Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04391 Filed 2–27–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71607; File No. SR–FINRA–2013–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to TRACE Reporting and Dissemination of Transactions in Asset-Backed Securities

February 24, 2014.

I. Introduction

On November 13, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to TRACE reporting and dissemination of transactions in Asset-Backed Securities.[3] The proposed rule change was published for comment in the **Federal Register** on November 26, 2013.[4] The Commission received one comment on the proposal.[5] On January 10, 2014, the Commission extended to February 24, 2014, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[6] On February 14, 2014, FINRA responded to the comment [7] and filed Amendment No. 1 to the proposed rule change.[8] On February 21, 2014, FINRA submitted a supplemental response to the comment.[9] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Amended Proposal

Historically, FINRA has utilized the Trade Reporting and Compliance Engine (''TRACE'') to collect from its members and publicly disseminate information on secondary over-the-counter transactions in corporate debt securities, Agency Debt Securities,[10] and certain primary market transactions. For certain other asset types, FINRA utilized TRACE to collect transaction information, but until recently, did not report such information publicly. Recently, however, FINRA began to phase-in dissemination of the transaction information for these previously non-disseminated asset types. In the first two phases, FINRA implemented dissemination of Agency Pass-Through Mortgage-Backed Securities and SBA-Backed ABS.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Asset-Backed Security'' was previously defined in FINRA Rule 6710(m). As a result of this proposed rule change, the definition has been revised and relocated to FINRA Rule 6710(cc).

[4] *See* Securities Exchange Act Release No. 70906 (November 20, 2013), 78 FR 70602 (''Notice'').

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Chris Killian, Managing Director, Securitization, SIFMA, dated December 17, 2013 (''SIFMA Letter'').

[6] *See* Securities Exchange Act Release No. 71287 (January 10, 2014), 79 FR 2924 (January 16, 2014).

[7] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Kathryn M. Moore, Associate General Counsel, FINRA, dated February 14, 2014 (''FINRA Letter I'').

[8] In Amendment No. 1, FINRA revised the types of products that would be included in the definition of ''Asset-Backed Security'' and that, under the proposal, would be disseminated through TRACE and subject to reduced reporting times. FINRA initially proposed to include in the definition of ''Asset-Backed Securities,'' among other things, collateralized debt obligations, collateralized loan obligations, collateralized bond obligations, and non-agency backed commercial mortgage-backed securities. Amendment No. 1 removes these securities from the defined ''Asset-Backed Securities'' that would be subject to reduced reporting times and disseminated under the proposal. Amendment No. 1 also makes other minor, technical revisions to the proposal.

[9] *See* email to Michael Gaw, Assistant Director, Division of Trading and Markets, Commission, from Kathryn M. Moore, Associate General Counsel, FINRA, dated February 21, 2014 (''FINRA Letter II'').

[10] The term ''Agency Debt Security'' is defined in FINRA Rule 6710(*l*).

[11] On November 12, 2012, FINRA began disseminating transactions in Agency Pass-Though Mortgage-Backed Securities traded TBA. *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving SR–FINRA–2012–020); FINRA's *Regulatory Notice* 12–26 (May 2012) and *Regulatory Notice* 12–48 (November 2012). On July 22, 2013, FINRA began disseminating Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions and SBA-Backed ABS traded TBA or in Specified Pool Transactions. *See* Securities Exchange Act Release No. 68084 (October

Continued

Next, FINRA sought, and the Commission approved, public dissemination of transactions in TRACE-Eligible Securities effected as Rule 144A transactions (provided that such transactions were in securities of the same type as are subject to dissemination if effected in non-Rule 144A transactions).[12] FINRA now has proposed to provide for public dissemination of a group of newly defined Asset-Backed Securities and to make certain related changes to its rules, as described below.

Dissemination and Definitional Amendments

FINRA has proposed to revise FINRA Rule 6750 to include Asset-Backed Securities among the TRACE-Eligible Securities that FINRA will disseminate publicly.[13] In connection with this change, FINRA has proposed to revise certain existing definitions in its rules and add other, new definitions in order to delineate the specific Asset-Backed Securities that would be subject to dissemination pursuant to FINRA Rule 6750. Specifically, FINRA has proposed to re-name as ''Securitized Products'' the broad group of securities currently defined as ''Asset-Backed Securities'' in FINRA Rule 6710(m)[14] and, in a proposed new definition in FINRA Rule 6710(cc), to re-define the term ''Asset-Backed Security'' more narrowly to mean:

> a type of Securitized Product where the Asset-Backed Security is collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable, and excludes: (i) a Securitized Product that is backed by residential or commercial mortgage loans, mortgage-backed securities, or other financial assets derivative of mortgage-backed securities; (ii) an SBA-Backed ABS as defined in paragraph (bb) traded To Be Announced (''TBA'') as defined in paragraph (u) or in a Specified Pool Transaction as defined in paragraph (x); and (iii) collateralized debt, loan and bond obligations.[15]

In addition, FINRA has proposed to provide further guidance regarding the scope of this narrower definition of ''Asset-Backed Security'' in proposed Supplementary Material .01 to FINRA Rule 6710, which would state that the term ''Asset-Backed Security'' includes, but is not limited to:

> securities collateralized by the following types of assets and securities: credit card receivables; automobile loans and leases; student loans; home equity loans and home equity lines of credit; aircraft leases; automobile floorplan and wholesale loans; motorcycle loans and leases; recreational vehicle loans; manufactured housing loans; commercial loans; tranches of other Asset-Backed Securities; reinsurance; timeshare obligations; and loans or other financial instruments generating a stream of payments and guaranteed as to principal or interest (or both) by the Small Business Administration (traded other than to be announced (''TBA'') as defined in paragraph (u) or in a Specified Pool Transaction as defined in paragraph (x)).[16]

Transactions included in the re-defined group of Asset-Backed Securities, set forth in proposed Rule 6710(cc) (including Rule 144A transactions in such securities) and Supplementary Material .01 thereto, will be publicly disseminated through TRACE as a result of the proposed rule change.[17] Securities excluded from the new definition of Asset-Backed Security by subparts (i) through (iii) of proposed Rule 6710(cc) would not be disseminated under the proposal. FINRA has represented that it will observe trading in the newly-disseminated Asset-Backed Securities to monitor the impact of price transparency on the market for these securities.[18]

FINRA also has proposed to define ''Collateralized Mortgage Obligation'' in proposed new FINRA Rule 6710(dd).[19] As defined, Collateralized Mortgage Obligations would be excluded from the definition of ''Asset-Backed Security'' by subpart (i) of proposed Rule 6710(cc), and thus transactions in Collateralized Mortgage Obligations would not be publicly disseminated by TRACE pursuant to this proposed rule change.[20]

Reduction of Reporting Period

In connection with its proposal to publicly disseminate transactions in certain Asset-Backed Securities,[21] FINRA has proposed to amend FINRA Rule 6730 to reduce the period for reporting Asset-Backed Security transactions to TRACE. The reduction would occur in two stages. First, FINRA would reduce the reporting period from no later than the close of the TRACE system on the date of execution to no later than 45 minutes from the time of execution.[22] Second, after approximately 180 days, the reporting period would be further reduced from no later than 45 minutes from the time of execution to no later than 15 minutes from the time of execution.[23]

List or Fixed Offering Price and Takedown Transactions

According to FINRA, many Asset-Backed Securities are underwritten using a syndicated process that is similar to the offering process for corporate bonds.[24] In syndicated offerings, there may be a number of transactions that occur at the list or fixed offering price (or the takedown price).[25] Transactions in TRACE-Eligible Securities (except for transactions in Securitized Products) that are effected in accordance with the requirements of a List or Fixed Offering Price Transaction[26] or a Takedown

23, 2012), 77 FR 65436 (October 26, 2012) (Order Approving SR–FINRA–2012–042); FINRA's *Regulatory Notice* 12–56 (December 2012). The terms ''TBA,'' ''Agency Pass-Through Mortgage-Backed Security,'' ''Specified Pool Transaction,'' and ''SBA-Backed ABS'' are defined in FINRA Rule 6710(u), (v), (x), and (bb), respectively.

[12] *See* Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Approving SR–FINRA–2013–029); Securities Exchange Act Release No. 70691 (October 16, 2013), 78 FR 62788 (October 22, 2013) (SR–FINRA–2013–043) (together, ''Rule 144A Dissemination Amendments''); FINRA's *Regulatory Notice* 13–35 (announcing June 30, 2014 as the effective date for SR–FINRA–2013–029 and SR–FINRA–2013–043). Given the Rule 144A Dissemination Amendments, the instant proposal would result in the dissemination of Asset-Backed Security transactions effected pursuant to Rule 144A (in addition to Asset-Backed Security transactions not effected pursuant to Rule 144A).

[13] *See* proposed Rule 6750 and Amendment No. 1.

[14] *See* proposed FINRA Rule 6710(m). Proposed FINRA Rule 6710(m) also would replace the current rule's reference to Section 3(a)(77)(A) of the Act with a reference to Section 3(a)(79)(A) of the Act. This is a technical change to coincide with renumbering to Section 3(a)(77) of the Act implemented by Section 101(b)(1) of the Jumpstart Our Business Startups act (''JOBS Act''). *See* Notice, 78 FR at 70604; *see also* Public Law 112–106, 126 Stat. 306 (2012).

[15] Proposed FINRA Rule 6710(cc); *see also* Amendment No. 1. FINRA believes that this proposed narrower definition is consistent with industry usage. *See* Notice, 78 FR at 70603.

[16] Proposed Supplementary Material .01 to FINRA Rule 6710; *see also* Notice, 78 FR at 70603–04 and Amendment No. 1.

[17] *See* Notice, 78 FR at 70603–04.

[18] *See* Notice, 78 FR at 70605.

[19] *See* proposed Rule 6710(dd) and Amendment No. 1.

[20] *See* Amendment No. 1.

[21] Hereinafter, except where the context requires otherwise, references to ''Asset-Backed Security'' and ''Securitized Product'' are to the new definitions of those terms.

[22] *See* proposed Rule 6730(a)(3)(B)(i)(b). Exceptions for transactions that are executed within 45 minutes of the close of the TRACE system and for transactions executed when it is closed are set forth in subparts a., c., and d. of proposed Rule 6730(a)(3)(B)(i).

[23] *See* proposed Rule 6730(a)(3)(B)(ii), which incorporates by reference Rule 6730(a)(1). Rule 6730(a)(1) requires that transactions in TRACE-Eligible Securities be reported within 15 minutes of the time of execution, and also provides exceptions for transactions in TRACE-Eligible Securities that are executed shortly before the TRACE system closes and when it is closed.

[24] *See* Notice, 78 FR at 70605.

[25] *See id.* The terms ''List or Fixed Offering Price Transaction'' and ''Takedown Transaction'' are defined in FINRA Rules 6710(q) and 6710(r), respectively.

[26] The term ''List or Fixed Offering Price Transaction'' is defined in FINRA Rule 6710(q).

Transaction [27] may be reported as late as T+1 during TRACE system hours, as provided in FINRA Rule 6730(a)(2); such transactions are not disseminated, as provided in FINRA Rule 6750(b)(3); and members are not charged a reporting fee for such transactions, as provided in FINRA Rule 7730(b)(1)(C).[28]

In light of the similarity of the offering process for corporate bonds and many Asset-Backed Securities, FINRA has proposed to amend FINRA Rules 6710(q) and 6710(r) so that primary market Asset-Backed Securities transactions that meet all of the requirements of a List or Fixed Offering Price Transaction or a Takedown Transaction may be treated in accordance with FINRA Rules 6730(a)(2), 6750(b)(3), and 7730(b)(1)(C).[29]

Dissemination Caps

Currently, there are dissemination caps in place for disseminated TRACE data, such that the actual size (volume) of a transaction over a certain par value is not displayed.[30] FINRA has proposed a $10 million dissemination cap for Asset-Backed Security transactions, which would prevent the display in disseminated TRACE data of the actual size (volume) of Asset-Backed Security transactions with an original par or value over $10 million; rather, such transactions will be displayed as ''10MM+.'' [31]

Other Dissemination Protocols

Currently, the standard data elements that are disseminated for TRACE-Eligible securities include, among other things, a dealer/customer indicator (indicating the type of contra party) and a buy/sell indicator.[32] FINRA has stated that the Asset-Backed Security market differs from the corporate bond market in that it has a smaller number of participants that are largely institutional. As a result, market participants have raised concerns with FINRA regarding protecting the confidentiality of dealer and customer trading strategies, identities, and positions in certain types of Asset-Backed Securities. To address these concerns, FINRA has proposed not to disseminate the dealer/customer and buy/sell indicators for Asset-Backed Security transactions.[33]

Data Availability

Currently, what is known as Asset-Backed Securities data—organized as the ABS Data Set for real-time data and as the Historic ABS Data Set for Historic TRACE Data [34]—includes all Securitized Products transactions that are disseminated (*i.e.,* TBA transactions and Specified Pool Transactions). In light of the proposed definitional amendments discussed above, however, FINRA has proposed to amend Rule 7730 to rename those data sets as the ''SP Data Set'' and ''Historic SP Data Set.'' FINRA also has proposed to include in these data sets the transaction data for the newly defined Asset-Backed Securities, which would be disseminated under this proposal.[35] Asset-Backed Securities that are traded in Rule 144A transactions would be included in, respectively, the Rule 144A Data Set, when available, and the Historic Rule 144A Data Set, when available.[36] FINRA does not propose to amend the fees currently in effect for the SP Data Set and the Historic SP Data Set. Similarly, when the Rule 144A Data Set and the Historic Rule 144A Data Set become available, disseminated information regarding Rule 144A transactions in Asset-Backed Securities would be included in such data sets without any change to the applicable fees.[37]

Other Technical Changes

FINRA has proposed to eliminate certain provisions that have expired and all cross-references thereto in FINRA Rule 6730(a) and to make conforming changes.[38] FINRA also has proposed to make conforming and technical changes to the FINRA Rule 6700 Series and FINRA Rule 7730 to incorporate the proposed definitional amendments and new data set names discussed above.[39]

Effective Date of Proposed Rule Change

FINRA has stated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date would be no later than 270 days following publication of that *Regulatory Notice.*

III. Summary of Comments

The Commission received one comment on the proposal,[40] and two responses to the comment from FINRA.[41] The commenter argues that the proposal ''has the potential to negatively impact liquidity, as previous proposals have done in the TBA, specified pool and the high-yield markets.'' [42] Therefore, the commenter requests ''that FINRA not implement this proposal, and instead engage in further discussion with the industry as to how best to preserve ABS market liquidity, and re-propose this proposal after such discussions.'' [43]

According to the commenter, FINRA's prior implementation of post-trade transparency in the high-yield bond market, and more recently in the markets for mortgage-backed securities traded TBA and in specified pools,[44]

[27] The term ''Takedown Transaction'' is defined in FINRA Rule 6710(r).

[28] *See* Notice, 78 FR at 70605.

[29] *See* proposed FINRA Rules 6710(q) and 6710(r); *see also* Notice, 78 FR at 70605. All primary market transactions in other classes of Securitized Products will continue to be specifically excluded from the definitions of List or Fixed Offering Price Transaction and Takedown Transaction, because, in general, such Securitized Products are structured, offered, and sold quite differently than corporate bonds (*i.e.,* a large number of Securitized Products sales are for forward delivery, and most such securities are not underwritten using a syndicated process generating a large number of transactions occurring at the same price). *See* Notice, 78 FR at 70605 n.28.

[30] *See* Notice, 78 FR at 70605–06 and n.29. There are $5 million and $1 million caps for TRACE-Eligible Securities that are rated Investment Grade and Non-Investment Grade, respectively; a $25 million cap for Agency Pass-Through Mortgage Backed Securities traded TBA for good delivery; and a $10 million cap for Agency Pass-Through Mortgage Backed Securities traded TBA not for good delivery, Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions, and SBS-Backed ABS traded TBA and in Specified Pool Transactions.

[31] *See* Notice, 78 FR at 70606. In the Notice, FINRA stated that—based on a sample period of transactions reported from May 16, 2011 through December 2012—approximately 17.6% of trades and approximately 75.6% of original par or principal value traded in Asset-Backed Securities transactions (other than Rule 144A transactions) would have been subject to the $10MM+ dissemination cap had these transactions been subject to public dissemination. For Rule 144A transactions in Asset-Backed Securities over that same time period, approximately 28.5% of trades and approximately 88.1% of original par or principal value traded would have been disseminated subject to the $10MM+ dissemination cap. *See id.* at n. 30. The Commission notes that these figures are based on the definition of ''Asset-Backed Securities'' in the original proposal, not the definition in Amendment No. 1.

[32] Additional standard data elements include the CUSIP, the time and date of the transaction, price, and the size (subject to dissemination caps). Specified Pool Transactions are disseminated subject to modified dissemination protocols. *See* Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (Order Approving SR–FINRA–2012–042); FINRA *Regulatory Notice* 12–56 (December 2012).

[33] *See* Notice, 78 FR at 70606.

[34] A transaction in a disseminated TRACE-Eligible Security becomes available as part of Historic TRACE Data no earlier than 18 months after the specific transaction is reported to TRACE. *See* Notice, 78 FR at 70606 n.35.

[35] *See* proposed FINRA Rule 7730; *see also* Notice, 78 FR at 70606 and n. 35.

[36] *See* Notice, 78 FR at 70606.

[37] *See id.; see also* Rule 144A Dissemination Amendments, *supra* note 12.

[38] *See* proposed FINRA Rules 6730(a)(3)(D) through 6730(a)(3)(G); *see also* Notice, 78 FR at 70606.

[39] *See* Notice, 78 FR at 70606.

[40] *See* SIFMA Letter.

[41] *See* FINRA Letter I; FINRA Letter II.

[42] SIFMA Letter at 1.

[43] *Id.*

[44] *See supra* notes 7 and 9.

has contributed to liquidity decreases in those markets; the commenter believes that the result in the Asset-Backed Security market would be the same.[45] The commenter asserts that market makers are less willing to take on large trades from their buy-side counterparties when the identity of their position becomes immediately known.[46] In addition, the commenter references a recent study that, according to the commenter, concluded that the implementation of mandatory transparency through TRACE in the corporate bond market caused a significant decrease in price dispersion for all bonds and significant decrease in trading activity for certain categories of bonds.[47] The commenter states that the study's results indicate that mandated transparency may help some investors and dealers through a decline in price dispersion, while it harms others through a reduction in trading activity. According to the commenter, in the markets where post-trade transparency has already been implemented, the benefits of improved price discovery have been far outweighed by the costs of decreased liquidity.[48]

In response, FINRA notes that TRACE has been subject to extensive academic interest since its inception, and that studies have shown multiple benefits of transparency, including a narrowing of the bid-ask spread, reduction in trade execution costs, and improved valuation precision in mark-to-market valuations.[49] FINRA acknowledges the study referenced by the commenter, and notes that the study examined trading volume and the dispersion of transaction prices of corporate bonds over the period July 1, 2002, through December 31, 2006—a period during which FINRA implemented post-trade transparency in four stages. According to FINRA, the Asquith et al. study evaluated the change in dispersion of transaction prices and trading volume for windows of 90, 60, and 30 days before and after the implementation of each stage, and for the time frame examined concluded that increases in post-trade transparency were associated with a statistically significant decrease in price dispersion in all stages, generally benefitting investors. Further, FINRA asserts that the study found no negative impact on trading activity for the first three stages of transparency implementation, and it found a statistically significant decrease in trading activity only for the last stage of dissemination, which was composed of non-investment grade and inactively-traded bonds. FINRA notes, however, that the study captured only the temporary adjustment in trading activity for the 90 days after implementation of dissemination, which FINRA states may have been a time period when market participants were adjusting to the new information available.

Furthermore, FINRA states that, during the time period beyond 90 days from the last stage of dissemination, it appears that the trading activity of such bonds recovered to pre-dissemination levels, while the reduction in price dispersion was maintained. FINRA asserts this based on its understanding of the information and analysis provided in the same study referenced in the SIFMA Letter.[50] Specifically, FINRA notes that, for phase 3B bonds, which the authors identified as the bonds that have experienced a large and significant reduction in trading activity, Figure 1 on page 35 of the paper shows that the average weekly daily trading volume, which was in the $200,000 to $400,000 range when the final stage of transparency was implemented in February 2005, declined below the $200,000 level over the next several months after dissemination, but then by December and January 2006, recovered to the $200,000 to $400,000 range.[51]

In addition, FINRA disputes the commenter's assertion that the implementation of post-trade transparency in the markets for mortgage-backed securities traded TBA and in specified pools has caused decreased liquidity in these markets. According to FINRA, while there has been a decline in trading in these markets, there is no direct evidence that transparency has contributed to the decline.[52] FINRA states that TRACE data and statistics published on SIFMA's Web site indicate that the issuance of mortgage-related products has declined to the same extent or greater than trading volumes, affecting both disseminated and non-disseminated products.[53] FINRA also believes that market participants have been focused on macro factors in general, and in particular the current and future impact of the Federal Reserve buying program and any tapering thereof.[54]

The commenter also states that its members are ''generally in agreement with the re-definition of ABS that includes securities backed by consumer or student loans, a lease or a secured or unsecured receivable but excludes Agency Pass-MBS, Agency CMOs and Agency and Non-Agency RMBS.'' [55] The commenter warns, however, that ''the inclusion of CDOs, CLOs and Non-Agency-Backed CMBS is pressing the revised definition of ABS beyond what is appropriate.'' [56] According to the commenter, unlike the consumer Asset-Backed Securities with which they are grouped under the original proposal, the credit analysis for CDOs, CLOs, and Non-Agency CMBS require extensive work and an in-depth study of the underlying assets in order to formulate an opinion on the value of the tranche.[57] The commenter states, therefore, that ''[i]f prices were disseminated to the market on these securities without appropriate consideration, it would likely be the case that inexperienced investors could use the trade print in one junior bond as a proxy for a nominally similar piece of paper.'' [58] Furthermore, the commenter cautions that disseminated prices for CMBS and CDO tranches may be influenced by technical factors and thus ''TRACE prices may not always reflect the fundamental credit risk of a security.'' [59]

In its response, FINRA stated that it ''agrees that the credit analysis for [these securities] differs from those Securitized Products backed by consumer or student loans, a lease, or a secured or unsecured receivable.'' [60] Accordingly, in Amendment No. 1, FINRA revised the proposal to exclude these securities—as well as collateralized bond obligations—from the defined group of Asset-Backed Securities that would be disseminated

[45] *See* SIFMA Letter at 2.

[46] *See id.*

[47] *See id.* (*citing* Asquith, Covert, and Pathak, ''The Effects of Mandatory Transparency in Financial Markets Design: Evidence from the Corporate Bond Market'' (2013) (the ''Asquith et al. study'')).

[48] *See id.*

[49] *See* FINRA Letter I at 3 (citing, *e.g.,* Goldstein, Hotchkiss, and Sirri, ''Transparency and Liquidity: A Controlled Experiment on Corporate Bonds'' (March 2006); Bessembinder, Maxwell, and Venkataraman, ''Optimal Market Transparency: Evidence From the Initiation of Trade Reporting in Corporate Bonds'' (January 2005); and Cici, Gibson, and Merrick, ''Missing the Marks: Dispersion in Corporate Bond Valuation'' (May 2008)).

[50] *See* FINRA Letter II.

[51] *See id.* FINRA states that a similar trend is shown in Figure 2 on page 36 of the Asquith et al. study.

[52] *See* FINRA Letter I at 3–4.

[53] *See id.* at 4.

[54] *See id.*

[55] SIFMA Letter at 3.

[56] *Id.*

[57] *See id.*

[58] *Id.*

[59] *Id.* at 4 (stating, for example, that ''it is not uncommon in markets for deeply discounted legacy CMBS credit that a party may seek to purchase a specific tranche as a means of obtaining control rights in a transaction. As a result, a bond can trade at a pronounced premium to its fundamental value because the control right is worth a significant amount for a special servicer who can extract value with special servicing and liquidation fees which are not available to a typical investor'').

[60] FINRA Letter I at 2.

under the proposal.[61] FINRA states that, instead, it will consider potential additional transparency in these securities in conjunction with other tranched securities, such as Collateralized Mortgage Obligations, as appropriate.[62]

Finally, the commenter suggests an increased reporting period for TRACE-reportable Regulation S securities, stating that they require a manual and time-consuming booking process which would be difficult if not impossible to complete within the proposed timeframes.[63] In response, FINRA states that it considers this suggestion to be outside the scope of its proposal.[64]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[65] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[66] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting the fairness and efficiency of U.S. capital markets.[67] The Commission believes that real-time dissemination of last-sale information could aid dealers in deriving better quotations, because they would know the prices at which other market participants had recently transacted in the same or similar instruments. This information also could aid all market participants in evaluating current quotations, because they could inquire why dealer quotations might differ from the prices of recently executed transactions. Furthermore, post-trade transparency affords market participants a means of testing whether dealer quotations before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency can promote price competition between dealers and more efficient price discovery, and ultimately lower transaction costs. For similar reasons, FINRA believes that dissemination of Asset-Backed Security transaction information may enhance price discovery, allow investors to better assess the quality of their executions, assist broker-dealers in complying with best execution obligations, and enable broker-dealers and other institutional investors to improve the accuracy of their valuations of their Asset-Backed Security positions.[68] The Commission agrees.[69]

The Commission has considered the commenter's argument that post-trade transparency in the Asset-Backed Security market has the potential to negatively impact liquidity in that market. The commenter references an academic study that found that the implementation of mandatory transparency through TRACE in the corporate bond market is associated with a significant decrease in price dispersion for all bonds and a significant decrease in trading activity for certain categories of bonds. FINRA notes in response to the comment that the study found a statistically significant decrease in trading activity only in the last of the four stages of transparency implementation in high-yield corporate bonds, and no impact on trading activity in the first three stages.[70] FINRA also notes that, according to the same study, trading activity in those corporate bonds eventually normalized to pre-dissemination levels, while the reduction in price dispersion remained.[71] The Commission notes that both the commenter and the Asquith et al. study believe that mandated post-trade transparency under TRACE has caused a reduction in price dispersion of the affected bonds. This feature appears consistent with the view that post-trade transparency reduces information asymmetries and promotes price competition in the market. Although the Asquith et al. study claims that post-trade transparency may cause a reduction in the level of trading of illiquid bonds, the Commission also notes that some question exists about whether that feature—even if real in the short term—persists over time or is detrimental. The Commission believes that the comment does not preclude approval of the proposal at this time, particularly in light of FINRA's representation that it will ''observe the trading in Asset-Backed Securities to monitor the impact of price transparency in the market for Asset-Backed Securities.''[72]

The Commission believes that the proposed reduction in reporting times for Asset-Backed Security transactions (except those that are effected as primary market List or Fixed Offering Price Transactions or Takedown Transactions) is an important corollary to the expansion of post-trade transparency for such transactions. Reducing the reporting period for these transactions as set forth in the proposal will result in important trade information reaching the market more quickly, thus contributing to enhanced price transparency for Asset-Backed Securities. The Commission also believes that FINRA's two-stage phased approach to implementing the reduced reporting period is reasonably designed to ease the compliance burdens on those affected by the proposal without significantly compromising FINRA's ability to disseminate more timely transaction information. Further, the Commission believes that it is reasonable and appropriate to allow members that effect primary market Asset-Backed Security transactions as List or Fixed Ordering Price Transactions or Takedown Transactions to continue to take advantage of the more flexible treatment of those transactions provided for in FINRA Rules 6730(a)(2), 6750(b)(3), and 7730(b)(1)(C).

The Commission believes that the proposed $10 million dissemination cap for Asset-Backed Security transactions is reasonable and consistent with the Act. FINRA has represented that it will observe the effects of the $10 million dissemination cap on the market and may propose modifications to the cap size in the future if warranted. The Commission expects FINRA to periodically re-evaluate whether the dissemination caps, including the caps for Asset-Backed Security transactions being approved today, continue to be appropriate. Furthermore, the Commission believes that the additional

[61] *See id.;* Amendment No. 1.

[62] *See* FINRA Letter I at 2.

[63] *See* SIFMA Letter at 4.

[64] *See* FINRA Letter I at 4. FINRA also reiterates that the proposal is consistent with the Act and should be approved for the reasons set forth in the proposal. *See id.*

[65] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78o–3(b)(6).

[67] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8136 (January 29, 2001) (approving SR–NASD–99–65) (''2001 TRACE Order'').

[68] *See* Notice, 78 FR at 70607; *see also* FINRA Letter I, at 4.

[69] *See* Edwards, A. K., Harris, L. E. & Piwowar, M. S., ''Corporate Bond Market Transaction Costs and Transparency'' (June 2007); Goldstein, Hotchkiss, and Sirri, ''Transparency and Liquidity: A Controlled Experiment on Corporate Bonds'' (March 2006); and Bessembinder, Maxwell, and Venkataraman, ''Optimal Market Transparency: Evidence From the Initiation of Trade Reporting in Corporate Bonds'' (January 2005).

[70] *See* FINRA Letter I.

[71] *See* FINRA Letters I and II.

[72] Notice, 78 FR at 70605.

proposed dissemination protocols for Asset-Backed Security transactions, pursuant to which the dealer/customer and buy/sell indicators would not be disseminated, strike an appropriate balance between enhancing post-trade transparency and protecting counterparty confidentiality.

The Commission further believes that including disseminated Asset-Backed Security transaction data in the SP Data Set and Historic SP Data Set (as renamed under the proposal) while maintaining the current fee levels in effect for those data sets is reasonable and consistent with the Act. The rules that establish the existing data sets have been approved by the Commission,[73] and including the additional Asset-Backed Securities to be disseminated under the instant proposal in those data sets does not appear to raise any issues. Finally, the Commission believes that the proposal's minor, conforming, and technical revisions to the FINRA Rule 6700 series and FINRA Rule 7730 are consistent with the Act.

The Commission finds good cause to approve the proposed rule change, as amended by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The amendment responds to an issue raised by one commenter on the proposal by excluding certain tranched securities from the Asset-Backed Securities to be disseminated. Thus, the scope of proposal, as amended, is narrower than the initial proposal. In addition, the initial proposal underwent a full notice-and-comment period and generated no comment from any other parties. Accelerated approval would allow FINRA to expand post-trade transparency to transactions in the Asset-Backed Securities set forth in the amended proposal without delay. Accordingly, the Commission believes that good cause exists, consistent with Sections 15A(b)(6) and 19(b) of the Act,[74] to approve the proposed rule change, as amended by Amendment No. 1, on an accelerated basis.

[73] *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (approving SR–FINRA–2012–020, which, among other things, established real-time and historic market data sets for certain Asset-Backed Securities traded ''To Be Announced''); Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (approving SR–FINRA–2012–042, which, among other things, established real-time and historic market data sets for certain other Asset-Backed Securities).

[74] 15 U.S.C. 78*o*–3(b)(6); 15 U.S.C. 78s(b).

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–046 and should be submitted on or before March 21, 2014.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[75] that the proposed rule change (SR–FINRA–2013–046), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04390 Filed 2–27–14; 8:45 am]

BILLING CODE 8011–01–P

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71606; File No. SR–NYSEArca–2013–122]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to the Use of Derivative Instruments by PIMCO Total Return Exchange Traded Fund

February 24, 2014.

I. Introduction

On November 6, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the use of derivative instruments by the PIMCO Total Return Exchange Traded Fund (''Fund''). The proposed rule change was published for comment in the **Federal Register** on November 26, 2013.[3] The Commission received no comment letters on the proposed rule change. On January 9, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70905 (November 20, 2013), 78 FR 70610 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 71271 (January 9, 2014), 79 FR 2736 (January 15, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated February 24, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.