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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-15889 Filed 7-11-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-58115; File No. SR-FINRA-2007-026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto for TRACE To Disseminate Additional Data Elements Relating to Each Transaction

July 7, 2008.

I. Introduction

On December 5, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD"))¹ filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposal to adopt a policy to publicly disseminate additional data elements for corporate bond transactions that are reported to the Trade Reporting and Compliance Engine ("TRACE"). These additional elements are whether a transaction is an inter-dealer transaction or a transaction with a customer and, if the latter, whether the dealer is on the buy or the sell side. On May 20, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on

June 2, 2008.⁴ The Commission received one comment on the proposal.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the TRACE rules, a FINRA member that is party to a transaction in a TRACE-eligible security must report several types of information to the TRACE system—including whether it is buying or selling ("Buy/Sell data element") and whether its counterparty is a broker-dealer or a customer ("Dealer/Customer data element").⁶ Currently, these two data elements are not disseminated.⁷

FINRA has proposed that these two data elements now be publicly disseminated for each transaction. FINRA believes that these data elements would enhance market transparency by allowing TRACE users to better understand what a reported price actually represents. Customer transaction prices are "all-in prices" that include a mark-up/mark-down or a commission, while interdealer transaction prices are not. A customer could compare the "all-in price" of its transaction with other customer transactions. Dealer pricing could be approximated by "backing out" the mark-up, mark-down, or commission from the "all-in price" of a customer transaction.

FINRA represented that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following any Commission approval. The effective date would be no later than 120 days following publication of that *Regulatory Notice*.

III. Summary of Comments

The Commission received one comment. The commenter strongly supported the proposal, arguing that dissemination of the additional data

elements "would improve the system tremendously."⁸

IV. Discussion and Findings

After carefully considering the proposal and the comment submitted, 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.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA 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. The Commission notes that it has previously approved the collection and real-time dissemination of similar transaction information for municipal securities.¹¹ The Commission believes that the current proposal will make the corporate debt markets more transparent by allowing market participants to make more accurate assessments of reported prices for transactions in TRACE-eligible securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-FINRA-2007-026) as modified by Amendment No. 1 thereto be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-15890 Filed 7-11-08; 8:45 am]

BILLING CODE 8010-01-P

⁸ See *supra* note 5.

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ See Securities Exchange Act Release No. 42241 (December 16, 1999), 64 FR 72123 (December 23, 1999) (SR-MSRB-99-8) (requiring that transaction reports be disseminated for certain municipal securities transactions identifying the transaction as either a sale by a dealer to a customer, a purchase by a dealer from a customer, or an inter-dealer trade); Securities Exchange Act Release No. 50294 (August 31, 2004), 69 FR 54170 (September 7, 2004) (SR-MSRB-2004-02) (implementing real-time reporting for most municipal securities transactions and adding a capacity field to reports to allow for the dissemination of data showing whether an inter-dealer trade was done as agent for a customer).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Generally, pre-consolidation actions by NASD are referred to as FINRA actions, except for NASD Rules, when referenced singularly, and NASD *Notices to Members*. When FINRA files proposed rule changes to create a consolidated FINRA rule manual, such NASD rules and interpretations, as incorporated in the consolidated FINRA Manual, will no longer be referred to as "NASD" rules.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Securities Exchange Act Release No. 34-57866 (May 23, 2008), 73 FR 31518 (June 2, 2008) (SR-FINRA-2007-026).

⁵ See submission via SEC WebForm from Rebecca E. Carsten, dated June 20, 2008.

⁶ For an interdealer transaction, FINRA receives a TRACE report from each dealer but disseminates data reflecting only the information received from the sell side. For a customer transaction, only one side of the trade has to be reported—the dealer side—and FINRA disseminates the data from the dealer's report.

⁷ The data elements that are disseminated include: The bond identifier (*i.e.*, the TRACE symbol); the price inclusive of any mark-up, mark-down, or commission; the quantity (expressed as the total par value); the yield; the time of execution; and, if the transaction were executed on a day other than when TRACE data is being disseminated, the actual date of execution.