

July 18, 2013

## FINRA Proposes to Publicly Disseminate Transaction Information Regarding Rule 144A Corporate Debt Securities

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

### Contacts

Russell D. Sacks  
New York  
+1.212.848.7585  
[rsacks@shearman.com](mailto:rsacks@shearman.com)

Charles S. Gittleman  
New York  
+1.212.848.7317  
[cgittleman@shearman.com](mailto:cgittleman@shearman.com)

David L. Portilla  
New York  
+1.212.848.4468  
[david.portilla@shearman.com](mailto:david.portilla@shearman.com)

Leo Wong  
New York  
+1.212.848.4259  
[leo.wong@shearman.com](mailto:leo.wong@shearman.com)

**FINRA has proposed a trade-reporting rule change that would result in the public dissemination of secondary market transactions in corporate debt securities sold under Securities Act Rule 144A. If adopted, this change could affect secondary market transactions in a number of assets classes, including high-yield debt securities.**

### Introduction

On July 8, 2013, the US Financial Industry Regulatory Authority, Inc. (“FINRA”) submitted an amendment to its Rule 6750 to the Securities and Exchange Commission (“SEC”). If adopted, the amendment would allow FINRA to disseminate information on transactions effected pursuant to Rule 144A under the Securities Act of 1933 (“Rule 144A”) through the Trade Reporting and Compliance Engine (“TRACE”), the principal trade-reporting system for fixed-income securities. The proposed amendment would allow FINRA to disseminate information regarding secondary transactions effected pursuant to Rule 144A. It would not require the reporting of primary transactions.

The practical effect of the rule change would be for Rule 144A transaction reports in corporate bonds to become subject to public dissemination in the manner of other fixed-income secondary trading.

As of July 17, 2013, the SEC has not published the amendment for comment.<sup>1</sup>

<sup>1</sup> The [proposed rule change](#) is available on FINRA's website. FINRA previously published the rule for comment to its members. See [Regulatory Notice 12-39](#). A number of comment letters were submitted in response to the prior notice to members, including letters from major financial trade associations. The comment letters reveal varying points of view from different market participants, including some for and some against the proposal. Once the SEC publishes the rule, the rule will be open for comment again. FINRA Regulatory Notices and NASD Notices to Members are available at FINRA's Internet website, [www.finra.org](http://www.finra.org).

## About TRACE

FINRA currently requires any member that is a party to a transaction in a “TRACE-eligible security” to report the transaction to TRACE by submitting a trade report. TRACE-eligible securities include any debt security that is US dollar-denominated and issued by a US or foreign private issuer, including those sold pursuant to Rule 144A, and any debt security that is US dollar-denominated and issued or guaranteed by a US executive agency or a Government-Sponsored Enterprise.<sup>2</sup>

FINRA Rule 6730(a) generally requires any transaction in a TRACE-eligible security, subject to certain exceptions, to be reported to TRACE within 15 minutes of the transaction. FINRA Rule 6730(c) requires the trade report to contain information on size, price, time of execution, the amount of commission and the date of settlement, among other items.

Currently, FINRA Rule 6750 permits FINRA to disseminate information on all transactions in a TRACE-eligible security, subject to certain exceptions, immediately upon receipt of the report. Under FINRA Rule 6750(c), transactions excluded include those effected pursuant to Rule 144A, and primary market sale transactions sold on the first day of trading of a security, which are defined for purposes of the TRACE rules as “list or fixed offering price transactions.”

## The Proposal

FINRA has proposed to remove transactions effected pursuant to Rule 144A from the list of excepted transactions for which it disseminates information. Thus, under the proposed amendments, FINRA would disseminate information on secondary market transactions effected pursuant to Rule 144A. Information regarding primary transactions, on the other hand, would continue to be exempt from dissemination. The Proposal also includes changes to permit the inclusion of data regarding Rule 144A transactions in the data sets it sells to market participants, including with respect to historic Rule 144A transactions effected as of or after July 2, 2002.

## Conclusion

With this proposed rule change, FINRA seeks to increase transparency in Rule 144A transactions and, in its view, to modify its rules to be consistent with changes to Rule 144A mandated by the JOBS Act. As noted above, the practical effect of this proposal would be that transaction information regarding corporate bonds sold under Rule 144A would be disseminated by TRACE. If this proposal is adopted, transactions in certain classes of fixed-income securities that are routinely sold pursuant to Rule 144A, such as high-yield securities, will now be subject to public dissemination of trade reports.<sup>3</sup> During the short-term, transitional period after public dissemination commences, the pricing impact of publicly-available trade report dissemination will be most clearly felt.

---

<sup>2</sup> TRACE-eligible security does not include a debt security that is issued by a foreign sovereign, a US Treasury security or a money market instrument. See FINRA Rule 6710(a).

<sup>3</sup> Fixed income securities sold pursuant to Rule 144A have been reported to FINRA since July 1, 2002. See [NASD Notice to Members 01 18](#).