FINANCIAL INFORMATION FORUM

January 27, 2023

By electronic mail to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 22-26, "Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot Trades"

Dear Ms. Mitchell,

The Financial Information Forum ("FIF")[1] appreciates the opportunity to comment on Regulatory Notice 22-26 (the "Current Regulatory Notice") published by the Financial Industry Regulatory Authority ("FINRA").[2] In the Current Regulatory Notice, FINRA solicits comment on proposed changes for reporting of delayed Treasury spot trades. FINRA proposes "… requiring members to report the spread and identify the associated benchmark Treasury security (i.e., the CUSIP or other appropriate identifier) at the time at which the spread is agreed, and then subsequently report the dollar price of the transaction once the trade is spotted."[3]

Prior FINRA proposal for reporting delayed Treasury spot trades

FINRA's proposal in Regulatory Notice 22-26 represents a modification to the prior proposal by FINRA set forth in Regulatory Notice 20-24.[4] In Regulatory Notice 20-24, FINRA proposed the following

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] FINRA Regulatory Notice 22-26, "Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot Trades" (Nov. 29, 2022), available at https://www.finra.org/sites/default/files/2022-11/Regulatory-Notice-22-26.pdf ("Regulatory Notice 22-26").
[3] Id. at 1.
[4] FINRA Regulatory Notice 20-24, "Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades" (July 16, 2020), available at https://www.finra.org/sites/default/files/2020-07/Regulatory-Notice-20-24.pdf.

additional reporting for a delayed Treasury spot trade at the time the trade is spotted (i.e., executed):

- a modifier to identify the trade as a delayed Treasury spot trade
- the time at which the spread was agreed upon (in addition to the time of execution).[5]

The proposal by FINRA in Regulatory Notice 20-24 reflected the recommendations of the Fixed Income Market Structure Advisory Committee ("FIMSAC") established by the Securities and Exchange Commission (the "Commission").[6] FINRA included this proposal, along with a proposal for TRACE reporting of a portfolio trade modifier, in a rule filing submitted by FINRA to the Commission on November 22, 2021 (the "FINRA Rule Filing").[7] On December 2, 2021, the Commission published notice of the FINRA Rule Filing (the "Notice of Filing").[8] In the Notice of Filing, the Commission requested feedback on "… the incremental burden of the systems changes necessary to report two additional data elements—the agreed upon spread and the CUSIP or other identifier of the benchmark U.S. Treasury Security …"[9] FINRA subsequently amended the FINRA Rule Filing to withdraw the proposals relating to delayed Treasury spot trades,[10] and the Commission published a notice of filing relating to this amendment.[11]

FIF members recommend, as an alternative to the proposal in the Current Regulatory Notice, that FINRA adopt the alternative approach recommended by FIMSAC and previously proposed by FINRA

FIF members recommend, as an alternative to the proposal in the Current Regulatory Notice (the "Current Proposal"), that FINRA adopt the approach it previously proposed in Regulatory Notice 20-24 and the FINRA Rule Filing. The approach proposed by FINRA in the Current Regulatory Notice would provide enhanced transparency to the market for delayed Treasury spot trades. However, this proposal would represent a fundamental change to how firms record trading activity in their systems. As discussed in further detail below, firms do not record the agreement to a spread as a trade execution. Instead, in reliance on regulatory guidance, firms record the spotting of the trade as the point of execution. As a result, the Current Proposal would require firms to report data to back-end and reporting systems pre-execution when these systems are designed for processing executed transactions.

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[5] Id. at 3.
[6] Securities and Exchange Commission, Fixed Income Market Structure Advisory Committee, "Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades" (Feb. 10, 2020), available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf ("FIMSAC Recommendation"), at 1-2 and 3.
[7] SR-FINRA-2021-030, "Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Require Members to Append Modifiers to Identify Delayed Treasury Spot and Portfolio Trades when Reporting to TRACE," available at https://www.finra.org/sites/default/files/2021-11/SR-FINRA-2021-030.pdf, at 7-8.
[8] Exchange Act Release No. 93699 (Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 6730 to Require Members to Append Modifiers to Delayed Treasury Spot and Portfolio Trades When Reporting to TRACE) (Dec. 1, 2021), 86 FR 69337 (Dec. 7, 2021).
[9] Id. at 38.
[10] Amendment No. 1 to Proposed Rule Change (Mar. 4, 2022), available at https://www.finra.org/sites/default/files/2022-03/sr-finra-2021-030-amendment-no-1.pdf.
[11] Exchange Act Release No. 94365 (Mar. 4, 2022) (Notice of Filing of Amendment No. 1 and Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to TRACE Reporting of Corporate Bond Trades That Are Part of a Larger Portfolio Trade), 87 FR 13781 (Mar. 10, 2022).

Given the fundamental systems changes that would be required to implement the Current Proposal, FIF members recommend that FINRA implement the approach FINRA previously proposed in Regulatory Notice 20-24. The approach previously proposed by FINRA in Regulatory Notice 20-24, which was based on the FIMSAC recommendations, would not require the reporting of data pre-execution and would address a primary concern identified by FIMSAC, which is to "… alert market participants that the spread-based economics of the trade had been agreed earlier in the day."[12] FIF members note that implementing the proposal in Regulatory Notice 20-24 would require significant systems and workflow changes, but FIF members recommend the approach set forth in Regulatory Notice 20-24 as an alternative to the Current Proposal because the Current Proposal would require fundamental changes to how firms record trading activity in their systems. The Current Proposal also would require fundamental changes to the TRACE reporting process, as discussed below.

In a future phase, FINRA should consider the Current Proposal. However, the following steps should precede this future phase:

- FINRA should implement the approach proposed in Regulatory Notice 20-24. This would provide additional detail to FINRA as to the level of market activity that is represented by delayed Treasury spot trading.
- FINRA should make a determination with respect to its proposal to reduce the reporting timeframe for transactions in corporate and certain other TRACE-eligible securities that are currently subject to a 15-minute reporting timeframe.[13] If FINRA determines to reduce the reporting timeframe for these securities, FINRA should implement such a proposal prior to requiring firms to report data to TRACE pre-execution.
- If FINRA determines to reduce the reporting timeframe as described in the preceding bullet, FINRA should, as part of such a proposal, provide reporting firms the option to report within such shortened timeframe only the data elements that will be publicly disseminated and allow firms to report on an end-of-day basis data elements (such as those relating to commissions, settlement and capacity) that will not be publicly disseminated.
- If reporting of data to TRACE pre-execution is required, reporting should be limited to those data elements that FINRA intends to publicly disseminate upon receipt.

The Current Proposal would require the reporting of data to back-office and reporting systems and to TRACE pre-execution, representing a fundamental change to firm systems and workflows

The initial FINRA proposal would have required many firms to update their systems to record and report two new data elements for a delayed Treasury spot trade: a delayed Treasury spot trade modifier; and the time the spread was agreed. These two data elements would be reportable upon trade execution. The Current Regulatory Notice requires the reporting of these two data elements and also requires the reporting of the agreed spread and the applicable benchmark Treasury security. The Current Regulatory

[12] FIMSAC Recommendation, at 2.

[13] FINRA Regulatory Notice 22-17, "TRACE Reporting Timeframe, FINRA Requests Comment on a Proposal to Shorten the Trade Reporting Timeframe for Transactions in Certain TRACE-Eligible Securities From 15 Minutes to One Minute" (Aug. 2, 2022), available at https://www.finra.org/sites/default/files/2022-08/Regulatory-Notice-22-17.pdf.

Notice further requires that the agreed spread, the applicable benchmark and other applicable terms (including time of agreement) be reported at the time the spread has been agreed. Accordingly, these terms must be systematized, communicated from front-office (trading) to back-office (trade processing) and reporting systems, and reported to TRACE prior to trade execution. The requirement for communication of data between front-office and back-office systems at the time a spread is agreed is significant because front-office systems do not communicate data to back-office systems “pre-execution”, as it would not make sense to communicate data to a downstream system pre-execution when the function of that downstream system is to process executed trades. As an example, there is no need to communicate order and quote data to a back-office system that processes executed trades.

As an alternative to communicating data to back-office systems pre-execution, firms could report pre-execution data directly from their front-office systems to TRACE. This alternative approach also would require significant system changes. As discussed in further detail below, FINRA Rule 6710(d) defines the "time of execution" for a transaction in a TRACE-eligible security as “… the time when the Parties to a Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.” Accordingly, agreement to a spread occurs “pre-execution”.

The Current FINRA Filing also will require that delayed Treasury spot trades be reported to TRACE through a two-step reporting process, which will involve a fundamental change to the TRACE reporting process. This is discussed in further detail below.

The Current Proposal creates additional complexity given that TRACE requires dual-party reporting

An additional complexity results from the fact that TRACE requires dual-party reporting. FIF members expect that many industry members will want to arrange for automated exchange of spread terms between broker-dealers at the time a spread has been agreed. This will be important to enable firms to report to TRACE consistently with their counter-parties and within the mandated TRACE reporting timeframes. Many firms will want to implement this automated process for spread terms agreed between two dealers, spread terms intermediated by an inter-dealer broker, and spread terms agreed through an alternative trading system (“ATS”), RFQ system or other trading platform. This will require industry participants to agree upon standards for how this data should be communicated and implement this data exchange with all of their counter-parties. This will be a significant industry-wide effort.

TRACE should allow for single-party reporting of when a spread has been agreed

TRACE currently requires dual-party reporting. Dual-party reporting could be appropriate for trades that are manually negotiated between two dealers where there is no designated executing dealer. However, where one dealer routes an order to another dealer (or to an ATS or other trade execution platform), and the receiving dealer (or ATS or other trade execution platform) executes the order, there is no need for dual-party reporting. It should be sufficient in this type of transaction for the executing dealer (or ATS or other trade execution platform) to report the transaction. The Consolidated Audit Trail (“CAT”) provides for this type of reporting. In CAT, the executing firm reports both sides of a trade execution for the significant majority of trade executions.[14] CAT provides for dual-party reporting in certain exceptional cases, such as when a "[T]rade is executed as the result of a negotiation between two Industry Members."[15] Commission and Commodity Futures Trading Commission rules similarly provide for single-party reporting of swaps and security-based swaps.[16]

FIF members understand that a significant portion of delayed Treasury spot trades are executed through ATSs and other trade execution platforms. If FINRA requires reporting of data for delayed Treasury spot trades pre-execution, FINRA should allow for single-party pre-execution reporting in the scenario where a receiving dealer, ATS or other trade execution platform will be executing the order. This approach would provide FINRA with all the data that it seeks to disseminate while significantly reducing the implementation burden for industry members.

Fixed income trading often involves back-to-back scenarios where a dealer trades as riskless principal. For these scenarios it should be sufficient for only the execution platform to report data pre-execution. The following are examples of these types of scenarios:

- A dealer trades on a platform based on a customer order and will execute back-to-back with its customer.
- A dealer trades on a platform and will execute back-to-back with an affiliate.
- An ATS or other trade execution platform requires all platform participants to settle all trades through a single clearing firm designated by the ATS.
- A dealer trades through an entity established by an ATS or other trade execution platform where the entity provides anonymity to platform participants.

In each of these scenarios, FIF members propose that only the execution platform would report to TRACE pre-execution and all parties would report to TRACE at the time of execution.[17]

Dissemination of TRACE-reported data

In addition to the significant work that would be required for reporting firms to report to TRACE at the time a spread has been agreed, there also would be significant work for vendors and other firms that are involved in the processing and dissemination of TRACE-reported data as these firms would now have to process and disseminate a new type of pre-execution TRACE message. FINRA would need to update its

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[14] See "CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r18" (Dec. 16, 2022), available at https://catnmsplan.com/sites/default/files/2022-12/12.16.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r18_CLEAN.pdf, at 125-131.
[15] Id. at 126.
[16] 17 CFR 45.8. 17 CFR 242.901.
[17] While FIF members recommend that FINRA implement the proposal from Regulatory Notice 20-24 instead of the Current Proposal, in this and other sections of this letter FIF members provide suggestions for how the Current Proposal could be implemented in a more efficient manner in the event that FINRA proceeds with the Current Proposal.

Bond Trade Dissemination Service specifications (the "BTDS Specifications")[18] to incorporate this pre-execution TRACE message; trade messages in the BTDS Specifications also will be impacted because of the need to link a trade message to a pre-execution message. As discussed below, a cancel or correction can apply to a pre-execution report, a trade execution report or both. This will add significant complexity not just for trade reporting (as discussed below), but also for trade dissemination. The proposal in Regulatory Notice 20-24 would involve less work for vendors because they are currently required to receive, process and disseminate a number of fields and modifiers.[19] The proposal in Regulatory Notice 20-24 would require vendors to receive, process and disseminate one additional field (the time at which the spread was agreed upon) and one additional modifier (a modifier to identify the trade as a delayed Treasury spot trade).

Workflow changes

The Current Proposal would require not just system changes but also changes to firm workflows. In many cases, traders record agreed spread terms through email, IM and chat messages, excel spreadsheets and other methods that are not in a format that would enable automated reporting to TRACE upon agreeing to a spread. Many firms will need to change their trading workflows to ensure that the reportable spread-related terms are systematized at the time a spread has been agreed to enable automated reporting to TRACE at that time.

Current FINRA real-time reporting systems do not require reporting of data pre-execution

Current FINRA real-time reporting systems do not require reporting of data on a pre-execution basis. For example, FAQ 100.8 of FINRA's Trade Reporting Frequently Asked Questions for equities provides the following guidance with respect to real-time trade reporting for equities:

> "Q100.8: What is the "time of execution" for purposes of the trade reporting rules?
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> A100.8: The time of execution is the time when the parties to a transaction have agreed to all of the essential terms of the transaction, including the actual price (e.g., the published closing price or end-of-day volume weighted average price (VWAP)) and number of shares to be traded.
>
> The actual price (e.g., the published closing price, end-of-day volume weighted average price (VWAP) or Net Asset Value (NAV)) must be known at the time of execution. For example, at 10:00 a.m., member BD1 receives an order to purchase 100 shares that is to be priced at the end-of-day VWAP, at 4:30 p.m., the VWAP is published, and at 4:35

[18] FINRA, "Bond Trade Dissemination Service (BTDSSM) For OTC Corporate Bond Transactions, Data Feed Interface Specification, Version 4.7" (Feb. 16, 2022), available at https://www.finra.org/sites/default/files/2022-02/BTDS-Specs-v4.7.pdf.
[19] Id. at 7-10 to 7-12.

> p.m., BD1 executes the trade at the published VWAP. ***In this example, the time of execution is 4:35 p.m., not 10:00 a.m. or 4:30 p.m***."[20] (emphasis added)

FINRA Rule 6710(d) similarly does not require reporting of data to TRACE pre-execution. FINRA Rule 6710(d) defines the "time of execution" for a transaction in a TRACE-eligible security as "… the time when the Parties to a Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade." Rule 6710(d) further provides:

> "For a transaction in a TRACE-Eligible Security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a "benchmark security" such as a U.S. Treasury Security maturing in 5 years, or a combination of such "benchmark securities") and adding the agreed upon "yield spread" (e.g., 150 basis points above the benchmark security), the Time of Execution occurs when the yield has been agreed to by the Parties to a Transaction."

Requiring the reporting of data to TRACE pre-execution involves a fundamental change to FINRA's real-time reporting systems.

Inconsistency with reporting other bond trades

FIF members note an inconsistency relative to the reporting of other bond trades. For many corporate bond trades, the trade execution price is agreed between the parties at the time of execution as an agreed spread to a benchmark Treasury security. In the Current Regulatory Notice, FINRA refers to these trades as "non-delayed spot trades".[21] For these trades, the parties report the final price to TRACE but not the underlying agreed spread and benchmark. In contrast, under the Current Proposal, the parties would be required to report the agreed spread and the underlying benchmark, but only for delayed Treasury spot trades.

Cost-benefit analysis

While FIF members consider that there are transparency benefits in providing additional information to the market in relation to these transactions, the overwhelming majority of FIF members believe that, in light of the fundamental system, workflow and TRACE reporting changes that would be required, FINRA should proceed with the proposal in Regulatory Notice 20-24 in place of the Current Proposal. The proposal in Regulatory Notice 20-24 would address a primary concern identified by FIMSAC -- which is to "… alert market participants that the spread-based economics of the trade had been agreed earlier in the day"[22] -- without requiring the additional system, workflow and TRACE reporting changes that would be required based on the Current Proposals.

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[20] FINRA, Trade Reporting Frequently Asked Questions, Q100.8, available at https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.
[21] Regulatory Notice 22-26, at 11.
[22] FIMSAC Recommendation, at 2.

Complexities of a two-step TRACE reporting process

The Current Proposal represents a fundamental change to TRACE reporting requirements because, for the first time, a trade will be associated with two distinct sub-events: the agreement to the spread (the step-one event); and the spotting of the trade (the step-two event). This will raise certain complexities that FINRA will need to address. For example, the TRACE system will need to address as distinct workflows a cancel or modification of the step-one event (for example, correcting an error in the reported time at which the spread was agreed or the reported benchmark or spread), a cancel or modification of the step-two event (for example, correcting an error in the reported spot price), and a cancel or modification that impacts both sub-events (for example, cancelling the trade). These events also must be distinguishable in how they are disseminated to the market. In addition, the TRACE system will need to maintain linkage between the step-two event (including any applicable cancels or modifications) and the step-one event (including any applicable cancels or modifications) for a transaction.

Non-delayed spot trades

In the Current Regulatory Notice, FINRA requests comment on whether it would "… be beneficial to the marketplace if members were required to report, and FINRA disseminated, the agreed upon spread for non-delayed spread trades."[23] FIF members are opposed to such a requirement because it would involve a significant amount of work for firms to implement and would not provide any additional transparency to the market. If a market participant knows the time and price of a trade and the coupon and remaining maturity of the corporate bond that is reported, the market participant has the necessary data to determine the benchmark Treasury bond and the spread to the yield of that Treasury bond.

Time period for reporting the agreement to the spread

In the Current Regulatory Notice, FINRA requests comment on what should be the time period for firms to report the agreement to a spread.[24] Because firms do not currently report pre-execution data to TRACE, it is difficult for firms to provide feedback on what would be an appropriate reporting time period for reporting such pre-execution data. As noted above, in many cases, traders record agreed spread terms through email, IM and chat messages, excel spreadsheets and other methods that are not in a format that would enable automated reporting to TRACE upon agreeing to a spread.

Typically, when FINRA introduces a new TRACE reporting requirement, FINRA provides for a longer reporting period. FINRA then reduces that time period after the reporting requirement has been in effect for a period of time. Given that the requirement for firms to report the agreement to the spread would represent a fundamental change to TRACE reporting in that reporting would be required pre-execution, and considering the other complexities with this reporting as discussed in this letter, FIF members recommend for initial roll-out that firms be required to report the agreement to the spread prior to the time of spotting. At a subsequent date, FINRA could reduce the timeframe for this reporting.

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[23] Regulatory Notice 22-26, at 11.
[24] Ibid.

Implementation timeframe and process

To ensure that industry members will have sufficient time to properly implement any reporting changes that are adopted, any timetable should run from the date that FINRA publishes updated technical specifications, interpretive FAQs and other applicable documentation. The documentation should include guidance on how firms should report all applicable cancel and modification scenarios. Given the expected complexity of the proposed two-step reporting, FIF members recommend that FINRA provide opportunity for market participants to provide input on the technical specifications to be published by FINRA. Further, given the expected complexity of this two-step reporting process and the systems and trading workflow changes that firms would need to implement (including changes to front-office, back-office and reporting systems, and changes to the data that would need to be communicated between contra-side firms), FIF members also recommend that FINRA provide an implementation period of at least 18 months. Consistent with our comments above, this 18-month period should run from the date that FINRA has published the relevant technical specifications, interpretive FAQs and other applicable documentation.

As part of this documentation, FINRA should provide guidance on how it will compute compliance statistics for these types of trades. For example, if a firm corrects a TRACE report relating to a delayed Treasury spot trade after the applicable TRACE reporting deadline (currently 15 minutes for most trades executed while the TRACE system is open), will this count as one or two late TRACE reports? FINRA also should provide guidance on how matching feedback will apply for step-one and step-two reporting.

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FIF appreciates the opportunity to comment on FINRA Regulatory Notice 22-26. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum