



September 24, 2019

Submitted electronically to: [pubcom@finra.org](mailto:pubcom@finra.org)

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: RN 19-25: Reporting of Transactions in U.S. Dollar-Denominated Foreign Sovereign Debt Securities to TRACE<sup>1</sup>**

Dear Ms. Asquith,

SIFMA<sup>2</sup> is pleased to respond to FINRA's Regulatory Notice 19-25 ("RN") on proposed TRACE reporting requirements for U.S. dollar denominated foreign sovereign and supranational securities. SIFMA members are active participants in fixed-income markets, including the markets covered by the RN, and view this proposal with great interest.

The RN includes the proposal that FINRA-member broker-dealers generally be required to engage in same-day TRACE reporting for USD-denominated foreign sovereign and supranational trading (referred to in this letter as "sov/supra"). FINRA would not disseminate these reports. FINRA indicates that reporting would allow it to better supervise these markets.

**A. Considerations for the Reporting of Transactions**

SIFMA members understand FINRA's desire for regulatory reporting of transactions in these securities for the purposes of its supervisory activities, however, we believe it is important to recognize that the nature of these markets will not result in FINRA receiving comprehensive

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<sup>1</sup> The RN is available here: <https://www.finra.org/rules-guidance/notices/19-25>

<sup>2</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

information regarding trading in these markets. In contrast to most other TRACE-eligible markets, a significant amount of trading in sov/supra debt does not occur at FINRA-member broker dealers, as a significant proportion of trading occurs off-shore and by non-US entities. Accordingly, FINRA will not get the full picture of market activity. This could lead to regulatory confusion, needless inquiries, or other inefficiencies.

We believe it would be beneficial for FINRA to discuss with market participants how sov/supra trading is executed by FINRA-member firms, their foreign affiliates and other market participants prior to implementing the proposed rule-changes so that the supervisory regime may be tailored to the market and the unique role member-firms play within it. In some ways this is a similar issue to that in the U.S. Treasury market where a significant proportion of volume is traded outside of the broker dealer community. This gap in visibility weakens the utility of the data for supervisory activity and the drawing of conclusions based on it.

We have a number of additional questions and concerns related to the RN that FINRA should clarify or otherwise address.

- *Defining the Scope*

FINRA proposes to extend the definition of “TRACE-Eligible Security” to “Foreign Sovereign Debt Securities” – a term which has yet to be defined but which is to closely track the same term currently used in Reg ATS.<sup>3</sup> Elsewhere in the RN FINRA indicates that such TRACE reporting will extend to “debt securities that are issued or guaranteed by a government of a foreign country, any political subdivision of a foreign country, or a supranational entity.” In this regard, our members request that FINRA provide significant and specific guidance as to which types of issuers would meet these standards.<sup>4,5</sup> For example, members seek specific guidance as to what would constitute a government “guarantee” and parameters around in-scope “political subdivisions”.<sup>6</sup>

It is worth noting that, as FINRA knows, there have been historical challenges for FINRA members in determining which foreign-issued securities are TRACE eligible (such as Reg S securities which are traded subsequent to applicable seasoning periods). Challenges have also surfaced in supplying required information to FINRA so that seasoned Reg S securities become available for reporting in the TRACE system (since U.S. firms may not have been part of the distribution of the issuance). Given that the proposed rule change will likely result in more of these challenges as the number of foreign-issued TRACE-eligible securities will increase substantially, FINRA should be cognizant of the strains placed on members when designing its related supervisory structure/program. SIFMA would be pleased to facilitate a discussion for FINRA and its members on this issue.

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<sup>3</sup> RN Footnote 5.

<sup>4</sup> It is SIFMA’s position is that none of these “Foreign Sovereign Debt Securities” are issued by “foreign private issuers” as defined in Rule 405 of the Securities Act or Rule 3b-4(c) of the Exchange Act. For the avoidance of doubt, FINRA should confirm this.

<sup>5</sup> We also note that the definition FINRA has proposed for “Foreign Sovereign Debt Securities” defines the scope of that term without regard to the nature of the issuance (registered, Reg S, or otherwise) such that all securities issued by these issuers are TRACE reportable. FINRA should clarify this if it disagrees or confirm our view if it agrees.

<sup>6</sup> As FINRA notes, currently members are not required to TRACE report the securities of issuers who are entitled to register securities under Schedule B. It is often unclear to members which issuers would qualify under Schedule B however. While the SEC has historically been asked to provide No Action guidance with respect to a range of development banks or other issuers who are closely aligned with or identified with a sovereign, to the extent that an issuer has not sought such No Action then members would be required to conduct their own analysis on a case by case basis.

- *Security Identifiers*

As we have discussed in previous comment letters, the lack of consistent availability of CUSIP numbers presents a further operational challenge for members.<sup>7</sup> In the case of sov/supras, we believe this problem is more prevalent. Obtaining a FINRA identifier where a CUSIP is not used, while a solution, is neither efficient nor automatable. We believe the superior solution is for FINRA to allow for the submission of ISINs, which are broadly available when a CUSIP is not used.

- *Implementation Timelines*

Given that updated rules suggested by the RN would mandate new operational requirements to markets not currently impacted by TRACE, we are pleased to see FINRA proposing end of day reporting. We believe this is appropriate. We would note in a similar vein that FINRA should also provide ample time for firms to program their systems to automate the reporting. We believe a lead time of no less than one year, and ideally 18 months, would be sufficient.

## **B. Considerations with Respect to Potential Public Dissemination**

This proposal requests comments on the reporting of dealer trades in these securities to FINRA. However, given the path of other markets through TRACE, our members also considered the prospect that rulemaking would eventually be expanded to require that these trades be publicly disseminated. In summary form, we believe there are several potentially significant complications and consequences regarding dissemination of sov/supra transactions in anything approaching a real-time nature, and do not believe the benefits outweigh the risks. We believe this requires FINRA to approach this idea very carefully, involving not only the U.S. based buyers and sellers of the bonds but also the sovereign issuers and regulators who will be impacted by changes in their markets.

- *The Need to Solicit Feedback from Foreign Sovereigns, Supranationals and their Market Regulators*

The most important distinction between sov/supra markets addressed by this RN and those otherwise included in the TRACE requirements (ex-U.S. Treasury) is that instead of a corporate entity issuing securities to fund its business, the issuer is a country or political subdivision issuing securities to support its fiscal policy, domestic agenda, or other social programs. To the extent that regulatory changes here in the U.S. impair the execution, secondary pricing, or liquidity of an issuer's securities, the effects could very well be felt by the country itself through an impact on the execution of its fiscal policy or other programs. This is very different than the situation faced by a corporate issuer that would be able to respond to financing cost changes through price changes or adjustments to supply chains, etc.

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<sup>7</sup> See, e.g., SIFMA letter re: Corporate Bond New Issue Reference Data, available here [https://www.sifma.org/wp-content/uploads/2019/06/CorpBondNewIssue\\_Sifma.pdf](https://www.sifma.org/wp-content/uploads/2019/06/CorpBondNewIssue_Sifma.pdf), at 3.

Additionally, USD sovereign markets are not homogeneous and the impact on each may be more or less significant. Of the 116 issuers identified by FINRA,<sup>8</sup> larger in-scope issuers and their markets can be very different from smaller issuers and their markets. Indeed, within the 5 largest issuers identified in the RN (Canada, Argentina, South Korea, France and Sweden)<sup>9</sup> there are very different economic situations driving different outcomes for related securities markets. In addition, some jurisdictions have existing regulatory reporting and transparency requirements in place. This of course makes it important for FINRA to consider the differing needs of each type of market. Much like was done for securitized products, FINRA should consider different approaches for different sectors of the market if it moves to proposing trade dissemination.

Further, we believe that FINRA should discuss the prospect of dissemination with some of these foreign issuers, including both large G10 issuers and some smaller emerging market nations and supranational organizations. We believe that various constituents in other countries, including finance ministries and key regulators, would view this proposal with great interest.

- *The Risks to Liquidity*

As we have discussed, sov/supra markets are different from the other markets subject to TRACE reporting and share similarities with the Treasury market (i.e. the issuance of these securities is how finance ministries execute fiscal policy and their domestic policy agendas). We believe that, as we have seen in other markets, there is a likelihood that public dissemination could impair liquidity in these markets. Given the limited size of many of these markets, members are concerned that it would be unlikely that transaction counterparties could remain anonymous. There is simply not enough volume in some markets to provide that protection. Second, our members believe that price transparency is at appropriate levels today. As a general matter, the USD sov/supra markets are small and involve transactions among institutional investors who have access to effective sources of pricing information. We believe these markets generally have very low levels of retail participation. The traditional motivation to provide price transparency to retail investors, who are generally less able to access the multiple sources of pricing that institutional investors can find, is not as present here. Accordingly, the justification for imposing policies that may harm institutional liquidity because they provide some benefit to retail investors is not as relevant.

FINRA should also consider the incentive effects of dissemination. As we noted, trading is geographically dispersed in these markets. Will market participants shift the location of trade execution to avoid transparency in whole or in part for certain size trades (e.g., block trades)? The impact could be that the USD sov/supra markets increasingly move offshore and FINRA members see decreased trading activity. Our members have expressed concern regarding these issues.

- *The Risks from an Incomplete Dataset*

Further, as discussed above, trading in sov/supras is distributed internationally, with TRACE-reportable U.S. activity making up only a portion of global activity. Any analysis of the impact of public dissemination must include a review of whether such an incomplete dataset could be misleading to recipients of disseminated data.

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<sup>8</sup> RN at 4.

<sup>9</sup> RN at 5

- *The Risk of Complications with Current Rulemaking Efforts*

We also note that the issue of public dissemination is currently being debated in the U.S. regarding Treasury securities. Treasury transactions are not disseminated at this time, and there is an active debate as to the merits of doing so.<sup>10,11</sup> We note that some of the issues present in the Treasury market – including the impacts on fiscal policy, and concerns around an incomplete dataset -- are also present here, as we have discussed. Adding another asset class with its own unique circumstances and various liquidity profiles to this debate at this point could potentially further confuse the analysis. Furthermore, FINRA is currently exploring the structure of a pilot program in the corporate markets aimed at testing whether changes to block trade dissemination could improve liquidity in that sector. We believe that there may be valuable lessons learned from that exercise and it would advise FINRA to evaluate the results before imposing dissemination regimes on additional markets.

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We appreciate this opportunity to provide input to FINRA. We would welcome further opportunities to discuss our comments, at your convenience.

Regards,



Christopher B. Killian  
Managing Director  
Securitization and Corporate Credit

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<sup>10</sup> SIFMA has provided views on this issue, see, e.g., *SIFMA Letter to the Treasury Department*, <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-treasury-in-response-to-rfi.pdf> at 11.

<sup>11</sup> On September 23, 2019, Treasury Deputy Secretary Justin Muzinich indicated that Treasury's view is that aggregated disclosure is an appropriate path forward. See his remarks at the 2019 US Treasury Market Structure Conference here: <https://home.treasury.gov/news/press-releases/sm782>.