



January 30, 2023

Submitted electronically to: pubcom@finra.org

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

RE: Regulatory Notice 22-26 - FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot Trades

Dear Ms. Mitchell:

SIFMA¹ and SIFMA's Asset Management Group² ("SIFMA AMG) are pleased to jointly submit these comments on Regulatory Notice 22-26 (the "2022 RN"), which expands on the prior delayed spot trade reporting proposal³ by requiring the reporting of additional information for each trade in two separate linked reports, as follows:

At the time of spread agreement (w/in 15 minutes):

- *Spread*
- *Associated benchmark CUSIP*
- *Other terms of the trade required by TRACE except dollar price*

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

³ See FINRA RN 20-24 (July 16, 2020), available here: <https://www.finra.org/rules-guidance/notices/20-24>, and SR-FINRA-2021-030, available here: <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2021-030>.

At the time the trade is spotted/executed (w/in 15 minutes):

- *Dollar price*

We reiterate our previous comments that while the indication that a trade is a delayed spot transaction may provide some participants in the fixed income market with limited additional information, the costs of implementation along with other potential negative impacts exceed their marginal benefit.⁴ It is important to place the 2022 RN in the proper context:

- Delayed spot trades are currently reported to and disseminated promptly by TRACE once the final price is determined. FINRA Rule 6730(d)(4)(A) already requires members to affix a “special price modifier” when a transaction is not executed at a price that reflects the current market price of a security. We are not aware that FINRA has raised concerns to our members that delayed spot transactions are not reflective of current market prices. Similarly, we are not aware of any specific guidance that FINRA has provided regarding the use of this modifier in the delayed spot context.
- The 2022 RN may provide some additional color on when delayed spot transactions were agreed to (e.g., what time the spread was agreed). However much of the information required in the proposed “initial” TRACE report only provides information that recipients of the data can (and do) derive on their own today.
- Given that there is no meaningful information gap for the 2022 RN to address, any proposed changes need to balance the very material costs and impacts of implementation against the perceived benefits (which as noted above we believe would be negligible). The costs of the proposed approach relate not only to the operational implementation of additional reporting, but also to the negative impacts on liquidity available to clients.
- This could lead to some broker-dealers (and/or investors) limiting their activity in these trades in favor of immediate trades, even though clients enter into delayed spot trades to deliver efficiencies for their underlying investors.
- We believe smaller broker-dealers will be more significantly impacted by this proposal due to the operational implementation burden.
- There are several material changes to TRACE requirements in the proposed or early implementation stage at this time, including the portfolio trade flag and non-U.S. sovereign reporting. FINRA and MSRb have also recently sought comment on a major change to the TRACE and RTRS reporting regimes that would involve a 1-minute reporting mandate. Taken together, these changes are material to every aspect of TRACE reporting, and until the overall framework is settled, it is impossible for dealers to estimate the true costs and impacts of any other change proposal related to trade

⁴ See SIFMA’s responses to FINRA RN 20-24 (available here: https://www.sifma.org/wp-content/uploads/2020/09/SIFMA_PortfolioSpot_Final.pdf) and SIFMA’s response to SR-FINRA-2021-030 (available here: <https://www.sifma.org/wp-content/uploads/2022/01/TRACE-Portfolio-Trades-Treasury-Spot-Trades.pdf>).

reporting.⁵ We recommend a more proportionate and deliberative approach to the adoption and implementation of these changes.

We believe FINRA's analysis of these impacts and concerns is inadequate. For these reasons, we strongly oppose the revised approach discussed in the 2022 RN that would require two trade reports for each transaction.

Furthermore, it is not clear why this modified approach involving two separate reports was proposed. The SEC's Fixed Income Market Structure Advisory Committee ("FIMSAC") did not suggest this approach.⁶ Based on our review, none of the comments on FINRA's RN 20-24 appear to request this approach.⁷ Similarly, none of the comments to the SEC rule filing in 2021 appear to desire this approach.⁸ The responses we reviewed were mixed, with some supporting the original proposal and some expressing concern. We also note that the amendment to the 2021 SEC rule filing that deleted provisions related to the delayed spot proposal did not provide a rationale for this change.⁹

If FINRA wishes to proceed with a revision to the rules related to delayed spot trades, despite the concerns we have laid out in this letter, we believe the original approach involving a specific indicator on a transaction reported after all pricing information is known (i.e., post spot) presents the best relative balance of costs and benefits (*relative*, because as we expressed in our previous comments, we do not believe the costs and benefits are in balance with that version of the proposal either).

We discuss these views in more detail below and have included responses to FINRA's requests for comment in the Appendix.

I. The benefit of new information to be provided is marginal

Our members do not believe there is an information asymmetry that needs to be addressed regarding delayed spot trades. These trades occur at the request of investors for a variety of operational reasons and to drive trading efficiencies. Dealers are already required to report applicable trades within 15 minutes of execution (i.e., determination of final price), and the pricing is disseminated by FINRA immediately thereafter. Further, to the extent a trade is off-market, dealers are already required to add a special price indicator to such trades. A specific delayed spot flag or other indication added to a TRACE report submitted post-spot could potentially provide more specific information regarding the nature of the trade structure as a guide to trades that might potentially be off-market, but the 2022 RN goes far beyond that.

⁵ See letter from SIFMA and SIFMA's Asset Managers Group to FINRA and the MSRB, available here: <https://www.sifma.org/wp-content/uploads/2022/10/MSRB-Notice-2022-07-and-FINRA-Regulatory-Notice-22-17---Proposals-to-Shorten-Fixed-Income-Trade-Reporting-Timeframes.pdf>

⁶ See "Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades" (February 10, 2020), available here: <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf>.

⁷ <https://www.finra.org/rules-guidance/notices/20-24#comments>

⁸ <https://www.sec.gov/comments/sr-finra-2021-030/srfinra2021030.htm>

⁹ <https://www.finra.org/sites/default/files/2022-03/sr-finra-2021-030-amendment-no-1.pdf>

When delayed spot trades are executed today, the traded CUSIP and the price of the trade are reported and disseminated, and the reference CUSIP can be determined with great reliability by the market based on the maturity of the corporate bond that was traded given long-standing market practice. Therefore, market participants can determine the approximate spread at which a bond was traded using current data and the existing TRACE infrastructure.¹⁰

We note for completeness that the “initial” trade report suggested by the 2022 RN would come before any trades are executed, and the terms of the trade may change before execution. This would prompt additional TRACE reports in the form of cancels or amendments, thus adding further unwarranted noise and complexity into the existing TRACE regime.

From a broader perspective, this proposal would further complicate TRACE reporting requirements. There are already a multitude of flags which sometimes overlap (e.g., were the 2022 RN to be adopted a single trade could be a delayed spot portfolio trade where one of the transactions is off market, to which presumably three or more flags may need to be applied at once). At best, this will be confusing, and dealers will need to understand how to manage such multi-flag transactions.¹¹

II. Pricing on and willingness to provide liquidity for delayed spot trades may be adversely impacted.

Delayed spot trades are routinely entered into by dealers at the request of clients for a range of operational reasons and to drive efficiencies in execution. We are concerned that the reporting requirements under the 2022 RN could negatively impact liquidity for delayed spot trades and hence negatively impact clients’ ability to use delayed spot trades as part of their overall execution strategies.

Some dealers may simply stop offering delayed spot trades because of the sheer cost of implementation of the reporting requirements of the 2022 RN, which we will discuss below. As mentioned previously, the value of the additional information to be provided under the 2022 RN appears negligible. Indeed, it may only benefit small sectors of the market seeking to use it to the detriment of investors and their dealer counterparties who trade on a delayed spot basis.

While SIFMA AMG’s members generally favor enhanced transparency and appreciate the intention of the proposed approach in sharing spread data on a live basis, we also recognize that this degree of transparency will undoubtedly compromise much needed liquidity without commensurate benefit. Delayed spot trades are a prudent portfolio management tool to align

¹⁰ Unless there were significant market moves before the end of the day, but we would argue in that case the spread a bond traded prior to such moves is of little, if any, value to a market participant.

¹¹ More broadly, we believe that FINRA should review the totality of TRACE reporting requirements, as they have materially expanded on a piecemeal basis over the years. We believe there may be opportunities for simplification and reduction of cost burdens and would be pleased to discuss this further with FINRA.

execution with a benchmark by efficiently managing a large transaction over the course of a day. While in the past several of our members have supported proposals to flag these trades, the proposed real-time disclosure of the spreads applied to delayed spot trades compromises dealer pricing in raising the risk of predatory trading ahead of the execution of an overall position. Armed with this information, the market will take advantage of the dealer's need to hedge. Compromised pricing and constrained liquidity will undoubtedly be the result.

III. Operational concerns related to the implementation of the proposal are significant.

- *The 2022 RN could further the consolidation of market activity in larger firms better able to bear the cost of implementation.*

Before we go into the details of the implementation burden, we note that the impact of the cost burdens will likely fall disproportionately on smaller broker-dealers. Our smaller members have advised that there is a fixed-cost burden presented by the 2022 RN (and the earlier versions) that is more meaningful to these dealers on a cost vs. revenue basis. In other words, smaller dealers that do less of this business would face the same implementation requirements, but would have fewer resources, tend to be more dependent on third-party vendors, and ultimately may have less motivation to bear the cost. The result could be that they do not create the necessary infrastructure and they revert to a manual process, which as we noted, is generally not favored and adds operational risk. Some smaller dealers may instead simply choose to no longer engage in these kinds of trades, further concentrating the activity in larger firms and reducing the number of market participants and market liquidity for delayed spot trades.

- *The costs of implementation are not justified by the limited benefits the proposal would provide, and risk of harm it creates.*

As we noted in 2020,¹² implementing a flag to indicate that a trade is a delayed spot trade once the final price is determined is not an overwhelming burden and with adequate implementation timeframes, we would not oppose such an approach (noting, however, that FINRA's existing rules already mandate a special price indicator for situations where a reporting entity executes a transaction with a price other than the current market price). Similarly, adding a field on a report submitted post-pricing to include the time of the agreement of the spot earlier in the day is far less burdensome than the proposal in the 2022 RN, although it would require dealers and vendors to build functionality to capture this information and is certainly not cost-free. As the FIMSAC noted, this would be all that is needed to allow market participants to estimate the spread at a specific point in time.¹³ However, the 2022 RN goes

¹² See SIFMA response to FINRA RN 20-24 at 3.

¹³ Supra note 6, at 2.

beyond the FIMSAC's suggested approach and is far more challenging from an operational perspective. As such, it requires closer scrutiny.

The 2022 RN will require dealers to double the number of TRACE reports required for transactions that are not otherwise complex. More significantly, under the 2022 RN dealers would be required to capture information that does not exist in trade reporting systems today. As we discussed in our previous comment letters, spread and reference CUSIP information does not necessarily flow to dealer or vendor trade reporting systems. Capturing this information will require extensive reworking of dealers' infrastructure: trade reporting systems, front-end screens, back-end systems and processes, vendor systems, and the connections between them.

We discussed in a previous comment letter that reporting of spread was a complex undertaking:

*"Additionally, there is a difference between data being captured by a given medium or system, and that data being easily extractable into a TRACE reporting system. Further, it may be the case that spread information is captured in an RFQ platform or other vendor system, but that does not mean it is something dealers (or those platforms and ATSS) could easily redirect into a TRACE feed. Additionally, clients may provide trade information to dealers in a variety of ways... This information is not subject to any regulatory disclosure requirement at this time, and accordingly, it is not something that dealers have put into systems that are accessible to or connected with automated data feed systems such as their TRACE reporting systems. A requirement for the submission of specific spread information would, for many if not most dealers, require a significant build of systems, from the front end used by traders all of the way through to the system that submits information to TRACE. Validation, compliance, and other policies and processes would need to be developed. Our members believe this would be very time consuming and expensive."*¹⁴

FINRA references this issue in the 2022 RN, but we believe this is a more significant challenge than the 2022 RN reflects. A dealer may use a trading venue's user interfaces for some transactions/protocols entirely; in other cases, a dealer may use a venue's user interfaces for only certain portions of a given trade/transaction lifecycle and handle the rest internally. Dealers may implement risk capture into their internal systems from a continuous data feed or a periodic download to ensure capture of all executions. Additionally, it is not clear that all trading venues currently can send two execution report messages (i.e., when spread is agreed and again when the related trade is executed with the final price and volume). Trading venue support would be critical for dealers to implement this proposal consistently and efficiently. Ideally, trading venues would offer a relatively standard way of doing this in their APIs (but even then, each vendor has a different specification so there is a build for each venue, of which dealers may have 5-10 or more).

Finally, this proposal would represent an additional books-and-records requirement for dealers, presenting compliance risk and increased resource requirements and costs, and some dealers

¹⁴ SIFMA comments on SR-FINRA-2021-030, at 5.

may determine the risk of an error, or the additional resource burden, outweighs the benefits of continuing to execute these trades.

Regarding the reference CUSIP, we provided comments in 2020 in response to FINRA's questions that there are market standard reference benchmark Treasury securities that correspond with the maturities of the corporate bonds traded on a spread basis. FINRA notes this on page 10 of the 2022 RN. There is no need for dealers to undertake the implementation of reporting processes to feed this information into TRACE reports. Market participants and vendors should be able to determine the reference CUSIP. We do not believe it is common for clients to request trades with a non-standard reference spread, e.g., off-the-run Treasuries. On the other hand, the implementation of this proposal would require dealers and/or their vendors to implement a link to the reference Treasury security on a CUSIP level basis for hundreds of thousands of individual CUSIPs. This is no small task. We do not believe there is any material benefit of requiring dealers to report this information that justifies the cost of doing so.

IV. Further clarity is needed on various aspects of the 2022 RN.

The 2022 RN leaves open several issues that have been raised by our members which require clarification before completing our commentary on the 2022 RN, such as:

- How would the two required trade reports be implemented in reporting systems in practice? For example, would the second report be an amendment of the first report? Would they be two separate reports?
- Would FINRA charge dealers for both reports?
- Further clarification would be required on what constitutes a delayed spot trade. For example, would an operational delay between spread agreement and execution represents a delayed spot trade? Would it only be for trades where the client requests a spot at a specific time? In today's market, it is up to the client whether a spot is delayed or not. A client may send across spread information immediately, on a belated basis (e.g., in 5-10 minutes), or they may not send it until much later in the day.
- Will dealers need to append a flag to these trades? The proposal does not specifically mention this but does indicate these trades would somehow be identifiable among other types of trades.
- How would these transactions interact with the new portfolio trade indicators and other existing indicators?

On behalf of SIFMA and SIFMA AMG, we appreciate the opportunity to respond to the 2022 RN and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact Chris Killian of SIFMA at ckillian@sifma.org or 212-313-1126 or William Thum of SIFMA AMG at bthum@sifma.org or (202) 962-7381.



Christopher Killian
Managing Director
Securitization and Credit
SIFMA



William C. Thum
Managing Director
and Associate General Counsel
SIFMA AMG

Appendix - Responses to FINRA questions

- *FINRA requests comment on whether the proposal would provide useful information to the marketplace. Why or why not?*

SIFMA response: See discussion above. We believe the 2022 RN would provide very limited new information to the market, and this would come at a great cost in terms of operational uplift and reduce available liquidity.

- *Would the proposal benefit some market participants more than others? If so, why?*

SIFMA response: See discussion above. We believe this proposal would harm broker-dealers, and in particular smaller broker-dealers. In doing so, it will also harm their investor clients who request to transact in delayed spot transactions, as we expect broker-dealers would provide less liquidity in this type of transaction or it would come at higher costs to investor clients. We fear it may only benefit certain market participants who seek to trade against broker-dealers (and their clients) that report pending delayed spot transactions prior to the execution of those transactions. We do not believe that is an appropriate basis for amending the TRACE rules.

- *What challenges do commenters anticipate with reporting the spread and benchmark U.S. Treasury security at the time the spread is agreed, and then reporting the dollar price when known?*

SIFMA response: See discussion above. We believe this proposal would require extensive reworking of broker-dealer reporting flows from the front end to the back end as the required information is not captured by these systems and may not even be currently accessible to them. We believe that this will be very costly, whether done internally or through a vendor product. We believe some dealers will be unwilling to bear these costs and simply cease providing liquidity in these trades.

- *What costs are associated with the proposal? How do these costs compare to the costs associated with the prior proposal as set forth in Regulatory Notice 20-24?*

SIFMA response: See discussion above. We believe the costs are significant, exceed any benefits, and are not justified or reasonable. The RN 20-24 approach would still be costly and provide limited benefit, but would be less disruptive than the current proposal.

- *How much time would firms need to make systems and other changes required to implement the proposal?*

SIFMA response: Regarding the current proposal - at least two years. As discussed, this would require a material reworking of process and information flows. However, as discussed below, nothing should be changed until there is resolution on the proposal to reduce TRACE reporting times to 1-minute (which we strongly oppose) and other pending proposals and implementations.

- *Should FINRA instead consider permitting firms to report the transaction details as they do today (i.e., report the trade only once the dollar price is known), but require firms to append at that time a new flag identifying the trade as a delayed Treasury spot trade?*

SIFMA response: If FINRA believes some additional granularity is needed for delayed spot trades, yes (though we do not think it is necessary, as discussed in the body of this letter). This would be a materially less burdensome approach that would effectively provide the same information, given the ability of market participants to discern spread information from the traded price/CUSIP information already provided in the trade reports. However, FINRA would need to clarify how dealers report trades that qualify for multiple flags.

- *If FINRA were to permit firms to report transaction details as they do today (i.e., only once the dollar price is known), would it be beneficial to require firms to also report the spread and benchmark U.S. Treasury security at that time (which FINRA would disseminate)?*

SIFMA response: We believe this would create additional burden and costs to dealers, while providing limited benefit to market participants (since they can estimate this information today). However, it would be preferable to the approach proposed in the 2022 RN that would require separate reports and present risks to dealers' ability to risk manage their activities.

- *In Regulatory Notice 20-24, FINRA requested comment on its understanding that the most common pricing benchmark used for delayed Treasury spot trades is the on-the-run U.S. Treasury security with the maturity that corresponds to the maturity of the corporate bond being priced (e.g., the most recently issued 10-year U.S. Treasury security typically is used as the benchmark for pricing a 10-year corporate bond issue). Commenters expressed agreement with this understanding. Given this understanding, should FINRA require firms to report the benchmark U.S. Treasury security along with the spread? How confident are market observers that they share the same understanding of the specific U.S. Treasury security used as the benchmark?*

SIFMA response: SIFMA provided these comments in response to the previous request for comments and stands by them. We believe market participants can already determine the reference benchmarks. As mentioned above, we do not think this requirement would provide any benefit.

- *As noted in endnote #4, FINRA issued Regulatory Notice 22-17 requesting comment on a proposal to shorten the trade reporting timeframe for transactions in certain TRACE-Eligible securities, including corporate bonds, from 15 minutes to one minute. If that proposal is adopted, the timeframe for reporting the final dollar price for delayed Treasury spot trades would coincide with the reporting timeframe for transaction reports in corporate bonds. Should FINRA also require firms to report the spread and benchmark U.S. Treasury security as soon as practicable but no later than within one minute of the time at which the spread was agreed for delayed Treasury spot trades? Why or why not?*

SIFMA response: We incorporate by reference our comments on the 1-minute proposal, which is very significant, and reiterate our extremely strong opposition to that proposal. Much of the volume in delayed spot trades is done by voice. As such, and as discussed in the SIFMA 1-minute TRACE reporting letter, it is not compatible with a 1-minute requirement. Indeed, we believe that before any other changes to TRACE are made, the 1-minute proposal needs to be settled.

- *Market participants also engage in spread trades on a non-delayed basis where they negotiate a trade for a corporate bond, or other TRACE-eligible security, on the basis of a spread to a benchmark (U.S. Treasury security or otherwise) that is immediately converted to a dollar price. With respect to such non-delayed spread trades:*
 - *FINRA understands that, in many cases, the spread for non-delayed spot trades can be immediately deduced based on the disseminated dollar price and U.S. Treasury spread at the time of the trade. Is this an accurate understanding?*
 - *FINRA requests comment on whether it would, on balance, be beneficial to the marketplace if members were required to report, and FINRA disseminated, the agreed upon spread for non-delayed spread trades. Why or why not?*
 - *If the spread price were required to be reported and disseminated for non-delayed spread trades, should the dollar price also be required to be reported and disseminated? Why or why not?*
 - *If the spread price were required to be reported and disseminated for non-delayed spread trades, should the benchmark used to calculate the dollar price also be required to be reported and disseminated? Why or why not?*
 - *Might the benefits and costs of the proposal be different if FINRA were to also require reporting of the spread for non-delayed spread trades? If so, how?*

SIFMA response: FINRA is correct – for a non-delayed spot trade, any market participant should be able to derive the spread from the reported CUSIP and volume information, given the standardization of benchmarking by maturity. Therefore, on balance, there is no benefit to the market from requiring dealers to report spread information, there is only increased cost and the potential to decrease liquidity. We would strongly oppose any such proposal.