

August 29, 2022

Via Electronic Mail (pubcom@finra.org)

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

RE: TRACE Reporting Timeframe, Reg. Notice. 22-17<sup>1</sup>

Dear Ms. Mitchell,

The Healthy Markets Association<sup>2</sup> writes to urge FINRA to finalize its Proposal to shorten the period within which brokers must report transactions in many TRACE-Eligible Securities from fifteen minutes to one minute.

## Background

In 2001, the SEC approved a NASD proposal to establish a corporate bond trade reporting and dissemination facility.<sup>3</sup> Since 2002, NASD (now FINRA) has collected and disseminated trade-related information in fixed income securities through TRACE. In 2004, NASD shortened the timeframe for reporting some TRACE-Eligible Securities, including corporate and agency debt, to 15 minutes following execution. That 15 minute rule now applies to trades in corporate bonds, agency debt securities, asset-backed securities, and some agency pass-through mortgage-backed securities.

Because the fixed income markets generally don't include a "market open" and "market close" like the US equities markets, FINRA Rule Rule 6730(a)(1) generally sets the parameters for when trades have to be reported, using the "opening" and "closing" of TRACE as the cutoff times.<sup>4</sup> Generally speaking, trades executed:

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<sup>1</sup> *TRACE Reporting Timeframe*, FINRA, Reg. Notice. 22-17, Aug. 2, 2022, available at <https://www.finra.org/sites/default/files/2022-08/Regulatory-Notice-22-17.pdf> ("Proposal").

<sup>2</sup> Healthy Markets Association ("HMA") engages asset owners, asset managers, brokers, exchanges, data providers, policymakers, regulators, and other stakeholders to increase capital markets transparency and reduce conflicts of interest, risks, and costs for investors. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.

<sup>3</sup> *Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System*, SEC, Exch. Act Rel. No. 43873, 66 Fed. Reg. 8131 (Jan. 29, 2001), available at <https://www.govinfo.gov/content/pkg/FR-2001-01-29/pdf/FR-2001-01-29.pdf>.

<sup>4</sup> *Rule 6730: Transaction Reporting*, FINRA, available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6730>.

- before 8am ET have to be reported as soon as practicable, but not later than 15 minutes after TRACE opens (which occurs at 8am);
- at or after 8am and before 6:15pm ET have to be reported as soon as practicable, but not later than 15 minutes after execution; and
- at or after 6:15pm ET, on weekends, or on holidays have to be reported as soon as practicable, but not later than 15 minutes after TRACE opens the next business day.

In the nearly two decades since the 15 minute rule was implemented, the markets for fixed income securities have changed dramatically. As the SEC is separately considering in other rulemakings,<sup>5</sup> there has been a proliferation of fixed income trading venues, many of which enable trading in fractions of a second. In some assets, the fixed income markets are increasingly looking like their lightning fast counterparts in the equities arena.

However, unlike in the equities markets, there is not a consolidated quotation collection and dissemination mechanism. Further, the transaction reporting and dissemination mechanism (aka TRACE) is slow, jumbled, and too narrowly scoped to be of significant use for market participants.

The lack of timely, comprehensive order and execution information may benefit some parties, including large market intermediaries and a handful of very large investors, but it generally harms most investors.<sup>6</sup>

When the SEC's Fixed Income Market Structure Advisory Committee considered a recommendation to further delay reporting and dissemination of some corporate bond trades, former SEC Chairwoman Elisse Walters, former SEC Chief Economist Larry Harris, and professor Kumar Venkataraman objected, explaining:

Delayed reporting of large trade prices will certainly make it easier for dealers to distribute a large block because the investors to whom the dealers will distribute the block ("receiving investors") will have less information about the value of the bond. The dealers profit from this information advantage. ... Stated more abstractly, information is power, and power produces profits.<sup>7</sup>

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<sup>5</sup> For example, the SEC is currently considering (1) revising the definition of an "exchange" and (2) whether a broker must comply with Rule 15c2-11 before providing a "quotation" for a fixed income security in a "medium."

<sup>6</sup> See generally, Letter from Tyler Gellasch, HMA, to Marcia Asquith, FINRA, June 6, 2019, *available at* <https://healthymarkets.wpengine.com/wp-content/uploads/2019/06/FINRA-Block-Trade-Comment-6-11-19.pdf>.

<sup>7</sup> Letter from Larry Harris, Kumar Venkataraman, and Hon. Elisse Walter, to Brent J. Fields, SEC, Aug. 21, 2018, *available at* <https://www.sec.gov/comments/265-30/26530-4268151-173129.pdf>.

Months later, when FINRA proposed implementing the FIMSAC recommendation (adopted over the objections highlighted above),<sup>8</sup> HMA objected, noting that delayed reporting and dissemination of fixed income trades:

- has a discriminatory impact on market participants and creates significant risk of misuse of material, non-public information;
- impedes best execution and transaction cost analysis; and
- could increase volatility and decrease liquidity in times of stress.<sup>9</sup>

Fortunately, FINRA never moved forward with that proposal.

We appreciate that FINRA is now considering going in the opposite direction by improving the timeliness and scope of fixed income trade reporting and dissemination.

## Efforts to Improve Timeliness and Scope of Fixed Income Market Data

Over the past several years, FINRA has expanded both who must report transactions to TRACE and the securities for which transactions must be reported. FINRA has not, however, generally improved the timeliness of reporting and dissemination of fixed income trades.

In April 2022, SEC Chair Gary Gensler delivered remarks to City Week in London in which he declared:

One area where I think there could be some improvement is the length of time by which market participants must report transactions to TRACE and the MSRB. Currently, a trade has to be reported as soon as practicable but no later than within 15 minutes of the time of execution. Why couldn't the outer bound be shortened to no later than, for example, 1 minute?<sup>10</sup>

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<sup>8</sup> *Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on a Proposed Pilot Program to Study Recommended Changes to Corporate Bond Block Trade Dissemination*, FINRA, Reg. Notice 19-12, (Apr. 2019), available at [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-19-12.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-19-12.pdf).

<sup>9</sup> Letter from Tyler Gellasch, HMA, to Marcia Asquith, FINRA, June 6, 2019, available at <https://healthymarkets.wpengine.com/wp-content/uploads/2019/06/FINRA-Block-Trade-Comment-6-11-19.pdf>.

<sup>10</sup> *"The Name's Bond:" Remarks at City Week*, Hon. Gary Gensler, SEC, Apr. 26, 2022, available at <https://www.sec.gov/news/speech/gensler-names-bond-042622> ("Gensler April 2022 Remarks"). We note that in that same speech, SEC Chair Gensler also suggested expanding the scope of TRACE-Eligible Securities to include foreign sovereign debt and beginning to disseminate to the public individual Treasury

The Proposal would do exactly that. Specifically, the Proposal would amend FINRA Rule 6730(a)(1) to require trades executed:

- before 8am ET to be reported as soon as practicable, but not later than 1 minute after TRACE opens (which occurs at 8am);
- at or after 8am and before 6:29pm ET to be reported as soon as practicable, but not later than 1 minute after execution; and
- at or after 6:29pm ET, on weekends, or on holidays to be reported as soon as practicable, but not later than 1 minute after TRACE opens the next business day.

The Proposal explains that the effort would “improve transparency and allow investors and other market participants to obtain and evaluate pricing information more quickly—creating a qualitative increase in market transparency for these securities. Facilitating more timely information is one way to improve the value of disseminated transaction data.”<sup>11</sup>

We agree.

As we consider this Proposal, we think it’s worth assessing four very high-level, key questions:

- 1) Does FINRA have the authority to implement the change? Yes.
- 2) Has FINRA demonstrated a rational basis for implementing the change? Yes.
- 3) Would the Proposal promote fair, orderly and efficient markets and promote investor protection? Yes.
- 4) Could brokers, most of which are already required to report other securities trades within fractions of a second, reasonably implement the change?<sup>12</sup> Yes.

Rather than simply offering additional support for those obvious realities, we wish to highlight one very significant complication that should give FINRA urgency in moving forward with the Proposal – the rise of fixed income securities that are traded using the equity trading market apparatus: fixed income ETFs. Fixed income ETFs trade on equities exchanges and orders and trade information are reported and disseminated using the equities markets infrastructure. This means that consolidated order and execution information in those securities is available to market participants within fractions of a second.

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transaction details. Gensler April 2022 Remarks. HMA would support both efforts, and we also agree with SEC Chair Gensler that “[p]ublic dissemination of Treasury trade data could help enhance counterparty risk management and the evaluation of trade execution quality.” Gensler April 2022 Remarks.

<sup>11</sup> Proposal, at 4.

<sup>12</sup> See, Consolidated Audit Trail NMS Plan Quarterly Progress Report Q2 2022, July 22, 2022, available at <https://www.catnmsplan.com/sites/default/files/2022-07/CAT-Q2-2022-QPR.pdf> (reflecting implementation schedule for plan participants, large traders, and smaller firms).

In recent years, fixed income exchange traded products have dramatically expanded. Today, hundreds of billions of dollars in fixed income ETFs are traded on markets where order and execution information is disseminated in milliseconds. The two largest bond ETFs, Vanguard Total Bond Market ETF (BND) and iShares Core U.S. Aggregate Bond ETF (AGG), had nearly \$84 billion and \$83 billion in assets as of August 23, 2022, respectively.<sup>13</sup> The Vanguard Total Bond Market ETF holds more than 10,000 bonds, most of which very, rarely trade. Yet, the fund averages nearly 6 million shares traded a day.<sup>14</sup> Even an ETF for generally illiquid high yield bonds averages over 30 million shares traded every day.<sup>15</sup> Put simply, the liquidity in the ETFs may greatly outstrip the liquidity in the component assets.

For each of these products, the order information in the component fixed income securities may never be publicly disseminated, and trade information may be disseminated on an extremely delayed basis, while the order and trade information in these ETFs is disseminated nearly instantly. Not surprisingly, many market participants are actively engaged in trading strategies that assess and make trading decisions with knowledge of that information in milliseconds.

We are concerned with the yawning gap between the timeliness and quantity of information available regarding the trading of the fixed income securities themselves and the information available (and trading) of securities built on top of them. The larger the gap, the greater risks to market integrity and stability.

These concerns are now significantly magnified by the inevitable merging of equity and fixed income market structure, with perhaps the clearest example being the creation of single-bond ETFs.

On August 9th, Nasdaq listed for trading the US Treasury 10 Year ETF (UTEN), the US Treasury 2 Year ETF (UTWO); and the US Treasury 3 Month Bill ETF (TBIL).<sup>16</sup> Each of these ETFs holds one security; the associated “on-the-run” version of the named security.<sup>17</sup> Thus, while there is no public dissemination of individual quotations or trades in Treasury Securities, there already is nearly instantaneous dissemination of this

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<sup>13</sup> *Total Bond Market ETF: Portfolio Composition*, Vanguard, available at <https://investor.vanguard.com/investment-products/etfs/profile/bnd> (last viewed Aug. 24, 2022); *iShares Core U.S. Aggregate Bond ETF: Key Facts*, BlackRock, available at <https://www.ishares.com/us/products/239458/ishares-core-total-us-bond-market-etf> (last viewed Aug. 24, 2022).

<sup>14</sup> *Total Bond Market ETF: Price (sic)*, Vanguard, available at <https://investor.vanguard.com/investment-products/etfs/profile/bnd> (last viewed Aug. 24, 2022).

<sup>15</sup> See, *iShares iBoxx \$ High Yield Corporate Bond ETF: Key Facts*, BlackRock, available at <https://www.ishares.com/us/products/239565/ishares-iboxx-high-yield-corporate-bond-etf> (reflecting a 30 day average trading volume of 30.5 million shares)(last viewed Aug. 24, 2022).

<sup>16</sup> Press Release, *F/m Investments Announces Launch of the US Benchmark Series*, F/m Investments, Aug. 9, 2022, available at <https://www.businesswire.com/news/home/20220808005808/en/Fm-Investments-Announces-Launch-of-the-US-Benchmark-Series>.

<sup>17</sup> Steve Johnson, *First single-bond ETFs look set to revolutionise access to Treasuries*, Financial Times, Aug. 9, 2022, available at <https://www.ft.com/content/b69a5dce-306f-4e9c-910b-b4c97abbe6c1>.

information for three ETFs that each hold only one Treasury Security. We fully expect that we will soon see a plethora of single bond ETFs in corporate debt securities, as well. And while information on quotations in corporate debt securities may not be publicly disseminated at all, and trades are reported on a delayed basis, quotations and trading in the ETFs built on top of them will be publicly disseminated in milliseconds.

This newly-created discrepancy in access to timely quotation and trade information in extremely related assets creates material risks for extremely significant threats to market stability and integrity, including the risk that those associated with the ETFs could use their information and positions to advantage themselves in the underlying markets (and vice versa). This advantage may be particularly acute when you consider that the shares in the ETF may be shorted or lent like other exchange-traded securities. While we don't expect many of these new single-security fixed income ETFs to ultimately attract significant assets or trading volumes, the opportunities for abuses, volatility, and disruptions are significant.

## Conclusion

Reducing the delay in reporting and dissemination of fixed income securities trades would promote more fair, orderly and efficient markets, while promoting investor protections. However, this step is most urgently needed in response to the rapidly evolving landscape of how fixed income securities are traded, including through related products.

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact Tyler Gellasch at (202) 909-6138.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Gellasch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tyler Gellasch  
Executive Director

Cc: Hon. Gary Gensler