



October 4, 2012

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: FINRA Notice 12-39: FINRA Requests Comment on TRACE Dissemination Issues

Dear Ms. Asquith:

Benchmark Solutions¹ appreciates this opportunity to respond to Regulatory Notice 12-39² (the "Notice") issued by the Financial Industry Regulatory Association ("FINRA") in which FINRA is seeking comment on two TRACE dissemination issues. The first, on whether it should maintain or modify current TRACE dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated real-time TRACE transaction data. And second, on whether transactions in TRACE eligible securities effected pursuant to Securities Act Rule 144A should be disseminated, and if so, the scope and manner of such dissemination.

Feedback Loop:

In general, Benchmark Solutions is fully supportive of regulatory efforts to provide full post-trade transparency to all market participants in the timeliest and most complete manner possible. We believe that there is a strong feedback loop where post-trade information is a valuable input to determining pre-trade price discovery. Therefore, any delay in either reporting (timeliness) or transparency (data) inhibits the ability of the market to provide pre-trade price discovery which may ultimately affect market liquidity.

Size assists in determining market impact:

Full disclosure of trade size will help market participants make more informed trading and risk management decisions. In most asset classes, trading activity is a closely watched indicator of market sentiment. Heavy buying or selling activity helps investors interpret news reports and other forms of market research and commentary. Based upon the information currently available through TRACE, it is not possible to accurately assess the level of intraday activity in specific bonds.

FINRA publishes lists of the 10 Most Active investment grade and high yield issues on its investor website, with a one-day lag. Attempts to replicate this list using the information reported on the TRACE feed are fruitless. For example, on 9/18/12, the Sun America 5.6's '97 was the 5th most active investment grade issue according to FINRA. The TRACE feed that day reported a single trade with a capped amount of \$5MM+. The same day, the Citigroup 1.875's of Oct'12 was the 9th

¹ Benchmark Solutions is a privately owned corporation focused on providing real-time price transparency in the Fixed Income Markets.

² FINRA Regulatory Notice 12-39 issued September 2012.

most active bond but traded only 3 times, with just 1 capped volume trade report. Any most active list produced solely from the publicly available information provided by FINRA would never include either of these issues.

The absence of fully disclosed trade sizes also complicates the adoption of important management tools, such as Transaction Cost Analysis, in the corporate bond sector. Any attempt to compare one's trades to trades of similar size suffers from the same inability to accurately assess activity levels. Therefore, full disclosure of the actual trade size at a time nearest to the true execution time should be the norm for reporting. Valid arguments should be made as to why timely and complete reporting is not made to the investing public.

FINRA Specific Request for Comment:

Dissemination Caps for Investment Grade and Non-Investment Grade Debt Securities

1. What would be the impact of raising the dissemination caps for:

a. investment grade TRACE-eligible securities transactions to \$10 million, \$15 million, \$20 million or higher; and

b. non-investment grade TRACE-eligible securities transactions to \$5 million, \$10 million, \$20 million or higher?

Benchmark Solutions Response: In general, we feel that there should not be dissemination caps for either investment grade or non-investment grade securities and that all trades should be reported and disseminated within seconds after execution.

2. Should FINRA set a dissemination cap applicable solely to agency debt securities in light of the larger size of many transactions in such securities?

Benchmark Solutions Response: As stated above we feel that it is best for the market participants to have full visibility to market transactions. Therefore, there should not be a cap for agency securities.

a. If so, should it be set at \$25 million, \$50 million, \$100 million or higher?

3. Should there continue to be different dissemination caps for investment grade and non-investment grade debt securities?

Benchmark Solutions Response: We firmly believe that there should not be any dissemination caps. Based on the information provided from FINRA we do not believe there is a material difference between how investment grade and non-investment grade trade or as to their bond structures to warrant caps in general or unique caps specifically. If FINRA feels that caps are in the best interest marketplace then we would ask FINRA to consider consistent caps and a much shorter embargo timeframe.

4. Should the dissemination caps for investment grade and non-investment grade debt securities be eliminated entirely?

Benchmark Solutions Response: Yes, based on our response to question 3.

5. Would the information available as a result of higher dissemination caps allow broker dealers and institutional investors to better value positions?

Benchmark Solutions Response: We firmly believe this to be the case. Additionally, many Institutional Investors utilize TRACE data as an input in performing Transaction Cost Analysis. Delayed reporting of trades along with capped volumes inhibits their ability to perform an accurate analysis.

6. Could alternative ways of determining dissemination caps—for example, by dollar value of transaction rather than par value—provide meaningful trade volume exposure while still limiting the transaction sizes displayed through the caps?

Benchmark Solutions Response: We're generally not in favor of this particular idea.

Dissemination Caps for TBA Transactions

1. Should there be a dissemination cap for TBA transactions?

Benchmark Solutions Response: No. The TBA market is an OTC version of a futures market. The futures market doesn't have any caps associated with its trade reporting and dissemination.

- a. If yes, are the levels appropriate or should higher or lower caps be considered?

Rule 144A Transactions

1. Should Rule 144A transactions—private re-sales of securities to QIBs—be subject to dissemination?

Benchmark Solutions Response: Yes.

If yes, should Rule 144A transactions be subject to dissemination in the same manner as other disseminated transactions in TRACE-eligible securities?

Benchmark Solutions Response: In the case of 144A securities, while their market size is smaller than the overall Trace disseminated market the amount traded is significant(17.53%) even though the actual number of trades is relatively low (4.37%). Given the materiality of the volume associated with this market we feel that trades in these instruments should be disseminated to the marketplace in the same manner and timeframe as their registered security counterparts.

- a. If yes, should they be disseminated subject to a dissemination cap?
 - b. If yes, what is the appropriate size (volume) at which to set the dissemination cap?

Areas of Improvement to Existing TRACE Data:

Although we were not specifically asked to comment on areas of improvement we'd like to take this opportunity to do so.

1. **Time of Execution-** We suggest that FINRA consider redefining the time of execution (FINRA Rule 6710 (d)) to reflect the time at which investment risk is transferred between the parties in the transaction. Prices reported on the TRACE feed provide an estimate of an asset's value at a moment in time. The current rule allows trade participants to agree on the "spread" at which a transaction will be valued but defer the setting of the transaction yield until some later time,

which is then reported as the execution time. As a result, consumers of the TRACE feed are unable to reconcile the value represented by prices derived for spread-based transactions with the market conditions that existed at the time the value judgment was made. Without this improvement, there will always be transactions that appear to be off-market.

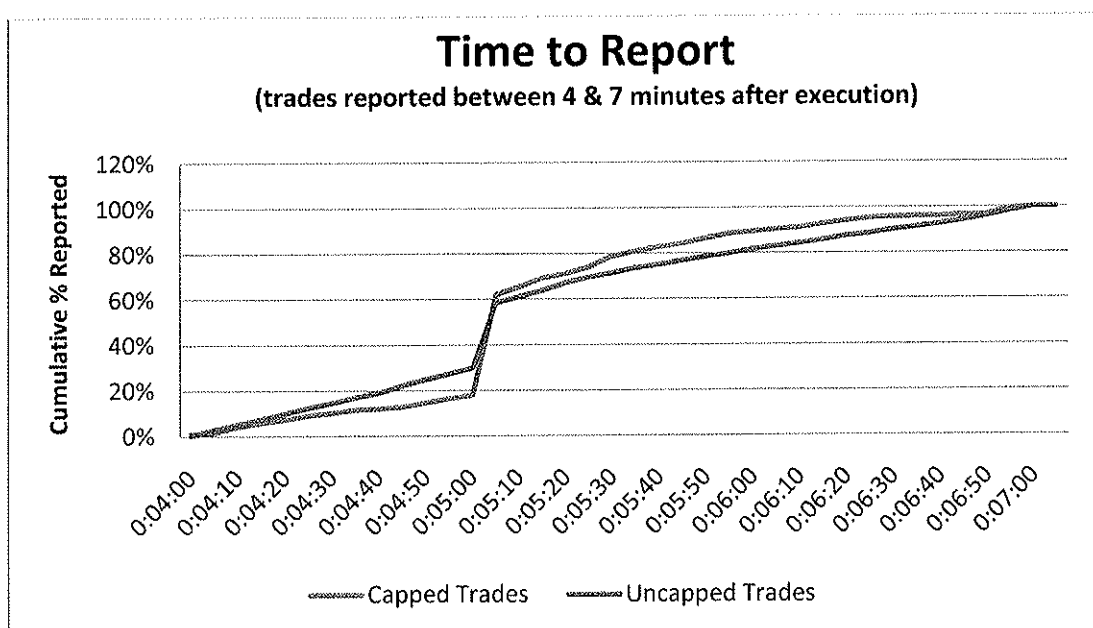
2. **Identification of trades done via electronic trading platforms**- We'd like to suggest that there be, at a minimum, an identifier letting the public know whether the transaction occurred via an electronic platform such as ECNs or an ATS.
3. **Earlier opening to the TRACE feed** – TRACE system hours are currently set as 8:00AM through 6:29:59PM, Eastern Time. During August 2012, 2% of the corporate bond transactions had reported execution times outside the TRACE system hours. 1.5% of the corporate bond transactions occurred between 6AM and 8AM, with 80% of these transactions occurring after 7am. We ask that FINRA consider extending the TRACE reporting and dissemination services by changing the opening time to 6:00 AM. This move will improve the transparency of trades occurring in overnight sessions and allow these trades to inform the setting of opening levels in the market.
4. **Foreign, non-FINRA member, Broker Dealers** – These trades look like customer trades which is misleading to the market. The reporting party, a US registered Broker Dealer, should identify these transactions as Broker Dealer or create a new category such as unregulated foreign dealer rather than Customer.
5. **Enhance the classification of Investment Grade versus High Yield debt** – To the extent that different volume caps continue to exist based upon credit quality, Benchmark urges FINRA to minimize the anomalies that are allowed to leak into the market. It appears that many bonds are initially designated as High Yield when they are first added to the FINRA Issue Master file due to the lack of assigned credit ratings. After several days, many of these issues are upgraded to investment grade, once ratings are formally published. During the first few days after issuance, which are often quite active, the disseminated trade sizes are capped at 1MM.

For example, on 9/18/2012 Novartis Capital came to market with a 2-tranche deal totaling \$2B, split between 10 & 30 year maturities. These issues were added to the issue master file on that day as high yield/unrated bonds. There were 52 reported trades in the 10-yr issue on the 18th. 29 of these trades had size capped at \$1MM. On the 19th, another 98 trades were reported, with 45 showing a capped trade size of \$1MM. The issue master records were updated as of the 20th to investment grade, after Aa2/AA- ratings were assigned by Moody's and S&P. As of September 20th, the capped volume limit rose to \$5MM+.

FINRA Rule 6710(h) states, "If a TRACE-Eligible Security is unrated, for purposes of TRACE, FINRA may classify the TRACE-Eligible Security as an Investment Grade security." Benchmark urges FINRA to utilize its authority under Rule 6710(h) and designate unrated new issues as investment grade when similar bonds from the issuer are already in the market carrying investment grade ratings, as is the case for the Novartis bonds in the example. If non-investment grade ratings are assigned later, the designation can be modified.

6. **Timeliness of Trade reporting** – Through the information available on the TRACE feed, we have observed that a disproportionate number of trades seem to be reported at precisely 5 minutes after trade execution. The chart below focuses on trades reported on 9/18/12 that came in 4 to 7 minutes after execution (similar patterns are observable on other days). Over 25% of the trades were reported exactly 5 minutes after execution. For trades with capped volumes, 44% of the trades in this interval and 5% of all trades were reported at 5 minutes. This seems to be counter to the spirit of reporting as soon as technologically feasible.

Additionally, we recently analyzed trades reported from May 2012 through August 2012. This analysis identified that 94% of the trades were reported to FINRA in less than 5 minutes. Of these trades the average reporting time was less than a minute while the median reporting time was less than a half a minute. Therefore, given the current reporting technology environment it seems feasible to both report and disseminate trades in less than one minute.



7. **Enhance its policies and processes to report data which was not previously reported due to reference data errors.** Over the past year, we have seen scenarios where a bond was originally designated for dissemination on the TRACE feed and then erroneously reclassified as a 144a, which given the existing dissemination rules, made the bonds ineligible for inclusion on the data feed. Once the reference data was corrected, there was no process to release the omitted transactions to the marketplace. While administrative issues are unavoidable, procedures need to be adopted to ensure that the all eligible transactions are reported to the market.

Recent Regulatory Reporting Improvements in Other OTC Markets:

On August 24, 2012, the Municipal Securities Rulemaking Board (“the MSRB”) filed amendments with the SEC to enhance price transparency for large trades.³ The amendment proposes to enhance the Real-Time unmasking of trades greater than \$1 million to \$5 million with full

³ MSRB Notice 2012-29(June 1, 2012)

disclosure on the real-size 5 business days later. From our perspective the Municipal Market is more opaque than the corporate market given that it has over 50,000 issuers and over 1.2 million unique instruments.

Should FINRA determine that capped trade sizes are in the markets best interest, then we'd like to see FINRA consider making the full trade size available within a similar timeframe rather than the current 18 – 21 month embargo which exists today.

Ease of Implementation:

As far as implementation of our proposal for Actual Trade reporting is concerned, since the actual trade size is currently captured through BTDS there should not be any business process changes to market participants or direct technology implementation costs to them. As far as our suggestions for improvement to the existing TRACE reporting service are concerned they require potential changes to either FINRA or Market Participants, but in our estimate are not overly burdensome in nature and would greatly enhance the value of post-trade reporting data to market participants and investors alike.

We wish to thank FINRA and its staff for their work in developing this Request for Comment and for this opportunity to comment on it. We would be pleased to discuss these comments in greater detail to help facilitate your review. If you have any questions, please do not hesitate to contact the undersigned at (212) 220-4740.

Sincerely yours,



Jim Toffey
CEO
Benchmark Solutions, Inc.