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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 030
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Rule
☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

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

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Robert Last Name * McNamee
Title * Associate General Counsel
E-mail * robert.mcnamee@finra.org
Telephone * (202) 728-8012 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/22/2021
By Racquel Russell (Name *)
(Title *) Senior Vice President and Director, Capital Mar

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Racquel Russell
Digitally signed by Racquel Russell
Date: 2021.11.22 14:28:54 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View FINRA-2021-030 19b-4.docx	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View FINRA-2021-030 Exhibit 1.docx	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View FINRA-2021-030 Exhibit 2a.pdf FINRA-2021-030 Exhibit 2b.docx FINRA-2021-030 Exhibit 2c.pdf	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View FINRA-2021-030 Exhibit 5.docx	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 6730 to require members to append modifiers to identify delayed Treasury spot and portfolio trades when reporting to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice.[2] FINRA will publish a Regulatory Notice announcing the effective date(s) of the proposed amendments pursuant to Rule 6730(d)(4)(H) and (I) no later than 90 days following Commission approval, and the effective date(s) will be no later than 365 days following

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1 15 U.S.C. 78s(b)(1).

2 As discussed below, FINRA may implement the proposed modifier requirements (pursuant to proposed Rule 6730(d)(4)(H) and (I)) separately from the proposed requirement to report the time at which the spread was agreed (pursuant to proposed Rule 6730(c)(14)).

publication of the Regulatory Notice. FINRA will publish a Regulatory Notice announcing the effective date of the proposed amendments pursuant to Rule 6730(c)(14) once determined.[3]

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On February 10, 2020, the Commission's Fixed Income Market Structure Advisory Committee ("FIMSAC") unanimously approved a recommendation from its Technology and Electronic Trading Subcommittee for FINRA to amend its TRACE[4] reporting rules to provide additional information on two types of trades in corporate bond TRACE-Eligible Securities[5] ("FIMSAC Recommendation").[6] Specifically, the FIMSAC

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3 FINRA is currently in the process of developing and implementing enhancements to its reporting systems, including TRACE. Because the proposed requirement to report the time at which the spread was agreed for a delayed Treasury spot trade under Rule 6730(c) would require the addition of a new TRACE reporting field, FINRA intends to set the effective date for this requirement at a later date following completion of TRACE system changes.

4 TRACE is the FINRA-developed system that facilitates the mandatory reporting of over-the-counter transactions in eligible fixed income securities. See generally Rule 6700 Series.

5 Rule 6710(a) generally defines a "TRACE-Eligible Security" as a debt security that is United States ("U.S.") dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise as defined in Rule 6710(n); or (3) a U.S. Treasury Security as defined in Rule 6710(p). "TRACE-Eligible Security" does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in Rule 6710(o).

6 See FIMSAC, Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades (February 10, 2020).

recommended that FINRA amend its TRACE reporting rules to require members to: (1) identify corporate bond trades where the price of the trade is based on a spread to a benchmark U.S. Treasury Security[7] that was agreed upon earlier in the day (referred to as a "delayed Treasury spot trade") and report the time at which the spread was agreed upon; and (2) identify corporate bond trades that are part of a larger portfolio trade. Because the price reported to TRACE for these two types of trades may not reflect the market prices at the time the trades are reported and disseminated, the FIMSAC believed that reporting and disseminating this additional information would improve price transparency in the corporate bond market.[8]

On July 16, 2020, FINRA published Regulatory Notice 20-24 to solicit public comment on potential changes to its TRACE reporting rules in line with the FIMSAC's recommendations. FINRA also sought comment on whether any modifications to the

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https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf.

7 Rule 6710 defines a "U.S. Treasury Security" as "a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities." The term "U.S. Treasury Security" also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury. See Rule 6710(p).

8 See FIMSAC Recommendation at 1. FINRA reminds members that, pursuant to Rule 3110, they must have policies and procedures in place that are reasonably designed to ensure compliance with the TRACE reporting rules, including the accurate reporting of applicable trade modifiers or indicators. Firms also must be able to demonstrate that a transaction meets the applicable conditions associated with a particular modifier or indicator.

scope of the FIMSAC's recommended approach might be appropriate.[9] As discussed in greater detail in Item 5 of this filing, FINRA received seven comments in response to Regulatory Notice 20-24. After further consideration, FINRA is proposing the FIMSAC-recommended changes to the TRACE reporting rules to append modifiers to identify both delayed Treasury spot trades and portfolio trades, with modifications to the portfolio trade provision to clarify and simplify its conditions (based on feedback received in response to Regulatory Notice 20-24), as further discussed below.

Delayed Treasury Spot Trades

For purposes of the proposed amendment, a delayed Treasury spot trade is a transaction in a corporate bond that occurs on the basis of a spread to a benchmark U.S. Treasury Security, where the agreed upon spread is later converted to a dollar price by "spotting" the benchmark U.S. Treasury Security at a designated time. For example, parties may determine to trade a corporate bond based on an agreed spread to a specified U.S. Treasury Security at 10:00 a.m. (e.g., 150 bps over the 10 Year Treasury yield), but the dollar price is determined later, e.g., at 3:00 p.m., when the parties "spot" the spread against the agreed benchmark U.S. Treasury Security yield (e.g., a reported dollar price of 97.5, expressed as a percentage of par value, calculated by applying the agreed spread of 150 bps to the 10 Year Treasury yield at 3:00 p.m.). The TRACE reporting rules generally require members to report transactions in corporate bonds within 15 minutes of the Time of Execution,[10] which is the time when the parties agree to all of the terms of

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9 See FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades, Regulatory Notice 20-24 (July 2020).

10 See Rule 6730(a).

the transaction that are sufficient to calculate the dollar price of the trade.[11] Therefore, in the above scenario, the delayed Treasury spot trade is reportable at 3:00 p.m., which is when the dollar price has been determined. Because the spread was negotiated earlier in the day, the dollar price reported at 3:00 p.m. may be away from the current market price for the security.

The FIMSAC believed that a specific modifier to identify delayed Treasury spot trades, along with disseminating the time at which the spread was agreed (e.g., 10:00 a.m.), would both alert market participants that the spread-based economics of the trade had been agreed upon earlier in the day as well as provide market participants with the ability to estimate the agreed-upon spread.[12]

Consistent with the FIMSAC Recommendation, FINRA is proposing amendments to Rule 6730 to provide additional transparency into delayed Treasury spot trades. Specifically, FINRA is proposing to amend Rule 6730: (1) add new paragraph (d)(4)(H) to require that a member append a new modifier[13] when reporting a delayed Treasury spot trade – i.e., a transaction in a corporate bond,[14] the price of which is based on a

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11 See Rule 6710(d).

12 See FIMSAC Recommendation at 2.

13 As for other TRACE modifiers and indicators under Rule 6730, the specific format for the new delayed Treasury spot trade modifier would be published in TRACE technical specifications.

14 The FIMSAC Recommendation related to delayed Treasury spot trades was limited to corporate bond trades. See FIMSAC Recommendation at 1. Similarly, FINRA proposes to limit use of the new modifier to transactions in corporate bonds (i.e., CUSIPs that are disseminated as part of the TRACE Corporate Bond Data Set). A CUSIP, standing for the Committee on Uniform Security Identification Procedures, is a 9-character alphanumeric code that identifies a North American security for the purposes of facilitating clearing and settlement of

spread to the yield of a U.S. Treasury Security and where the spread was agreed upon that day prior to the Time of Execution of the transaction;[15] and (2) add new paragraph (c)(14) to require that the member report the time at which the spread for a delayed Treasury spot trade was agreed upon.[16] Both the new delayed Treasury spot modifier and the time at which the spread was agreed would be disseminated through TRACE, together with other information on the transaction, immediately upon receipt of the transaction report.[17]

FINRA believes that, by specifically identifying delayed Treasury spot trades, the proposed rule change will enhance FINRA's regulatory audit trail data and improve price transparency for corporate bond market participants by identifying transactions whose prices may not be at the current market for the security.[18] FINRA also believes that

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trades. FINRA may in the future consider applying the delayed Treasury spot modifier and associated requirement to report the time at which the spread was agreed to other types of TRACE-Eligible Securities, such as Agency Debt Securities.

15 FINRA is also proposing a non-substantive, stylistic change to the title of paragraph (d)(4) of Rule 6730, so that it refers to "Modifiers and Indicators" rather than "Modifiers; Indicators".

16 As a result of this addition, current paragraph (c)(14) of Rule 6730 would be renumbered as paragraph (c)(15).

17 FINRA generally disseminates information on transactions in TRACE-Eligible Securities immediately upon receipt of the transaction report, except as otherwise provided in Rule 6750. See Rule 6750(a).

18 The FIMSAC considered several potential means of improving transparency around Treasury spot trades, including whether the terms (including the agreed spread and applicable Treasury benchmark) should be reported to TRACE within 15 minutes of the parties' agreement to all of the terms of the transaction other than the price of the Treasury. The FIMSAC noted that, while these alternatives would allow market participants to fully understand the spread-based economics of the trade at the time at which they are agreed, the recommended approach

disseminating the time that the spread was agreed will further enhance price transparency by providing market participants with the ability to estimate the agreed-upon-spread.[19]

Portfolio Trades

FINRA also is proposing a new modifier to identify portfolio trades.[20] For purposes of the proposed amendment, a "portfolio trade" is a trade between only two parties for a basket of corporate bonds at a single aggregate price for the entire basket. For example, a market participant may seek to trade a portfolio consisting of 50 corporate bonds. The parties may obtain mid-market prices for each of the 50 component bonds as a framework for the pricing, and, during the negotiation process, ultimately agree on a uniform spread, resulting in an aggregate dollar price for the entire portfolio. In such cases, members must report to TRACE a trade for each individual bond in the basket with an attributed dollar price for each bond. While, in many cases, the reported price for each

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would be simpler and more cost-effective to implement, assuming the need for reporting parties to enhance the initial TRACE report with the calculated dollar price of the trade when the delayed spot trade is "spotted" later in the day. See FIMSAC Recommendation at 2 n.3. Following implementation, FINRA will assess the reported data regarding delayed Treasury spot trades and continue to engage with industry participants regarding whether any future changes may be appropriate to further improve transparency.

19 FINRA understands 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. For example, market participants would use the most recently issued 10-year U.S. Treasury Security as the benchmark to price a 10-year corporate bond.

20 As noted below, the specific format and requirements for both the new delayed Treasury spot modifier and the new portfolio trade modifier would be published in TRACE technical specifications. Where a specific trade meets the criteria for both modifiers, such specifications may require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade.

corporate bond in a portfolio trade is in line with the security's current market price, in other cases—based on, for example, the liquidity profile of a specific bond or other factors—the attributed price reported for an individual security may deviate from its current market price.

The FIMSAC believed it would be beneficial if market participants were able to identify with certainty which trades were part of a portfolio trade because of the possibility that the reported price may not be reflective of the independent market for the bond.[21] The FIMSAC therefore recommended that FINRA amend its TRACE reporting rules to identify corporate bond trades: (i) executed between only two parties; (ii) involving a basket of securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis.[22]

In line with the FIMSAC's recommendation, FINRA is proposing to amend Rule 6730 to provide additional transparency into portfolio trades. Specifically, FINRA is proposing to add new paragraph (d)(4)(I) to Rule 6730 to require that a member append a new modifier[23] if reporting a transaction in a corporate bond:[24] (i) executed between only

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[21] The FIMSAC acknowledged that market participants currently may be able to surmise which TRACE reports are part of a portfolio trade, based on a common time of execution or the characteristics of the components. See FIMSAC Recommendation at 2.

[22] See FIMSAC Recommendation at 4.

[23] As for other TRACE modifiers and indicators under Rule 6730(d)(4), the specific format for the new portfolio trade modifier would be published in TRACE technical specifications.

[24] The FIMSAC Recommendation related to portfolio trades was limited to corporate bond trades. See FIMSAC Recommendation at 2. Similarly, FINRA proposes to limit use of the new modifier to transactions in corporate bonds (i.e., CUSIPs that are disseminated as part of the TRACE Corporate Bond Data Set).

two parties; (ii) involving a basket of corporate bonds of at least 10 unique issues; and (iii) for a single agreed price for the entire basket ("Portfolio Trade Definition"). The new portfolio trade modifier would be disseminated through TRACE, together with other information on the transaction, immediately upon receipt of the transaction report. Based on feedback from commenters, the scope of FINRA's proposed Portfolio Trade Definition differs from the FIMSAC recommended definition in two ways, as discussed further below.

Both the FIMSAC recommendation and the proposal would limit use of the portfolio trade modifier to instances where the trade is executed between only two parties at a single agreed price for the entire basket. However, instead of applying the portfolio modifier to transactions involving a basket of corporate bonds of 30 or more unique issuers (as recommended by the FIMSAC), FINRA is proposing to apply the portfolio trade modifier to transactions involving a basket of corporate bonds of at least 10 unique issues/securities (i.e., individual securities counted using security identifiers such as CUSIPs or TRACE symbols). As described in further detail in Item 5 of this filing, FINRA received several comments on this aspect of the proposal. Commenters stated that basing the numerical threshold on the number of issuers represented in a portfolio rather than the number of securities would be challenging to implement and would raise interpretive issues, and therefore suggested instead basing the threshold on the number of unique corporate bond securities in the portfolio. Commenters believed that this alternative approach would effectively identify portfolio trades while avoiding challenges

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FINRA may in the future consider expanding the portfolio trade modifier to cover other types of TRACE-Eligible Securities, such as Agency Debt Securities.

that would be associated with correctly identifying bonds associated with a particular issuer. Commenters also stated that basing the threshold on the number of unique issues would be simpler and more easily automatable for members to implement. FINRA agrees that using individual securities, rather than issuers, would provide a simpler and more effective way to identify portfolio trades for purposes of the new modifier. Therefore, FINRA is proposing to base the size threshold condition in prong (ii) of the Portfolio Trade Definition on the number of unique issues in the basket of corporate bonds.

Second, the FIMSAC recommended setting the size threshold for portfolio trades at 30 unique issuers. As described in further detail in Item 5 of this filing, FINRA also received comments on the appropriate basket size, with commenters expressing a range of views on the most appropriate threshold. After further consideration, FINRA is proposing to modify the size threshold in prong (ii) of the Portfolio Trade Definition by lowering the threshold from 30 to 10 unique securities. FINRA believes that lowering the threshold for use of the portfolio trade modifier to 10 would provide greater informational benefits to market participants by capturing a greater number of transactions that satisfy the other conditions of the Portfolio Trade Definition.

Consistent with the FIMSAC Recommendation, prong (iii) of the Portfolio Trade Definition would apply the new modifier to transactions entered into "for a single agreed price" for the entire basket. As described above, this prong represents the key characteristic of portfolio trades, i.e., that the transaction is entered into at an agreed aggregate price for the entire basket (as opposed to individually negotiated trades), which may result in the attributed price reported for individual securities in the basket being away from their current market price.

FINRA notes that the FIMSAC also recommended that the Portfolio Trade Definition include a requirement that the basket be executed on an "all-or-none or most-or-none basis."[25] One commenter suggested deleting the reference to "most-or-none" in this proposed prong because a definition of "most-or-none" does not currently exist in current market practice and the concept is not well understood. After further consideration, FINRA believes that removing this prong in its entirety would reduce the proposal's complexity without reducing the new modifier's informational value. FINRA is therefore not proposing to include an "all-or-none or most-or-none" prong as part of the Portfolio Trade Definition. Therefore, if two parties agree on a price with respect to a basket of bonds, the component trades would be identified with the new portfolio trade modifier so long as the resulting basket trade includes the minimum of 10 unique issues at a single agreed price, regardless of the number of securities that originally were contemplated as part of the basket.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice.[26] FINRA will publish a Regulatory Notice announcing the effective date(s) of the proposed amendments pursuant to Rule 6730(d)(4)(H) and (I) no later than 90 days following Commission approval, and the effective date(s) will be no later than 365 days following publication of the Regulatory Notice. FINRA will publish a

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25 See FIMSAC Recommendation at 4.

26 See supra note 2.

Regulatory Notice announcing the effective date of the proposed amendments pursuant to Rule 6730(c)(14) once determined.[27]

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[28] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to improve transparency for delayed Treasury spot and portfolio trades is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally, to protect investors and the public.

FINRA believes that the proposed rule change will improve transparency into pricing in the corporate bond market and enhance FINRA's regulatory audit trail data by specifically identifying delayed Treasury spot trades and portfolio trades, which are two types of trades where the price may not be reflective of the current market price at the time the trades are reported and disseminated. FINRA also believes that the proposed rule change will enable market participants and investors to better understand pricing for delayed Treasury spot trades by requiring members to report the time at which the spread was agreed, which will provide market participants with the ability to estimate the agreed-upon-spread for such trades.

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27 See supra note 3.

28 15 U.S.C. 78o-3(b)(6).

4. **Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

Regulatory Objective

As discussed above, delayed Treasury spot trades and portfolio trades may not be reflective of the current market price for the bonds and may be less informative for market participants that rely on TRACE for price discovery or other analyses. The proposed modifiers would specifically identify these types of trades and add the time at which the spread was agreed upon in disseminated data.

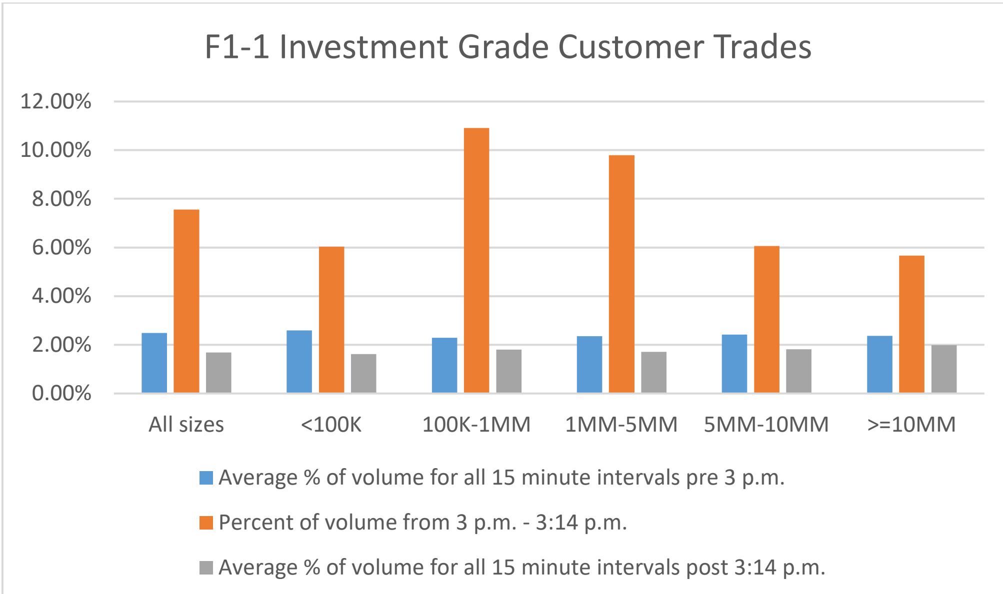
Economic Baseline

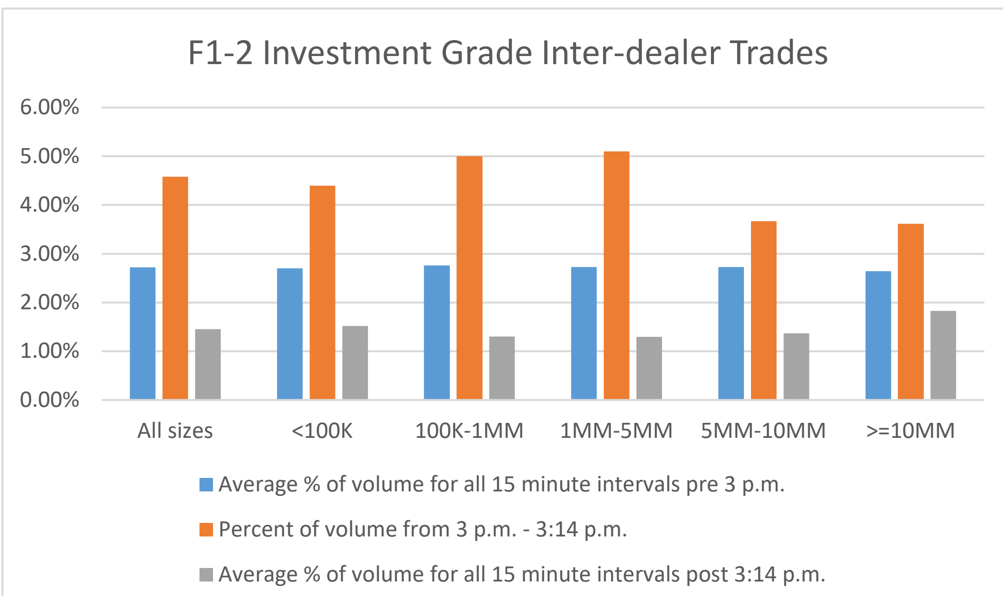
A. Delayed Treasury Spot Trades

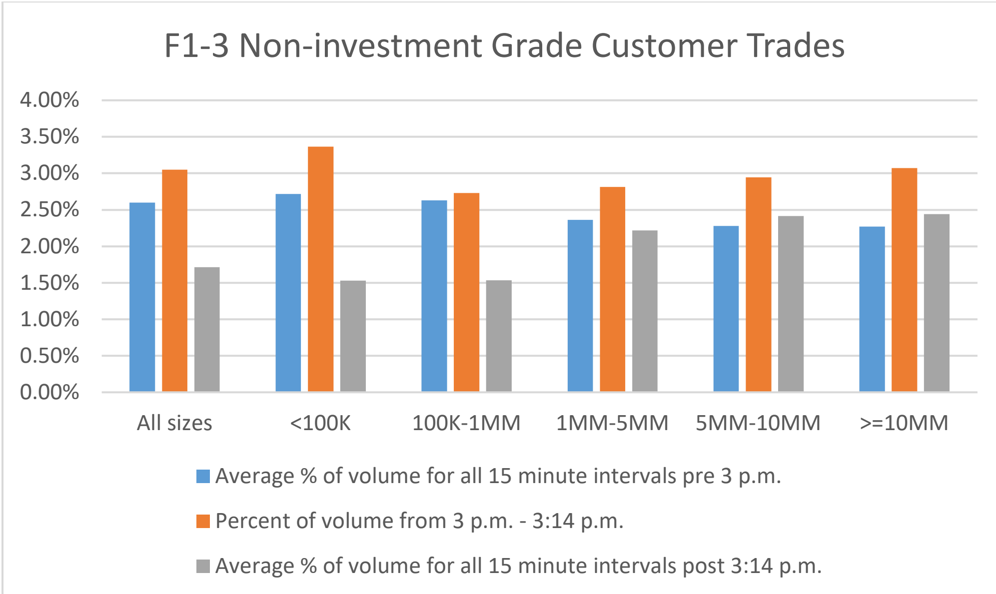
Because delayed Treasury spot trades are currently not identified in the TRACE data, the economic baseline first establishes the TRACE reported trades most likely to be associated with delayed Treasury spot trades. Using TRACE data from June 2020 to May 2021, FINRA examined the daily average concentration of corporate bond trades around 3:00 p.m., which FINRA understands to be the "spotting" time usually used by dealers for delayed Treasury spot trades. Figures F1-1 and F1-2 below compare the percentage of trades during the 3:00 p.m. to 3:14 p.m. time interval with: (1) the average percentage of trades for all 15-minute intervals before 3:00 p.m.; and (2) and the average percentage of trades for all 15-minute intervals after 3:14 p.m. Figures F1-1 and F1-2 also provide these trade distributions based on the size of trades and for all trades combined. These data are likely to either overcount the number of delayed Treasury spot trades because some of the trades executed in the time interval are not delayed Treasury spot trades, or undercount because they exclude delayed Treasury spot trades executed at other times during the day. Nevertheless, FINRA believes this methodology will provide a reasonable baseline for the analysis.

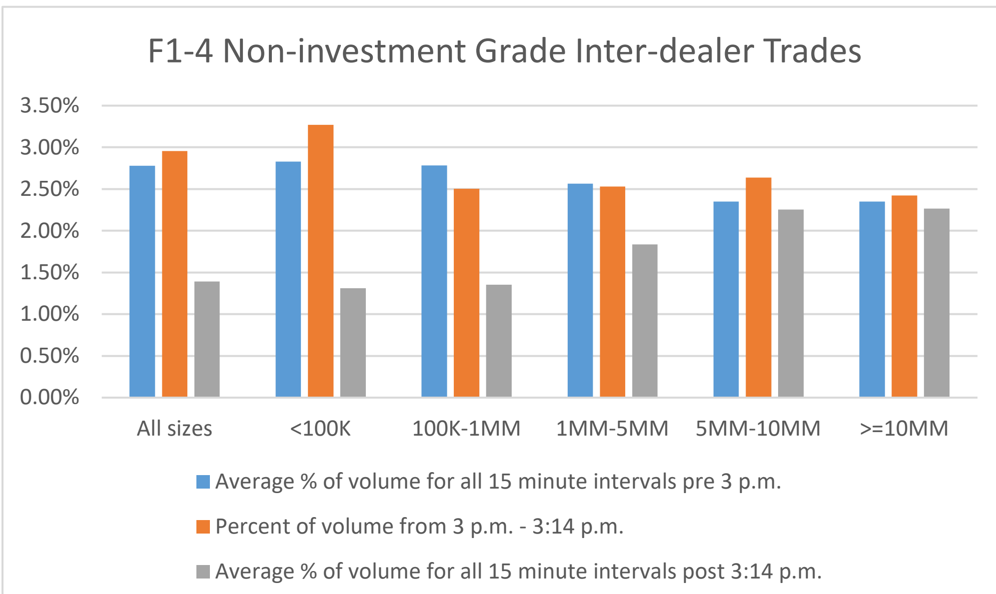
Figure F1-1 provides statistics for customer trades in investment grade bonds and Figure F1-2 provides statistics for inter-dealer trades in investment grade bonds. Figures F1-1 and F1-2 show that, across all trade sizes in investment grade bonds, volumes in the 3:00 p.m. trade interval are larger than both the pre-3:00 p.m. and the post-3:14 p.m. intervals. For investment grade customer trades, the 3:00 p.m. volumes are several times larger than both the pre-3:00 p.m. and the post-3:14 p.m. intervals. Figures F1-3 and F1-4 provide similar information for trades in non-investment grade bonds. These figures show that the differences in trades across the time intervals are much less material in non-investment grade bond trades. Although trades during the 3:00 p.m. to 3:14 p.m. time interval may not all be delayed spot trades, the jump in investment grade bond volume during the period is consistent with FINRA's understanding of when delayed Treasury spot trades are priced and reported (regardless of when the spread was agreed upon).

Figure 1: Distribution of Corporate Bond Trading Volume during Trading Hours (June 2020 to May 2021)









B. Portfolio Trades

Evidence supports the hypothesis that portfolio trading has been increasing over time.[29] An analysis by Morgan Stanley shows that $88 billion in portfolio trades were executed from January 2019 through November 2019, compared to virtually none in

[29] See infra notes 30 and 31.

2017.[30] The analysis also shows that portfolio trades with 140 bonds or more increased tenfold since 2018. According to a Financial Times article citing Greenwich Associates' survey of 67 bond traders, more than 50% of the traders have executed a portfolio trade in the past year.[31]

FINRA computed the annual percentage of trades that can be classified as portfolio trades of increasing portfolio sizes from 2015 to 2020 using TRACE data. For purposes of these calculations, a "portfolio trade" is a trade of a basket of corporate bonds between only two parties at the same execution time.[32] "Portfolio size" is defined as the number of unique CUSIPs contained in the basket. This analysis demonstrates that portfolio trades reported to TRACE grew significantly in the past six years. For example, Table 1 shows that the percentage of customer portfolio trades involving at least 10 CUSIPs more than quadrupled from 1.34% in 2015 to 5.64% in 2020. For portfolio trades involving at least 30 CUSIPs, the percentage of trades increased from 0.29% in

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30 See Jennifer Surane & Matthew Leising, Bond Trade That's Gone from Zero to $88 Billion in Two Years, BLOOMBERG (Nov. 18, 2019), https://www.bloomberg.com/news/articles/2019-11-18/the-bond-trade-that-s-gone-from-zero-to-88-billion-in-two-years.

31 See Joe Rennison, Robert Armstrong & Robin Wigglesworth, The New Kings of the Bond Market, FINANCIAL TIMES (Jan. 22, 2020), https://www.ft.com/content/9d6e520e-3ba8-11ea-b232-000f4477fbca. Among those traders, 75% executed the portfolio trade with dealers while the remaining did so through other means such as an electronic trading platform.

32 Using current TRACE data, FINRA can only approximate "portfolio trades" as defined in the proposed rule change. Specifically, the analysis may include trades that are not executed at a single agreed price for the entire basket or that are not limited to two parties. As a result, the method used in this analysis may include as a "portfolio trade" some trades that would fall outside of the scope using the criteria set forth in the proposed rule change. However, FINRA believes that the method used in these calculations is reasonable for purposes of the analysis given the scope of information currently available in TRACE.

2015 to 3.60% in 2020. Inter-dealer portfolio trades grew at an even higher rate, albeit from a lower base level.

Table 1: Percentage of trades by portfolio size

	2015	2016	2017	2018	2019	2020
1: Customer Trades						
>= 1	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
>= 2	14.60%	12.63%	13.14%	16.38%	18.89%	21.94%
>= 10	1.34%	1.21%	1.10%	2.20%	3.09%	5.64%
>= 20	0.44%	0.38%	0.42%	1.30%	1.98%	4.10%
>= 30	0.29%	0.15%	0.25%	1.01%	1.62%	3.60%
>= 50	0.20%	0.06%	0.18%	0.86%	1.33%	2.98%
>= 70	0.16%	0.05%	0.16%	0.78%	1.15%	2.58%
>= 100	0.11%	0.04%	0.14%	0.71%	0.95%	2.10%
2: Dealer to Dealer Trades						
>= 1	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
>= 2	3.65%	4.73%	5.44%	7.99%	11.36%	14.44%
>= 10	0.39%	0.78%	0.99%	2.68%	5.03%	7.18%
>= 20	0.09%	0.27%	0.41%	2.03%	4.14%	6.22%
>= 30	0.02%	0.08%	0.17%	1.70%	3.55%	5.54%
>= 50	0.00%	0.01%	0.08%	1.34%	2.65%	4.31%
>= 70			0.07%	1.04%	1.97%	3.38%
>= 100			0.06%	0.73%	1.21%	2.49%

Economic Impact

1. Delayed Treasury Spot Trades

A modifier identifying delayed Treasury spot trades would add valuable information to disseminated TRACE data by indicating that the reported price may not be at the current market. The new disseminated time field would benefit the market because market participants can use it to reasonably evaluate the spread at the time when the spread was agreed upon and compare it to other trades at or near the same time. Together, these additions will increase post-trade price transparency.

Members would be required to make systems changes to accommodate the new modifier and time field. This would represent a fixed cost to FINRA members that report corporate bond transactions priced through a delayed Treasury spot process. The cost may be higher for members that house information regarding the time of spotting in a different platform or system that is not connected to its TRACE reporting system.[33] FINRA expects that the ongoing variable cost of reporting the new modifier and populating the time field will be low for firms as costs currently are incurred for existing TRACE reporting.

2. Portfolio Trades

A modifier identifying trades executed as part of a portfolio trade would allow market participants to identify with certainty which trades occurred at attributed prices as part of a portfolio trade. With this information, market participants could better identify trade prices that may not reflect the market price for the individual bond. This modifier will improve post-trade price transparency. While some market participants may be capable of inferring portfolio trades from current disseminated data,[34] the added modifier may particularly benefit smaller market participants, market observers and researchers who may not have systems in place to actively screen for portfolio trades using currently available data.

FINRA members would incur costs associated with making system changes required to accommodate the new modifier. This would represent a fixed cost to FINRA members that execute and report portfolio trades. The variable cost of reporting the new

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33 See SIFMA Letter, infra note 38.

34 See SIFMA Letter, infra note 38.

modifier should be minimal to firms as costs are currently incurred for existing TRACE reporting. In addition, while market participants currently may infer that some trades may be portfolio trades, they cannot do so with certainty. The FIMSAC noted that there may be an increased theoretical risk that a market participant may identify the seller of a portfolio trade if these trades are identified in disseminated data.[35] FINRA requested comments on the possibility of increased risk and members did not raise concerns regarding such risk.

3. Effects on competition

FINRA does not believe that the proposed modifiers will unduly burden competition. The costs for a firm to modify the reporting process for the proposed modifiers will be proportional to the fixed cost of the firm's reporting system, and thus be helped by similar factors. For example, firms with no activities in delayed Treasury spot trades or portfolio trades may not need to update their system; firms with limited activities may choose to manually input the new modifiers; and firms can also use third party reporting system vendors, which are intended to take advantage of lower costs due to economy of scale.

Alternatives Considered

With respect to the proposed delayed Treasury spot provisions, FINRA considered requiring firms to report the available terms (including the agreed spread and applicable Treasury benchmark) of delayed Treasury spot trades within 15 minutes of the parties' agreement to the spread and benchmark. FIMSAC noted this alternative in its recommendation and stated that, while this construct would allow market participants to

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35 See FIMSAC Recommendation at 2.

fully understand the spread-based economics of the trade at the point at which they are agreed, the proposed approach will be simpler and more cost-effective to implement and would avoid the need for reporting parties to enhance the initial TRACE report with the calculated dollar price of the trade when the delayed spot trade is "spotted" later in the day.[36] FINRA agrees and also believes that the proposed approach is beneficial in requiring reporting of the dollar price of the transaction once determined, which is then disseminated immediately upon receipt.

With respect to the proposed portfolio modifier, FINRA considered other thresholds for the number of unique issues to qualify as a portfolio trade, such as 30 unique issues, similar to the FIMSAC recommendation to identify trades involving a basket of at least 30 unique issuers (rather than issues), or as few as 2 unique issues, as suggested by some commenters. Lowering the threshold generally captures more portfolio trades and therefore provides greater informational benefits to market participants. It may also discourage traders from splitting up portfolio trades into smaller lists that do not meet the specified criteria to avoid identifying trades under the proposal. On the other hand, setting the threshold too low reduces the usefulness of the identifier. Portfolio trades are used to diversify individual bond risk and save on trading costs. Most of these benefits will diminish as the portfolio size becomes small. The deviation of individual bond price in a portfolio from market price will likely be less as the number of bonds in the portfolio decreases. The proposed threshold of 10 strikes an appropriate balance between the trade-offs and is also recommended by some commenters.[37]

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36 See note 18 supra.

37 See Jane Street Letter and SIFMA Letter, infra note 38.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 20-24 (July 2020). Seven comments were received in response to the Regulatory Notice.[38] A copy of the Regulatory Notice is attached as Exhibit 2a. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c. The comments are summarized below.

Delayed Treasury Spot Trades

Bloomberg, Jane Street and T. Rowe Price supported the proposal to require members to identify corporate bond trades where the price of the trade is based on a spread to a benchmark U.S. Treasury Security that was agreed upon earlier in the day and

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[38] See Comment submission from Melinda Ramirez, Consultant, dated July 19, 2020 (stating only "Thank you for the opportunity to invest.." [sic]); letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("Bloomberg Letter"); letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("FIF Letter"); letter from Kathleen Callahan, FIX Operations Director, FIX Trading Community, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("FIX Letter"); letter from Matt Berger, Global Head of Fixed Income and Commodities, Jane Street Capital, LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("Jane Street Letter"); letter from Chris Killian, Managing Director, Securitization and Credit, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 15, 2020 ("SIFMA Letter"); and letter from Michael Grogan, V.P. & Head of US Fixed Income Trading – Investment Grade, Dwayne Middleton, V.P. & Head of Fixed Income Trading, Brian Rubin, V.P. & Head of US Fixed Income Trading – Below Investment Grade and Jonathan Siegel, V.P. & Senior Legal Counsel – Legislative & Regulatory Affairs, T. Rowe Price, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 15, 2020 ("T. Rowe Price Letter").

report the time at which the spread was agreed upon.[39] Bloomberg stated that the proposal "adds an incredible amount of value, insight and transparency into TRACE data," including by making it possible for "market participants to derive intraday credit spread moves in specific corporate bond issues and issuers."[40] Jane Street noted that while market participants would initially incur costs to modify trading reporting procedures to provide this information, such costs are outweighed by the benefit of obtaining additional information about delayed Treasury spot trades.[41] T. Rowe Price noted that the reported dollar price for delayed Treasury spot trades may not take into account market or issuer-specific developments that have occurred throughout the day, such that the proposal would benefit investment advisers and other market participant by providing timely and definitive clarity on whether reported transactions are delayed Treasury spot trades, and further would support price formation.[42] T. Rowe Price also noted benefits of the proposal to transaction cost analysis and the portfolio valuation process for institutional investors.[43]

SIFMA expressed mixed views on the delayed Treasury spot trade proposal. SIFMA noted that its members "both see benefits to this proposal but also have material questions including the overall benefit vs. cost balancing."[44] SIFMA stated that a

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39 See Bloomberg Letter at 2; Janes Street Letter at 1-2; T. Rowe Price Letter at 1.

40 See Bloomberg Letter at 2.

41 See Jane Street Letter at 2.

42 See T. Rowe Price Letter at 1-2.

43 See T. Rowe Price Letter at 2.

44 See SIFMA Letter at 3.

potential benefit of the proposal would be to provide a “clearer picture, retrospectively, as to liquidity flows throughout the day.”[45] However, SIFMA noted that some of its members indicated that the technical implementation of this proposal is complex, particularly around the new time field.[46] SIFMA also highlighted that the fixed-cost burden presented by the proposal would be more meaningful for smaller, non-primary dealers, which could lead such dealers to use manual processes for trade reporting or no longer engage in these type of trades.[47]

FIF did not support the delayed Treasury spot proposal, noting that the proposal would require firms to implement significant system changes.[48] FIF stated that its members advised that dealer systems do not currently store the time the original terms are agreed in a manner that would enable reporting to TRACE on a timely basis, such that implementation would require significant cost and work for firms to upgrade various systems.[49] FIF instead proposed that FINRA consider mandating that the SpecialPriceIndicator tag, or another existing TRACE tag, be marked as instructed by FINRA to identify delayed Treasury spot trades.[50] FIF stated that this alternative would

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45 See SIFMA Letter at 4.

46 See SIFMA Letter at 4.

47 See SIFMA Letter at 4.

48 See FIF Letter at 2.

49 See FIF Letter at 2.

50 See FIF Letter at 2.

signal to the market that the terms of the trade were not agreed based on current market conditions.[51]

FINRA agrees with commenters that the proposal relating to delayed Treasury spot trades will provide significant benefits to market participants and investors by enhancing transparency into corporate bond pricing for these types of trades. FINRA acknowledges that implementing the proposal will require members to make systems changes to identify Treasury spot trades and append the modifiers, as well as to capture and report the time at which the spread was agreed. FINRA believes, however, that the ongoing transparency benefits of reporting and disseminating this additional information will outweigh the initial costs required to modify trade reporting systems to enable gathering and reporting this new information. FINRA does not believe that use of an existing TRACE modifier or indicator, such as the special price tag, would sufficiently differentiate delayed Treasury spot trades in disseminated TRACE data or its regulatory audit trail data, nor would use of such a tag provide information about the time that the spread was agreed such that market participants can estimate the agreed-upon spread for such trades.[52]

SIFMA also responded to two specific requests for comment in Regulatory Notice 20-24 concerning the proposed Treasury spot modifier. First, FINRA asked whether it

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51 See FIF Letter at 2.

52 The "special price" modifier must be appended when a transaction is executed at a price based on arm's length negotiation and done for investment, commercial or trading considerations, but does not reflect current market pricing. See FINRA Rule 6730(d)(4)(A) and Notice to Members 05-77 (November 2005). Thus a member must first make a determination, on a trade-by-trade basis, that a price is off-market before it appends the special price modifier.

should consider requiring firms to report the spread, either at the time the spread is agreed or later in the day, and, if reported at the time the spread is agreed, whether the dollar price should also be reported later in the day. SIFMA responded that FINRA should have enough information from the proposed trade reports to derive an estimate of the spread without requiring reporting of this additional data.[53] SIFMA also noted that, in any case, dealers should not have to submit two reports, or amend a previous report, for the same trade.[54] As described above, FINRA is not modifying the proposal to require reporting of the spread or to require members to submit two reports for the same trade.[55] Second, FINRA requested comment on its understanding that 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. SIFMA stated that its members share that understanding.[56]

FIX didn't express a substantive view on the proposed amendments but suggested that it can assist in developing standard solutions for reporting of the proposed new delayed Treasury spot trade modifier.[57] For example, FIX noted that adding the capability for FINRA to capture the time that the spread was agreed would be a minimal extension to an existing concept in FIX, specifically the TrdRegTimestamps field.[58]

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53 See SIFMA Letter at 4.

54 See SIFMA Letter at 4-5.

55 See note 18 supra.

56 See SIFMA Letter at 5.

57 See FIX letter at 3.

58 See FIX letter at 2.

FINRA notes that it supports several technical standards for reporting of trade information to TRACE, including FIX, and that the specific format and requirements for the new delayed Treasury spot modifier and reporting field for the time the spread was agreed would be published in TRACE technical specifications. As noted above, where a specific trade meets the criteria for both modifiers, such specifications may require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade.

Portfolio Trades

T. Rowe Price supported the proposal to require members to identify corporate bond trades that are components of a larger portfolio trade, as defined in the FIMSAC Recommendation.[59] T. Rowe Price noted that the prices reported to TRACE for transactions that are part of a portfolio trade may not be at the current market for the security and that the proposal would benefit investment advisers and other market participants by providing timely and definitive clarity on whether a transaction is part of a portfolio trade, and further would support price formation.[60] T. Rowe Price also noted benefits of the proposal to transaction cost analysis and the portfolio valuation process for institutional investors.[61]

FIF, Bloomberg and Jane Street generally supported the proposal but suggested certain modifications to the conditions for trades that would qualify for the proposed

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59 See T. Rowe Price Letter at 1.

60 See T. Rowe Price Letter at 1-2.

61 See T. Rowe Price Letter at 2.

portfolio trade modifier under the FIMSAC Recommendation,[62] while SIFMA expressed generally mixed views on the portfolio trade proposal.[63]

FIF and SIFMA recommended that prong (ii) of the Portfolio Trade Definition be changed to a threshold based on the number of unique issues or securities, rather than the number of unique issuers.[64] FIF noted that shifting to a security basis for this prong would avoid challenges in identifying and processing which bonds are associated with a particular issuer and would result in more trades being reported as portfolio trades, which would provide greater transparency and enhance FINRA's audit trail.[65] FIF also stated that basing the determination of a portfolio trade on the number of unique issuers would raise the question of whether bonds of affiliated issuers should be counted as one or multiple issuers, and highlighted in particular bonds issued by special purpose vehicle subsidiaries.[66] SIFMA stated that while it understands that using the number of unique issuers is intended to scope in diversified portfolio trades, its members raised the concern that doing so would be more complicated to implement than basing the threshold on the number of securities in the portfolio.[67] SIFMA noted several examples of potential complications that could arise by using unique issuers, such as determining how to treat

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62 See FIF Letter at 1-2; Bloomberg Letter at 3-4; Jane Street Letter at 2.

63 See SIFMA Letter at 1-3.

64 See FIF Letter at 2; SIFMA Letter at 2-3.

65 See FIF Letter at 2-3.

66 See FIF Letter at 3.

67 See SIFMA Letter at 2-3.

affiliates and subsidiaries and how guarantees might affect the analysis.[68] SIFMA stated that these issues would require market participants to generate large lists of bonds and determine how to attribute each bond to a unique issuer, which would not be easily automatable and would introduce the risk of errors and omissions in TRACE reporting.[69] FINRA agrees with these commenters that using a threshold based on the number of individual securities, rather than issuers, to determine when to append the portfolio trade modifier would result in a clearer and easier to implement approach to identifying portfolio trades, and has modified the proposal accordingly.

Jane Street, Bloomberg, FIF and SIFMA commented on the threshold number for appending the portfolio trade modifier, which the FIMSAC recommendation set at 30. FIF stated that a trade involving fewer than 30 unique issuers should still be considered a portfolio trade if it meets the other conditions in the definition.[70] Jane Street stated that 30 unique issuers is too high and recommended that a basket containing bonds from at least 10 unique issuers should be reported using the portfolio trade modifier, which would maximize the informational benefit of the new modifier since many portfolio trades contain bonds of between 10 and 30 unique issuers.[71] SIFMA stated that some of its members believe that a lower number of securities would be more appropriate, such as 10, while other of its members are comfortable with the proposed 30 or an even higher

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68 See SIFMA Letter at 3.

69 See SIFMA Letter at 3.

70 See FIF Letter at 2.

71 See Jane Street Letter at 2.

number.[72] Bloomberg recommended that TRACE should identify every situation where two or more securities are transacted at an agreed upon price where the price may not reflect the current market price for the bonds.[73] As described above, FINRA has modified the proposal by lowering the threshold from 30 to 10. FINRA believes that lowering the threshold for portfolio trades that would be identified by the new modifier in this manner would provide greater informational benefits to market participants. However, FINRA believes that a lower threshold than 10 issues, such as two or more securities, would be over-inclusive and reduce the usefulness of the modifier.

With respect to the proposed prong requiring that a portfolio trade must be executed on an all or none or most or none basis, Bloomberg noted that an "all-or-none" designation is "an execution constraint that is well defined in all markets" but that the concept of "most-or-none" does not currently exist and would require further clarification around what number of constituents in the basket constitutes "most."[74] Bloomberg therefore recommended using a definition of a basket that focuses on executions, rather than order designations.[75] As described above, FINRA agrees that this aspect of the initial proposal is not well-understood and believes that the Portfolio Trade Definition would be best implemented without an "all-or-none or most-or-none" prong. Therefore, under the current formulation, if two parties enter into negotiations with respect to a basket of bonds, the component trades would be identified with the new portfolio trade

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72 See SIFMA Letter at 3.

73 See Bloomberg Letter at 4.

74 See Bloomberg Letter at 3-4.

75 See Bloomberg Letter at 4.

modifier so long as the resulting basket trade meets the other conditions specified in the Portfolio Trade Definition.

SIFMA also commented more broadly on the portfolio trade proposal. SIFMA stated that its members see two aspects to the portfolio trade proposal: (1) the identification of portfolio trades vs. other kinds of trades and (2) the identification of potentially off-market trades.[76] With respect to the first aspect, SIFMA noted that, while the proposal would make it easier to identify portfolio trades, some of its members believe it is already fairly easy to identify portfolio trades today without the specific modifier.[77] However, SIFMA also noted that other of its members believe that the proposal would benefit smaller market participants, market observers and researchers, who may not have systems in place to actively screen for portfolio trades using currently available data.[78] SIFMA noted that some of its members have concerns about the potential impact on liquidity resulting from disclosure of trading strategies, while other members did not believe that this is a material concern. With respect to the second aspect, SIFMA stated that some of its members have questioned the appropriateness of a flag that does not provide definitive information regarding whether the price is off-market, since a price in a portfolio trade may or may not be off-market.[79] SIFMA noted that dealers are already expected to review each line item in a portfolio trade to determine

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[76] See SIFMA Letter at 1.

[77] See SIFMA Letter at 2. SIFMA also expressed concern that the proposal shifts TRACE away from being a price transparency tool into a tool that provides trading strategy details. See id.

[78] See SIFMA Letter at 2.

[79] See SIFMA Letter at 2.

if it is off-market and, if so, append the existing special price indicator in TRACE reports. SIFMA stated that one potential benefit of the proposal could be to reduce compliance burdens if the new portfolio trade modifier replaces the special price indicator for components of portfolio trades.[80] On a related point, SIFMA asked FINRA to confirm that the portfolio trade modifier would be taken into account in fair pricing reviews.[81] SIFMA also stated dealers should not face an undue burden to explain why a price on a trade identified as a portfolio trade was off-market.[82] FINRA confirms that the portfolio trade modifier would be taken into account in FINRA's reviews of members' trading activities, including fair pricing reviews, along with any other indicators or modifiers that may be appended to individual trades (such as the special price indicator, where applicable). However, the new portfolio trade modifier would not replace any other applicable indicators or modifiers, including the special price indicator, where applicable. FINRA continues to believe that, on balance, identification of portfolio trades through the proposed portfolio trade modifier would improve market transparency and provide greater certainty to market participants and investors regarding such trades.

Bloomberg also commented more generally on the portfolio trade proposal. Bloomberg stated that it has significant reservations about the portfolio trade proposal because there would be significant incentives for liquidity seekers to avoid sending baskets that meet criteria.[83] Specifically, Bloomberg noted that dissemination of

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[80] See SIFMA Letter at 2.

[81] See SIFMA Letter at 2.

[82] See SIFMA Letter at 2.

[83] See Bloomberg Letter at 3.

individual components of portfolio trades as unrelated transactions in TRACE data, as it is today, protects liquidity seekers, while appending the proposed modifier could lead to significant information leakage such that market participants would understand both why and how the trade was executed.[84] Bloomberg expressed concern that the modifier would therefore be problematic because it would alert the market that a change in portfolio strategy had occurred, for example by allowing participants to reverse engineer a particular institution's views on a particular issue, which could dampen liquidity. Bloomberg stated that these concerns would reduce the transparency benefits sought by the proposal because liquidity seekers and providers may simply split up their baskets into smaller lists that do not meet the proposed criteria for the portfolio trade modifier.[85] Bloomberg also suggested that transparency could be enhanced by instead identifying every situation where two or more securities are transacted at an agreed upon price where the price may not reflect the current market price for the bonds, drawing an analogy to reporting modifiers used for equities in the public data feeds to indicate transactions with special circumstances that impact price.[86] As discussed above, FINRA believes that, on balance, identification of portfolio trades through the new proposed portfolio trade modifier would improve market transparency and provide greater certainty to market participants and investors regarding such trades. With respect to Bloomberg's suggestion to identify any portfolio trades involving two or more securities, as discussed above FINRA believes such a low threshold would be over-inclusive and would reduce the

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84 See Bloomberg Letter at 3.

85 See Bloomberg Letter at 3.

86 See Bloomberg Letter at 4.

usefulness of the modifier, while a threshold of 10 securities as proposed would benefit market participants by providing greater transparency into pricing in the corporate bond market, while avoiding capturing transactions that are not portfolio trades, as that term is commonly understood in the market. In addition, as discussed above, FINRA believes lowering the threshold to 10 unique issues (from the threshold of 30 set forth in the FIMSAC Recommendation) may discourage traders from splitting up portfolio trades into smaller lists that do not meet the specified criteria for the proposed modifier to avoid identifying the trade under the proposal.

FIF requested guidance on application of the portfolio trade proposal in certain scenarios. Specifically, FIF stated that its members request guidance on whether non-TRACE-Eligible Securities should be counted toward the portfolio basket size threshold where a portfolio trade involves some bonds that are TRACE-Eligible Securities and other bonds that are not TRACE-Eligible Securities.[87] FINRA confirms that a security that is a non-TRACE Eligible Security, as well as a security other than a corporate bond that is a TRACE Eligible Security, should not be counted toward the portfolio basket size threshold. FIF also asked for guidance on the definition of a "single agreed price" in the context of a portfolio trade.[88] FINRA is clarifying that a portfolio trade would be considered to be executed for a "single agreed price" for the entire basket where the overall price for the basket has been negotiated or agreed on an aggregate basis, including where the parties used a pricing list or pricing service as the starting point for negotiations but the final price was determined by applying a uniform spread to all

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87 See FIF Letter at 3.

88 See FIF Letter at 3.

securities in the basket. However, where the parties simply aggregate individual prices obtained from a pricing list or service without further negotiation, this would not be considered within the scope of the proposed portfolio trade modifier.[89] FIF further asked whether a portfolio trade involving a delayed spotting process would qualify as a portfolio trade.[90] FINRA notes that, where a trade meets the conditions for applying multiple modifiers, all applicable modifiers should be appended unless otherwise provided for in the TRACE technical specifications. Thus, in the scenario presented by FIF, the trade may qualify for the delayed Treasury spot modifier if the trades are based on a spread to the yield of a U.S. Treasury Security and the spread was agreed upon that day prior to the Time of Execution of the transaction. If the trade also involved at least 10 unique securities and was transacted for a single agreed price for the entire basket and the other conditions of the Portfolio Trade Definition have been met, the trade must also be appended with the portfolio trade modifier. The specific format and requirements for the new modifiers would be published in TRACE technical specifications, which may

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89 For example, consistent with the FIMSAC's recommendation, the "single agreed price" prong would "exclude normal multi-dealer list trades that originate as either an electronic OWIC or a BWIC as such protocols result in a competitively negotiated price for each security in the list." See FIMSAC Recommendation at 3 n.5.

90 See FIF Letter at 3. Specifically, FIF asked whether the following scenario would constitute a portfolio trade: (i) a third-party publishes reference prices for a universe of bonds at a set time each day at 3 pm; (ii) at 10 am two firms agree to trade a basket of securities that represents a subset of this universe based upon the as-of-yet unpublished 3 pm reference price; and (iii) at 3:30 pm the two firms review the prices published at 3 pm for the basket constituents and come to consensus on the final price, which is an aggregate of the constituent prices. FIF further asked whether the existence of any offset to the price (e.g., the 3pm reference price plus a fixed markup) would change whether the basket in this scenario would be considered a portfolio trade.

require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade. As noted below, FINRA will work with members to provide further interpretive guidance, where needed.

FIX suggested that it can assist in developing standard solutions for reporting the proposed new portfolio trade modifier.[91] For example, FIX noted that the TrdType and TrdSubType fields could be used to identify portfolio trades.[92] FINRA notes that it supports several technical standards for reporting of trade information to TRACE, including FIX, and that the specific format and requirements for the new portfolio trade modifier would be published in TRACE technical specifications.

Implementation Period

FIF, Bloomberg and SIFMA commented on the implementation period that would be necessary with respect to both the delayed Treasury spot and portfolio trade aspects of the proposal. FIF requested that the implementation timeline for the changes commence upon the publication of updated technical specifications and the issuance of FAQs by FINRA, given the significant technical work that will be required to implement the proposal and various issues where the industry will require interpretive guidance from FINRA.[93] SIFMA stated that a significant amount of lead time would be needed before the implementation date for the delayed Treasury spot trade proposal, "on the order of 18 months or more."[94] Bloomberg noted the "significant change in workflow" that would be

91 See FIX letter at 3.

92 See FIX letter at 2.

93 See FIF Letter at 3.

94 See SIFMA Letter at 4.

required to implement the delayed Treasury spot proposal, particularly with respect to recording and reporting the time that the spread was agreed.[95] Bloomberg also noted that consumers of TRACE data will need specifications in advance to make changes to systems to ingest the updated data feed and interpret the data.[96] Bloomberg therefore recommended that FINRA provide the industry with "plenty of time" to accommodate the changes and that FINRA should conduct outreach with members to determine an appropriate amount of lead time following FINRA's release of FAQs and TRACE messaging specifications needed to code, test and implement the necessary changes.[97] Bloomberg also noted similar implementation issues and made the same recommendation with respect to the portfolio trade aspect of the proposal.[98]

FINRA acknowledges that members reporting to TRACE require an appropriate amount of time to implement the systems and other changes necessary to report the additional information required under the proposed rule change. As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice.[99] FINRA will publish a Regulatory Notice announcing the effective date(s) of the proposed amendments pursuant to Rule 6730(d)(4)(H) and (I) no later than 90 days following Commission approval, and the effective date(s) will be no later than 365 days following

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95 See Bloomberg Letter at 2-3.

96 See Bloomberg Letter at 3.

97 See Bloomberg Letter at 3.

98 See Bloomberg Letter at 5.

99 See supra note 2.

publication of the Regulatory Notice. FINRA will publish a Regulatory Notice announcing the effective date of the proposed amendments pursuant to Rule 6730(c)(14) once determined.[100] As is generally the case for TRACE rule changes, FINRA will endeavor to publish updated technical specifications as far as possible in advance of the effective date(s) and will work with members to provide interpretive guidance, where needed.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[101]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the

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[100] See supra note 3.

[101] 15 U.S.C. 78s(b)(2).

Federal Register.

Exhibit 2a. Regulatory Notice 20-24 (July 2020).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 20-24.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2021-030)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6730 to require members to append modifiers to identify delayed Treasury spot and portfolio trades when reporting to FINRA's Trade Reporting and Compliance Engine ("TRACE").

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 10, 2020, the Commission's Fixed Income Market Structure Advisory Committee ("FIMSAC") unanimously approved a recommendation from its Technology and Electronic Trading Subcommittee for FINRA to amend its TRACE[3] reporting rules to provide additional information on two types of trades in corporate bond TRACE-Eligible Securities[4] ("FIMSAC Recommendation").[5] Specifically, the FIMSAC

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[3] TRACE is the FINRA-developed system that facilitates the mandatory reporting of over-the-counter transactions in eligible fixed income securities. See generally Rule 6700 Series.

[4] Rule 6710(a) generally defines a "TRACE-Eligible Security" as a debt security that is United States ("U.S.") dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise as defined in Rule 6710(n); or (3) a U.S. Treasury Security as defined in Rule 6710(p). "TRACE-Eligible Security" does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in Rule 6710(o).

[5] See FIMSAC, Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades (February 10, 2020).

recommended that FINRA amend its TRACE reporting rules to require members to: (1) identify corporate bond trades where the price of the trade is based on a spread to a benchmark U.S. Treasury Security[6] that was agreed upon earlier in the day (referred to as a "delayed Treasury spot trade") and report the time at which the spread was agreed upon; and (2) identify corporate bond trades that are part of a larger portfolio trade. Because the price reported to TRACE for these two types of trades may not reflect the market prices at the time the trades are reported and disseminated, the FIMSAC believed that reporting and disseminating this additional information would improve price transparency in the corporate bond market.[7]

On July 16, 2020, FINRA published Regulatory Notice 20-24 to solicit public comment on potential changes to its TRACE reporting rules in line with the FIMSAC's recommendations. FINRA also sought comment on whether any modifications to the

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https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf.

6 Rule 6710 defines a "U.S. Treasury Security" as "a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities." The term "U.S. Treasury Security" also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury. See Rule 6710(p).

7 See FIMSAC Recommendation at 1. FINRA reminds members that, pursuant to Rule 3110, they must have policies and procedures in place that are reasonably designed to ensure compliance with the TRACE reporting rules, including the accurate reporting of applicable trade modifiers or indicators. Firms also must be able to demonstrate that a transaction meets the applicable conditions associated with a particular modifier or indicator.

scope of the FIMSAC's recommended approach might be appropriate.[8] As discussed in greater detail below, FINRA received seven comments in response to Regulatory Notice 20-24. After further consideration, FINRA is proposing the FIMSAC-recommended changes to the TRACE reporting rules to append modifiers to identify both delayed Treasury spot trades and portfolio trades, with modifications to the portfolio trade provision to clarify and simplify its conditions (based on feedback received in response to Regulatory Notice 20-24), as further discussed below.

Delayed Treasury Spot Trades

For purposes of the proposed amendment, a delayed Treasury spot trade is a transaction in a corporate bond that occurs on the basis of a spread to a benchmark U.S. Treasury Security, where the agreed upon spread is later converted to a dollar price by "spotting" the benchmark U.S. Treasury Security at a designated time. For example, parties may determine to trade a corporate bond based on an agreed spread to a specified U.S. Treasury Security at 10:00 a.m. (e.g., 150 bps over the 10 Year Treasury yield), but the dollar price is determined later, e.g., at 3:00 p.m., when the parties "spot" the spread against the agreed benchmark U.S. Treasury Security yield (e.g., a reported dollar price of 97.5, expressed as a percentage of par value, calculated by applying the agreed spread of 150 bps to the 10 Year Treasury yield at 3:00 p.m.). The TRACE reporting rules generally require members to report transactions in corporate bonds within 15 minutes of the Time of Execution,[9] which is the time when the parties agree to all of the terms of the

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8 See FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades, Regulatory Notice 20-24 (July 2020).

9 See Rule 6730(a).

transaction that are sufficient to calculate the dollar price of the trade.[10] Therefore, in the above scenario, the delayed Treasury spot trade is reportable at 3:00 p.m., which is when the dollar price has been determined. Because the spread was negotiated earlier in the day, the dollar price reported at 3:00 p.m. may be away from the current market price for the security.

The FIMSAC believed that a specific modifier to identify delayed Treasury spot trades, along with disseminating the time at which the spread was agreed (e.g., 10:00 a.m.), would both alert market participants that the spread-based economics of the trade had been agreed upon earlier in the day as well as provide market participants with the ability to estimate the agreed-upon spread.[11]

Consistent with the FIMSAC Recommendation, FINRA is proposing amendments to Rule 6730 to provide additional transparency into delayed Treasury spot trades. Specifically, FINRA is proposing to amend Rule 6730: (1) add new paragraph (d)(4)(H) to require that a member append a new modifier[12] when reporting a delayed Treasury spot trade – i.e., a transaction in a corporate bond,[13] the price of which is based on a

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10 See Rule 6710(d).

11 See FIMSAC Recommendation at 2.

12 As for other TRACE modifiers and indicators under Rule 6730, the specific format for the new delayed Treasury spot trade modifier would be published in TRACE technical specifications.

13 The FIMSAC Recommendation related to delayed Treasury spot trades was limited to corporate bond trades. See FIMSAC Recommendation at 1. Similarly, FINRA proposes to limit use of the new modifier to transactions in corporate bonds (i.e., CUSIPs that are disseminated as part of the TRACE Corporate Bond Data Set). A CUSIP, standing for the Committee on Uniform Security Identification Procedures, is a 9-character alphanumeric code that identifies a North American security for the purposes of facilitating clearing and settlement of trades. FINRA may in the future consider applying the delayed Treasury spot

spread to the yield of a U.S. Treasury Security and where the spread was agreed upon that day prior to the Time of Execution of the transaction;[14] and (2) add new paragraph (c)(14) to require that the member report the time at which the spread for a delayed Treasury spot trade was agreed upon.[15] Both the new delayed Treasury spot modifier and the time at which the spread was agreed would be disseminated through TRACE, together with other information on the transaction, immediately upon receipt of the transaction report.[16]

FINRA believes that, by specifically identifying delayed Treasury spot trades, the proposed rule change will enhance FINRA's regulatory audit trail data and improve price transparency for corporate bond market participants by identifying transactions whose prices may not be at the current market for the security.[17] FINRA also believes that

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modifier and associated requirement to report the time at which the spread was agreed to other types of TRACE-Eligible Securities, such as Agency Debt Securities.

14 FINRA is also proposing a non-substantive, stylistic change to the title of paragraph (d)(4) of Rule 6730, so that it refers to "Modifiers and Indicators" rather than "Modifiers; Indicators".

15 As a result of this addition, current paragraph (c)(14) of Rule 6730 would be renumbered as paragraph (c)(15).

16 FINRA generally disseminates information on transactions in TRACE-Eligible Securities immediately upon receipt of the transaction report, except as otherwise provided in Rule 6750. See Rule 6750(a).

17 The FIMSAC considered several potential means of improving transparency around Treasury spot trades, including whether the terms (including the agreed spread and applicable Treasury benchmark) should be reported to TRACE within 15 minutes of the parties' agreement to all of the terms of the transaction other than the price of the Treasury. The FIMSAC noted that, while these alternatives would allow market participants to fully understand the spread-based economics of the trade at the time at which they are agreed, the recommended approach would be simpler and more cost-effective to implement, assuming the need for reporting parties to enhance the initial TRACE report with the calculated dollar

disseminating the time that the spread was agreed will further enhance price transparency by providing market participants with the ability to estimate the agreed-upon-spread.[18]

Portfolio Trades

FINRA also is proposing a new modifier to identify portfolio trades.[19] For purposes of the proposed amendment, a "portfolio trade" is a trade between only two parties for a basket of corporate bonds at a single aggregate price for the entire basket. For example, a market participant may seek to trade a portfolio consisting of 50 corporate bonds. The parties may obtain mid-market prices for each of the 50 component bonds as a framework for the pricing, and, during the negotiation process, ultimately agree on a uniform spread, resulting in an aggregate dollar price for the entire portfolio. In such cases, members must report to TRACE a trade for each individual bond in the basket with an attributed dollar price for each bond. While, in many cases, the reported price for each corporate bond in a portfolio trade is in line with the security's current market price, in

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price of the trade when the delayed spot trade is "spotted" later in the day. See FIMSAC Recommendation at 2 n.3. Following implementation, FINRA will assess the reported data regarding delayed Treasury spot trades and continue to engage with industry participants regarding whether any future changes may be appropriate to further improve transparency.

18 FINRA understands 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. For example, market participants would use the most recently issued 10-year U.S. Treasury Security as the benchmark to price a 10-year corporate bond.

19 As noted below, the specific format and requirements for both the new delayed Treasury spot modifier and the new portfolio trade modifier would be published in TRACE technical specifications. Where a specific trade meets the criteria for both modifiers, such specifications may require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade.

other cases—based on, for example, the liquidity profile of a specific bond or other factors—the attributed price reported for an individual security may deviate from its current market price.

The FIMSAC believed it would be beneficial if market participants were able to identify with certainty which trades were part of a portfolio trade because of the possibility that the reported price may not be reflective of the independent market for the bond.[20] The FIMSAC therefore recommended that FINRA amend its TRACE reporting rules to identify corporate bond trades: (i) executed between only two parties; (ii) involving a basket of securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis.[21]

In line with the FIMSAC's recommendation, FINRA is proposing to amend Rule 6730 to provide additional transparency into portfolio trades. Specifically, FINRA is proposing to add new paragraph (d)(4)(I) to Rule 6730 to require that a member append a new modifier[22] if reporting a transaction in a corporate bond:[23] (i) executed between only

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20 The FIMSAC acknowledged that market participants currently may be able to surmise which TRACE reports are part of a portfolio trade, based on a common time of execution or the characteristics of the components. See FIMSAC Recommendation at 2.

21 See FIMSAC Recommendation at 4.

22 As for other TRACE modifiers and indicators under Rule 6730(d)(4), the specific format for the new portfolio trade modifier would be published in TRACE technical specifications.

23 The FIMSAC Recommendation related to portfolio trades was limited to corporate bond trades. See FIMSAC Recommendation at 2. Similarly, FINRA proposes to limit use of the new modifier to transactions in corporate bonds (i.e., CUSIPs that are disseminated as part of the TRACE Corporate Bond Data Set). FINRA may in the future consider expanding the portfolio trade modifier to cover other types of TRACE-Eligible Securities, such as Agency Debt Securities.

two parties; (ii) involving a basket of corporate bonds of at least 10 unique issues; and (iii) for a single agreed price for the entire basket ("Portfolio Trade Definition"). The new portfolio trade modifier would be disseminated through TRACE, together with other information on the transaction, immediately upon receipt of the transaction report. Based on feedback from commenters, the scope of FINRA's proposed Portfolio Trade Definition differs from the FIMSAC recommended definition in two ways, as discussed further below.

Both the FIMSAC recommendation and the proposal would limit use of the portfolio trade modifier to instances where the trade is executed between only two parties at a single agreed price for the entire basket. However, instead of applying the portfolio modifier to transactions involving a basket of corporate bonds of 30 or more unique issuers (as recommended by the FIMSAC), FINRA is proposing to apply the portfolio trade modifier to transactions involving a basket of corporate bonds of at least 10 unique issues/securities (i.e., individual securities counted using security identifiers such as CUSIPs or TRACE symbols). As described in further detail below, FINRA received several comments on this aspect of the proposal. Commenters stated that basing the numerical threshold on the number of issuers represented in a portfolio rather than the number of securities would be challenging to implement and would raise interpretive issues, and therefore suggested instead basing the threshold on the number of unique corporate bond securities in the portfolio. Commenters believed that this alternative approach would effectively identify portfolio trades while avoiding challenges that would be associated with correctly identifying bonds associated with a particular issuer. Commenters also stated that basing the threshold on the number of unique issues would be simpler and more easily automatable for members to implement. FINRA agrees that using individual securities, rather than issuers, would provide a simpler and more effective way to identify portfolio trades for purposes of the new modifier. Therefore, FINRA is proposing to base the size threshold condition in prong (ii) of the Portfolio Trade Definition on the number of unique issues in the basket of corporate bonds.

Second, the FIMSAC recommended setting the size threshold for portfolio trades at 30 unique issuers. As described in further detail below, FINRA also received comments on the appropriate basket size, with commenters expressing a range of views on the most appropriate threshold. After further consideration, FINRA is proposing to modify the size threshold in prong (ii) of the Portfolio Trade Definition by lowering the threshold from 30 to 10 unique securities. FINRA believes that lowering the threshold for use of the portfolio trade modifier to 10 would provide greater informational benefits to market participants by capturing a greater number of transactions that satisfy the other conditions of the Portfolio Trade Definition.

Consistent with the FIMSAC Recommendation, prong (iii) of the Portfolio Trade Definition would apply the new modifier to transactions entered into "for a single agreed price" for the entire basket. As described above, this prong represents the key characteristic of portfolio trades, i.e., that the transaction is entered into at an agreed aggregate price for the entire basket (as opposed to individually negotiated trades), which may result in the attributed price reported for individual securities in the basket being away from their current market price.

FINRA notes that the FIMSAC also recommended that the Portfolio Trade Definition include a requirement that the basket be executed on an "all-or-none or most-or-none basis."[24] One commenter suggested deleting the reference to "most-or-none" in this proposed prong because a definition of "most-or-none" does not currently exist in current market practice and the concept is not well understood. After further consideration, FINRA believes that removing this prong in its entirety would reduce the proposal's complexity without reducing the new modifier's informational value. FINRA is therefore not proposing to include an "all-or-none or most-or-none" prong as part of the Portfolio Trade Definition. Therefore, if two parties agree on a price with respect to a basket of bonds, the component trades would be identified with the new portfolio trade modifier so long as the resulting basket trade includes the minimum of 10 unique issues at a single agreed price, regardless of the number of securities that originally were contemplated as part of the basket.

If the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice.[25] FINRA will publish a Regulatory Notice announcing the effective date(s) of the proposed amendments pursuant to Rule 6730(d)(4)(H) and (I) no later than 90 days following Commission approval, and the effective date(s) will be no later than 365 days following publication of the Regulatory Notice. FINRA will publish a Regulatory Notice

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24 See FIMSAC Recommendation at 4.

25 FINRA may implement the proposed modifier requirements (pursuant to proposed Rule 6730(d)(4)(H) and (I)) separately from the proposed requirement to report the time at which the spread was agreed (pursuant to proposed Rule 6730(c)(14)).

announcing the effective date of the proposed amendments pursuant to Rule 6730(c)(14) once determined.[26]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to improve transparency for delayed Treasury spot and portfolio trades is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally, to protect investors and the public.

FINRA believes that the proposed rule change will improve transparency into pricing in the corporate bond market and enhance FINRA's regulatory audit trail data by specifically identifying delayed Treasury spot trades and portfolio trades, which are two types of trades where the price may not be reflective of the current market price at the time the trades are reported and disseminated. FINRA also believes that the proposed rule change will enable market participants and investors to better understand pricing for delayed Treasury spot trades by requiring members to report the time at which the spread

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26 FINRA is currently in the process of developing and implementing enhancements to its reporting systems, including TRACE. Because the proposed requirement to report the time at which the spread was agreed for a delayed Treasury spot trade under Rule 6730(c) would require the addition of a new TRACE reporting field, FINRA intends to set the effective date for this requirement at a later date following completion of TRACE system changes.

27 15 U.S.C. 78o-3(b)(6).

was agreed, which will provide market participants with the ability to estimate the agreed-upon-spread for such trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

Regulatory Objective

As discussed above, delayed Treasury spot trades and portfolio trades may not be reflective of the current market price for the bonds and may be less informative for market participants that rely on TRACE for price discovery or other analyses. The proposed modifiers would specifically identify these types of trades and add the time at which the spread was agreed upon in disseminated data.

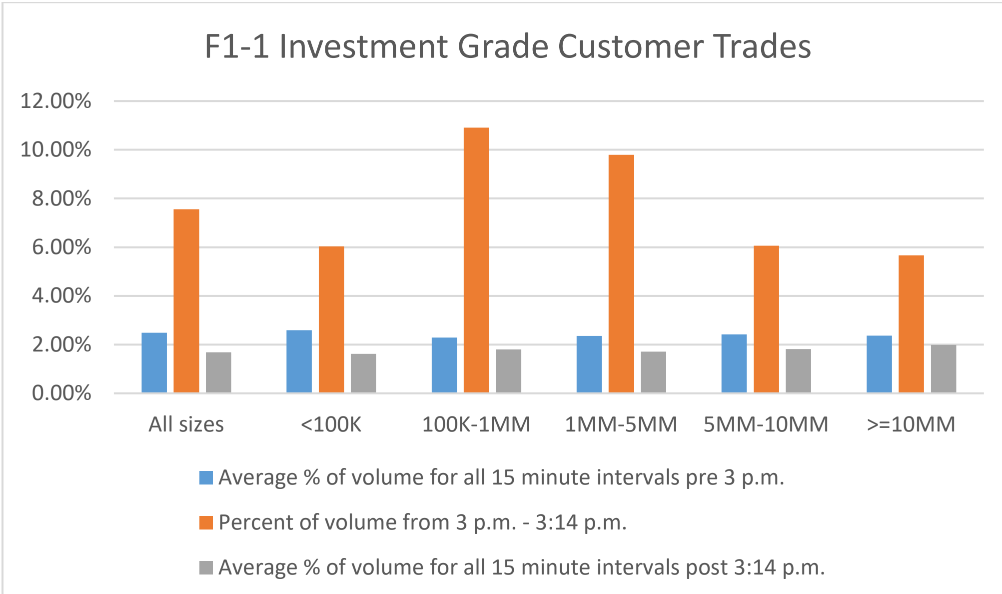
Economic Baseline

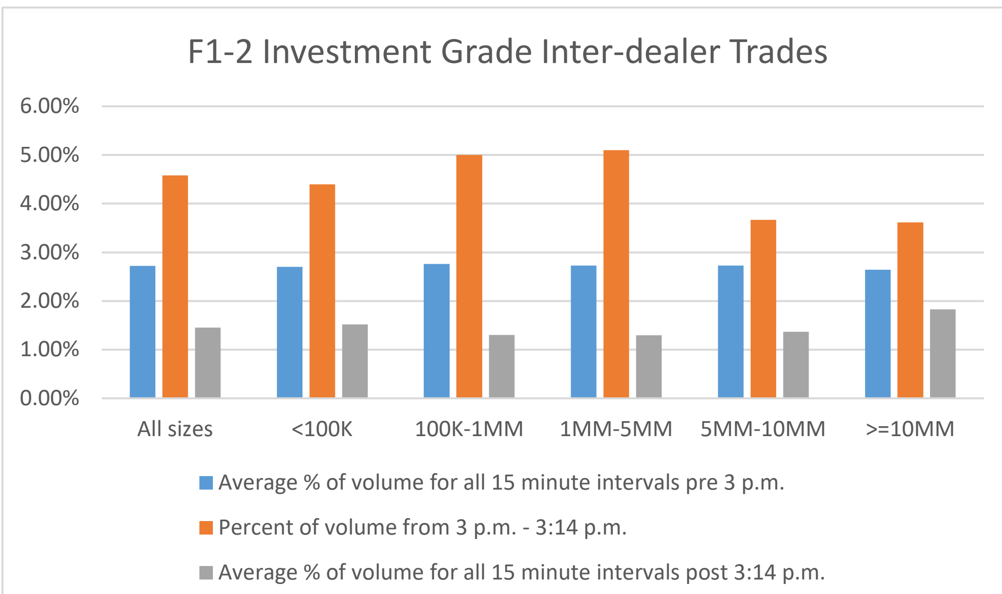
A. Delayed Treasury Spot Trades

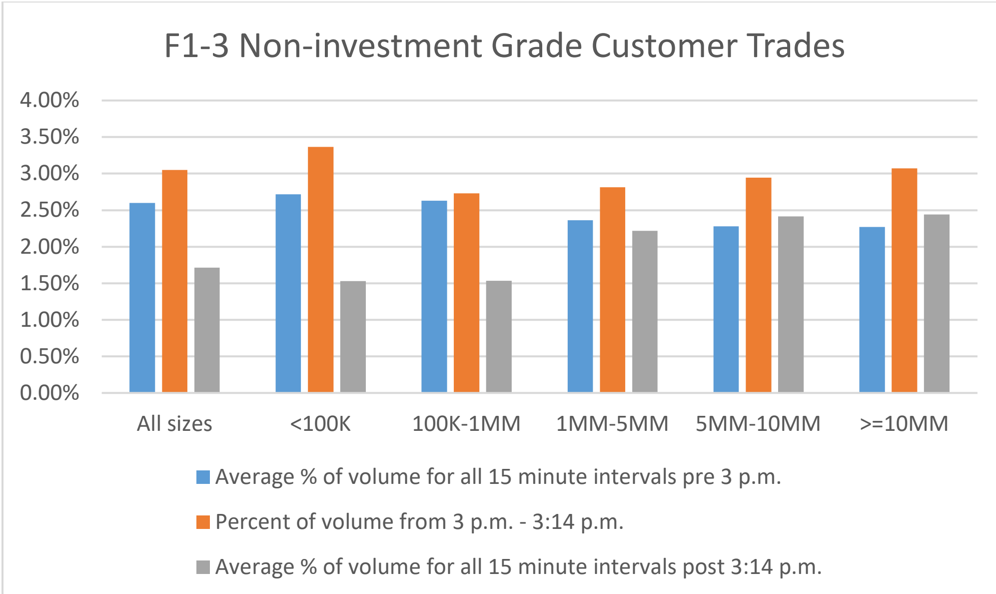
Because delayed Treasury spot trades are currently not identified in the TRACE data, the economic baseline first establishes the TRACE reported trades most likely to be associated with delayed Treasury spot trades. Using TRACE data from June 2020 to May 2021, FINRA examined the daily average concentration of corporate bond trades around 3:00 p.m., which FINRA understands to be the "spotting" time usually used by dealers for delayed Treasury spot trades. Figures F1-1 and F1-2 below compare the percentage of trades during the 3:00 p.m. to 3:14 p.m. time interval with: (1) the average percentage of trades for all 15-minute intervals before 3:00 p.m.; and (2) and the average percentage of trades for all 15-minute intervals after 3:14 p.m. Figures F1-1 and F1-2 also provide these trade distributions based on the size of trades and for all trades combined. These data are likely to either overcount the number of delayed Treasury spot trades because some of the trades executed in the time interval are not delayed Treasury spot trades, or undercount because they exclude delayed Treasury spot trades executed at other times during the day. Nevertheless, FINRA believes this methodology will provide a reasonable baseline for the analysis.

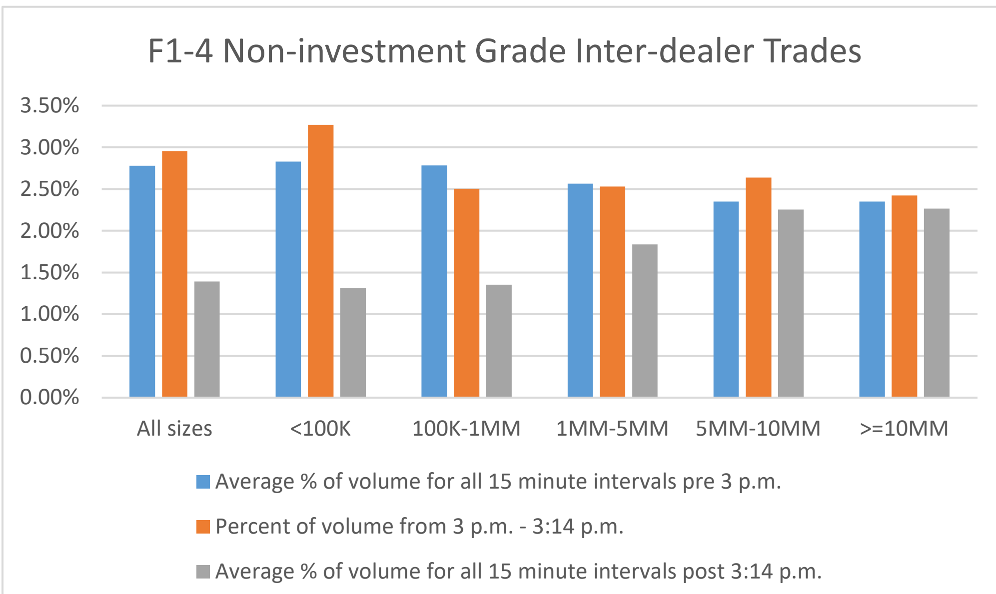
Figure F1-1 provides statistics for customer trades in investment grade bonds and Figure F1-2 provides statistics for inter-dealer trades in investment grade bonds. Figures F1-1 and F1-2 show that, across all trade sizes in investment grade bonds, volumes in the 3:00 p.m. trade interval are larger than both the pre-3:00 p.m. and the post-3:14 p.m. intervals. For investment grade customer trades, the 3:00 p.m. volumes are several times larger than both the pre-3:00 p.m. and the post-3:14 p.m. intervals. Figures F1-3 and F1-4 provide similar information for trades in non-investment grade bonds. These figures show that the differences in trades across the time intervals are much less material in non-investment grade bond trades. Although trades during the 3:00 p.m. to 3:14 p.m. time interval may not all be delayed spot trades, the jump in investment grade bond volume during the period is consistent with FINRA's understanding of when delayed Treasury spot trades are priced and reported (regardless of when the spread was agreed upon).

Figure 1: Distribution of Corporate Bond Trading Volume during Trading Hours (June 2020 to May 2021)









B. Portfolio Trades

Evidence supports the hypothesis that portfolio trading has been increasing over time.[28] An analysis by Morgan Stanley shows that $88 billion in portfolio trades were executed from January 2019 through November 2019, compared to virtually none in

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28 See infra notes 29 and 30.

2017.[29] The analysis also shows that portfolio trades with 140 bonds or more increased tenfold since 2018. According to a Financial Times article citing Greenwich Associates' survey of 67 bond traders, more than 50% of the traders have executed a portfolio trade in the past year.[30]

FINRA computed the annual percentage of trades that can be classified as portfolio trades of increasing portfolio sizes from 2015 to 2020 using TRACE data. For purposes of these calculations, a "portfolio trade" is a trade of a basket of corporate bonds between only two parties at the same execution time.[31] "Portfolio size" is defined as the number of unique CUSIPs contained in the basket. This analysis demonstrates that portfolio trades reported to TRACE grew significantly in the past six years. For example, Table 1 shows that the percentage of customer portfolio trades involving at least 10 CUSIPs more than quadrupled from 1.34% in 2015 to 5.64% in 2020. For portfolio trades involving at least 30 CUSIPs, the percentage of trades increased from 0.29% in

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29 See Jennifer Surane & Matthew Leising, Bond Trade That's Gone from Zero to $88 Billion in Two Years, BLOOMBERG (Nov. 18, 2019), https://www.bloomberg.com/news/articles/2019-11-18/the-bond-trade-that-s-gone-from-zero-to-88-billion-in-two-years.

30 See Joe Rennison, Robert Armstrong & Robin Wigglesworth, The New Kings of the Bond Market, FINANCIAL TIMES (Jan. 22, 2020), https://www.ft.com/content/9d6e520e-3ba8-11ea-b232-000f4477fbca. Among those traders, 75% executed the portfolio trade with dealers while the remaining did so through other means such as an electronic trading platform.

31 Using current TRACE data, FINRA can only approximate "portfolio trades" as defined in the proposed rule change. Specifically, the analysis may include trades that are not executed at a single agreed price for the entire basket or that are not limited to two parties. As a result, the method used in this analysis may include as a "portfolio trade" some trades that would fall outside of the scope using the criteria set forth in the proposed rule change. However, FINRA believes that the method used in these calculations is reasonable for purposes of the analysis given the scope of information currently available in TRACE.

2015 to 3.60% in 2020. Inter-dealer portfolio trades grew at an even higher rate, albeit from a lower base level.

Table 1: Percentage of trades by portfolio size

	2015	2016	2017	2018	2019	2020
1: Customer Trades						
>= 1	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
>= 2	14.60%	12.63%	13.14%	16.38%	18.89%	21.94%
>= 10	1.34%	1.21%	1.10%	2.20%	3.09%	5.64%
>= 20	0.44%	0.38%	0.42%	1.30%	1.98%	4.10%
>= 30	0.29%	0.15%	0.25%	1.01%	1.62%	3.60%
>= 50	0.20%	0.06%	0.18%	0.86%	1.33%	2.98%
>= 70	0.16%	0.05%	0.16%	0.78%	1.15%	2.58%
>= 100	0.11%	0.04%	0.14%	0.71%	0.95%	2.10%
2: Dealer to Dealer Trades						
>= 1	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
>= 2	3.65%	4.73%	5.44%	7.99%	11.36%	14.44%
>= 10	0.39%	0.78%	0.99%	2.68%	5.03%	7.18%
>= 20	0.09%	0.27%	0.41%	2.03%	4.14%	6.22%
>= 30	0.02%	0.08%	0.17%	1.70%	3.55%	5.54%
>= 50	0.00%	0.01%	0.08%	1.34%	2.65%	4.31%
>= 70			0.07%	1.04%	1.97%	3.38%
>= 100			0.06%	0.73%	1.21%	2.49%

Economic Impact

1. Delayed Treasury Spot Trades

A modifier identifying delayed Treasury spot trades would add valuable information to disseminated TRACE data by indicating that the reported price may not be at the current market. The new disseminated time field would benefit the market because market participants can use it to reasonably evaluate the spread at the time when the spread was agreed upon and compare it to other trades at or near the same time. Together, these additions will increase post-trade price transparency.

Members would be required to make systems changes to accommodate the new modifier and time field. This would represent a fixed cost to FINRA members that report corporate bond transactions priced through a delayed Treasury spot process. The cost may be higher for members that house information regarding the time of spotting in a different platform or system that is not connected to its TRACE reporting system.[32] FINRA expects that the ongoing variable cost of reporting the new modifier and populating the time field will be low for firms as costs currently are incurred for existing TRACE reporting.

2. Portfolio Trades

A modifier identifying trades executed as part of a portfolio trade would allow market participants to identify with certainty which trades occurred at attributed prices as part of a portfolio trade. With this information, market participants could better identify trade prices that may not reflect the market price for the individual bond. This modifier will improve post-trade price transparency. While some market participants may be capable of inferring portfolio trades from current disseminated data,[33] the added modifier may particularly benefit smaller market participants, market observers and researchers who may not have systems in place to actively screen for portfolio trades using currently available data.

FINRA members would incur costs associated with making system changes required to accommodate the new modifier. This would represent a fixed cost to FINRA members that execute and report portfolio trades. The variable cost of reporting the new

32 See SIFMA Letter, infra note 37.

33 See SIFMA Letter, infra note 37.

modifier should be minimal to firms as costs are currently incurred for existing TRACE reporting. In addition, while market participants currently may infer that some trades may be portfolio trades, they cannot do so with certainty. The FIMSAC noted that there may be an increased theoretical risk that a market participant may identify the seller of a portfolio trade if these trades are identified in disseminated data.[34] FINRA requested comments on the possibility of increased risk and members did not raise concerns regarding such risk.

3. Effects on competition

FINRA does not believe that the proposed modifiers will unduly burden competition. The costs for a firm to modify the reporting process for the proposed modifiers will be proportional to the fixed cost of the firm's reporting system, and thus be helped by similar factors. For example, firms with no activities in delayed Treasury spot trades or portfolio trades may not need to update their system; firms with limited activities may choose to manually input the new modifiers; and firms can also use third party reporting system vendors, which are intended to take advantage of lower costs due to economy of scale.

Alternatives Considered

With respect to the proposed delayed Treasury spot provisions, FINRA considered requiring firms to report the available terms (including the agreed spread and applicable Treasury benchmark) of delayed Treasury spot trades within 15 minutes of the parties' agreement to the spread and benchmark. FIMSAC noted this alternative in its recommendation and stated that, while this construct would allow market participants to

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34 See FIMSAC Recommendation at 2.

fully understand the spread-based economics of the trade at the point at which they are agreed, the proposed approach will be simpler and more cost-effective to implement and would avoid the need for reporting parties to enhance the initial TRACE report with the calculated dollar price of the trade when the delayed spot trade is "spotted" later in the day.[35] FINRA agrees and also believes that the proposed approach is beneficial in requiring reporting of the dollar price of the transaction once determined, which is then disseminated immediately upon receipt.

With respect to the proposed portfolio modifier, FINRA considered other thresholds for the number of unique issues to qualify as a portfolio trade, such as 30 unique issues, similar to the FIMSAC recommendation to identify trades involving a basket of at least 30 unique issuers (rather than issues), or as few as 2 unique issues, as suggested by some commenters. Lowering the threshold generally captures more portfolio trades and therefore provides greater informational benefits to market participants. It may also discourage traders from splitting up portfolio trades into smaller lists that do not meet the specified criteria to avoid identifying trades under the proposal. On the other hand, setting the threshold too low reduces the usefulness of the identifier. Portfolio trades are used to diversify individual bond risk and save on trading costs. Most of these benefits will diminish as the portfolio size becomes small. The deviation of individual bond price in a portfolio from market price will likely be less as the number of bonds in the portfolio decreases. The proposed threshold of 10 strikes an appropriate balance between the trade-offs and is also recommended by some commenters.[36]

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35 See note 17 supra.

36 See Jane Street Letter and SIFMA Letter, infra note 37.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 20-24 (July 2020). Seven comments were received in response to the Regulatory Notice.[37] A copy of the Regulatory Notice is available on FINRA's website at http://www.finra.org. A list of the comment letters received in response to Regulatory Notice 20-24 is available on FINRA's website.[38] Copies of the comment letters received in response to the Regulatory Notice are also available on FINRA's website. The comments are summarized below.

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37 See Comment submission from Melinda Ramirez, Consultant, dated July 19, 2020 (stating only "Thank you for the opportunity to invest.." [sic]); letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("Bloomberg Letter"); letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("FIF Letter"); letter from Kathleen Callahan, FIX Operations Director, FIX Trading Community, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("FIX Letter"); letter from Matt Berger, Global Head of Fixed Income and Commodities, Jane Street Capital, LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 14, 2020 ("Jane Street Letter"); letter from Chris Killian, Managing Director, Securitization and Credit, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 15, 2020 ("SIFMA Letter"); and letter from Michael Grogan, V.P. & Head of US Fixed Income Trading – Investment Grade, Dwayne Middleton, V.P. & Head of Fixed Income Trading, Brian Rubin, V.P. & Head of US Fixed Income Trading – Below Investment Grade and Jonathan Siegel, V.P. & Senior Legal Counsel – Legislative & Regulatory Affairs, T. Rowe Price, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 15, 2020 ("T. Rowe Price Letter").

38 See SR-FINRA-2021-030 (Form 19b-4, Exhibit 2b) (available on FINRA's website at http://www.finra.org).

<u>Delayed Treasury Spot Trades</u>

Bloomberg, Jane Street and T. Rowe Price supported the proposal to require members to identify corporate bond trades where the price of the trade is based on a spread to a benchmark U.S. Treasury Security that was agreed upon earlier in the day and report the time at which the spread was agreed upon.[39] Bloomberg stated that the proposal "adds an incredible amount of value, insight and transparency into TRACE data," including by making it possible for "market participants to derive intraday credit spread moves in specific corporate bond issues and issuers."[40] Jane Street noted that while market participants would initially incur costs to modify trading reporting procedures to provide this information, such costs are outweighed by the benefit of obtaining additional information about delayed Treasury spot trades.[41] T. Rowe Price noted that the reported dollar price for delayed Treasury spot trades may not take into account market or issuer-specific developments that have occurred throughout the day, such that the proposal would benefit investment advisers and other market participant by providing timely and definitive clarity on whether reported transactions are delayed Treasury spot trades, and further would support price formation.[42] T. Rowe Price also noted benefits of the proposal to transaction cost analysis and the portfolio valuation process for institutional investors.[43]

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39 <u>See</u> Bloomberg Letter at 2; Janes Street Letter at 1-2; T. Rowe Price Letter at 1.

40 <u>See</u> Bloomberg Letter at 2.

41 <u>See</u> Jane Street Letter at 2.

42 <u>See</u> T. Rowe Price Letter at 1-2.

43 <u>See</u> T. Rowe Price Letter at 2.

SIFMA expressed mixed views on the delayed Treasury spot trade proposal. SIFMA noted that its members "both see benefits to this proposal but also have material questions including the overall benefit vs. cost balancing."[44] SIFMA stated that a potential benefit of the proposal would be to provide a "clearer picture, retrospectively, as to liquidity flows throughout the day."[45] However, SIFMA noted that some of its members indicated that the technical implementation of this proposal is complex, particularly around the new time field.[46] SIFMA also highlighted that the fixed-cost burden presented by the proposal would be more meaningful for smaller, non-primary dealers, which could lead such dealers to use manual processes for trade reporting or no longer engage in these type of trades.[47]

FIF did not support the delayed Treasury spot proposal, noting that the proposal would require firms to implement significant system changes.[48] FIF stated that its members advised that dealer systems do not currently store the time the original terms are agreed in a manner that would enable reporting to TRACE on a timely basis, such that implementation would require significant cost and work for firms to upgrade various systems.[49] FIF instead proposed that FINRA consider mandating that the SpecialPriceIndicator tag, or another existing TRACE tag, be marked as instructed by

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44 See SIFMA Letter at 3.

45 See SIFMA Letter at 4.

46 See SIFMA Letter at 4.

47 See SIFMA Letter at 4.

48 See FIF Letter at 2.

49 See FIF Letter at 2.

FINRA to identify delayed Treasury spot trades.[50] FIF stated that this alternative would signal to the market that the terms of the trade were not agreed based on current market conditions.[51]

FINRA agrees with commenters that the proposal relating to delayed Treasury spot trades will provide significant benefits to market participants and investors by enhancing transparency into corporate bond pricing for these types of trades. FINRA acknowledges that implementing the proposal will require members to make systems changes to identify Treasury spot trades and append the modifiers, as well as to capture and report the time at which the spread was agreed. FINRA believes, however, that the ongoing transparency benefits of reporting and disseminating this additional information will outweigh the initial costs required to modify trade reporting systems to enable gathering and reporting this new information. FINRA does not believe that use of an existing TRACE modifier or indicator, such as the special price tag, would sufficiently differentiate delayed Treasury spot trades in disseminated TRACE data or its regulatory audit trail data, nor would use of such a tag provide information about the time that the spread was agreed such that market participants can estimate the agreed-upon spread for such trades.[52]

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[50] See FIF Letter at 2.

[51] See FIF Letter at 2.

[52] The "special price" modifier must be appended when a transaction is executed at a price based on arm's length negotiation and done for investment, commercial or trading considerations, but does not reflect current market pricing. See FINRA Rule 6730(d)(4)(A) and Notice to Members 05-77 (November 2005). Thus a member must first make a determination, on a trade-by-trade basis, that a price is off-market before it appends the special price modifier.

SIFMA also responded to two specific requests for comment in Regulatory Notice 20-24 concerning the proposed Treasury spot modifier. First, FINRA asked whether it should consider requiring firms to report the spread, either at the time the spread is agreed or later in the day, and, if reported at the time the spread is agreed, whether the dollar price should also be reported later in the day. SIFMA responded that FINRA should have enough information from the proposed trade reports to derive an estimate of the spread without requiring reporting of this additional data.[53] SIFMA also noted that, in any case, dealers should not have to submit two reports, or amend a previous report, for the same trade.[54] As described above, FINRA is not modifying the proposal to require reporting of the spread or to require members to submit two reports for the same trade.[55] Second, FINRA requested comment on its understanding that 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. SIFMA stated that its members share that understanding.[56]

FIX didn't express a substantive view on the proposed amendments but suggested that it can assist in developing standard solutions for reporting of the proposed new delayed Treasury spot trade modifier.[57] For example, FIX noted that adding the capability for FINRA to capture the time that the spread was agreed would be a minimal

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53 See SIFMA Letter at 4.

54 See SIFMA Letter at 4-5.

55 See note 17 supra.

56 See SIFMA Letter at 5.

57 See FIX letter at 3.

extension to an existing concept in FIX, specifically the TrdRegTimestamps field.[58] FINRA notes that it supports several technical standards for reporting of trade information to TRACE, including FIX, and that the specific format and requirements for the new delayed Treasury spot modifier and reporting field for the time the spread was agreed would be published in TRACE technical specifications. As noted above, where a specific trade meets the criteria for both modifiers, such specifications may require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade.

Portfolio Trades

T. Rowe Price supported the proposal to require members to identify corporate bond trades that are components of a larger portfolio trade, as defined in the FIMSAC Recommendation.[59] T. Rowe Price noted that the prices reported to TRACE for transactions that are part of a portfolio trade may not be at the current market for the security and that the proposal would benefit investment advisers and other market participants by providing timely and definitive clarity on whether a transaction is part of a portfolio trade, and further would support price formation.[60] T. Rowe Price also noted benefits of the proposal to transaction cost analysis and the portfolio valuation process for institutional investors.[61]

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[58] See FIX letter at 2.

[59] See T. Rowe Price Letter at 1.

[60] See T. Rowe Price Letter at 1-2.

[61] See T. Rowe Price Letter at 2.

FIF, Bloomberg and Jane Street generally supported the proposal but suggested certain modifications to the conditions for trades that would qualify for the proposed portfolio trade modifier under the FIMSAC Recommendation,[62] while SIFMA expressed generally mixed views on the portfolio trade proposal.[63]

FIF and SIFMA recommended that prong (ii) of the Portfolio Trade Definition be changed to a threshold based on the number of unique issues or securities, rather than the number of unique issuers.[64] FIF noted that shifting to a security basis for this prong would avoid challenges in identifying and processing which bonds are associated with a particular issuer and would result in more trades being reported as portfolio trades, which would provide greater transparency and enhance FINRA's audit trail.[65] FIF also stated that basing the determination of a portfolio trade on the number of unique issuers would raise the question of whether bonds of affiliated issuers should be counted as one or multiple issuers, and highlighted in particular bonds issued by special purpose vehicle subsidiaries.[66] SIFMA stated that while it understands that using the number of unique issuers is intended to scope in diversified portfolio trades, its members raised the concern that doing so would be more complicated to implement than basing the threshold on the number of securities in the portfolio.[67] SIFMA noted several examples of potential

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62 See FIF Letter at 1-2; Bloomberg Letter at 3-4; Jane Street Letter at 2.

63 See SIFMA Letter at 1-3.

64 See FIF Letter at 2; SIFMA Letter at 2-3.

65 See FIF Letter at 2-3.

66 See FIF Letter at 3.

67 See SIFMA Letter at 2-3.

complications that could arise by using unique issuers, such as determining how to treat affiliates and subsidiaries and how guarantees might affect the analysis.[68] SIFMA stated that these issues would require market participants to generate large lists of bonds and determine how to attribute each bond to a unique issuer, which would not be easily automatable and would introduce the risk of errors and omissions in TRACE reporting.[69] FINRA agrees with these commenters that using a threshold based on the number of individual securities, rather than issuers, to determine when to append the portfolio trade modifier would result in a clearer and easier to implement approach to identifying portfolio trades, and has modified the proposal accordingly.

Jane Street, Bloomberg, FIF and SIFMA commented on the threshold number for appending the portfolio trade modifier, which the FIMSAC recommendation set at 30. FIF stated that a trade involving fewer than 30 unique issuers should still be considered a portfolio trade if it meets the other conditions in the definition.[70] Jane Street stated that 30 unique issuers is too high and recommended that a basket containing bonds from at least 10 unique issuers should be reported using the portfolio trade modifier, which would maximize the informational benefit of the new modifier since many portfolio trades contain bonds of between 10 and 30 unique issuers.[71] SIFMA stated that some of its members believe that a lower number of securities would be more appropriate, such as 10, while other of its members are comfortable with the proposed 30 or an even higher

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68 See SIFMA Letter at 3.

69 See SIFMA Letter at 3.

70 See FIF Letter at 2.

71 See Jane Street Letter at 2.

number.[72] Bloomberg recommended that TRACE should identify every situation where two or more securities are transacted at an agreed upon price where the price may not reflect the current market price for the bonds.[73] As described above, FINRA has modified the proposal by lowering the threshold from 30 to 10. FINRA believes that lowering the threshold for portfolio trades that would be identified by the new modifier in this manner would provide greater informational benefits to market participants. However, FINRA believes that a lower threshold than 10 issues, such as two or more securities, would be over-inclusive and reduce the usefulness of the modifier.

With respect to the proposed prong requiring that a portfolio trade must be executed on an all or none or most or none basis, Bloomberg noted that an "all-or-none" designation is "an execution constraint that is well defined in all markets" but that the concept of "most-or-none" does not currently exist and would require further clarification around what number of constituents in the basket constitutes "most."[74] Bloomberg therefore recommended using a definition of a basket that focuses on executions, rather than order designations.[75] As described above, FINRA agrees that this aspect of the initial proposal is not well-understood and believes that the Portfolio Trade Definition would be best implemented without an "all-or-none or most-or-none" prong. Therefore, under the current formulation, if two parties enter into negotiations with respect to a basket of bonds, the component trades would be identified with the new portfolio trade

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72 See SIFMA Letter at 3.

73 See Bloomberg Letter at 4.

74 See Bloomberg Letter at 3-4.

75 See Bloomberg Letter at 4.

modifier so long as the resulting basket trade meets the other conditions specified in the Portfolio Trade Definition.

SIFMA also commented more broadly on the portfolio trade proposal. SIFMA stated that its members see two aspects to the portfolio trade proposal: (1) the identification of portfolio trades vs. other kinds of trades and (2) the identification of potentially off-market trades.[76] With respect to the first aspect, SIFMA noted that, while the proposal would make it easier to identify portfolio trades, some of its members believe it is already fairly easy to identify portfolio trades today without the specific modifier.[77] However, SIFMA also noted that other of its members believe that the proposal would benefit smaller market participants, market observers and researchers, who may not have systems in place to actively screen for portfolio trades using currently available data.[78] SIFMA noted that some of its members have concerns about the potential impact on liquidity resulting from disclosure of trading strategies, while other members did not believe that this is a material concern. With respect to the second aspect, SIFMA stated that some of its members have questioned the appropriateness of a flag that does not provide definitive information regarding whether the price is off-market, since a price in a portfolio trade may or may not be off-market.[79] SIFMA noted that dealers are already expected to review each line item in a portfolio trade to determine

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76 See SIFMA Letter at 1.

77 See SIFMA Letter at 2. SIFMA also expressed concern that the proposal shifts TRACE away from being a price transparency tool into a tool that provides trading strategy details. See id.

78 See SIFMA Letter at 2.

79 See SIFMA Letter at 2.

if it is off-market and, if so, append the existing special price indicator in TRACE reports. SIFMA stated that one potential benefit of the proposal could be to reduce compliance burdens if the new portfolio trade modifier replaces the special price indicator for components of portfolio trades.[80] On a related point, SIFMA asked FINRA to confirm that the portfolio trade modifier would be taken into account in fair pricing reviews.[81] SIFMA also stated dealers should not face an undue burden to explain why a price on a trade identified as a portfolio trade was off-market.[82] FINRA confirms that the portfolio trade modifier would be taken into account in FINRA's reviews of members' trading activities, including fair pricing reviews, along with any other indicators or modifiers that may be appended to individual trades (such as the special price indicator, where applicable). However, the new portfolio trade modifier would not replace any other applicable indicators or modifiers, including the special price indicator, where applicable. FINRA continues to believe that, on balance, identification of portfolio trades through the proposed portfolio trade modifier would improve market transparency and provide greater certainty to market participants and investors regarding such trades.

Bloomberg also commented more generally on the portfolio trade proposal. Bloomberg stated that it has significant reservations about the portfolio trade proposal because there would be significant incentives for liquidity seekers to avoid sending baskets that meet criteria.[83] Specifically, Bloomberg noted that dissemination of

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80 See SIFMA Letter at 2.

81 See SIFMA Letter at 2.

82 See SIFMA Letter at 2.

83 See Bloomberg Letter at 3.

individual components of portfolio trades as unrelated transactions in TRACE data, as it is today, protects liquidity seekers, while appending the proposed modifier could lead to significant information leakage such that market participants would understand both why and how the trade was executed.[84] Bloomberg expressed concern that the modifier would therefore be problematic because it would alert the market that a change in portfolio strategy had occurred, for example by allowing participants to reverse engineer a particular institution's views on a particular issue, which could dampen liquidity. Bloomberg stated that these concerns would reduce the transparency benefits sought by the proposal because liquidity seekers and providers may simply split up their baskets into smaller lists that do not meet the proposed criteria for the portfolio trade modifier.[85] Bloomberg also suggested that transparency could be enhanced by instead identifying every situation where two or more securities are transacted at an agreed upon price where the price may not reflect the current market price for the bonds, drawing an analogy to reporting modifiers used for equities in the public data feeds to indicate transactions with special circumstances that impact price.[86] As discussed above, FINRA believes that, on balance, identification of portfolio trades through the new proposed portfolio trade modifier would improve market transparency and provide greater certainty to market participants and investors regarding such trades. With respect to Bloomberg's suggestion to identify any portfolio trades involving two or more securities, as discussed above FINRA believes such a low threshold would be over-inclusive and would reduce the

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84 See Bloomberg Letter at 3.

85 See Bloomberg Letter at 3.

86 See Bloomberg Letter at 4.

usefulness of the modifier, while a threshold of 10 securities as proposed would benefit market participants by providing greater transparency into pricing in the corporate bond market, while avoiding capturing transactions that are not portfolio trades, as that term is commonly understood in the market. In addition, as discussed above, FINRA believes lowering the threshold to 10 unique issues (from the threshold of 30 set forth in the FIMSAC Recommendation) may discourage traders from splitting up portfolio trades into smaller lists that do not meet the specified criteria for the proposed modifier to avoid identifying the trade under the proposal.

FIF requested guidance on application of the portfolio trade proposal in certain scenarios. Specifically, FIF stated that its members request guidance on whether non-TRACE-Eligible Securities should be counted toward the portfolio basket size threshold where a portfolio trade involves some bonds that are TRACE-Eligible Securities and other bonds that are not TRACE-Eligible Securities.[87] FINRA confirms that a security that is a non-TRACE Eligible Security, as well as a security other than a corporate bond that is a TRACE Eligible Security, should not be counted toward the portfolio basket size threshold. FIF also asked for guidance on the definition of a “single agreed price” in the context of a portfolio trade.[88] FINRA is clarifying that a portfolio trade would be considered to be executed for a “single agreed price” for the entire basket where the overall price for the basket has been negotiated or agreed on an aggregate basis, including where the parties used a pricing list or pricing service as the starting point for negotiations but the final price was determined by applying a uniform spread to all

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87 See FIF Letter at 3.

88 See FIF Letter at 3.

securities in the basket. However, where the parties simply aggregate individual prices obtained from a pricing list or service without further negotiation, this would not be considered within the scope of the proposed portfolio trade modifier.[89] FIF further asked whether a portfolio trade involving a delayed spotting process would qualify as a portfolio trade.[90] FINRA notes that, where a trade meets the conditions for applying multiple modifiers, all applicable modifiers should be appended unless otherwise provided for in the TRACE technical specifications. Thus, in the scenario presented by FIF, the trade may qualify for the delayed Treasury spot modifier if the trades are based on a spread to the yield of a U.S. Treasury Security and the spread was agreed upon that day prior to the Time of Execution of the transaction. If the trade also involved at least 10 unique securities and was transacted for a single agreed price for the entire basket and the other conditions of the Portfolio Trade Definition have been met, the trade must also be appended with the portfolio trade modifier. The specific format and requirements for the new modifiers would be published in TRACE technical specifications, which may

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89 For example, consistent with the FIMSAC's recommendation, the "single agreed price" prong would "exclude normal multi-dealer list trades that originate as either an electronic OWIC or a BWIC as such protocols result in a competitively negotiated price for each security in the list." See FIMSAC Recommendation at 3 n.5.

90 See FIF Letter at 3. Specifically, FIF asked whether the following scenario would constitute a portfolio trade: (i) a third-party publishes reference prices for a universe of bonds at a set time each day at 3 pm; (ii) at 10 am two firms agree to trade a basket of securities that represents a subset of this universe based upon the as-of-yet unpublished 3 pm reference price; and (iii) at 3:30 pm the two firms review the prices published at 3 pm for the basket constituents and come to consensus on the final price, which is an aggregate of the constituent prices. FIF further asked whether the existence of any offset to the price (e.g., the 3pm reference price plus a fixed markup) would change whether the basket in this scenario would be considered a portfolio trade.

require the use of a third, single modifier indicating that both the delayed Treasury spot modifier and the portfolio trade modifier apply to the trade. As noted below, FINRA will work with members to provide further interpretive guidance, where needed.

FIX suggested that it can assist in developing standard solutions for reporting the proposed new portfolio trade modifier.[91] For example, FIX noted that the TrdType and TrdSubType fields could be used to identify portfolio trades.[92] FINRA notes that it supports several technical standards for reporting of trade information to TRACE, including FIX, and that the specific format and requirements for the new portfolio trade modifier would be published in TRACE technical specifications.

Implementation Period

FIF, Bloomberg and SIFMA commented on the implementation period that would be necessary with respect to both the delayed Treasury spot and portfolio trade aspects of the proposal. FIF requested that the implementation timeline for the changes commence upon the publication of updated technical specifications and the issuance of FAQs by FINRA, given the significant technical work that will be required to implement the proposal and various issues where the industry will require interpretive guidance from FINRA.[93] SIFMA stated that a significant amount of lead time would be needed before the implementation date for the delayed Treasury spot trade proposal, "on the order of 18 months or more."[94] Bloomberg noted the "significant change in workflow" that would be

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[91] See FIX letter at 3.

[92] See FIX letter at 2.

[93] See FIF Letter at 3.

[94] See SIFMA Letter at 4.

required to implement the delayed Treasury spot proposal, particularly with respect to recording and reporting the time that the spread was agreed.[95] Bloomberg also noted that consumers of TRACE data will need specifications in advance to make changes to systems to ingest the updated data feed and interpret the data.[96] Bloomberg therefore recommended that FINRA provide the industry with "plenty of time" to accommodate the changes and that FINRA should conduct outreach with members to determine an appropriate amount of lead time following FINRA's release of FAQs and TRACE messaging specifications needed to code, test and implement the necessary changes.[97] Bloomberg also noted similar implementation issues and made the same recommendation with respect to the portfolio trade aspect of the proposal.[98]

FINRA acknowledges that members reporting to TRACE require an appropriate amount of time to implement the systems and other changes necessary to report the additional information required under the proposed rule change. As noted above, if the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice.[99] FINRA will publish a Regulatory Notice announcing the effective date(s) of the proposed amendments pursuant to Rule 6730(d)(4)(H) and (I) no later than 90 days following Commission approval, and the effective date(s) will be no later than 365 days following publication of the

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95 See Bloomberg Letter at 2-3.

96 See Bloomberg Letter at 3.

97 See Bloomberg Letter at 3.

98 See Bloomberg Letter at 5.

99 See supra note 25.

Regulatory Notice. FINRA will publish a Regulatory Notice announcing the effective date of the proposed amendments pursuant to Rule 6730(c)(14) once determined.[100] As is generally the case for TRACE rule changes, FINRA will endeavor to publish updated technical specifications as far as possible in advance of the effective date(s) and will work with members to provide interpretive guidance, where needed.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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100 See supra note 26.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-030 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2021-030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-030 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[101]

Jill M. Peterson
Assistant Secretary

[101] 17 CFR 200.30-3(a)(12).

Exhibit 2a

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

Comment Period Expires: September 14, 2020

Summary

FINRA requests comment on two proposed changes to the TRACE reporting rules that were recommended by the Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee. The proposed changes would require firms to: (1) identify corporate bond trades where the price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day (*i.e.*, a "delayed Treasury spot trade") and report the time at which the spread was agreed upon; and (2) identify corporate bond trades that are a part of a larger portfolio trade.

The proposed rule text is set forth in Attachment A.

Questions regarding this *Notice* should be directed to:

- Patrick Geraghty, Vice President, Market Regulation, at (240) 386-4973 or *patrick.geraghty@finra.org*;
- Elliot Levine, Associate Vice President & Counsel, Transparency Services, at (202) 728-8405 or elliot.levine@finra.org;
- Racquel Russell, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8363 or *racquel.russell@finra.org*; or
- Robert McNamee, Assistant General Counsel, OGC, at (202) 728-8012 or *robert.mcnamee@finra.org*.

July 16, 2020

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Fixed Income
- Legal
- Operations
- Senior Management
- Systems
- Trading

Key Topics

- Corporate Debt
- Fixed Income
- Portfolio Trades
- TRACE
- Trade Reporting
- U.S. Treasury Security

Referenced Rules

- FINRA Rule 3110
- FINRA Rule 6710
- FINRA Rule 6730

Action Requested

FINRA encourages all interested parties to comment on this proposal. Comments must be received by September 14, 2020.

Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[1]

Before becoming effective, the proposed rule change must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background and Discussion

On February 10, 2020, the Securities and Exchange Commission's (SEC) Fixed Income Market Structure Advisory Committee (FIMSAC) unanimously approved a recommendation for FINRA to amend its TRACE reporting rules to provide additional information on two types of trades in corporate bond TRACE-Eligible Securities.[3] In these trades, the reported price may not be reflective of the current market for the bond at the time the trades are reported and disseminated. The two types of trades are: (1) delayed Treasury spot trades and (2) portfolio trades.[4] The FIMSAC believed that regulatory audit trail data and price transparency could be improved if these trades were specifically identified in TRACE data.[5] FINRA is issuing this *Regulatory Notice* to solicit comment on the usefulness of the changes recommended by the FIMSAC, and on whether any modifications to the scope of the proposal might be appropriate.

A. Delayed Treasury Spot Trades

Market participants may trade corporate bonds on the basis of a spread to a benchmark U.S. Treasury Security,[6] which is then converted to a dollar price by "spotting" the benchmark U.S. Treasury Security at a designated time. For example, parties may determine to trade a corporate bond based on an agreed spread to a specified U.S. Treasury Security at 10:00 a.m., but the dollar price is determined later, *e.g.*, at 3:00 p.m., when the parties spot the spread against the benchmark U.S. Treasury Security yield. The TRACE reporting rules generally require firms to report transactions in corporate bonds within 15 minutes of the Time of Execution,[7] which is the time when the parties agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.[8] Therefore, in the example above, the trade is not reportable to TRACE until the completion of the spotting process (in this example, at 3:00 p.m.), even though the spread and other terms were agreed upon earlier in the day. The FIMSAC believed that a specific modifier for delayed Treasury spot trades, along with disseminating the time at which the spread was agreed, would both alert market participants that the spread-based economics of the trade had been agreed upon earlier in the day as well as provide market participants with the ability to estimate the agreed-upon spread.[9]

Consistent with the FIMSAC Recommendation, FINRA is proposing two amendments to Rule 6730 to provide additional transparency into delayed Treasury spot trades. Specifically, FINRA is proposing requiring firms to append a new modifier when reporting a transaction in a corporate bond where the price of the transaction is based on a spread to the yield of a U.S. Treasury Security, and where the spread was agreed upon that day prior to the Time of Execution of the transaction. In addition, where the modifier is appended to a delayed Treasury spot trade, firms also would be required to report the time at which the spread was agreed upon (in addition to the Time of Execution).

B. Portfolio Trades

Some market participants also engage in "portfolio trades" in which two parties enter into a single trade for a basket of corporate bonds at an agreed aggregate price for the entire basket. For example, a market participant may seek to trade a portfolio consisting of 50 corporate bonds on an all-or-none or most-or-none basis. The parties may obtain mid-market prices for each of the 50 component bonds as a framework for the pricing, and, during the negotiation process, ultimately agree on a uniform spread, resulting in an aggregate dollar price for the entire portfolio. Even though, in this scenario, the firm is executing a basket of bonds at one, singular price, the TRACE rules require firms to report a trade for each individual bond in the basket with an attributed dollar price for each bond. While, in many cases, the prices attributed to each corporate bond in a portfolio trade may be in line with market levels, in some cases—based on, for example, the liquidity profile of a specific bond or other factors—the attributed price may deviate from the current market price.

The FIMSAC acknowledged that market participants currently may be able to surmise which TRACE reports are part of a portfolio trade (based on a common time of execution or the characteristics of the components). Nonetheless, the FIMSAC believed it would be beneficial if market participants were able to identify with certainty which trades occurred at an agreed price as part of a portfolio trade and, therefore, may not be reflective of the independent market for the bond.[10]

Consistent with the FIMSAC Recommendation, FINRA is proposing to amend Rule 6730 to require firms to append a new modifier to identify a trade in a corporate bond that has all of the following characteristics: (i) executed between two parties; (ii) involving a basket of corporate bond securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis.

Economic Impact Assessment

Regulatory Objective

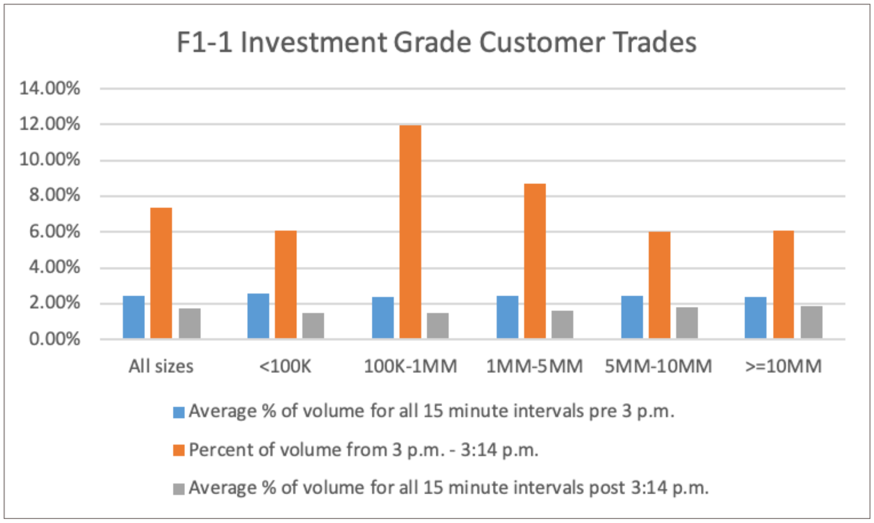
As discussed above, prices reported to TRACE for delayed Treasury spot trades and portfolio trades may not be reflective of the current market price for the bonds and may be less informative for market participants that rely on TRACE for price discovery or other analyses. The proposed modifiers would specifically identify these types of trades in disseminated data.

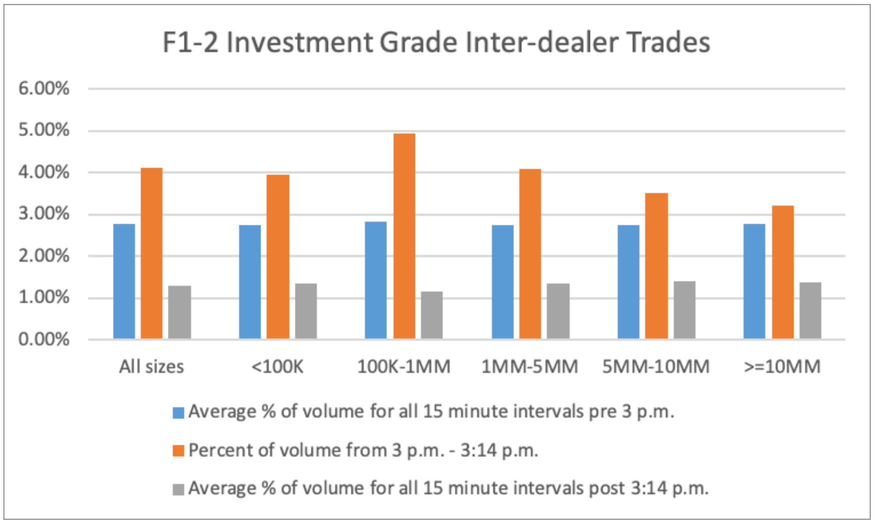
Economic Baseline

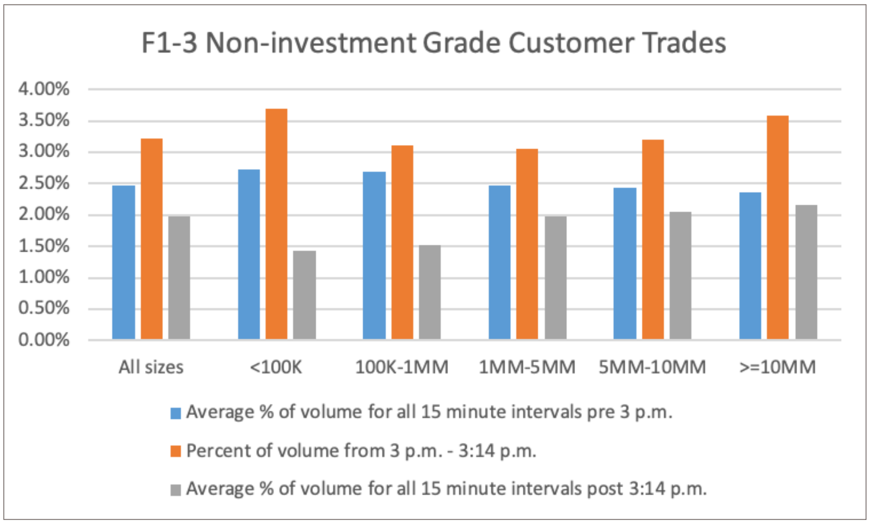
A. Delayed Treasury Spot Trades

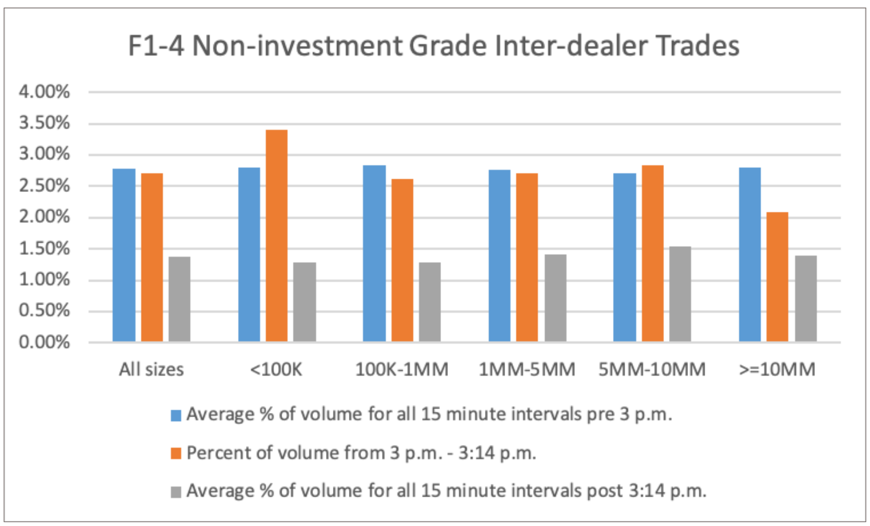
Using 2019 TRACE data, FINRA examined the daily average concentration of corporate bond trades around 3:00 p.m., which is the delayed spot time usually used by dealers. Figures F1-1 and F1-2 below compare, for 2019, the percentage of dollar par volume during the 3:00 p.m. to 3:14 p.m. time interval with: (1) the average percentage of dollar par volume for all 15-minute intervals before 3:00 p.m.; and (2) and the average percentage of dollar par volume for all 15-minute intervals after 3:14 p.m. Figures F1-1 and F1-2 also provide these volume distributions based on the size of trades and for all trades combined. Figure F1-1 provides statistics for customer trades in investment grade bonds and Figure F1-2 provides statistics for inter-dealer trades in investment grade bonds. Figures F1-1 and F1-2 show that, across all trade sizes in investment grade bonds, volumes in the 3:00 p.m. trade interval are larger than both the pre-3:00 p.m. and the post-3:14 p.m. intervals. For investment grade customer trades, the 3:00 p.m. volumes are several times larger than volumes during both the pre-3:00 p.m. and the post-3:14 p.m. intervals. Figures F1-3 and F1-4 provide similar information for trades in non-investment grade bonds. These figures show that the differences in dollar volume across the time intervals are much less material in non-investment grade bond trades. Although trades during the 3:00 p.m. to 3:14 p.m. interval may not all be delayed spot trades, the jump in investment grade bond volume during this period is consistent with FINRA's understanding of when delayed Treasury spot trades are priced and reported (regardless of when the spread was agreed upon).

Figure 1: Distribution of Corporate Bond Trading Volume during Trading Hours (2019 Daily Average)






F1-3 Non-investment Grade Customer Trades
4.00%
3.50%
3.00%
2.50%
2.00%
1.50%
1.00%
0.50%
0.00%
All sizes
<100K
100K-1MM
1MM-5MM
5MM-10MM
>=10MM
Average % of volume for all 15 minute intervals pre 3 p.m.
Percent of volume from 3 p.m. - 3:14 p.m.
Average % of volume for all 15 minute intervals post 3:14 p.m.


F1-4 Non-investment Grade Inter-dealer Trades
4.00%
3.50%
3.00%
2.50%
2.00%
1.50%
1.00%
0.50%
0.00%
All sizes
<100K
100K-1MM
1MM-5MM
5MM-10MM
>=10MM
Average % of volume for all 15 minute intervals pre 3 p.m.
Percent of volume from 3 p.m. - 3:14 p.m.
Average % of volume for all 15 minute intervals post 3:14 p.m.

B. Portfolio Trades

Evidence supports the hypothesis that portfolio trading has been increasing over time.[11] An analysis by Morgan Stanley shows that $88 billion in portfolio trades were executed from January 2019 through November 2019, compared to virtually none in 2017.[12] The analysis also shows that portfolio trades with 140 bonds or more increased tenfold since 2018. According to a Financial Times article citing Greenwich Associates' survey of 67 bond traders, more than 50 percent of the traders executed a portfolio trade in the past year.[13]

FINRA computed the number and dollar par value of portfolio trades from 2015 to 2019 using TRACE data. For purposes of these calculations, a "portfolio trade" is a trade of a basket of corporate bonds between only two parties at the same execution time.[14] Table 1-1 includes portfolio trades by the number of unique CUSIPs identified to be contained in the basket. This analysis demonstrates that portfolio trades reported to TRACE grew significantly in the past five years. For portfolio trades with more than 10 CUSIPs, the total number of portfolio trades approximately tripled from 6,683 in 2015 to 19,001 in 2019. Table 1-2 demonstrates that the total dollar par value grew from approximately $19 million to $340 billion over the past five years. For portfolio trades with at least 30 CUSIPs, the total number of portfolio trades in 2019 was 5,085 (compared to 354 in 2015) and the total dollar par value was approximately $253 billion (compared to $7 billion in 2015). Tables 1-3 and 1-4 show portfolio trades by the number of unique issuers contained in the basket. The results are largely similar.

Table 1-1: Number of Portfolio Trades (Unique CUSIPs)

By Unique CUSIPs	2015	2016	2017	2018	2019	2019 Individual Basket Size Group as % of Total
1: Customer	**5,775**	**5,815**	**4,778**	**7,225**	**10,116**	**100%**
1: >= 10 < 30	5,469	5,600	4,527	6,480	8,545	84.5%
2: >= 30 < 50	164	188	146	327	695	6.9%
3: >= 50 < 70	52	8	33	119	277	2.7%
4: >= 70 < 90	22	8	16	53	172	1.7%
5: >= 90 < 110	26	2	7	47	103	1.0%
6: >= 110 < 130	9		8	23	53	0.5%
7: >= 130	33	9	41	176	271	2.7%
2: Dealer to Dealer	**844**	**2,352**	**3,174**	**4,436**	**7,562**	**100%**
1: >= 10 < 30	836	2,229	3,009	3,358	4,804	63.5%
2: >= 30 < 50	8	114	147	416	929	12.3%
3: >= 50 < 70	0	7	14	173	496	6.6%
4: >= 70 < 90		2	0	106	320	4.2%
5: >= 90 < 110			0	78	245	3.2%
6: >= 110 < 130			0	48	197	2.6%
7: >= 130			4	257	571	7.6%
3: Non-Member Affiliate	**64**	**455**	**259**	**2,524**	**1,323**	**100%**
1: >= 10 < 30	24	179	129	2,136	567	42.9%
2: >= 30 < 50	12	73	55	126	194	14.7%
3: >= 50 < 70	17	60	32	56	102	7.7%
4: >= 70 < 90	4	49	14	58	103	7.8%
5: >= 90 < 110	2	38	13	29	57	4.3%
6: >= 110 < 130	2	15	5	26	28	2.1%
7: >= 130	3	41	11	93	272	20.6%
Grand Total	6,683	8,622	8,211	14,185	19,001	
Total >=30	354	614	546	2,211	5,085	
% of >=30 as Grand Total	5.3%	7.1%	6.6%	15.6%	26.8%	

Table 1-2: Dollar Par Value (Million, Unique CUSIPs)

By Unique CUSIPs	2015	2016	2017	2018	2019	2019 Individual Basket Size Group as % of Total
1: >= 10 < 30	11,458	17,734	18,474	42,984	86,937	25.6%
2: >= 30 < 50	1,254	2,243	2,119	17,298	43,779	12.9%
3: >= 50 < 70	1,289	1,718	2,980	9,992	35,621	10.5%
4: >= 70 < 90	788	1,735	828	6,463	30,916	9.1%
5: >= 90 < 110	1,269	1,169	2,024	6,186	18,623	5.5%
6: >= 110 < 130	507	587	335	3,272	18,277	5.4%
7: >= 130	1,950	3,065	2,983	54,581	105,674	31.1%
Grand Total	**18,515**	**28,251**	**29,745**	**140,776**	**339,826**	**100%**
Total >=30	**7,056**	**10,517**	**11,270**	**97,792**	**252,890**	
% of >=30 as Grand Total	**38.1%**	**37.2%**	**37.9%**	**69.5%**	**74.4%**	

Table 1-3: Number of Portfolio Trades (Unique Issuers)

By Unique Issuers	2015	2016	2017	2018	2019	2019 Individual Basket Size Group as % of Total
1: Customer	**4,633**	**4,779**	**4,119**	**6,150**	**8,829**	**100%**
1: >= 10 < 30	4,385	4,686	3,940	5,531	7,543	85.4%
2: >= 30 < 50	134	73	100	259	589	6.7%
3: >= 50 < 70	39	9	23	110	268	3.0%
4: >= 70 < 90	29	3	11	61	128	1.4%
5: >= 90 < 110	18		12	42	76	0.9%
6: >= 110 < 130	10	1	13	29	61	0.7%
7: >= 130	18	7	20	118	164	1.9%
2: Dealer to Dealer	**709**	**1,937**	**2,652**	**3,878**	**6,885**	**100%**
1: >= 10 < 30	707	1,871	2,572	2,986	4,420	64.2%
2: >= 30 < 50	2	66	72	342	933	13.6%
3: >= 50 < 70	0	0	6	167	475	6.9%
4: >= 70 < 90				103	360	5.2%
5: >= 90 < 110			0	76	263	3.8%
6: >= 110 < 130			0	68	168	2.4%
7: >= 130			2	136	266	3.9%
3: Non-Member Affiliate	**60**	**418**	**226**	**1,995**	**1,189**	**100%**
1: >= 10 < 30	26	169	118	1,714	608	51.1%
2: >= 30 < 50	16	78	60	116	182	15.3%
3: >= 50 < 70	10	74	20	58	81	6.8%
4: >= 70 < 90	3	46	15	51	70	5.9%
5: >= 90 < 110	2	17	5	28	45	3.8%
6: >= 110 < 130	1	12	3	7	50	4.2%
7: >= 130	2	22	5	21	153	12.9%
Grand Total	5,402	7,134	6,997	12,023	16,903	
Total >=30	284	408	367	1,792	4,332	
% of >=30 as Grand Total	5.3%	5.7%	5.2%	14.9%	25.6%	

Table 1-4: Dollar Par Value (Million, Unique Issuers)

By Unique Issuers	2015	2016	2017	2018	2019	2019 Individual Basket Size Group as % of Total
1: >= 10 < 30	9,302	14,387	15,697	42,728	92,864	28.4%
2: >= 30 < 50	1,627	2,503	3,384	17,508	55,327	16.9%
3: >= 50 < 70	1,207	2,325	930	10,666	38,486	11.8%
4: >= 70 < 90	1,461	1,605	2,172	9,368	28,869	8.8%
5: >= 90 < 110	689	758	1,073	11,286	20,819	6.4%
6: >= 110 < 130	538	620	800	6,440	17,297	5.3%
7: >= 130	1,228	1,976	1,322	35,560	73,371	22.4%
Grand Total	**16,051**	**24,173**	**25,379**	**133,555**	**327,034**	**100%**
Total >=30	**6,749**	**9,786**	**9,681**	**90,827**	**234,169**	
% of >=30 as Grand Total	**42.0%**	**40.5%**	**38.1%**	**68.0%**	**71.6%**	

Economic Impact

1. Delayed Treasury Spot Trades

   A modifier identifying delayed Treasury spot trades may add valuable information to disseminated TRACE data by indicating that the reported price may not be at the current market. The new disseminated field providing the time at which the spread was agreed upon could benefit the market by providing participants with this information, which market participants may use to reasonably evaluate the transaction price compared to other prices reported to TRACE at or near the same time. Below, FINRA requests comment on whether this proposal would provide useful information to the marketplace.

   FINRA and members would be required to make systems changes to accommodate the new modifier and time field. This would represent a fixed cost to FINRA and its members that report corporate bond transactions priced through a delayed Treasury spot process. The variable cost of reporting the new modifier and populating the time field should be minimal for firms as costs currently are incurred for existing TRACE reporting. We request comment below on the costs associated with the proposed changes.

2. Portfolio Trades

   A modifier identifying trades executed as part of a portfolio trade would allow market participants to identify with certainty which trades occurred at attributed prices as part of a portfolio trade. With this information, market participants could better identify trade prices that may not reflect the market price if the bond was priced individually. Below, FINRA requests comment on whether this proposal would provide useful information to the marketplace.

   FINRA and members would incur costs associated with making system changes required to accommodate the new modifier. This would represent a fixed cost to FINRA and its members that execute and report portfolio trades. The variable cost of reporting the new modifier should be minimal to firms as costs are currently incurred for existing TRACE reporting. In addition, while market participants currently may infer that some trades may be portfolio trades, they cannot do so with certainty. The FIMSAC noted that there may be an increased theoretical risk that a market participant may identify the seller of a portfolio trade if these trades are identified in disseminated data.[15] It is difficult for FINRA to analyze the extent of the risk given the inability to ascertain the extent to which market participants can identify trades that are part of a portfolio with existing data. FINRA requests comment below on the costs associated with the proposed changes.

Alternatives Considered

No alternatives have been considered.

Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. In addition to general comments, FINRA specifically requests comments on the following questions.

Delayed Treasury Spot Trades

As discussed above, FINRA is proposing to amend Rule 6730 to require firms to append a new modifier to identify a corporate bond transaction that was priced earlier in the day based on the spread to a U.S. Treasury Security. Under the proposal, firms also would report the time at which the parties agreed to the spread.

- FINRA requests comment on whether the proposed new modifier and time field would provide useful information to the marketplace. Why or why not?
- If the new modifier and time field provide benefits, will they benefit some market participants more than others? If so, why?
- Are there any modifications or alternatives to the current proposal that FINRA should consider in providing additional insight into delayed Treasury spot trades?
    - For example, should FINRA consider requiring firms to report the spread, either at the time that the spread is agreed upon or later in the day when the dollar price is known?
    - If the spread should be reported, should this information be reported in lieu of or in addition to the time at which the spread was agreed upon?
    - If the spread should be reported at the time it is agreed upon, should the dollar price also be reported later in the day when known?
    - Once the spread and benchmark are agreed upon, are there circumstances under which they may change before the trade is finalized?
    - Should FINRA consider requiring firms to identify the benchmark U.S. Treasury Security being used to price a delayed Treasury spot trade so that market participants can calculate the spread with certainty? Why or why not?
    - What operational or other challenges would be associated with these alternatives?

- FINRA understands 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). FINRA requests comment on whether this understanding is accurate. To the extent that market participants would not use the most recently issued U.S. Treasury Security with the same maturity, please discuss alternative ways in which a U.S. Treasury benchmark may be chosen and provide insight into the frequency of use of these alternatives.
- Do commenters anticipate any challenges with identifying delayed Treasury spot trades or with reporting the time at which the spread was agreed in a timely manner?
- What costs are associated with identifying delayed Treasury spot trades or the time at which the spread was agreed upon?
- Will the new requirements impose costs on some reporters more than others? If so, why?
- What operational or other challenges would be associated with implementing the proposal?
- What costs are associated with modifying firms' reporting systems to append the new modifier and populate the new time field?
- How much time would firms need to make systems and other changes required to implement the proposal?
- Will there be any other costs for TRACE reporters or other market participants related to the proposal? If so, please describe.

Portfolio Trades

As discussed above, FINRA is proposing to amend Rule 6730 to require firms to append a new modifier to identify a trade in a corporate bond (i) executed between two parties; (ii) involving a basket of corporate bond securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis.

- FINRA requests comment on whether the proposed new modifier would provide useful information to the marketplace. Why or why not?
- If the new modifier provides benefits, will it benefit some market participants more than others? If so, why?

- FINRA also requests comment on whether the proposed parameters are appropriate.
  - For example, is "at least 30 unique issuers" the appropriate threshold for appending the new modifier, or would a different threshold be more appropriate? If a different threshold would be more appropriate, please specify.
  - Should the proposed portfolio trade modifier be appended to trades involving at least 30 unique CUSIPs, rather unique issuers (as is currently proposed)? Why or why not?
  - What operational or other challenges would be associated with these alternative parameters?
- Are there any other modifications or alternatives that FINRA should consider in providing additional insight into portfolio trades? If so, please explain.
- FINRA requests comment on firms' current practices for attributing a price to each component of a portfolio trade for purposes of reporting the individual bond transaction to TRACE. What methodologies and associated documentation do firms have in place and keep regarding attributing a price to component securities for portfolio trades?
- FINRA requests comment on the probability that a market participant would be able to identify the counterparties to a portfolio trade if such trades are identified in disseminated data. How would this probability compare to the probability that counterparties could be identified based on current TRACE data? What effect might this have on the market?
- What costs are associated with identifying portfolio trades?
- Will the new requirements impose costs on some reporters more than others? If so, why?
- What operational or other challenges would be associated with implementing the proposal?
- What costs are associated with modifying firms' reporting systems to append the new portfolio trade modifier?
- How much time would firms need to make systems and other changes to implement the proposal?
- Will there be any other costs for TRACE reporters or other market participants? If so, please describe.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.

2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Some proposed rule changes take effect immediately upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.

3. Rule 6710(a) generally defines a "TRACE-Eligible Security" as a debt security that is United States ("U.S.") dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise as defined in Rule 6710(n); or (3) a U.S. Treasury Security as defined in Rule 6710(p). "TRACE-Eligible Security" does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in Rule 6710(o).

4. *See* Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades (February 10, 2020), ("FIMSAC Recommendation"). The FIMSAC recommended that these proposals apply only to corporate bond transactions reported to TRACE.

5. FINRA reminds members that, pursuant to Rule 3110 (Supervision), they must have policies and procedures in place that are reasonably designed to ensure compliance with the 6700 Rule Series (Trade Reporting and Compliance Engine (TRACE)), including the accurate reporting of applicable trade modifiers or indicators. Firms also must be able to demonstrate that a transaction meets the applicable conditions associated with a particular modifier or indicator.

6. Rule 6710 defines a "U.S. Treasury Security" as "a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities." The term "U.S. Treasury Security" also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury. *See* Rule 6710(p).

7. *See* Rule 6730(a).

8. *See* Rule 6710(d).

9. *See* FIMSAC Recommendation at 2.

10. *See id.*

11. *See infra* notes 12 and 13.

12. *See* Jennifer Surane and Matthew Leising, "Bond Trade That's Gone from Zero to $88 Billion in Two Years," Bloomberg (Nov. 18, 2019).

13. *See* Joe Rennison, Robert Armstrong and Robin Wigglesworth, "The New Kings of the Bond Market," Financial Times (Jan. 22, 2020). Among those traders, 75 percent executed the portfolio trade with dealers while the remaining did so through other means, such as an electronic trading platform.

14. Using only current TRACE data, FINRA cannot identify "portfolio trades," as defined in the FIMSAC Recommendation. Specifically, the analysis in this *Notice* may include trades that are not executed at a single agreed price for the entire basket and that are not executed on an all-or-none or most-or-none basis. As a result, the method used in this *Notice* may include as a "portfolio trade" some trades that would fall outside of the scope using the FIMSAC's criteria. However, FINRA believes that the method used in these calculations is reasonable given the scope of information currently available in TRACE.

15. *See* FIMSAC Recommendation at 2.

Attachment A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6730. Transaction Reporting

(a) through (b) No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) through (13) No Change.

(14) <u>If a member is appending the Delayed Treasury Spot Trade Modifier pursuant to paragraph (d)(4) below, the time at which the spread was agreed upon.</u>

<u>(15)</u> Such trade modifiers as required by either the TRACE rules or the TRACE users guide.

(d) Procedures for Reporting Price, Capacity, Volume

(1) through (3) No Change.

(4) Modifiers[;] <u>and</u> Indicators

Members shall append the applicable trade report modifiers or indicators as specified by FINRA to all transaction reports.

(A) through (G) No Change

<u>(H) Delayed Treasury Spot Trade Modifier</u>

<u>If reporting a transaction in a corporate bond, the price of which is based on a spread to the yield of a U.S. Treasury Security and where the spread was agreed upon that day prior to the Time of Execution of the transaction, select the appropriate modifier.</u>

(I) Portfolio Trade Modifier

If reporting a transaction in a corporate bond: (i) executed between two parties; (ii) involving a basket of corporate bond securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis, select the appropriate modifier.

• • • Supplementary Material: --------------

.01 through .05 No Change.

* * * * *

EXHIBIT 2b

Alphabetical List of Written Comments
Regulatory Notice 20-24

1. Gregory Babyak, Bloomberg L.P. ("Bloomberg Letter") (September 14, 2020)

2. Matt Berger, Jane Street Capital, LLC ("Jane Street Letter") (September 14, 2020)

3. Kathleen Callahan, FIX Trading Community ("FIX Letter") (September 14, 2020)

4. Michael Grogan, Dwayne Middleton, Brian Rubin, and Jonathan Siegel, T. Rowe Price ("T. Rowe Price Letter") (September 15, 2020)

5. Chris Killian, SIFMA ("SIFMA Letter") (September 15, 2020)

6. Howard Meyerson, Financial Information Forum ("FIF Letter") (September 14, 2020)

7. Melinda Ramirez (July 19, 2020)

Exhibit 2c

Bloomberg

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September 14, 2020

Via Electronic Submission: pubcom@finra.org

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

RE: COMMENT LETTER ON THE PROPOSED CHANGES TO TRACE REPORTING RELATING TO DELAYED TREASURY SPOT AND PORTFOLIO TRADES (REGULATORY NOTICE 20-24)

Dear Ms. Mitchell,

Bloomberg L.P.[1] is grateful for the opportunity to provide the Financial Industry Regulatory Authority ("FINRA") with our comments regarding the above-referenced proposal ("Proposal").

I. Executive Summary

FINRA has proposed making two changes to the Trade Reporting and Compliance Engine (TRACE) reporting rules to provide greater clarity to market participants with additional information on two types of trades in corporate bonds. The first proposed change compels market participants, when reporting a corporate bond transaction to TRACE operations, to add a modifier that identifies executions where the price of the transaction is based on a spread to the yield of a U.S. Treasury Security where the spread was agreed upon that day prior to the Time of Execution of the transaction. In addition to adding a modifier to the trade report, the reporting firm would also be required to report the time at which the spread was agreed upon (in addition

[1] Bloomberg L.P. ("Bloomberg") is a global business and financial information company headquartered in New York. The principal product offered by Bloomberg is the Bloomberg Terminal® service (formerly known as the Bloomberg Professional® service), which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies and other business and financial professionals worldwide.

to the Time of Execution). The second proposed change would require reporting firms to add a modifier to identify transactions that were completed as part of a "portfolio trade."

Bloomberg is highly supportive of the regulatory goals of the proposal to bring greater clarity to TRACE disseminated prices by identifying the types of trades in the TRACE data that may not be reflective of the current market price for the bonds and may be less informative for market participants that rely on TRACE for price discovery or other analyses. While the proposal to add a modifier when the Treasury spot is delayed moves TRACE much closer to achieving this goal, instituting the modifier to indicate a portfolio trade, in its current proposed form, would represent a colossal missed opportunity because the definition is far too narrow.

II. Delayed Treasury Price Proposal

FINRA notes that market participants may trade corporate bonds on the basis of a spread to a benchmark U.S. Treasury Security, which is then converted to a dollar price by "spotting" the benchmark U.S. Treasury Security at a designated time in the future, e.g. the closing price which is traditionally set at 3:00 pm ET when the US Treasury futures markets "close" their day session. Despite the trade being arranged at an earlier time (e.g. 10:00 am), the transaction is reportable only when the corporate bond price is set after the benchmark Treasury yield is "spotted" (at 3:00 pm).

The proposal adds an incredible amount of value, insight and transparency into TRACE data. Currently, when such a delayed transaction is disseminated at 3:00 pm, difference in prices for the same corporate bond could be a result of either a move in the underlying Treasury benchmark or a change in perception of the credit worthiness of the corporate issuer. By identifying these delayed spread trades and disseminating the time that they were arranged, it will become possible for market participants to derive intraday credit spread moves in specific corporate bond issues and issuers. This is particularly important during this unprecedented time impacted by the coronavirus. According to Bloomberg[2], BBB-rated bonds made 51% of investment grade issuance in 2019, and Fitch Ratings[3] estimates that, as of September 2019, over 58% of the corporate bond market is rated BBB, the lowest investment grade rating. With this new information, it becomes possible to discern whether price moves are the result of a market concern that an issuer is expected to become a fallen angel.

The proposal does not come without a cost, however. For most market participants and infrastructure providers, recording the time that the spread was agreed upon, placing it into a myriad of systems, and augmenting reporting to TRACE operations represents a significant

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[2] *See* Perez, I. (2020, February 18). Risks Build From Companies After Multi-Year Bond Market Binge. *Bloomberg*. Retrieved from https://www.bloomberg.com/news/articles/2020-02-18/risks-build-from-companies-after-multi-year-bond-market-binge

[3] *See* Forsyth, R. (2019, November 1). The Bond-Market Panic That Wasn't. *Barron's*. Retrieved from https://www.barrons.com/articles/these-corporate-bonds-were-supposed-to-turn-to-junk-theyre-booming-instead-51572620527

change in workflow. Most of the industry plans changes of this magnitude are based on quarterly rollout schedules. Additionally, consumers of the TRACE data will need specifications in advance in order to make changes to systems that will ingest the new updated feed and make practical changes in order to interpret the data and bring additional market insights that the new time stamp affords. We recommend that FINRA provide the industry with plenty of time to accommodate these changes and conduct an outreach of members to determine an appropriate amount of lead time following FINRA's release of FAQ's and TRACE messaging specifications that is needed to code, test, and implement the necessary changes.

III. Portfolio Trades

In the proposal, FINRA seeks to define a portfolio trade as two parties entering into a single trade for a basket of at least 30 corporate bonds of the same issuer at an agreed aggregate price for the entire basket executed on an all-or-none or most-or-none basis.

Bloomberg has significant reservations with this part of the proposal including that there are significant incentives for liquidity seekers to avoid sending baskets that would meet the criteria; the concept of "most-or-none" is neither defined nor a protocol that exists in the market today; and the data FINRA supplied in the regulatory notice demonstrates that the overall approach actually moves FINRA further away from achieving its stated regulatory objective.

Throughout the history of TRACE, FINRA has sought to balance transparency and the potential impact to liquidity. Currently, portfolio trades are disseminated through TRACE as a series of unrelated transactions. This protects liquidity seekers from their trading and investing strategies being reverse engineered. On the other hand, implementing the designation as proposed by FINRA could lead to significant information leakage because it is so specific. FIMSAC committee member Lynn Martin recognized that when she said that the designation would help participants "understand the mechanism as to ***why*** and how the trade was executed."[4]

The designation is problematic because it will alert the market that a change in portfolio strategy has just occurred. For example, a portfolio designation would enable participants to group the transactions together to reverse engineer, or signal, that an institution has extended the duration or soured on a particular issuer. From the liquidity provider perspective, the designation acts as an immediate signal that a liquidity provider just took down a portfolio and could dampen liquidity for trades that meet the stated criteria. Thus, the proposal will most likely not provide the transparency or insight into market structure that FINRA is seeking because liquidity seekers and providers may simply split up their lists into smaller lists that do not meet the criteria, to avoid the designation signaling investment strategy shifts and subsequent potential adverse market impact.

An all-or-none designation included on an order is an execution constraint that is well defined in all markets. However, "most-or-none" is a concept that does not currently exist in any market. And for good reason – from our experience this is a common practice of trade negotiation. How

[4] *See* Transcript of FIMSAC Meeting (February 10, 2020) at page 105, available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-021020-transcript.pdf

is “most” different than sending a list that is open for trade negotiation? Why does this need to be defined when it is embedded in the process? Moreover, if there is a regulatory reason why an order needs to stipulate “most” it needs to be defined - what is the threshold on the number of constituents in the basket that constitutes “most”? Is it a percentage or a number based on the threshold of 30 bonds from the same issuer in the portfolio trade?

Regulatory reporting designations from orders are far more difficult to track. This is in part why most reporting regulations focus on executions. It is a far simpler approach from both regulatory and practical system implementation point of view (and FINRA examinations point of view). Consider for example, a definition of a basket that includes 30 executions with bonds from the same issuer between two parties at an aggregate price. This definition acknowledges that a portfolio is a specific form of a basket trade and makes it clear from the transaction that a reportable transaction was executed.

FINRA’s regulatory transparency objective is to provide greater clarity in the TRACE data by indicating that prices may be off-market (not reflective of the current market price for the bonds). Perhaps the greatest problem with the portfolio trading modifier is that, in its attempt to bring more clarity to the market structure, the proposal pulls FINRA further away from addressing its stated regulatory transparency objective. To move closer to the transparency objective, TRACE should identify every situation where two or more securities are transacted at an agreed upon price where the price may not reflect the current market price for the bonds. This point was also raised by FIMSAC member and USC Marshall School of Business Professor Larry Harris,[5] but was not addressed by the electronic trading subcommittee or the full committee at large. As a subject matter expert also in equities, Mr. Harris draws parallels to the equity market from time-to-time. Regarding transparency, the Security Information Processors (“SIP”) is instructive.

The SIP, in order to indicate which prices are reflective of the current market price for a stock, requires market participants to assign condition codes (reporting modifiers) that indicate transactions with special circumstances that impact price. Like the SIP, TRACE has modifiers (conditions codes) to identify (weighted) average price trades. The SIP, however, has additional condition codes that flag derivatively priced and qualified contingent trades where the price of the transaction is defined by a relationship between the assets rather than the current market price of the asset. FINRA’s data shows that, by flagging only “portfolio” trades, 75-85% of these trades will continue to published without the needed price context.

FINRA’s stated regulatory objective is to provide greater ***price*** transparency, not ***market structure*** transparency. Therefore, FINRA, similar to the SIP, should consider creating a new or

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[5] *See* FIMSAC Meeting Transcript at page 124. “With respect to portfolio trading, the distinguishing characteristic of a portfolio trade, and the reason that we're concerned about this, is that there is a single price for the portfolio. And underlying that single price, there is some sort of matrix pricing for the individual trades. So the present proposal says that we should implement these new procedures for portfolio trades whenever there are 30 or more transactions or lines, as they have been called, associated with the portfolio. But the truth was that the principle applies to any transaction where there are more than one line, more than one line, with prices being somewhat arbitrarily assigned. And so I think that the 30 ought to be brought down to two. I don't see any additional cost because anybody who is using a system that is working it this way, it goes into that system.”

using an established modifier for reported trades when the derived price of the corporate bond may not accurately reflect the current market price for the bond.

We agree with the late Thomas Gira when he explained at the February 10, 2020 FIMSAC meeting that, "…I think anytime we [FINRA] can add contextual information about trades, particularly trades that might be away from the current prevailing market, that's always a good thing for the audit trail."[6] With the changes to provide greater clarity to delayed Treasury prices and Bloomberg's suggested changes to the portfolio trading proposal, FINRA will move closer to fulfilling its regulatory transparency objective.

As we advised in the Delayed Treasury Price part of this Proposal, tracking the trades where prices may not be reflective of the current market price for the bonds because they are priced based upon an aggregate price in order to add a modifier in the TRACE report is not a trivial change to current systems and infrastructure. Market participants will need time to integrate these changes into basket trading software, books and records, and TRACE reporting systems. Most of the industry plans changes of this magnitude are based on quarterly rollout schedules. We recommend that FINRA provide the industry with plenty of time to accommodate these changes and conduct an outreach of members to determine an appropriate amount of lead time following FINRA's release of FAQ's and TRACE messaging specifications that is needed to code, test, and implement the necessary changes.

Very truly yours,

Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.

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[6] *See* FIMSAC Meeting Transcript at page 117.

Jane Street

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September 14, 2020

Jennifer Piorko Mitchell
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Washington, DC 20006-1506

Via E-mail

Re: Regulatory Notice 20-24: FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades

Ms. Mitchell:

Jane Street Capital, LLC (together with its affiliates, "Jane Street") respectfully submits this comment letter regarding the proposed changes to the TRACE reporting rules that were recommended by the Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee (the "Proposed Rules"). The Proposed Rules would require firms to (1) identify "delayed Treasury spot trades" and report the time that the spread was agreed to and (2) identify corporate bond trades that are part of a larger portfolio trade. Jane Street supports the Proposed Rules, on the basis that the Proposed Rules would increase transparency in the market and improve price discovery, creating a more efficient marketplace for all participants.

Founded in 2000, Jane Street trades across a wide range of asset classes, including equities, bonds, options, currencies, commodities and futures. Jane Street makes markets not only by buying or selling small quantities around the bid or offer, but by standing ready to provide deep liquidity in large size, both on exchange and to institutions through OTC markets. Jane Street's fixed income trading, which includes individual bonds, portfolio trades, and ETFs, exceeded $1 trillion over the 12-month period ending June 30, 2020. Further, Jane Street is the largest lead market maker in U.S.-listed fixed income ETFs. Jane Street's significant experience in fixed income markets has given it a deep understanding of the market's dynamics and the important role that price transparency serves. Jane Street firmly supports proposals such as the Proposed Rules which increase transparency and promote accurate price discovery.

Delayed Spot Treasury Trades

The Proposed Rules would require firms to append a new modifier in their TRACE report when reporting a transaction in a corporate bond where the price of the transaction is based on a spread to the yield of a U.S. Treasury Security, and the spread was agreed upon that day prior to the time of execution. The Proposed Rules would also require firms to report the time at which the spread was agreed to. Jane

Jane Street

Street believes that these new requirements are appropriate, and would support their adoption without further amendment. While market participants (including Jane Street) would initially incur costs in order to modify their trade reporting procedures to provide this information,[1] these costs are outweighed by the benefit of obtaining additional information about the delayed spot trade. As noted by the Proposal Release, market participants would both be alerted to the fact that the trade had been agreed to earlier in the day, and obtain the information necessary to estimate the agreed-upon spread. Knowledge of the details of the delayed spot trade would allow market participants to better understand how the price of a given bond was determined, and in turn allow for improved price discovery and more efficient markets.

Portfolio Trades

The Proposed Rules would also require firms to append a new modifier in their TRACE report when a transaction in a corporate bond was part of a "basket" of bonds, where the basket consisted of bonds from at least 30 unique issuers, was executed on an all-or-none (or most-or-none) basis, and had a single agreed-upon price for the entire basket. Jane Street agrees with the Proposal Release that when bonds are traded as part of a portfolio trade, the price at which the trade is reported may not necessarily reflect an independent market for the bond (because, for example, the parties may negotiate the entire trade based on a spread from mid-market). Accordingly, Jane Street supports the Proposed Rules' introduction of the portfolio trade modifier, as it provides important information to the market about the context in which the trade was executed. However, Jane Street believes that the requirement that a basket contain bonds from at least 30 unique issuers is too high, and would recommend that a basket which contains bonds from at least 10 unique issuers should be reported using the portfolio trade modifier. As shown in Table 1-3 of the Proposal Release, and consistent with Jane Street's experience, many portfolio trades contain bonds of between 10 and 30 unique issuers. Accordingly, to maximize the informational benefit which the portfolio trade modifier would provide, Jane Street believes that a basket with bonds from at least 10 issuers should use the new portfolio trade modifier.

Sincerely,

/s/ Matt Berger

Matt Berger
Global Head of Fixed Income and Commodities

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[1] Jane Street agrees with the economic impact analysis contained within Regulatory Notice 20-24 (the "Proposal Release") that for both delayed spot trades and portfolio trades, while the required systems changes would impose an initial fixed cost to accommodate the new modifiers and time field, the ongoing variable costs should be minimal.

September 14, 2020

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: Regulatory Notice 20-24: FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades

Dear Ms. Mitchell,

The Financial Information eXchange (FIX) appreciates the opportunity to comment on Regulatory Notice 20-24 (the Regulatory Notice) published by Financial Industry Regulatory Authority, Inc. (FINRA).[1] We will leave it to our member firms to reply on the specific requests for comment, but wish to offer the assistance of the FIX Trading Community in ensuring effective implementation of any regulation by use of prevalent industry standards. The FIX Trading Community is focused on promoting the use of standards; we look forward to the opportunity to work with FINRA and discuss the use of standardized FIX tags as a solution.

FIX Trading Community is the non-profit, industry-driven standards body (representing the entire industry including buy side, fintech providers, sell side, and trading venues) at the heart of global trading. The organization is independent and neutral, dedicated to addressing real business and regulatory issues impacting multi-asset trading in global markets through standardization, delivering operational efficiency, increased transparency, and reduced costs and risks for all market participants. Additionally, FIX is open to the support of all standards. Central to our mission is creating and maintaining robust open standards across the whole trading ecosystem. The FIX Trading Community's partnership with the Financial Information Forum (FIF) supports industry collaboration of compliance, technology and use of standards as solutions to address regulatory requirements.

The Regulatory Notice requests comment on two proposed changes to the TRACE reporting rules. The proposed changes were recommended by the Fixed Income Market Structure Advisory Committee (FIMSAC) established by the Securities and Exchange Commission.

[1] FINRA Regulatory Notice 20-24 (July 16, 2020), available at https://www.finra.org/sites/default/files/2020-07/Regulatory-Notice-20-24.pdf ("Regulatory Notice 20-24") .

The first proposed change would require firms to "identify corporate bond trades where the price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day … and report the time at which the spread was agreed upon…."[2] . The second proposed change would require firms to "identify corporate bond trades that are a part of a larger portfolio trade."[3]

FIX involves core concepts that have supported regulatory reporting in the financial industry for many years. FIX introduced a practice of producing Extension Packs (EP) to address regulation in response to a CFTC regulation in 2012 (EP161). At that time, we created the field RegulatoryReportType(1934) to distinguish different use cases for TradeCaptureReport(35=AE) messages. It provides a regulatory context above more specific attributes such as TrdType(828) and TrdSubType(829), TrdType(828) = 50 identifies a portfolio trade that FINRA seeks to capture as an attribute.

The concept was re-used more than once since 2012 and for different regulatory environments. The first re-use was for MiFID 2 for the purpose of MMT (Market Model Typology), which ESMA is now considering to use as an EU standard for post-trade flagging. For example, it allowed to convey the fact that not all details of a trade were disclosed in the report or that a specific (deferred) report now contains full details of a trade.

The concept was used again in the context of CAT Phase 2A last year to identify the various CAT events, e.g. MENO for a new order. The purpose was again to support the distinction of use cases as defined by the regulator, in this case the SEC. The third re-use was also last year in the context of SFTR reporting in the EU. On a high level and from the perspective of the regulator, SFTR reports are about transactions and their corrections/modifications.

Another key concept is about timestamps and goes back all the way to FIX 4.4 in 2003. Since then, FIX has a dedicated component TrdRegTimestamps to capture any number of timestamps with regulatory importance. It was equally used/extended for CFTC reporting and CAT where it can now even convey the NBBO together with the timestamp of the regulatory event. Adding the capability for FINRA to capture the time of agreeing on a spread is a minimal extension to an existing concept in FIX.

More specifically relating to TRACE, FIX introduced EP209 in 2016 in support of trades executed on an Alternative Trading System (ATS) in support of FINRA TRACE and MSRB Reporting requirements. Since the publication of EP209, FIX has delivered an additional 50 extensions packs.

In summary, FIX has well-established concepts to support regulatory reporting in general. Specifically, FIX messages are able to convey characteristics of a trade that are relevant from a regulatory perspective, including timestamps for events related to a trade.

[2] Regulatory Notice 20-24, p. 1.
[3] Regulatory Notice 20-24, p. 1.

Please reach out to me when convenient to discuss implementation of these rules and we can assist in developing standard solutions that benefit the industry.

Thank you for the opportunity to comment on Regulatory Notice 20-24.

Sincerely,

Kathleen Callahan
FIX Operations Director
FIX Trading Community
[redacted]

Filed electronically via email (pubcom@finra.org)

September 15, 2020

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry National Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 20-24 (Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades)

Dear Ms. Mitchell:

We welcome the opportunity to comment on the above-referenced proposal (the "Proposal") to add special identifiers to TRACE reports for: (a) delayed treasury spot trades, and (b) trades that are part of a larger "portfolio trade."[1] T. Rowe Price is a global investment adviser serving a broad array of clients, from individual savers to large institutions and funds.[2] We trade a wide range of fixed income instruments across an array of investment strategies and therefore have a vested interest in fair, well-functioning, and liquid fixed income markets.

Over the many years we have participated in these markets, we have advocated for greater transparency in a variety of ways and are proud of our participation in the development of TRACE and analysis of its impact on liquidity through serving on the NASD's Bond Market Transparency and Bond Transaction Reporting Committees. The addition of the identifiers described in the Proposal would make the TRACE reporting engine more robust and transparent, and facilitate market participants' analysis of transactions captured in TRACE. Therefore, we are in favor of FINRA moving forward with the Proposal.

Benefits to the Trade Negotiation Process. Both delayed treasury spot trades and trades that are part of a broader portfolio trade may not be reflective of current prices for the relevant security at the time they are disseminated in TRACE; and we believe the Proposal helps address some of the challenges arising from this dynamic. In the case of delayed treasury spot trades, because the spread may have been agreed to many hours in advance, the dollar price for the transaction may not take into account market or issuer-specific developments that have occurred throughout the day. With respect to transactions that are part of a portfolio trade, the price reported in TRACE may not be indicative of the bond's purchase or sale price and may appear to be outside of the quoted context versus if it had been traded individually.

[1] See Proposal at: https://www.finra.org/rules-guidance/notices/20-24. Delayed Treasury spot trades are corporate bond trades where the price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day. Portfolio trades are transactions in which two parties enter into a single trade for a basket of corporate bonds at an agreed aggregate price for the entire basket (proposed to consist of at least 30 unique issuers). Mid-market prices for each of the bonds in the basket may be obtained by the parties as a framework for discussing pricing, and, during the negotiation process, the two parties ultimately agree on a uniform spread, resulting in an aggregate dollar price for the entire portfolio.

[2] T. Rowe Price Associates, Inc. and its affiliates manage $1.34 trillion in assets, of which $160 billion represents fixed income portfolios (based on preliminary data as of August 31, 2020). Fixed income exposure is also an important component of many other T. Rowe Price portfolios, including our target date retirement products, which represent $305 billion of our August 31, 2020 assets under management.

We welcome the Proposal because the above hurdles can lead to situations where a transaction reported in TRACE looks out of step with other trades reflected in TRACE at or near the same time. This misalignment complicates and adds time to the analysis conducted by our traders as they survey the market, engage with dealers on potential trade opportunities, and seek to negotiate a mutually agreeable price for trades. The frequency of these misalignments is exacerbated by the prevalence of delayed Treasury spot trades and the significant growth of portfolio trading in recent years.

The Proposal would benefit investment advisers and other market participants by providing timely and definitive clarity on whether a transaction reported in TRACE was a delayed treasury spot trade or part of a portfolio trade. These types of enhancements will create efficiencies in our processes and further our ability to be agile in carrying out transactions for our client portfolios. More broadly, we believe the Proposal supports price formation for the overall US fixed income market.

Other Benefits. Transaction cost analysis ("TCA") plays an important role in the trading process for institutional investors such as T. Rowe Price and the proposed enhancements to TRACE would be useful in this context. Similar to how the Proposal would benefit traders when surveying the market and negotiating trades, it is useful to our staff conducting TCA to more readily be able to identify transactions that may not be reflective of current market prices when comparing them to trades executed by the investment adviser. In this way, the Proposal facilities the evaluation and oversight of best execution that we undertake in our role as a fiduciary investment adviser.

The Proposal would also aid the portfolio valuation process. Investment vehicles such as US mutual funds are required to strike net asset values ("NAVs") for fund shares on a daily basis. For funds investing in fixed income instruments, TRACE is an important data point for the pricing services used by fund complexes to help determine NAVs. The proposed identifiers would help pricing services better understand the context of trades reported in TRACE to help ensure that the information incorporated into a fixed income security's valuation is based on relevant inputs.

****

Thank you for considering our feedback on these issues and we look forward to FINRA moving forward with this initiative. Should you have any questions regarding this letter, please feel free to contact us.

Sincerely,

/S/ Michael Grogan
Michael Grogan, V.P. & Head of US Fixed Income Trading – Investment Grade

/S/ Dwayne Middleton
Dwayne Middleton, V.P. & Head of Fixed Income Trading

/S/ Brian Rubin
Brian Rubin, V.P. & Head of US Fixed Income Trading – Below Investment Grade

/S/ Jonathan Siegel
Jonathan Siegel, V.P. & Senior Legal Counsel – Legislative & Regulatory Affairs

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Invested in America

September 15, 2020

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 20-24 - Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades

Dear Mrs. Mitchell,

SIFMA[1] is pleased to respond to FINRA's Regulatory Notice (RN)[2] regarding TRACE flags for portfolio trades and delayed treasury spot trades. These proposals, if they became rules, would implement recommendations of the SEC's Fixed Income Market Structure Advisory Committee (FIMSAC), and we write this letter to express our high-level comments on the proposals. As a general matter, SIFMA supports the enhancement of TRACE to provide transparency to market participants, when such transparency is appropriately balanced with the impacts on liquidity and reasonableness of compliance burdens that any particular proposal creates. In this letter we set out some initial views, questions, and requests for further details of SIFMA members on the proposals in the RN. As you will see, while we believe there are positive aspects to the proposals, some of our members have expressed concerns about the utility of them. We hope that FINRA takes our comments into account, and is able to return to the market with more information and clarification to help build a broader base of support for the proposals in the RN. We look forward to a continued dialog on this RN.

1. Portfolio Trading Flag

The RN explains that the proposed portfolio trading flag would allow market participants to *"better identify trade prices that may not reflect the market price if the bond was priced individually."*[3] Our members see two aspects of this proposal: (1) the identification of portfolio trades vs. other kinds of trades and (2) the identification of potentially off-market trades.

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[1] 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).
[2] Available here: https://www.finra.org/sites/default/files/2020-07/Regulatory-Notice-20-24.pdf
[3] Proposal at 12.

We agree that this proposal would make it easier to identify the type of transaction – that a trade was a portfolio trade – since they would be tagged as such. However, some of our members have noted that it is fairly easy, generally speaking, to identify portfolio trades today without the usage of a specific modifier, so the proposal would provide somewhat limited new information to market participants in this regard. Other members noted that this may be beneficial to smaller market participants, as well as market observers and researchers, who may not have systems in place to actively screen for these types of transactions.

The other aspect of the proposal relates to identification of potentially off-market trades and we agree that the modifier may flag a trade that was traded off-market. Generally, the portfolio trading flag would alert users of the data to take care to consider whether or not the flagged trades are off-market. The key word used above is 'may' – indeed the price in a portfolio trade may or may not be off market. The proposed indicator is not definitive. Some of our members have questioned the appropriateness of a flag that does not provide definitive information regarding the price that is reported and have expressed concern that a false impression of being off-market could be created by the flag. Other members noted that it should not be assumed that a portfolio flag would designate that a bond trade was off-market, but rather provide context that the trade price may have been determined in a different manner than a single bond trade.

TRACE already incorporates a special price modifier that is required when trades are executed off market for various reasons (e.g.: NERIs (FAQ 3.4.12), bonds trading flat (FAQ 3.1.40), where prices are very high or very low (FAQ 3.4.26)), and provides an unequivocal signal to data users. Today dealers are expected to review each line item in a portfolio trade to determine if it is off market, and if so, set the special price indicator to 'yes'. A potential benefit of this proposal could be to reduce the compliance burden for dealers if the portfolio trade indicator would supplant the need for the dealer to also do a line by line review of a large trade for the purposes of the special price indicator. Related to this, FINRA should confirm that the modifier would be taken into account in fair pricing reviews and dealers would not face undue burden to explain why a price on a portfolio trade was off-market, given the nature of these transactions.

An additional concern that some of our members have raised is that this proposal would start to shift TRACE away from being a price transparency tool (e.g., size, quantity, time of execution) into a tool that provides trading strategy details (e.g., how a trade was executed). Some members who are active in this market expressed concerns regarding the potential impact on liquidity and potential disclosure of member or client trading strategies, while other members active in the market did not believe this was a material concern with the appropriate definition of a portfolio trade, given those active in the market are already aware of their occurrence. As FINRA knows, both dealers and their clients view trading strategy information as proprietary and sensitive, and the potential for exposure of such information could cause participants to alter how they trade and potentially have impacts on market liquidity. We would appreciate FINRA addressing this concern in subsequent publications, and consideration of whether there are ways to mitigate it.

We have a few more granular comments on the proposal

- Issuers vs. CUSIPS
    - SIFMA members understand that the reason for including a certain number of unique issuers as a criteria for use of the portfolio trade flag is intended to scope in diversified portfolio trades. Members have raised a concern that while this is understandable, it

would be complicated to implement. On the other hand, a definition of a portfolio trade based on a certain number of CUSIPs would be much easier to implement.
  - For example, it could be the case that a company issues debt at the parent level and also issues debt out of a differently-named affiliate or subsidiary with a parent guarantee. Should they be treated as the same issuer? Or perhaps an issuer is involved in a merger with another company but the merged company still has bonds in the market referenced in its 'old' name. Should those two names be considered the same issuer? There could be other edge cases that arise from time to time would require further definition. In any case, traders and compliance personnel would have to examine a potentially large list of bonds and determine how many distinct issuers there were (subject to potential complications like those above) and this would have to be done within the short submission time requirements that exist in TRACE. This would introduce the risk of errors and omissions in TRACE reporting and penalties for dealers. It does not appear that this process would be easily automatable. We expect it would also increase demands on FINRA staff to field questions and provide guidance.
  - On the other hand, a requirement based on a CUSIP count, while not as precise at identifying diversified portfolio trades, would be over-inclusive (if anything), and would be far easier to implement given that it is a simple and automatable counting exercise.

- The number of securities traded
  - Our members have also discussed at some length the numerical trigger of 30 names. Some members believe that a lower number (of CUSIPs, as discussed above) would be more appropriate, such as 10, whereas others are comfortable with the proposed 30 or an even higher number.

In sum, we believe it would be useful for FINRA to further discuss with the industry in subsequent publications and meetings a deeper insight into some of the rationale that underlies the proposal and provide perspectives on the questions we raise above, such as the usage of issuers vs. CUSIPs and the appropriate number of them. As noted, while some members see potential benefits to the proposal, some significant questions and concerns have also been raised.

2. Delayed Treasury Spot Trades

Similar to the discussion above, our members both see benefits to this proposal but also have material questions including the overall benefit vs. cost balancing. In this proposal FINRA would require firms to append a new modifier when reporting a corporate bond trade priced based on a spread to a yield of a Treasury security, where the spread was set prior to the time of execution of the trade, and would also require dealers to report the time at which the spread was agreed in addition to the time of execution.

The proposal states: *"A modifier identifying delayed Treasury spot trades may add valuable information to disseminated TRACE data by indicating that the reported price may not be at the current market. The new disseminated field providing the time at which the spread was agreed upon could benefit the market by providing participants with this information, which market participants may use to reasonably evaluate the transaction price compared to other prices reported to TRACE at or near the same time."*[4]

[4] Proposal at 12.

The potential benefit of this proposal would be to provide a clearer picture, retrospectively, as to liquidity flows throughout the day. SIFMA members understand how this information could be helpful to market participants and observers and note that FINRA (via FIMSAC) provided data to support the existence of delayed spot trades on TRACE at end-of-day. Members understand that US IG trades which occur early in the day which then report end of day may or may not seem "off market" by end of day, depending on the magnitude of the bond's credit spread movement throughout the day.

Despite this acknowledgement, some members have indicated that the technical implementation of this proposal is complex. Specifically, a number of our members disagree that *"[t]he variable cost of reporting the new modifier and populating the time field should be minimal for firms as costs currently are incurred for existing TRACE reporting."*[5] While building a flag to identify a spot trade is not difficult, members have reported that the ability to automate the flow of the time the trade was spotted could be much more complicated. For example, information about time of spotting may be housed in a trading platform (or other internal system) for which the dealer does not have connectivity through to its TRACE reporting system, and that connectivity would either need to be built or a manual workflow would need to be managed (e.g., based off of a report from a platform). Additionally, some firms will have to build this connectivity across multiple lines of business. Manual workflows are of course not favored.

Some of our smaller, non-primary dealer members have pointed out that there is a fixed-cost burden presented by this proposal that is more meaningful to these dealers. In other words, smaller dealers that do less of this business would face the same implementation requirements discussed in the preceding paragraph, but they have fewer resources, tend to be more dependent on third-party vendors, and ultimately may have less motivation to bear the cost. The end 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. It also could be the case that some of these dealers simply choose to no longer engage in these kinds of trades, possibly further concentrating the activity in larger firms and reducing the number of market participants. The factors discussed in this and the above paragraph cause some of our members to believe it would be preferable to only report the spot flag and not the time.

In any case, in light of the points raised above, we believe that a significant amount of lead time would be needed before the implementation date - on the order of 18 months or more.

We would also like to address some of FINRA's specific requests for comment:

- *"Should FINRA consider requiring firms to report the spread, either at the time that the spread is agreed upon or later in the day when the dollar price is known?"* and *"If the spread should be reported at the time it is agreed upon, should the dollar price also be reported later in the day when known?"*
    - SIFMA members have pointed out that FINRA should have enough information from trade reports from dealers to derive an estimate of the spread without requiring dealers to submit this data.
    - In any case, we believe that dealers should not have to submit two reports (or amend a previous report) for the same trade. This would significantly increase the burden of implementation on dealers, introduce risk of errors, and possibly confuse users of the

[5] Proposal at 12.

data. Accordingly, if spread were required to be reported (which we don't believe is necessary), it should be at the time of execution of the trade.

- *"FINRA understands 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). FINRA requests comment on whether this understanding is accurate."*
    - Our members share this understanding.

To summarize, we would encourage FINRA to consider these comments regarding spot trades, and carefully consider balancing the costs vs. the benefits of this proposal. We believe a significant lead time for implementation would be required if this proposal were to be implemented.

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We hope these comments are constructive and helpful to FINRA as it considers how to move forward with the proposals in the RN. As mentioned, SIFMA supports enhancements to transparency that weigh benefits to market participants against the impact on liquidity and costs of compliance. We hope that FINRA provides further details in line with some of the questions and comments discussed above, and would be pleased to discuss our views in more detail. Please contact me at [redacted] if you would like to discuss any of these issues further.

Sincerely,

Christin B Killian

Chris Killian
Managing Director
Securitization and Credit

FINANCIAL INFORMATION FORUM

September 14, 2020

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: Regulatory Notice 20-24: FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades

Dear Ms. Mitchell,

The Financial Information Forum (FIF)[1] appreciates the opportunity to comment on Regulatory Notice 20-24 (the Regulatory Notice) published by Financial Industry Regulatory Authority, Inc. (FINRA).[2]

The Regulatory Notice requests comment on two proposed changes to the TRACE reporting rules. The proposed changes were recommended by the Fixed Income Market Structure Advisory Committee (FIMSAC) established by the Securities and Exchange Commission.[3]

The first proposed change would require firms to "identify corporate bond trades where the price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day … and report the time at which the spread was agreed upon…."[4] We refer to this proposal as the delayed Treasury spot trade proposal. The second proposed change would require firms to "identify corporate bond trades that are a part of a larger portfolio trade."[5] We refer to this proposal as the portfolio trade proposal.

[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 trading and back office service bureaus, broker-dealers, market data vendors and exchanges. 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 20-24 (July 16, 2020), available at https://www.finra.org/sites/default/files/2020-07/Regulatory-Notice-20-24.pdf ("Regulatory Notice 20-24") .
[3] Meeting of the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee, Monday, February 10, 2020, 9:32 a.m., available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-021020-transcript.pdf. See, in particular, pp. 81-132.
[4] Regulatory Notice 20-24, p. 1.
[5] Regulatory Notice 20-24, p. 1.

Delayed Treasury spot trade proposal

The delayed Treasury spot trade proposal would require firms to implement significant system changes. FIF members have identified various trading scenarios that could be impacted. For example, a dealer could agree on the terms for a delayed Treasury spot trade earlier in a trading day. These terms could be agreed through an electronic trading platform used by the dealer or through an exchange of instant messages between the dealer and a customer. The agreed terms include the Treasury bond to be used as the benchmark and the agreed spread versus that benchmark. Later in the trading day (for example, at 3 pm), the electronic trading platform reports an executed trade back to the dealer, or a trader at the dealer firm enters an execution into the dealer's order management system, and the dealer's systems report the trade to TRACE. FIF members have advised that dealer systems do not currently store the time the original terms are agreed in a manner that would enable reporting to TRACE on a timely basis. The proposal, which requires reporting of this time, would require significant cost and work for firms to upgrade various systems, including order management systems, trade reporting systems and databases, as the requirement to report a new field is a significant driver of additional cost.

FIF members propose that FINRA consider as an alternative mandating that the SpecialPriceIndicator tag (FIX Tag 22006) be marked as "Y" (Yes) for delayed Treasury spot trades[7] or that another existing TRACE tag be marked as instructed by FINRA to identify this type of trade. SpecialPriceIndicator is a tag that is included in the current TRACE reporting specifications. If firms report in this manner, it would signal to the market that the terms of the trade were not agreed based on the current market conditions. Since populating the SpecialPriceIndicator necessitates populating the SpecialPriceReason (Tag 5149), further discussion of what would be appropriate would be needed.

Portfolio trade proposal

FINRA proposes to require firms to append a new modifier to their TRACE reports "to identify a trade in a corporate bond that has all of the following characteristics: (i) executed between two parties; (ii) involving a basket of corporate bond securities of at least 30 unique issuers; (iii) for a single agreed price for the entire basket; and (iv) executed on an all-or-none or most-or-none basis."[8]

FIF members propose that condition (ii) be removed. A trade involving fewer than 30 unique issuers would still be a portfolio trade if it is executed "for a single agreed price for the entire basket" and "executed on an all-or-none or most-or-none basis".

If condition (ii) is retained, FIF members recommend that condition (ii) be based on number of unique issues (counted using CUSIPs, TRACE Symbols assigned by FINRA, etc.) rather than the number of unique issuers whose securities are included in the basket. Shifting to an issue basis would avoid challenges in

[7] FIX Specifications for the Trade Reporting and Compliance Engine system (TRACE), Trade Reporting for OTC Corporate Bonds and Agency Debt (Corporates & Agencies), version 1.4 (March 5, 2018), available at https://www.finra.org/sites/default/files/CA-trace-fix-specs-v1.4.pdf ("TRACE FIX Specification"). See p. 21.
[8] Regulatory Notice 20-24, p. 4.

identifying and processing within the TRACE reporting timeframe which bonds are associated to a particular issuer. In addition, FIF's recommendation would result in more trades being reported as portfolio trades providing greater transparency to the market while enhancing FINRA's audit trail.

Basing the determination of a portfolio trade on the number of unique issuers also raises the question of whether bonds of affiliated issuers should be counted as one or multiple issuers. For example, would the debt of a wholly owned Special Purpose Vehicle, which exists solely for the purpose of issuing debt, be considered as distinct from the debt of the parent issuer?

If condition (ii) is retained, FIF members also request guidance for the scenario where a portfolio trade involves some bonds that are TRACE-reportable and other bonds that are not TRACE-reportable (for example, corporate bonds that are not denominated in U.S. dollars). Should the bonds that are not TRACE reportable be counted in determining whether the trades in the TRACE-reportable bonds are part of a portfolio trade?

Regarding condition (iii), FIF requests that FINRA, as part of the rulemaking process, provide guidance on:

- The definition of a "single agreed price" in the context of a portfolio trade
- Whether the following scenario would constitute a portfolio trade:
    - A third-party publishes reference prices for a universe of bonds at a set time each day at 3 pm
    - At 10 am two firms agree to trade a basket of securities that represents a subset of this universe based upon the as-of-yet unpublished 3 pm reference price
    - At 3:30 pm the two firms review the prices published at 3 pm for the basket constituents and come to consensus on the final price, which is an aggregate of the constituent prices.

Please also advise regarding whether the existence of any offset to the price (e.g. 3 pm reference price plus a fixed markup) would change whether the basket in the above scenario would be considered a portfolio trade.

Implementation timeline

Based on the significant technical work that will be required to implement the proposed changes and various issues where the industry will require interpretive guidance from FINRA, FIF members request that the implementation timeline for any changes commence upon the publication of updated technical specifications and the issuance of FAQs by FINRA. In other words, if firms will have a period of "n" days to implement changes required by the rule, the commencement of this period of "n" days should be the day that FINRA publishes updated technical specifications and issues FAQs in response to industry member requests for guidance.

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FIF appreciates the opportunity to comment on Regulatory Notice 20-24. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Melinda Ramirez Comment On Regulatory Notice 20-24

Melinda Ramirez
Consultant

Thank you for the opportunity to invest..

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6730. Transaction Reporting

(a) through (b) No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) through (12) No Change.

(13) If the member is reporting a transaction that occurred on an ATS pursuant to Rule 6732, the ATS's separate MPID obtained in compliance with Rule 6720(c); [and]

(14) <u>If the member is appending the Delayed Treasury Spot Trade Modifier pursuant to paragraph (d)(4) of this Rule, the time at which the spread was agreed upon; and</u>

<u>(15)</u> Such trade modifiers as required by either the TRACE rules or the TRACE users guide.

(d) Procedures for Reporting Price, Capacity, Volume

(1) through (3) No Change.

(4) Modifiers[;] <u>and</u> Indicators

Members shall append the applicable trade report modifiers or indicators as specified by FINRA to all transaction reports.

(A) through (G) No Change.

(H) Delayed Treasury Spot Trade Modifier

If reporting a transaction in a corporate bond, the price of which is based on a spread to the yield of a U.S. Treasury Security and where the spread was agreed upon that day prior to the Time of Execution of the transaction, select the appropriate modifier.

(I) Portfolio Trade Modifier

If reporting a transaction in a corporate bond: (i) executed between only two parties; (ii) involving a basket of corporate bonds of at least 10 unique issues; and (iii) for a single agreed price for the entire basket, select the appropriate modifier.

(e) through (f) No Change.

• • • Supplementary Material: --------------

.01 through .07 No Change.

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