



August 20, 2015

Mr. Robert W. Errett
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2015-025 (Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Require Members to Report Transactions in TRACE-Eligible Securities As Soon As Practicable) – Response to Comments

Dear Mr. Errett:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to comments submitted to the U.S. Securities and Exchange Commission (“Commission”) regarding the above-referenced rule filing.¹ The Commission received two comment letters on the Proposal, one of which generally supports the proposal and the other opposes the proposal, as further discussed below.²

FINRA proposes to codify that members are required to report transactions in TRACE-Eligible Securities subject to dissemination “as soon as practicable” following the time of execution. FIF opposes codification of this standard, asserting that the proposal raises operational and implementation concerns due to the diverseness of TRACE reporting workflows from member to member; processing issues involving the setup of newly issued TRACE-Eligible Securities; and considerations around manual trade reporting. FINRA does not believe that these considerations, all of which exist today, are altered by the instant proposal. BDA supports the proposal and believes that “reporting trades to TRACE ‘as soon as practicable’ and without intentional delay is in the best interests of the marketplace,” and requests clarification on aspects of the intended operation of the proposal.

FIF asserts that the “as soon as practicable” language is vague and proposes that, alternatively, FINRA’s rule state “it is a violation of the rule to purposely delay or knowingly stop reporting.” FINRA disagrees. While intentional delays or failures to trade report clearly

¹ See Securities Exchange Act Release No. 75428 (July 10, 2015), 80 FR 42149 (July 16, 2015) (Notice of Filing of File No. SR-FINRA-2015-025) (“Proposal”).

² See Letter to Robert W. Errett, Deputy Secretary, Commission, from Darren Wasney, Program Manager, Financial Information Forum, dated August 5, 2015 (“FIF”); and letter to Secretary, Commission, from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated August 6, 2015 (“BDA”).

are violative of the “as soon as practicable” standard, the proposed requirement goes beyond conduct to delay reporting and puts an affirmative obligation on firms to automate their trade reporting processes to the greatest extent possible, and where automation is not feasible, firms should endeavor to implement more efficient trade entry processes. In this regard, the “as soon as practicable” standard does reflect a degree of flexibility, which FINRA believes is appropriate – particularly for TRACE-Eligible Securities, which, as FIF notes, are inherently different from equities. As acknowledged by FIF, members’ processes around TRACE reporting are diverse and may differ depending upon the degree of automation of a member’s system for reporting trades in TRACE-Eligible Securities, the method of order receipt and execution, as well as other factors. FINRA’s proposed language is an acknowledgement of this, and FINRA understands that a certain amount of time is operationally needed for reporting.³ FINRA also notes the importance of price transparency to the investing public and the marketplace overall, and believes that pricing and other disseminated transaction information should be available as soon as practicable, and that each member should take steps to ensure that such information is reported promptly without taking more time than is operationally necessary.⁴

FIF also seeks confirmation that, if two members engage in a transaction with each other where one member reports within one minute and the other in 14 minutes (due to different internal workflows), both members will be deemed to be in compliance with the TRACE trade reporting rules (since both trades were reported within 15 minutes). FINRA cannot opine on whether the trade report submitted in 14 minutes would be deemed reported “as soon as practicable” in all instances. As explained in the Proposal, such a determination would hinge on whether the member’s policies and procedures were reasonably designed to trade report as “soon as practicable” by having in place systems that commence the trade reporting process at the time of execution without delay.⁵ As stated in the Proposal, “FINRA recognizes that reporting within a short time frame may not mean that firms are reporting as soon as practicable, but does indicate general timeliness in reporting.”⁶

³ For example, FIF raises issues around TRACE reporting of new issues, particularly where the managing underwriter has not setup the issue in a timely fashion, possibly leading to other dealers having difficulty reporting in a timely manner. This potential situation is not compounded by the instant proposal. Underwriters are required, pursuant to Rule 6760, to notify FINRA of the new issue and to add the issue to the TRACE system for reporting in advance of the first transaction.

Should another member trade a TRACE-Eligible Security not yet added to the TRACE system, Rule 6730(a)(6) currently sets forth the steps that the member should take – particularly, the member must promptly notify FINRA and provide specified information about the security so that it can be added to TRACE.

⁴ FIF also asks for clarification as to whether any new reporting thresholds are proposed to be adopted, and whether there are unofficial time frame thresholds that members will be measured against. FINRA is not proposing any changes to the reporting time frames set forth in Rule 6730. FINRA currently monitors, and will continue to monitor, for member compliance with TRACE reporting obligations, including timeliness.

⁵ See Proposal at 42150.

⁶ *Id.*

FIF also requests clarity on whether, under the Proposal, FINRA expects members to make changes beyond correcting systems programmed to intentionally delay reporting. The Proposal includes supplementary material to provide additional color on the scope of the “as soon as practicable” requirement. Proposed Supplementary Material .03 provides that:

“Each member with a trade reporting obligation pursuant to paragraph (a) above for a TRACE-Eligible Security that is subject to dissemination must adopt policies and procedures reasonably designed to comply with the requirement that transactions in TRACE-Eligible Securities be reported ‘as soon as practicable’ by implementing systems that commence the trade reporting process at the Time of Execution without delay. Where a member has such reasonably designed policies, procedures and systems in place, the member generally will not be viewed as violating the ‘as soon as practicable’ requirement because of delays in trade reporting that are due to extrinsic factors that are not reasonably predictable and where the member does not purposely intend to delay the reporting of the trade.”

If a member currently has established policies and procedures reasonably designed to report “as soon as practicable” through the implementation of systems that commence the trade reporting process at the time of execution without delay, then further changes would not be required to comply with the proposed rule change.⁷

BDA requests modification of the language in the proposed supplementary material; particularly, with regard to the statement that members “generally will not be viewed as violating the ‘as soon as practicable’ requirement because of delays in trade reporting that are due to *extrinsic factors that are not reasonably predictable*.” BDA requests that FINRA instead state that members generally will not be viewed as violating the “as soon as practicable” requirement because of delays in trade reporting that are due to *the facts and circumstances of the transaction*. FINRA agrees that the facts and circumstances of a transaction is one of the factors that may be considered in determining whether a transaction was reported “as soon as practicable,” but does not believe a change to the proposed text is appropriate. Unpredictable extrinsic factors are, by their nature, outside of a member’s control and, as done in the equity rules, FINRA provides comfort to members that such occurrences will not result in the member being deemed to have violated the rule, so long as the member had in place reasonably designed policies, procedures and systems.⁸

⁷ FINRA also notes that paragraph (a)(4) of Rule 6730 currently provides that members have an ongoing obligation to report transaction information promptly, accurately and completely.

FIF members request a definition of “reasonably” as it is used in proposed Supplementary Material .03, which requires that members’ policies and procedures be *reasonably designed* to comply with the rule. An analysis of whether a member’s policies and procedures are “reasonably designed” to achieve any regulatory purpose, including in the area of TRACE reporting, is a case-by-case determination.

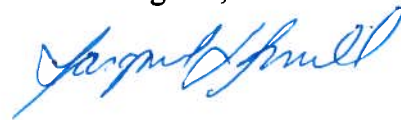
⁸ See e.g., FINRA Rule 6622 (Transaction Reporting on the FINRA ORF).

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On the contrary, the predictable and routine factors that BDA outlines (such as staff turnover, voice transactions, and trading in new security types), are factors members should consider in designing policies, procedures and systems. Among other things, policies, procedures and systems should be designed to accomplish TRACE reporting “soon as practicable” following execution of a transaction across the different categories of TRACE-Eligible Securities that a member may trade. As noted by BDA, trade reporting of certain security types may involve a greater degree of complexity and require a different amount of time than others (*e.g.*, reporting of transactions in Securitized Products). Members should implement processes across all product types traded by the firm to facilitate the prompt reporting of transactions without taking more time than is operationally necessary under the circumstances. FINRA does acknowledge that the particulars of what operationally is necessary to report a specific trade or type of trade legitimately may vary depending upon the circumstances.

FINRA believes that the foregoing fully responds to the issues raised by the comment letters. If you have any questions, please contact me at 202-728-8363.

Best regards,



Racquel L. Russell