

# FINANCIAL INFORMATION FORUM

September 20, 2022

**By electronic mail to [pubcom@finra.org](mailto:pubcom@finra.org)**

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

**Re: Regulatory Notice 22-14: FINRA Requests Comment on Proposed Trade Reporting Requirements for Over-The-Counter Options Transactions**

Dear Ms. Mitchell,

The Financial Information Forum (“FIF”)<sup>1</sup> appreciates the opportunity to comment on Regulatory Notice 22-14 (the “Regulatory Notice”) published by the Financial Industry Regulatory Authority (“FINRA”).<sup>2</sup> In the Regulatory Notice, FINRA solicits comment “on a proposal to establish a new trade reporting requirement for transactions in over-the-counter options on securities with terms that are identical or substantially similar to listed options.”<sup>3</sup> FINRA proposes “to require firms to report this information to FINRA on a daily basis (end-of-day) for regulatory purposes only.”<sup>4</sup>

As proposed in the Regulatory Notice, firms would be required to report a trade in an OTC option where:

- I. there is a listed option on the same underlying security (e.g., a single stock or an index), or the OTC option is overlying one or more U.S.-listed securities;
- II. the option type is a put, a call, or an option type related to a put or a call; and
- III. where the exercise style is one of the following: American, European, Asian, Cliquet or Binary.<sup>5</sup>

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<sup>1</sup> FIF ([www.fif.com](http://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 broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

<sup>2</sup> FINRA Regulatory Notice 22-14, “FINRA Requests Comment on Proposed Trade Reporting Requirements for Over-The-Counter Options Transactions” (June 22, 2022), available at <https://www.finra.org/sites/default/files/2022-06/Regulatory-Notice-22-14.pdf> (“Regulatory Notice 22-14”).

<sup>3</sup> Regulatory Notice 22-14, p. 1.

<sup>4</sup> Regulatory Notice 22-14, p. 1.

<sup>5</sup> Regulatory Notice 22-14, p. 3.

In this letter, FIF responds to the specific questions presented by FINRA in the Regulatory Notice. The following are some of the key points that we discuss below:

- In the first sentence of the Regulatory Notice, FINRA states that it proposes “to establish a new trade reporting requirement for transactions in over-the-counter options on securities with terms that are identical or substantially similar to listed options.”<sup>6</sup> Based on this guiding principle established by FINRA, FIF members recommend that OTC options transaction reporting be limited to OTC options that have the same strike price and expiration date as an exchange-listed option.
- While FINRA proposes to require reporting only for “transactions in over-the-counter options on securities with terms that are identical or substantially similar to listed options”,<sup>7</sup> the proposal would require reporting of Asian, Cliquet and Binary options, which are not traded as listed options except as customized FLEX options that do not have published quotes. These types of options rarely trade on-exchange. Based on the standard established by FINRA in the Regulatory Notice, Asian, Cliquet and Binary options should not be reportable.
- The Regulatory Notice expressly excludes “exotic options”.<sup>8</sup> Asian, Cliquet and Binary options typically are traded on exotic or structured options trading desks rather than on single-stock and index option desks. They are understood in the industry as exotic options. Accordingly, these options should not be reportable.
- Asian, Cliquet and Binary options also should be excluded from reporting because of their complexity.
- While the Regulatory Notice expressly excludes “exotic options”, FIF members request that FINRA provide additional clarity as to which types of options would be included in, and excluded from, OTC options reporting. This additional clarity is necessary to avoid discrepancies in how different firms report.
- FINRA should clarify the application of OTC options reporting to options on inter-listed securities and options on foreign securities that are not listed in the U.S. where the issuer has a U.S.-listed American depositary receipt (“ADR”). FIF members believe that these options should not be reportable because they are not “identical or substantially similar to listed options”. FINRA also should confirm that options on foreign stocks that are not inter-listed in the U.S. and where the issuer does not have a U.S.-listed ADR are not reportable.
- FINRA should provide additional guidance on reporting for forward start options, Delta One products and deconstructed options.
- Reporting of the order received time is not appropriate for a transaction reporting system. Since OTC options transactions typically are manually negotiated, the order received time typically would be simultaneous with the execution time.
- In the response to Question 4, FIF members provide recommendations relating to the reporting of specific data elements.

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<sup>6</sup> Regulatory Notice 22-14, p. 1.

<sup>7</sup> Regulatory Notice 22-14, p. 1.

<sup>8</sup> Regulatory Notice 22-14, p. 11.

- FIF members request clarification on whether allocations of OTC options transactions will be reportable and, if so, how they should be reported.
- FIF members are not able to provide cost estimates for implementing OTC options transaction reporting because of the lack of clarity at this point as to the scope of reporting that will be required. One complexity involved with reporting OTC options transactions as compared to reporting to the TRACE and TRF reporting systems<sup>9</sup> is that firms will need to consider the lifecycle events that must be reported for each OTC options transaction.
- FIF members are not able to provide time estimates for implementing OTC options transaction reporting because of the lack of clarity at this point as to the scope of reporting that will be required. Any implementation period should run from the date that FINRA publishes comprehensive Technical Specifications and FAQs for this reporting along with sample reporting scenarios for specific OTC options products.
- FINRA should provide a T+1 reporting timeframe, consistent with Large Options Positions reporting (“LOPR”).<sup>10</sup>
- FIF members do not agree with providing a time limitation for firms to correct reporting errors through the OTC options reporting system as imposing this limitation would require a manually intensive process to correct errors after T+5. This process would be burdensome for industry personnel and also for FINRA personnel. While LOPR, which is a position reporting system, has this T+5 limitation, FIF members are not aware of any transaction reporting system that has this limitation.
- The Consolidated Audit Trail (“CAT”) and electronic blue sheets (“EBS”) reporting systems do not require the reporting of option exercises,<sup>11</sup> and option exercises similarly should not be reportable to the proposed OTC options reporting system.
- FIF members support FINRA’s approach stated in the Regulatory Notice not to publicly disseminate the collected OTC options transactions data at this time.

**1. Why do firms trade OTC options where similar listed options are available? What considerations drive this determination?**

For transactions with customers, the decision of whether to trade an option on a listed market or OTC typically is driven by the customer and not the broker-dealer. There are a number of reasons that a customer would decide to trade an option OTC. FIF members would be happy to participate in a

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<sup>9</sup> See the further description below of the TRACE and TRF reporting systems.

<sup>10</sup> FINRA Rule 2360(b)(5)(A)(ii). Options Clearing Corporation, “Large Options Positions Reporting (LOPR), Reference Guide for LOPR Firms, Version 2.5 (October 2020), available at [https://ncuocblobdev.blob.core.windows.net/media/theocc/media/clearing-services/industry-services/lopr/lopr\\_ref\\_guide.pdf](https://ncuocblobdev.blob.core.windows.net/media/theocc/media/clearing-services/industry-services/lopr/lopr_ref_guide.pdf) (“LOPR Reference Guide”), p. 8.

<sup>11</sup> CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r17 (August 24, 2022), available at [https://catnmsplan.com/sites/default/files/2022-08/08.24.2022\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.0.0r17\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2022-08/08.24.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r17_CLEAN.pdf) (“CAT Reporting Technical Specifications”), pp. 149-150. FINRA Regulatory Notice 20-19, “Electronic Blue Sheet Submissions: FINRA and ISG Announce the Update of Blue Sheet Data Elements and Repositioning of Exchange Code Field” (June 23, 2020), available at <https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-19.pdf>.

separate discussion with FINRA about this topic. In this comment letter, FIF focuses on the scope and details of the proposed reporting requirements.

- 2. Is there a substantial amount of firm activity in smaller sized OTC options contracts that are not required to be reported to the LOPR system? Are there firms that trade OTC options, but never trade positions large enough to trigger LOPR obligations?**

Given the institutional nature of the OTC options market and the significant transaction costs that can be involved with executing an OTC options transactions (including legal documentation), it is unlikely that a firm would trade a substantial amount of OTC options and never trade positions large enough to trigger a LOPR obligation.

- 3. FINRA is proposing that firms would initially only be required to report transactions in OTC options with terms that are identical or substantially similar to listed options, including FLEX options, as explained above. Do commenters agree with this proposed scope? Please explain.**

***Reporting should be limited to OTC options that have the same strike price and expiration months as a listed option***

In the first sentence of the Regulatory Notice, FINRA states that it proposes “to establish a new trade reporting requirement for transactions in over-the-counter options on securities with terms that are identical or substantially similar to listed options.”<sup>12</sup> Based on this guiding principle established by FINRA, FIF members recommend that OTC options transaction reporting be limited to OTC options that have the same strike price and expiration date as an exchange-listed option.

***Asian, Cliquet and Binary options should not be subject to reporting because they are not identical or substantially similar to listed options***

While FINRA proposes to require reporting only for “transactions in over-the-counter options on securities with terms that are identical or substantially similar to listed options,”<sup>13</sup> the proposal would require reporting of Asian, Cliquet and Binary options, which are not traded as listed options except as customized FLEX options that do not have published quotes. These types of options rarely trade on-exchange. The Regulatory Need section of the Regulatory Notice provides,

A regulatory audit trail for transactions in OTC options that have terms that are identical or substantially similar to listed options would allow FINRA to better understand and review firm and customer trading activities, the relationship between transactions in OTC options and listed options (as well as other instruments) and provide information necessary to oversee for compliance with best execution and other FINRA rules.<sup>14</sup>

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<sup>12</sup> Regulatory Notice 22-14, p. 1.

<sup>13</sup> Regulatory Notice 22-14, p. 1.

<sup>14</sup> Regulatory Notice 22-14, p. 3.

This Regulatory Need discussion is not applicable to Asian, Cliquet and Binary options because these options do not have terms that are identical or substantially similar to listed options. Based on the standard set by FINRA for the types of options that should be reportable, and the discussion in the Regulatory Need section, Asian, Cliquet and Binary options should be excluded from OTC options reporting.

***Asian, Cliquet and Binary options should not be subject to reporting because they are exotic options***

In footnote 13, FINRA clarifies that exotic options will not be reportable. FINRA provides knock-in, knock-out, best of and worst of options as examples of exotic options that are not reportable.<sup>15</sup> Asian, Cliquet and Binary options typically are traded on exotic or structured options trading desks rather than on single-stock and index option desks. They are understood in the industry as exotic options. Based on the standard set by FINRA to exclude exotic options, these options should be excluded from OTC options reporting.

***Asian, Cliquet and Binary options should not be subject to reporting because of the complexity that would be involved in reporting these options***

Asian, Cliquet and Binary options also should not be subject to reporting because of their complexity (see next sub-section below). As discussed in the responses to Questions 6 and 7 below, firms will need to incur significant time and cost to implement reporting for OTC options. In addition, firms will need to incur significant costs to maintain separate position and transaction reporting for OTC options. Reporting for Asian, Cliquet and Binary options would further add to those costs. Accordingly, FIF members recommend that Asian, Cliquet and Binary options not be subject to OTC options reporting.

***Need for additional guidance if Asian, Cliquet and Binary options are included in OTC options reporting***

If Asian, Cliquet and Binary options are included in OTC options reporting, industry members will require additional guidance on how to report these types of options. For example, the Regulatory Notice contemplates that firms would report a Cliquet option as a single option when a Cliquet option is in fact a series of component options where each component option would need to be reported separately and then linked to the other component options through a linkage key. It also is not clear how reporting would work for the forward start component options of a Cliquet option. Are these forward start component options reportable at the time of the original trade and then subject to modification at the applicable forward start date? If so, how should the strike price be reported at the time of the original trade? Certain data elements that the Regulatory Notice applies to Cliquet options, such as Observation Day and Creation Date, do not appear to be applicable for these types of options. For Asian options, the Regulatory Notice contemplates monthly observation days, but Asian options can have daily or weekly observation days, and it is unclear how these would be reported. For certain Asian options (sometimes referred to as “fixed price” Asian options), the settlement value is based on the price of the underlying at the time of exercise, and the strike price is based on an averaging of the prices of the underlying during the option term. It is unclear whether these types of Asian options would be subject to reporting

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<sup>15</sup> Regulatory Notice 22-14, p. 11.

and, if so, how the strike price for these options should be reported at the time of the trade. For Binary options, there is no field provided to report the fixed payout amount that would apply if the option were to expire in-the-money.

If FINRA were to include Asian, Binary and Cliquet options in OTC options reporting, FIF members recommend that FINRA engage in discussions with industry members to identify the various types of transaction scenarios within each category and how these options should be reported. For each type of transaction, the stages of the transaction would need to be identified along with the data elements that would be reportable (and not reportable) at each stage and how each of these data elements would be reported.

***Request for additional clarity as to which types of OTC options transactions will be reportable***

FIF members request that FINRA provide a defined list of all option products that will be subject to reporting and also identify the option products that will not be subject to reporting. In footnote 13, FINRA clarifies that exotic options will not be reportable. FINRA provides knock-in, knock-out, best of and worst of options as examples of exotic options that are not reportable.<sup>16</sup> In the response to this Question 3, FIF members request further clarification on the scope of the proposed reporting requirement in relation to specific types of securities, transactions and products, including options on NMS stocks, forward start options, Delta One products, deconstructed options, and options based on a price differential of two underlying stocks or indexes. While this response focuses on specific OTC option products, FINRA should consider all types of OTC options products and provide guidance as to the applicability of the OTC reporting requirements to those products. This additional clarity is necessary to avoid discrepancies in how different firms report. In providing this guidance, FINRA should enumerate any differences in scope between LOPR and OTC options transactions reporting.

***Options on U.S.-listed securities, inter-listed securities and foreign securities that underly ADRs***

In the Regulatory Notice FINRA proposes that reporting would apply to an OTC option that overlies “one or more U.S.-listed securities.”<sup>17</sup> FIF members request confirmation that “U.S.-listed securities” is intended to cover an equity security that is an “NMS stock” as defined in Regulation NMS.<sup>18</sup> FIF members further request guidance as to whether reporting would apply to an option on an inter-listed security where the option is written on the non-U.S. security. An example of this type of transaction would be an option on the symbol TD listed on the Toronto Stock Exchange (“TSX”) where the settlement value is determined based on the stock price as reported on the TSX. FIF members do not believe that reporting should be required for these options because they are not “identical or substantially similar to listed options”.

FIF members further request guidance on whether reporting would apply to an option on a foreign-listed security where the issuer does not have shares listed in the U.S. but has an American depository receipt (“ADR”) listed in the U.S. An example of this type of transaction would be an option on the

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<sup>16</sup> Regulatory Notice 22-14, p. 11.

<sup>17</sup> Regulatory Notice 22-14, p. 3.

<sup>18</sup> 17 CFR 242.600(b)(55).

symbol NOKIA traded on Nasdaq Helsinki where the settlement value is determined based on the stock price as reported on Nasdaq Helsinki. FIF members do not believe that reporting should be required for these options because they are not “identical or substantially similar to listed options”. If reporting this type of option transaction is required, FIF members request guidance on how the underlying foreign symbol should be reported.

FIF members also request confirmation that an option on a foreign-listed security is not reportable if the security is not inter-listed in the U.S. and the issuer does not have a U.S.-listed ADR.

### ***Forward start options***

FIF members request that FINRA provide further guidance on reporting for forward start options. Are these options reportable? If these options are reportable, should these transactions be reported at the time of the original trade even though the strike price will be determined at a future date? If reporting is required at the time of the original trade, how should the strike price field be reported at that time? In addition, should a modification (or other event) be reported at the time that the strike price becomes known? FIF further discusses reporting of forward start options in the response to Question 4 below in relation to specific data elements to be reported.

### ***Delta One products***

In footnote 14 of the Regulatory Notice, FINRA writes that a Delta One product, “which is a product that combines the risk profile of both a put and a call, would be required to be deconstructed and separately reported as a put and a call transaction.”<sup>19</sup> FIF members are concerned that this could be interpreted to include forward and swap transactions and request clarification that FINRA is only intending to cover Delta One products that are expressly documented as combined put and call transactions.

### ***Deconstructed options***

The footnotes in the Regulatory Notice describe two scenarios where a firm is required to deconstruct an option transaction into components and report those components to FINRA. Footnote 14 provides that “a Delta One product, which is a product that combines the risk profile of both a put and a call, would be required to be deconstructed and separately reported as a put and a call transaction.”<sup>20</sup> FIF members request additional clarity on how the separate put and call transactions would be separately identified for reporting purposes.

Footnote 25 describes a second type of deconstruction. Footnote 25 provides that “FINRA intends to take an approach consistent with the LOPR requirement to deconstruct options on multiple underlying securities that do not meet the definition of conventional index option in FINRA Rule 2360(a)(48).”<sup>21</sup> FIF members request guidance on how the strike price should be reported for each individual option

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<sup>19</sup> Regulatory Notice 22-14, p. 11.

<sup>20</sup> Regulatory Notice 22-14, p. 11.

<sup>21</sup> Regulatory Notice 22-14, p. 12.

component. Should firms follow the guidance under LOPR where the strike price is reported as “999999999”?<sup>22</sup>

More generally, FIF members request confirmation that the scenarios described in footnotes 14 and 25 are the only scenarios that would require the reporting of deconstructed options. If there are other scenarios that would require the reporting of deconstructed options, FIF members request that FINRA provide specific guidance on those scenarios.

### ***Options valued based on a price differential between two underlying stocks or indices***

The settlement value for an option can be based on the difference in stock price between two listed equities. In footnote 13, FINRA clarifies that exotic options will not be reportable. FINRA provides knock-in, knock-out, best of and worst of options as examples of exotic options that are not reportable.<sup>23</sup> FINRA should clarify that options with a settlement value that is based on the difference in price between two listed underlying stocks or indices also would not be reportable.

- 4. Appendix A provides the fields and descriptions being contemplated under the proposal. Do commenters agree with the proposed fields? Why or why not? Please describe any challenges associated with the proposed fields.**

### ***Record Type***

In the Regulatory Notice FINRA provides for the reporting of the Record Type as a data element.<sup>24</sup> FIF members recommend that this field be renamed as the “Event Type” field because this field describes the type of options-related event that is being reported. FINRA identifies the record types as new trade, correction and exercise. The Commodity Futures Trading Commission (“CFTC”) rules for swap data reporting and the CFTC Technical Specification relating to swap data reporting (the “Swap Reporting Technical Specification”) provide for the following reportable event types: Trade; Novation; Compression or Risk Reduction Exercise; Early Termination; Clearing; Exercise; Allocation; Clearing and allocation; Credit event; Transfer; Corporate event; and Upgrade.<sup>25</sup> A Trade event in the Swap Reporting Technical Specification includes the creation or modification of a transaction.<sup>26</sup> Of these events, FIF members consider that the following events would potentially be applicable for OTC options reporting: Trade; Novation; Early Termination; Exercise; and Allocation. Trade events could be separated into Trade and Modification events. FINRA also should consider whether the determination of the strike price for a forward start option should be reported as a distinct event type. A correction could

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<sup>22</sup> NASD Notice to Members 07-03, “Reportable Options Positions, Options Position Limits and Exercise Limits” (January 2007), available at <https://www.finra.org/sites/default/files/NoticeDocument/p018288.pdf>, p. 9.

<sup>23</sup> Regulatory Notice 22-14, p. 11.

<sup>24</sup> Regulatory Notice 22-14, p. 8.

<sup>25</sup> 17 CFR Part 45, Appendix 1. “CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements”, Version 3.0 (September 30, 2021), available at [file:///C:/Users/meyerson/Downloads/Part43\\_45TechnicalSpecification093021CLEAN.pdf](file:///C:/Users/meyerson/Downloads/Part43_45TechnicalSpecification093021CLEAN.pdf) (“Swap Reporting Technical Specification”), p. 9. Industry participants also report security-based swaps based on the CFTC Technical Specification. Exchange Act Release No. 34-87780 (December 18, 2019), 85 FR 6270 (February 4, 2020), p. 9347.

<sup>26</sup> Swap Reporting Technical Specification, p. 9.



potentially apply to any of these event types, so FINRA should consider providing a separate field for a firm to signify that a previously reported event is being corrected. Increasing the size of an option transaction (sometimes referred to as “upsizing”) could be reportable as a modification or as a new transaction, depending on how a firm records the transaction in its books and records. For the reasons discussed in the response to Question 9 below, FIF members believe that option exercises should not be reportable. If option exercises are reportable, they presumably would require a distinct Event Type. FIF members request further clarification on whether allocations would be reportable and, if so, how allocations should be reported. This is discussed further in the next sub-section below.

FIF members do not believe that modification reports should be required in response to dividends and similar distributions. This is consistent with the approach adopted by the regulators for Consolidated Audit Trail (“CAT”) reporting in relation to orders. CAT FAQ B31 provides:

B31. Are order adjustments resulting from corporate actions such as dividends and distributions required to be reported to CAT?

Added: 11/15/2018

Adjustments to orders as the result of a corporate action are not required to be reported to CAT; however, if an order is canceled as a result of a corporate action, you must report the cancellation to CAT via a Cancel Event.<sup>27</sup>

FIF members believe that further guidance from FINRA will be required for reporting in response to other corporate transactions, such as the acquisition of the issuer of an underlying security.

### ***Allocations***

FIF members request clarification on whether allocations of OTC options transactions will be reportable and, if so, how they should be reported. The swap data reporting rules require reporting of the original transaction and the subsequent reporting of allocations.<sup>28</sup> Does FINRA similarly contemplate that firms will report the original trade and any subsequent allocations? If so, will FINRA require linkage between the original trade and any allocations? It is unclear whether the Regulatory Notice contemplates the reporting of the original transaction, subsequent allocations or both. FIF members request clarity on this point. If reporting of allocations will be required, the allocations should be reportable on T+1 relative to when the allocation is recorded by the firm (or T+2, if the allocation is recorded by the firm after 4:15 pm). This reporting timeframe is consistent with CAT.<sup>29</sup>

### ***Order Received Time***

In the Regulatory Notice FINRA provides for the reporting of the Order Received Time as a data element.<sup>30</sup> FIF members disagree with requiring trade reports to include the Order Received Time. Existing trade reporting systems like the FINRA/Nasdaq and FINRA/NYSE Trade Reporting Facilities for

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<sup>27</sup> Consolidated Audit Trail FAQ B31, available at <https://catnmsplan.com/faq>.

<sup>28</sup> 17 CFR 45.3(c).

<sup>29</sup> CAT Reporting Technical Specifications, pp. 291-292.

<sup>30</sup> Regulatory Notice 22-14, p. 8.

equity securities (the “TRF”) and the Trade Reporting and Compliance Engine for debt securities (“TRACE”) do not require the reporting of order times.<sup>31</sup> The swap reporting rules and the rules for reporting security-based swaps similarly do not require reporting of the order receipt time.<sup>32</sup> The order received time also is of limited informational value for OTC options transactions because these transactions typically involve manual negotiations where the order and execution times are effectively the same.

### ***Execution Timestamp***

The proposed data elements in the Regulatory Notice include an “Execution Timestamp” field. This field is defined as “the time and date of execution.”<sup>33</sup> This field should be generalized so it can cover novations, exercises and other reportable events as discussed above under “Record Type”. FIF members recommend that this field be renamed as “Event Timestamp” and described as “the time and date of the event being reported.”

The negotiation, documentation, execution and confirmation of an OTC options transaction often can involve multiple steps, and there is limited regulatory guidance as to how firms should determine the execution timestamp for this type of transaction. Accordingly, firms could have different procedures for recording execution timestamps. The documentation that is used for confirming an OTC options transaction, such as an ISDA confirmation, typically does not contain an execution timestamp. If FINRA intends to require reporting of this field, FIF members recommend that FINRA provide additional guidance as to how firms should determine the execution timestamp for an OTC options transaction.

### ***Single-sided vs. double-sided reporting***

The discussion of the Execution Timestamp field raises the question of whether reporting should be single-sided or double-sided. More specifically, if two broker-dealers enter into an OTC options transaction as counter-parties, should one or both broker-dealers be required to report the transaction to FINRA? Some reporting systems, such as swap, security-based swap and TRF reporting, generally provide for single-sided reporting.<sup>34</sup> Other reporting systems, such as TRACE, generally provide for double-sided reporting.<sup>35</sup> CAT generally provides for single-sided reporting for executed trades.<sup>36</sup> While it is not expressly stated in the Regulatory Notice, the Regulatory Notice appears to contemplate double-sided reporting. FIF members request that FINRA provide additional clarity on this issue.

### ***Trade ID***

The proposed data elements in the Regulatory Notice include a “Trade ID” field. This field is defined as “a unique value provided by the member shared by all reportable OTC option components of a single

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<sup>31</sup> See FINRA Rules 6380A(c), 6380B(c) and 6730(c).

<sup>32</sup> 17 CFR Parts 43 and 45. 17 CFR 242.901.

<sup>33</sup> Regulatory Notice 22-14, p. 8.

<sup>34</sup> 17 CFR 45.8. 17 CFR 242.901. FINRA Rules 6380A(b) and 6380B(b).

<sup>35</sup> FINRA Rule 6730(a).

<sup>36</sup> CAT Reporting Technical Specifications, pp. 125-131.

contract”.<sup>37</sup> FIF members assume that this field would apply only when reporting deconstructed options. FIF members request confirmation on this point. FIF members further request confirmation that this field would only be reportable when the Deconstructed Flag field is marked as “Y”. If this field would be reportable in other scenarios, FINRA should provide guidance as to the specific scenarios in which this field would be reportable.

The Trade ID field as proposed by FINRA is effectively an “aggregation” identifier. FIF members recommend that FINRA rename this field to reflect its function more clearly.

In addition to providing an aggregation identifier, it is also important that FINRA provide a field for a firm to report an individual reportable OTC option transaction. An example of this type of identifier is the “unique transaction identifier” (UTI) that is required for reporting swap transactions.<sup>38</sup> Another example is the branch/sequence number reported to the Nasdaq TRF.<sup>39</sup> FINRA also should add a record identifier field; a single transaction identifier could link to multiple events with distinct record identifiers (for example, trade and modification events with the same transaction identifier would have distinct record identifiers). More generally, it is important for FINRA to consider all potential transaction scenarios and workflows when determining the types of identifiers that should be reported.

### ***Underlying***

As discussed in the response to Question 3 above, FIF members request guidance on whether OTC options on foreign securities that are inter-listed in the U.S. would be reportable and, if so, how the Underlying field and the Option Strike Price field should be reported. FIF members also request guidance on whether an option on a foreign security would be reportable if the security is not listed in the U.S. but the issuer has a U.S.-listed ADR. If these options are reportable, FIF members request guidance on how the Underlying and Option Strike Price fields should be reported. FIF members also request confirmation that reporting is not required for an option on a foreign security where the security is not listed in the U.S. and the issuer does not have a U.S.-listed ADR.

### ***Option Strike Price***

The proposed data elements in the Regulatory Notice include an “Option Strike Price” field. This field is defined as “the level or price at which an option may be exercised.”<sup>40</sup> FIF members request guidance on how to report when the option strike price is not known at the time of a transaction. This can occur for a forward start option. This also can occur with certain Asian options where the strike price is determined over a future period of time and for Cliquet options in relation to subsequent options in the series. What would be reportable at the time of the original transaction? What would be reportable at the time the

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<sup>37</sup> Regulatory Notice 22-14, p. 8.

<sup>38</sup> 17 CFR 45.5. Swap Reporting Technical Specification, p. 30. Industry participants also report security-based swaps based on the CFTC Technical Specification.

<sup>39</sup> Nasdaq FIX for Trade Reporting Programming Specification, Version 2018-02 (May 2018), available at <http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/Trade-Reporting-FIX-Spec-2018-02.pdf>, p. 42.

<sup>40</sup> Regulatory Notice 22-14, p. 8.

strike price is determined? Would the fixing of a previously undetermined strike price, if reportable, be reported through a modification event, a specific event used to report the fixing of a strike price, or another event type? Should there be a permitted value in this field to report that the option strike price is to be determined? The CFTC rules for swap data reporting provide, “where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available.”<sup>41</sup>

### ***Exercise Style***

The LOPR Reference Guide provides for reporting of two possible exercise styles (American and European)<sup>42</sup>, while the Regulatory Notice provides for reporting of five possible exercise styles (American, European, Asian, Cliquet and Binary).<sup>43</sup> For the reasons discussed above, FIF members propose that OTC options transactions reporting be limited to American and European options.

### ***Settlement Style***

The proposed data elements in the Regulatory Notice include a “Settlement Style” field. This field is defined as “how the option is settled upon exercise – i.e., whether physically or cash settled.”<sup>44</sup> In some cases either or both parties to a transaction has the choice of whether to settle an option on a physical or cash basis. To address this scenario, FIF members recommend that FINRA include a hybrid settlement style value for this field. There also are scenarios where a transaction contract provides for physical settlement but the parties subsequently agree to cash settlement at the time of settlement. FIF members request guidance on how this scenario should be reported.

### ***Observation Day***

The proposed data elements in the Regulatory Notice include an “Observation Day” field. This field has the following description: “The date of each month on which the closing price of the underlying index is observed for the purpose of calculating the exercise settlement value (only required for Asian and Cliquet options).”<sup>45</sup> FIF members recommend that this field be removed because this field would only apply for Asian options, and FIF members have recommended that Asian options not be subject to reporting. If Asian options are reportable, FINRA should provide guidance on how to report when the observation days are not monthly. It is also unclear for Asian options whether this field would apply only for trades where the observation days are used for determining the exercise settlement value (sometimes referred to as “fixed strike” options) or also would apply for trades where observation days are used for determining the strike price (sometimes referred to as “fixed value” options). FIF members do not believe that this field would be applicable for Cliquet options.

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<sup>41</sup> 17 CFR Part 45, Appendix 1.

<sup>42</sup> LOPR Reference Guide, p. 21.

<sup>43</sup> Regulatory Notice 22-14, p. 8.

<sup>44</sup> Regulatory Notice 22-14, p. 8.

<sup>45</sup> Regulatory Notice 22-14, p. 8.

### ***Capped Return***

The proposed data elements in the Regulatory Notice include a “Capped Return” field. This field has the following description: “The capped return of the option contract is the maximum monthly return (only required for Cliquet options).”<sup>46</sup> FIF members recommend that this field be removed because FIF members do not believe that Cliquet options are identical or substantially similar to listed options and because of the complexity that would be involved with reporting these types of options.

### ***Creation Date***

The proposed data elements in the Regulatory Notice include a “Creation Date” field. This field has the following description: “The creation date of a Cliquet option is the first observation date on which the subsequent performance is based (only required for Asian and Cliquet options).”<sup>47</sup> FIF members recommend that this field be removed because this field would only apply for Asian options, and FIF members do not believe that Asian options are identical or substantially similar to listed options. FIF members do not believe that this field would be applicable for Cliquet options based on the description provided by FINRA because observation days would not apply for Cliquet options. FIF members consider the field name of “Creation Date” to be potentially confusing because an option could be considered “created” at the time of the original option transaction as opposed to the first observation day. FIF members recommend that FINRA rename this field to another value such as the “first observation day”. A separate forward start date field could be reportable for forward start options.

### ***Size Type, Trade Size and Trade Currency***

FIF members are familiar with OTC equity option contracts that are based on shares (for equity options) or units (for index options). FIF members are not familiar with OTC equity option contracts that are based on currency. FIF members request further clarification from FINRA on this point.

### ***Deconstructed Flag***

The proposed data elements in the Regulatory Notice include a Deconstructed Flag to report “if the trade is part of a deconstructed option contract”.<sup>48</sup> As discussed above, in footnotes 14 and 25, FINRA identifies two scenarios where firms would be required to report transactions that are deconstructed from a larger transaction. FIF members request confirmation that these are the only two scenarios where the Deconstructed Flag would be reported as “Y”. If that is not the case, FIF members request that FINRA provide specific guidance as to the scenarios where the Deconstructed Flag would be reportable.

While FINRA proposes a Trade ID field to report “a unique value provided by the member shared by all reportable OTC option components of a single contract”,<sup>49</sup> it is also important to have separate

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<sup>46</sup> Regulatory Notice 22-14, p. 8.

<sup>47</sup> Regulatory Notice 22-14, p. 8.

<sup>48</sup> Regulatory Notice 22-14, p. 9.

<sup>49</sup> Regulatory Notice 22-14, p. 8.

identifiers for the transactions that are deconstructed from the larger transaction. In this way, a subsequent reportable event can be linked to the specific component transaction.

**5. Are there any fields that should not be included? Is there any information that was not included in Appendix A that should be collected? Please be specific.**

Please see the response to Question 4.

**6. What costs would be associated with the proposed OTC options reporting requirements? Please be specific.**

**a. What costs would be incurred by firms in connection with reporting the specified information?**

**b. What operational or other challenges would be associated with implementing the proposal?**

FIF members are not able to provide cost estimates for implementing OTC options transaction reporting because of the lack of clarity at this point as to the scope of reporting that will be required. When the scope of the proposed reporting has been further clarified, FIF members will be in a better position to provide cost projections.

In contrast to the CAT Transaction Reporting System, which represents an enhancement to the prior Order Audit Trail System, the OTC options transactions reporting system will not represent an enhancement to an existing reporting system. Instead, the OTC options transaction reporting system will require the reporting of transactions that have not previously been reported. This adds to the complexity for firms to implement this requirement. In particular, firms will need to ensure that their systems of original entry for these transactions capture all of the data elements that must be reported, and in the proper format. Firms also will need to consider each type of option transaction that must be reported and the data elements that are required for those transactions. Firms also will need to consider the lifecycle events that must be reported for each option transaction. In this regard, reporting for OTC options will be more complex than reporting for TRACE or the TRF. In addition to modifying systems of original entry, firms will need to modify downstream operational and reporting systems to ensure that all necessary data elements are received and processed and then properly transmitted to downstream systems and ultimately reported. Firms also will need to reconcile their LOPR and OTC options transactions reporting. If end-of-day reporting is required (as opposed to T+1, which is the timeframe for LOPR reporting), this will further add to the implementation and ongoing operational costs that firms must incur.

Personnel involved in these efforts will include employees involved in trading, trade support, operations, legal, compliance, surveillance, business analysis, project management, development, testing and implementation. In addition to development and implementation costs, firms will incur ongoing costs for operations, testing and supervisory and compliance oversight, including the development, modification and ongoing review of surveillance reports.

**7. How much time would firms need to implement necessary technological changes to comply with the proposed end-of-day reporting requirement? Do firms currently have systems in place that could be leveraged to assist in collecting and reporting the required information?**

FIF members are not able to provide time estimates for implementing OTC options transaction reporting because of the lack of clarity at this point as to the scope of reporting that will be required. When the scope of the proposed reporting has been further clarified, FIF members will be in a better position to provide feedback on the required implementation timeframe. Any implementation period should run from the date that FINRA publishes comprehensive Technical Specifications and FAQs for this reporting along with sample reporting scenarios for specific OTC options products. In setting an implementation timeframe, FINRA should take account of the various complexities involved in reporting these transactions, as discussed in the response to Question 6 above.

FINRA should further take account of the fact that firms will need to allocate their finite internal regulatory technology resources to implement other regulations (and regulatory amendments) that have been recently adopted, proposed or announced for proposal by the Commission, FINRA and other regulators. At least two recent regulatory proposals by the Commission, if adopted, will require firms to allocate significant technology resources for OTC equity derivatives reporting.<sup>50</sup> More generally, FIF members are concerned about the significant number of regulations that have been recently adopted, proposed or announced for proposal by the Commission, FINRA and other regulators, as firms will be required to allocate finite technology resources to competing regulatory implementations. Regulations adopted by the Commission that firms are in the process of implementing, or will need to implement, include CAT transaction reporting,<sup>51</sup> CAT Customer and Account Information System reporting,<sup>52</sup> the Market Data Infrastructure Rule,<sup>53</sup> and Publication or Submission of Quotations Without Specified Information.<sup>54</sup> Firms also will need to implement proposed Commission regulations (if adopted) relating to reporting of securities loans,<sup>55</sup> reporting of short positions and short activity,<sup>56</sup> the expansion of dealer regulation,<sup>57</sup> the expansion of ATS regulation to cover systems that trade U.S. Treasury and agency securities and to cover an expanded set of trade execution models,<sup>58</sup> the expansion of

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<sup>50</sup> Exchange Act Release No. 34-93784 (December 15, 2021), 87 FR 6642 (February 14, 2022) (position reporting of large security-based swap positions). Securities Act Release No. 33-11030 (February 10, 2022), 87 FR 13625 (March 10, 2022) (proposed amendments to Schedule 13D to clarify disclosure requirements regarding derivative securities).

<sup>51</sup> CAT Reporting Technical Specifications.

<sup>52</sup> "CAT Reporting Customer & Account Technical Specifications for Industry Members", Version 2.0 r9.1 (May 5, 2022), [https://catnmsplan.com/sites/default/files/2022-05/05.05.22-Full CAIS Technical Specifications 2.0 R9.1 CLEAN.pdf](https://catnmsplan.com/sites/default/files/2022-05/05.05.22-Full_CAIS_Technical_Specifications_2.0_R9.1_CLEAN.pdf).

<sup>53</sup> Exchange Act Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021), and Exchange Act Release No. 34-90610A (May 24, 2021) (technical corrections).

<sup>54</sup> Securities Act Release No. 33-10842 (September 16, 2020), 85 FR 68124 (October 27, 2020).

<sup>55</sup> Exchange Act Release No. 34-93613 (November 18, 2021), 86 FR 69802 (December 8, 2021). Exchange Act Release No. 34-94315 (February 25, 2022), 87 FR 11659 (March 2, 2022).

<sup>56</sup> Exchange Act Release No. 34-94313 (February 25, 2022), 87 FR 14950 (March 16, 2022).

<sup>57</sup> Exchange Act Release No. 34-94524 (March 28, 2022), 87 FR 23054 (April 18, 2022).

<sup>58</sup> Exchange Act Release No. 34-94062 (January 26, 2022), 87 FR 15496 (March 18, 2022) ("ATS Amendments Rule Proposal").

Regulation SCI to cover certain systems that trade U.S. Treasury and agency securities,<sup>59</sup> the shortening of the securities transaction settlement cycle,<sup>60</sup> electronic recordkeeping requirements,<sup>61</sup> and the centralized clearing of transactions in U.S. Treasury securities.<sup>62</sup> The Commission’s most recent Agency Rule List identifies additional rulemaking to be proposed by the Commission, including rules relating to equity market structure modernization, digital engagement practices for broker-dealers, expanding clearing of government securities, cybersecurity, and amendments to Regulation ATS to promote pre-trade transparency across asset classes.<sup>63</sup> There also are a number of rules recently adopted or proposed by FINRA, the Municipal Securities Rulemaking Board (“MSRB”), and the Federal Reserve Board (“FRB”) that currently require or will require significant technology resources for implementation. These include recently-adopted FINRA rules to enhance TRACE reporting obligations for U.S. Treasury securities,<sup>64</sup> expand TRACE to cover foreign sovereign bonds,<sup>65</sup> and require the identification of corporate bond trades that are part of a larger portfolio trade,<sup>66</sup> as well as a rule adopted by the FRB to expand TRACE reporting to certain depository institutions (which impacts the reporting obligations of broker-dealer counter-parties).<sup>67</sup> In addition to these recently-adopted rules, FINRA has proposed new order routing disclosure requirements for firms routing orders in OTC equity securities,<sup>68</sup> and FINRA and the MSRB have proposed changes to the reporting obligations for trades in corporate, agency and municipal securities.<sup>69</sup> Firms also must allocate resources to comply with rule changes by exchanges and other self-regulatory organizations, such as a recent proposal discussed by an options exchange that would require firms to conduct more frequent oversight of the status of customers as professional customers. The above is just a partial listing of recent and proposed regulations that will require firms to allocate finite technology resources. When setting an implementation time period for the proposed OTC options transactions reporting, FINRA should take account of any conflicting regulatory implementation obligations to which firms are subject as well as the complexity of the proposed OTC options transaction reporting.

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<sup>59</sup> ATS Amendments Rule Proposal.

<sup>60</sup> Exchange Act Release No. 34-94196 (February 9, 2022), 87 FR 10436 (March 9, 2022).

<sup>61</sup> Exchange Act Release No. 34-93614 (November 18, 2021), 86 FR 68300 (December 1, 2021).

<sup>62</sup> Exchange Act Release No. 34-95763 (September 14, 2022).

<sup>63</sup> Commission, “Agency Rule List – Spring 2022”,

[https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235).

<sup>64</sup> Exchange Act Release No. 34-95635 (August 30, 2022).

<sup>65</sup> Exchange Act Release No. 34-95465 (August 10, 2022).

<sup>66</sup> Exchange Act Release No. 34-94635 (March 4, 2022).

<sup>67</sup> 86 FR 59716 (October 28, 2021).

<sup>68</sup> FINRA Regulatory Notice 21-35, available at <https://www.finra.org/sites/default/files/2021-10/Regulatory-Notice-21-35.pdf>.

<sup>69</sup> FINRA Regulatory Notice 22-17, available at <https://www.finra.org/sites/default/files/2022-08/Regulatory-Notice-22-17.pdf>. MSRB Notice 2022-07, available at <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2022-07.ashx??n=1>.



**8. FINRA is proposing that firms be required to report trades at the end of the trade day with corrections permitted through T+5. Is this a feasible timeline for reporting OTC options transactions and corrections to FINRA? Why or why not?**

***Timeline for reporting***

In the Regulatory Notice FINRA proposes that firms report on a daily end-of-day basis.<sup>70</sup> This is in contrast to large options positions reporting (LOPR), which is required on a T+1 basis.<sup>71</sup> While TRF reporting and TRACE reporting (for certain categories of bonds) are on a real-time or near real-time basis, OTC options transactions are more complex than transactions reported to the TRF or TRACE because OTC options transactions are typically manually negotiated, involve customized terms, and represent a continuing relationship. TRF and TRACE reporting also do not require reporting of customer names and addresses, in contrast to the proposed OTC options reporting. Swap reporting involves real-time public reporting of certain transaction-related data (Part 43)<sup>72</sup> and T+1 reporting of additional transaction-related data (Part 45).<sup>73</sup> The data elements that are reportable on T+1 and not publicly disseminated include counter-party identifiers.<sup>74</sup> Counter-party identifiers similarly are reportable for the proposed OTC options reports. The Commission permits industry participants to report security-based swaps based on the CFTC timelines for reporting swaps.<sup>75</sup>

FIF members support T+1 reporting for OTC options transactions, at least initially. At a minimum, T+1 reporting is necessary for trades executed after 4:15 pm ET, including “Rule 15a-6” scenarios where a transaction is executed overseas (for example in Asia) and personnel in the U.S. do not become aware of the transaction until the following morning U.S. time. In determining whether to require end-of-day reporting for OTC options, FINRA should evaluate the incremental value of having OTC options transactions reported end-of-day as opposed to T+1 and balance that against the costs to industry participants and the increased risk of transactions being incorrectly reported.

***Time for reporting allocations***

As discussed above, it is unclear whether allocations will be reportable to the OTC options transaction reporting system. Reporting to TRACE and the TRF does not require identification of the accounts to which a trade has been allocated. For transactions with customers, TRACE and TRF reporting only require reporting of the fact that the trade was with a customer. If FINRA will require a firm to report the accounts to which an OTC options transaction has been allocated, FINRA should follow the CAT reporting timeframes. In CAT, allocations recorded by a firm during the trading day must be reported on T+1, with “T” representing the date that the firm records the allocation in the firm’s books and records. For CAT reporting, if an allocation is recorded by a firm after 4:15 pm, the allocation is reportable by the

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<sup>70</sup> Regulatory Notice 22-14, p. 1.

<sup>71</sup> LOPR Reference Guide, p. 8.

<sup>72</sup> 17 CFR Part 43.

<sup>73</sup> 17 CFR Part 45.

<sup>74</sup> 17 CFR 43, Appendix A. 17 CFR Part 45, Appendix 1.

<sup>75</sup> Exchange Act Release No. 34-87780 (December 18, 2019), 85 FR 6270 (February 4, 2020), p. 6347.

firm by 8 am on the 2<sup>nd</sup> day after the allocation was recorded.<sup>76</sup> FINRA should adopt a similar approach for OTC options transaction reporting if allocations are reportable.

### ***Time limit for corrections***

The Regulatory Notice provides that “firms would be permitted to correct previously reported information up to five days following trade date (T+5), consistent with the correction timeframe in the LOPR system.”<sup>77</sup> FIF members do not agree with providing a time limitation for firms to correct reporting errors through the OTC options reporting system as it would presumably require a manually intensive and burdensome process to correct errors after T+5. This process would be burdensome for industry personnel and also for FINRA personnel. The CAT, TRF and TRACE reporting systems do not provide this time limitation, and FIF members are not aware of any current trade reporting system that has this limitation. While this T+5 limitation is problematic for LOPR (which is a position reporting system), this limitation would be far more problematic for OTC options reporting at the transaction level. If FINRA intends to adopt this T+5 limitation, FIF members request guidance on what steps, if any, a firm would need to take if it discovers an error in a report that was submitted with an event date that is more than five trading days prior to the error discovery date.

The reference in the Regulatory Notice to “trade date” quoted in the preceding paragraph should be generalized to refer to the “event date” since the reported event could be a modification or other event that is not a trade event.

### **9. FINRA is proposing that firms be required to report when OTC option trades are exercised. Do firms anticipate any challenges with respect to this aspect of the proposal? Please explain.**

Option exercises are not transactions and therefore should not be reportable. CAT and electronic blue sheets do not require the reporting of option exercises,<sup>78</sup> and option exercises similarly should not be reportable to the proposed OTC options reporting system. FIF members note that changes to LOPR-reportable positions incorporate option exercises.

If FINRA determines to require reporting of OTC option exercises, FIF members have the following comments:

- Reporting option exercises will require additional development work and additional ongoing cost.
- A field should be added to report the exercised quantity for a partial exercise.
- More generally, FIF members request that FINRA specify which data elements would be reportable for an option exercise.

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<sup>76</sup> CAT Reporting Technical Specifications, pp. 291-292.

<sup>77</sup> Regulatory Notice 22-14, p. 3.

<sup>78</sup> CAT Reporting Technical Specifications, pp. 149-150. FINRA Regulatory Notice 20-19, “Electronic Blue Sheet Submissions: FINRA and ISG Announce the Update of Blue Sheet Data Elements and Repositioning of Exchange Code Field” (June 23, 2020), available at <https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-19.pdf>.

- Industry members currently are required to report physically-settled OTC option exercises to the TRF.<sup>79</sup> FIF members request confirmation that reporting of these same exercises also would be required for OTC options reporting. FIF members also request confirmation that the reporting of exercises for OTC options reporting would apply for both physically-settled and cash-settled options (in contrast to the TRF reporting, which only applies for physically-settled exercises).

**10. FINRA is proposing that firms would initially be required to submit OTC option trades in batch form on a daily basis through fileX, FINRA’s data collection platform. Do firms anticipate any challenges with this reporting method? Please be specific.**

FIF members do not have any specific comments relating to the fileX system. FIF members request that FINRA provide additional guidance as to the feedback (such as acceptances, rejections and error notifications) that firms will receive from FINRA in response to the files that firms submit to the OTC options transaction reporting system.

**11. How will the proposed reporting requirements impact market participants’ behavior in the OTC options market? Might market participants alter their behavior due to the proposed requirements? If so, how?**

Please see the response to Question 12 below.

**12. FINRA is proposing that the information gathered would be used solely for regulatory purposes at this time and would not be publicly disseminated on a disaggregated basis. FINRA may explore providing public transparency once FINRA has gained experience with the data. FINRA is interested in views on whether firms, investors and other market participants would benefit from public transparency regarding OTC options transactions.**

In the Regulatory Notice, FINRA clarifies that it is not proposing “to publicly disseminate the collected OTC options transaction data at this time.”<sup>80</sup> FIF members support this approach. In contrast to the pricing of a listed OTC transaction, the pricing of an OTC options transaction can vary based on factors beyond the economic terms of the option. These factors include the credit of the counter-party, the margin arrangements that are agreed between the parties, the amount and quality of the collateral, and third-party guarantees. This means that public dissemination of individual OTC options transactions could provide incomplete and misleading data to the market. Accordingly, public dissemination should only apply for transactions that are cleared through a central counter-party.

Public dissemination also would enable market participants to identify the positions of specific customers, resulting in adverse market impact for end customers. This could result in customers reducing their trading activity in the U.S. and increasing their trading activity in other jurisdictions. This also creates a regulatory arbitrage in the U.S. because banks that transact in OTC options with qualified

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<sup>79</sup> FINRA, “Trade Reporting Frequently Asked Questions”, available at <https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq>, FAQ 602.3.

<sup>80</sup> Regulatory Notice 22-14, p. 3.

investors would not be subject to this reporting requirement.<sup>81</sup> For TRACE reporting, the Federal regulators and FINRA are reducing the regulatory arbitrage between banks and broker-dealers by requiring that certain depository institutions report trades in U.S. Treasury and agency securities to TRACE.<sup>82</sup> The Regulatory Notice, in contrast, increases the regulatory arbitrage between banks and broker-dealers because, as proposed, broker-dealers would be obligated to report OTC options transactions to FINRA and banks would not be subject to this obligation. This regulatory arbitrage would become a much more significant concern if OTC options reports were publicly disseminated.

Public dissemination of OTC options transactions also will make it more costly for broker-dealers to establish hedges for the OTC options positions that they assume. This will raise the cost of these transactions to the end customer. If FINRA intends, at some point in the future, to propose public dissemination of OTC options transactions, this should be proposed through a separate Regulatory Notice. A proposal of this type also should solicit comment from institutional customers, as certain institutional customers would have significant confidentiality and other concerns about this type of proposal.

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FIF appreciates the opportunity to comment on Regulatory Notice 22-14. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com).

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

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<sup>81</sup> Regulatory Notice 22-14, p. 12.

<sup>82</sup> See, for example, "Federal Reserve Depository Institution Reporting to TRACE", available at [https://www.finra.org/filing-reporting/trace/federal-reserve-depository-institution-reporting#:~:text=Beginning%20Thursday%2C%20September%201%2C%202022,and%20Compliance%20Engine%20\(TRACE\)](https://www.finra.org/filing-reporting/trace/federal-reserve-depository-institution-reporting#:~:text=Beginning%20Thursday%2C%20September%201%2C%202022,and%20Compliance%20Engine%20(TRACE).).