



Submitted Electronically to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Vanessa Countryman  
Acting Director  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street NE,  
Washington, DC 20549–1090

***Re: Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service [Release No. 34–85488; File No. SR–FINRA– 2019–008]***

Dear Ms. Countryman,

SIFMA<sup>1</sup> is pleased to respond to this request for comment (“RFC”) on proposed rules that would implement a new issue reference data service for corporate bonds that would be administered by FINRA (“Service”), generally in line with a recommendation from the SEC’s Fixed Income Market Structure Advisory Committee (“FIMSAC”). SIFMA supports the mission of the FIMSAC, and some of its members participate on the FIMSAC. SIFMA similarly supports the goals and conceptual basis of the proposed Service. Our comments on the specifics of the RFC are outlined in this letter.

**1. Requirement that all data elements be reported for new issues prior to the first transaction in the security**

SIFMA members are concerned that the proposal simultaneously adds new data submission requirements and shortens the timeframe under which the data needs to be submitted. This creates a risk that firms will not be able to meet this new timeline because final pricing terms are generally not available until pricing is complete, and it can be a challenge to quickly report all of the required information given the manual and operationally intensive nature of the submission process.

SIFMA would support the alternative approach considered by FINRA – that certain key information (e.g., the fields currently required to set up a security on TRACE) be reported before the first trade, and a 60-minute window be available for the remaining information.<sup>2</sup> A 60 minute window would allow sufficient time for a lead underwriter to have a final set of pricing documents and related information and to upload the information to FINRA in a timely and accurate manner. It also bears noting that underwriters

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See page 13983 of the proposed rule

may have a number of deals pricing at the same time or within close proximity, which could make immediate submission of information difficult if not impossible.

SIFMA does not believe that this alternative approach would have a material negative impact on information availability to the market, as all required information would be available within an hour of the first trade at worst, and it would allow for efficient functioning of trading markets for newly issued securities.

A related concern involves instances where a FINRA member wishing to trade in the secondary market encounters a security that was not set up on TRACE at issuance but should have been. It currently is challenging for our members to provide all of the set up data required by the current rules in a timely manner in these situations. If FINRA expects a dealer to supply each of the fields outlined in the proposal for a bond for which it was not involved in underwriting – something FINRA should clarify -- we believe it will be challenging for firms to submit this information to FINRA within 15 minutes. We believe that, at a minimum, greater leniency regarding set up timing is appropriate.

## **2. Mechanism of Submission**

Will the new mandatory fields be added to the TRACE new-issue form or will a different form be created? Footnote 9 references codifying in the rules the fields that are currently required but does not speak to the newly required fields.<sup>3</sup> Expanding the current form would appear to be the simplest option, albeit noting the challenges in submitting all data elements prior to the first transaction in the security, as covered in section 1 above.

Second, given the additional fields that member firms will be required to submit, it is incumbent upon FINRA to provide for greater ease of supplying this information. At a minimum, FINRA should modernize the entry forms to:

- (1) auto-populate fields that will typically have the same answer (PIK indicator - No, perpetual maturity indicator – No, Reg S indicator – No) so that firms generally will not need to touch these fields (unless the security has that feature, which for these items is expected to be rare);
- (2) allow firms to upload multiple tranches at once; and
- (3) allow firms to edit the new issue form – to add additional data points determined at a later time, and to correct mistakes through an online process instead of a phone call.

All that said, given the additional data proposed to be required by this rule, the ability to use an API becomes much more important, if not necessary, to deliver this information in a more efficient, timely, and accurate manner. FINRA should expedite the exploration of business requirements for the development of such an interface.

*Note: Items 3-7 below will discuss a number of issues with specific data fields. At the outset, we'd like to make clear our understanding that the proposed changes to rules and the discussion surrounding them in the RFC in no way impact the current definition of "TRACE eligible security".*

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<sup>3</sup> See footnote 9. "As part of this proposal, FINRA would codify in Rule 6760 the specific fields that have been deemed necessary under current Rule 6760(b) and therefore are mandatory for successful submission of the TRACE New Issue Form"

### **3. Issue Date/First Settlement Date**

Our members typically consider the issue date to be equivalent to the first settlement date, but it does not make sense that FINRA would expect the same date to be submitted for two different fields (these dates might differ in a reopening, but in that instance, the bond should already be eligible on TRACE).

Current TRACE set up involves reporting of a pricing date. Does FINRA intend that the pricing date continue to be reported? If so, this should be clarified.

Notwithstanding the above, SIFMA members report that at times there has been confusion where some FINRA-member firms take the view that “Issue Date” is “First Trade Date” rather than “First Settlement Date”. FINRA should take this opportunity to clarify the meaning and intended usage of these fields.

### **4. Currency**

Given that non-USD securities are not TRACE reportable, we believe this field applies to the new issuance form only and that no new trade reporting is required for non-USD securities. However, given that non-USD securities are not reportable, this field appears to be unnecessary.

### **5. Rating**

FINRA should explain the intended usage of the rating field. How should firms treat securities with ratings from multiple NRSROs? It may make sense for firms to include all public ratings obtained from NRSROs by the issuer – however it is not clear if firms will be able to submit multiple data points for this field. If only one rating may be submitted, what happens if a security is split-rated - should the lowest or highest rating be reported? Finally, SIFMA members interpret this requirement as only relating to publicly available ratings at the time of pricing, and not subsequent changes to those ratings or ratings issued at some point in the future after a deal is set up on TRACE.

### **6. ISINs and CUSIPs**

Not all USD securities have CUSIPs, and to set up one of these types of securities today firms must obtain a FINRA ID. Given the introduction of the ISIN field, it seems like this process would become largely unnecessary, as either a CUSIP or an ISIN should be available in most cases. We suggest that dealers should only be required to obtain a FINRA ID if neither a CUSIP nor an ISIN were available.

### **7. First Coupon Period Type**

FINRA should clarify the meaning of this field and explain how it differs from Coupon Frequency.

### **8. Fee Structure**

FINRA should provide evidence regarding the cost to produce the data to justify the fees that it intends to charge under the proposal. Under Rule 7730, FINRA would make the corporate bond new issue reference data available to any person or organization for a fee of \$250 per month for internal purposes only, and for a fee of \$6,000 per month where the data is retransmitted or repackaged for delivery and dissemination outside the organization. FINRA states in the proposal that the proposed fees would price

the corporate bond new issue reference data service as a utility, using cost plus margin pricing. However, FINRA has provided no data to support its assertions.

Section 15A(b) of the Exchange Act<sup>4</sup> imposes the same obligation on FINRA to justify fees as that the corresponding statutory requirement that the Commission has considered recently with respect to exchanges under Section 6 of the Exchange Act.<sup>5</sup> In a March 2019 Order, the Commission disapproved a proposed fee of the BOX Exchange, noting the Commission "cannot simply accept what the SRO has done, and cannot have an unquestioning reliance on an SRO's representations in a proposed rule change."<sup>6</sup> And in an October 2018 order, the Commission set aside exchange market data fees, finding that the exchanges failed to provide convincing evidence that the fees satisfied statutory requirements.<sup>7</sup> Without knowing "cost" or "margin" the Commission cannot ascertain whether the proposed fees represent "cost plus margin pricing." Consistent with those orders, FINRA must provide evidence for the Commission to independently determine whether the fees are fair, equitable, reasonable and not unfairly discriminatory.

### **9. Effective Date**

Our members believe that this rule should be finalized, subject to the clarifications discussed above, with an effective date no sooner than the later of the enhancements described in item 2 above or 6-12 months from the time of finalization, in order to provide our members with time to develop the necessary systems.

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Please contact me with any questions or for more information at [ckillian@sifma.org](mailto:ckillian@sifma.org) or 212-313-1126.

Sincerely,



Christopher B. Killian  
Managing Director  
Securitization and Corporate Credit

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<sup>4</sup> 15 U.S.C. 78o.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> See Securities Exchange Act Release No. 85459; File Nos. SR-BOX-2018-24; SR-BOX-2018-37; SR-BOX-2019-04) (Mar. 29, 2019) ("BOX Order").

<sup>7</sup> See *In the Matter of the Application of SIFMA, Review of Action Release No. 84432 (Oct. 16, 2018)*.