



October 24, 2019

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: ***SIFMA Comment Letter on Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Corporate Bond New Issue Reference Data Service [Release No. 34-87232; File No. SR-FINRA-2019-008]***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide additional comments in response to FINRA’s amended proposal to establish a corporate bond new issue reference data service (“Amendment No. 2”). We have submitted comments on the previous iterations of this proposal, and we stand behind those comments.² Our previous suggestions included providing for the usage of an API, clarification of several issues with specific data fields, and justification of the proposed pricing of the service.

Amendment No. 2 updates descriptive information for some of the proposed fields and adds additional fields to the proposed requirements. Further, the pricing component of the service has been severed and will be addressed in a future rule filing. We provide comments below on each of these topics. We remain concerned that some of the required fields are unclear and suffer from overlap, and that there is no discussion of a modernization of the process through which information is submitted to FINRA for TRACE set up. Each concern places unnecessary burdens on FINRA-member broker-dealers.

¹ 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 for 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>.

² See SIFMA letters of July 29, 2019: <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5885250-188752.pdf>; and April 29, 2019: <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5426947-184647.pdf>.

Information Delivery and the (Revised) Proposed Fields

Amendment No.2 does not address our prior comments about the need for a modern information submission mechanism for FINRA-member broker-dealers. Our previous letters highlighted the burden of manually reporting the extensive amount of data that the proposed service would require, particularly in the context of the proposal simultaneously adding new data submission requirements while shortening the timeframe under which the data needs to be submitted. Amendment No.2 to the proposal does not address this concern. We continue to believe strongly that FINRA should develop an automatable information delivery mechanism for TRACE such as an API, and that manual burden upon manual burden should not be borne by broker-dealers who are required to provide information to FINRA. This would be useful beyond this proposed new issue data service and also apply to other TRACE-related information requirements (e.g., securities setup in other markets such as securitized products). New issue bond set-ups would be faster and less prone to manual errors, benefitting all market participants and FINRA. FINRA should develop and release such a mechanism prior to the imposition of additional requirements on FINRA-member broker-dealers.

Our comments on specific fields follow:

- ***Currency*** - In Rule 6710 the definition of a “TRACE-Eligible Security” is a debt security that is U.S. Dollar (USD) denominated.³ As such, it is not clear to SIFMA under what circumstance a firm would be expected to submit any new issue securities to TRACE if denominated in any other currency than USD and how this field could contain a value other than USD.
- ***Regulation S Indicator*** – It is the case that Reg S CUSIPs are routinely made TRACE eligible in the instance of 144A/Reg S offerings when eventually traded in the US. However, the final rules should clarify that for bona-fide Reg S-only offerings sold solely to offshore clients, firms are not expected to submit the data proposed to be required here, given that these securities are not TRACE-reportable by definition.⁴
- ***Security Type*** – Amendment No. 2 provides the following examples for this field: “*Corporate Note, Bond or Debenture; Equity Linked Note; Convertible Bond; Convertible Note; Bank Note; Medium Term Note; Index Linked Security; Pass Through Certificate; Sinking Fund Bond; or Other.*” We submit that there is no meaningful difference between a note, bond or debenture. Further, a Medium-Term Note (“MTN”) is just another type of corporate debt security and thus this creates a question of whether a corporate bond sold off an MTN program should be listed as an MTN or a corporate bond. We suggest that FINRA provide a simplified set of options including “corporate debt security” and “convertible debt security” and eliminate the

³ 6710(a) provides that: “TRACE-Eligible Security” means 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 paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or (3) a U.S. Treasury Security as defined in paragraph (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 paragraph (o).

⁴ See TRACE FAQ 3.165; “If a debt security is sold pursuant to Regulation S in an off-shore transaction, is a member firm required to report the transaction to TRACE? No...For purposes of TRACE reporting, FINRA distinguishes between debt securities that are the subject of bona fide Regulation S transactions and subsequent non-Regulation S transactions in such debt securities.”

other options currently bifurcated into notes and bonds. This would leave the list as follows: “Corporate Debt Security; Convertible Debt Security; Equity Linked Note; Bank Note; Index Linked Security; Sinking Fund Bond; or Other.” This would ease compliance and reduce overlap among categories.

- First Coupon Period Type – Securities rarely have an exact 3-month or 6-month period for the first coupon. Moreover, First Coupon Payment Date is a separately required field which provides the date of the first interest payment and there is a field for the Issue Date, so this information could be easily derived. This field is not necessary.
- Issue Date/First Settlement Date – FINRA indicates that these fields may be required to be submitted separately as they may not always be the same. FINRA should clarify whether they will be separated so firms can understand the requirements. FINRA also must provide greater clarity on the meaning of each of those terms, as SIFMA members have expressed concern that they do not understand the distinction between them.
- First Call Date and First Call Price - Some securities, particularly high yield securities, are callable from the date they are issued at a make-whole call price and then later are callable at a fixed redemption price. For example, in the case of a high yield bond with a 5% coupon, the bonds could be callable for a period of time at a make-whole price and then later at a price of 102.5% of principal amount. As described in Amendment No.2, it appears that this would require the date of issuance to be used when there is a make-whole call. However, this is not certain so FINRA should clarify how this field should be completed in the case of a make-whole call from issuance. A similar clarification will also be needed in connection with the First Call Price field. In the case of a make-whole call the call price could theoretically be determined, but it would require a substantial mathematical exercise that may not reflect the actual redemption price at the date of redemption and would be extremely burdensome to comply with. We suspect that Amendment No.2 may be addressing the situation where there is a specified redemption price such as in the example above when the bond is callable at 102.5%. We request that FINRA clarify these fields for the case of debt securities with both a make-whole and fixed redemption price.
- Put Indicator and Put Date – Put rights may be contingent upon the occurrence of an event or be non-contingent and related to a specific date. High yield securities often contain contingent put rights that permit an investor to put the securities upon the occurrence of a change of control. That right exists from the date of issuance of the security. As there is no known change of control at the time of issuance, any put date would be unknowable at the time of issuance. Amendment No.2 may be intended to address a non-contingent put right (i.e., that at some specified date in the future the investor has the right to put the security). However, how broker-dealers should code contingent put rights is not clear and should be clarified.

Withdrawal of the Fee Proposal

FINRA should issue a comprehensive proposal that includes the specific proposed fees (and justification for them) along with the data submission requirements. The new data service is a unique, first-time product offering that will result in increased reporting requirements for FINRA member firms. Accordingly, member firms should have the ability to analyze the proposal in its entirety, including the specific proposed fees for the new service. We also believe the Commission’s determination of whether

to approve or disapprove the proposal should include the evaluation of a specific fee schedule. FINRA's fees for this product should not simply be imposed through the effective upon filing process.

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me at 212-313-1126 or ckillian@sifma.org.

Sincerely,

A handwritten signature in blue ink that reads "Chris Killian". The signature is written in a cursive, flowing style.

Chris Killian
Managing Director
Securitization and Credit Markets