

FINANCIAL INFORMATION FORUM

June 7, 2022

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: File Number SR-FINRA-2022-011: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Expand TRACE Reporting Requirements to Trades in U.S. Dollar Denominated Foreign Sovereign Debt Securities

Dear Secretary,

The Financial Information Forum (“FIF”)¹ appreciates the opportunity to comment on SR-FINRA-2022-011 filed by the Financial Industry Regulatory Authority (“FINRA”) with the Securities and Exchange Commission (the “Commission”)² and the Commission’s associated Notice of Filing.³ This filing by FINRA (the “Rule Filing”) proposes to expand reporting requirements for the Trade Reporting and Compliance Engine (“TRACE”) to collect information on trades in foreign sovereign debt securities that are United States (U.S.) dollar-denominated.⁴

Reporting for regulatory purposes only

FIF members support FINRA’s decision to require reporting of foreign sovereign debt securities for regulatory purposes only. As noted by FINRA in the Rule Filing, “FINRA will take a measured approach to potential dissemination, as it has taken historically with other TRACE-Eligible Securities and would first analyze the regulatory data to determine the appropriate contours of a potential dissemination framework.”⁵ FIF members support this approach.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include 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.

² SR-FINRA-2022-011, “Proposed Rule Change to Expand TRACE Reporting Requirements to Trades in U.S. Dollar-Denominated Foreign Sovereign Debt Securities” (May 6, 2022), available at <https://www.finra.org/sites/default/files/2022-05/sr-finra-2022-011.pdf>.

³ Securities Exchange Act Release No. 34-94891 (May 11, 2022), 87 FR 29,980 (May 17, 2022), available at <https://www.finra.org/sites/default/files/2022-05/sr-finra-2022-011-federal-register-notice.pdf>.

⁴ Notice of Filing, p. 29,980.

⁵ Rule Filing, p. 7.

Same-day and T+1 reporting

In the Rule Filing, FINRA proposes same-day reporting for foreign sovereign debt securities, with T+1 reporting permitted for trades executed after 5 pm Eastern Time. FINRA provides in the Rule Filing that “the same-day reporting requirement as opposed to a shorter reporting timeframe is appropriate because trades in U.S. dollar-denominated foreign sovereign debt securities would be reported for regulatory purposes only.”⁶ FIF members agree with this approach. As discussed below, the ability of reporting firms to meet these reporting timelines is dependent upon FINRA accepting automated submission of an ISIN on the FINRA TRACE New Issue Form as an alternative to a CUSIP or CINS identifier.

Some firms have identified certain scenarios where a trade in a U.S. dollar-denominated foreign debt security is executed by a U.S. firm through an overseas affiliate prior to 5 pm Eastern Time and cannot be reported until T+1. Accordingly, FIF members propose that T+1 reporting should be permitted for trades executed prior to 5 pm Eastern Time if they are executed outside the U.S or involve a foreign counterparty.

Leveraging the TRACE reporting system for corporate and agency debt

FINRA currently makes available three separate TRACE reporting systems for fixed income securities, as follows:

- Corporate and agency debt
- Securitized products
- US Treasury securities.

The Rule Filing provides that “... members no longer would be required to distinguish between foreign sovereign debt and foreign private issuer debt for purposes of TRACE reporting.”⁷ FIF members interpret this sentence to mean that FINRA will leverage the existing reporting system for corporate and agency debt for reporting transactions in foreign sovereign debt securities. FIF members support this approach and appreciate that FINRA has taken into consideration prior feedback from industry members on this point. With the approach that industry members understand FINRA to be adopting, firms will be able to leverage existing infrastructure, which will reduce the time and cost for firms to implement TRACE reporting for foreign sovereign bonds. While FIF members interpret the Rule Filing to mean that FINRA will be leveraging the corporate and agencies TRACE reporting system for the reporting of foreign sovereign bonds, FIF members request that FINRA expressly confirm this understanding.

⁶ Rule Filing, p. 7.

⁷ Rule Filing, p. 6.

Security identifiers

In many cases a foreign sovereign debt security, especially new issues, will not have a CUSIP or CINS number and will instead have an ISIN. FINRA provides as follows in the Rule Filing: “[T]o facilitate trade reporting of U.S. dollar-denominated foreign sovereign debt, where a CUSIP or CINS is not available, FINRA intends to permit members to report using a FINRA-assigned symbol that corresponds to the security’s other identifier(s) (e.g., the FINRA-assigned symbol would be associated with the ISIN on the Security Master List).”⁸ FIF members agree that the TRACE system should support firms obtaining a FINRA-assigned symbol based on an ISIN. FIF members note that this is currently permitted for other TRACE-reportable securities.

FIF members also consider it important for FINRA to take two additional steps. First, FINRA should expand the set of allowable standard identifiers that can be reported to TRACE to include ISINs. Specifically, tags such as Tag 22 (Instrument/SecurityIDSource) and Tag 48 (Instrument/SecurityID) should be expanded to allow for reporting ISINs directly to TRACE. Broker-dealer systems are highly automated. There is currently a delay in the dissemination of FINRA-assigned identifiers to ingest into those systems. This creates a challenge for firms in reporting to TRACE on a timely basis when the FINRA-assigned identifier is the only available identifier. Accordingly, FINRA should expand the set of allowable identifiers that can be used to identify a security on a TRACE report to include ISINs.

Second, FINRA should update the New Issue Form to accept and process a form submitted via the website if a firm provides an ISIN, rather than a CUSIP or CINS, for a security. The current web-based New Issue Form that FINRA makes available allows firms to optionally report an ISIN, but the form requires that a firm also include the security’s CUSIP or CINS. Currently, if a firm wants to request a TRACE symbol based on an ISIN or other identifier that is not a CUSIP or CINS, the firm must email FINRA with this request. This manual process can result in delays in the assignment of a FINRA identifier. Considering that there will likely be a significant number of foreign sovereign debt securities that do not have a CUSIP or CINS, FINRA should automate and expedite the procedure for firms to request and obtain a FINRA-assigned symbol based on an ISIN. Therefore, as noted in the first sentence of this paragraph, FINRA should update the New Issue Form such that FINRA will accept and process a form submitted via the website if a firm provides an ISIN, rather than a CUSIP or CINS, for a security.

Financial Instrument Global Identifier

Some FIF members also recommend that FINRA add the Financial Instrument Global Identifier (“FIGI”)⁹ as an approved identifier for TRACE reporting.¹⁰ Specifically, tags such as Tag 22

⁸ Rule Filing, p. 8.

⁹ The Financial Instrument Global Identifier (“FIGI”) is open-source and a US X9 national standard issued under the guidelines of the Object Management Group.

¹⁰ Expanding the set of security identifiers for regulatory reporting is consistent with other recent proposals from the Securities and Exchange Commission. Examples include:

- SEC Release No. 34-93784; File No. S7-32-10, “Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions” at 84 proposes that Security-Based

(Instrument/SecurityIDSource) and Tag 48 (Instrument/SecurityID) should be expanded to allow for reporting FIGIs directly to TRACE. FIGIs are currently included in the various TRACE trade dissemination reports and the Trace Master list, and it would thus be appropriate also to include FIGIs in the TRACE trade reports. These FIF members also support updating the FINRA New Issue Form to include FIGIs and recommend that FINRA should accept and process a New Issue Form if the requesting firm provides a FIGI, rather than a CUSIP, CINS or ISIN.

Schedule B-eligible issuers

The Rule Filing provides that the TRACE reporting requirements for transactions in foreign sovereign debt securities will apply to transactions in debt of Schedule B-eligible issuers.¹¹ Law firms that represent Schedule B issuers in connection with their US debt offerings have consistently noted that the applicability of Schedule B for specific issuers is often unclear. This determination often involves a facts and circumstances analysis, with consideration given to whether there is a sovereign guarantee or equivalent sovereign credit support of the issuer's securities, whether the issuer serves a governmental purpose, the level of sovereign ownership or control of the issuer, and other factors that involve a level of subjectivity.¹² Given the high degree of subjectivity that applies to classifying a wide range of issuers, there are currently many similar issuers that are classified differently depending upon the positions taken by the respective underwriters. Appendix 1 provides examples of issuers that are not classified consistently.

Currently, FINRA primarily relies upon the underwriter to determine whether an issuer is a private issuer, in which case the issuer's bonds are subject to TRACE reporting, or a sovereign issuer, in which

Swap Positions can include FIGI as the identifier of each underlying equity security, if applicable. <https://www.sec.gov/rules/proposed/2021/34-93784.pdf>.

- SEC Release No. 34-94313; File No. S7-08-22, "Short Position and Short Activity Reporting by Institutional Investment Managers" at 27 proposes that "In Column 6, a Manager shall enter the twelve (12) character, alphanumeric Financial Instrument Global Identifier ("FIGI") of the equity security for which information is being reported, if a FIGI has been assigned. Like CUSIP, FIGI provides a methodology for identifying securities."
- SEC Release No. 34-93613; File No. S7-18-21, "Reporting of Securities Loans" at 45 proposes the data elements in the report include "(1) the legal name of the security issuer, and the Legal Entity Identifier ("LEI") of the issuer, if the issuer has an active LEI; (2) the ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier; (3) the date the loan was effected; (4) the time the loan was effected; and (5) for a loan executed on a platform or venue, the name of the platform or venue where executed."
- SEC Release Nos. 34-93518; IA-5903; IC-34415; File No. S7-15-21, "Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F" at 38 proposes to allow managers to provide other identifiers such as a Financial Instrument Global Identifier (FIGI) for each security.

¹¹ Rule Filing, p. 6.

¹² Morrison Foerster, "Considerations for Foreign Banks Financing in the United States, 2019 Update", *International Financial Law Review*, available at <https://media2.mofo.com/documents/190400-considerations-foreign-banks-financing.pdf>, pp. 112-113. Latham & Watkins, "Hail, Hail Freedomia: Frequently Asked Questions About SEC Registration on Schedule B by Foreign Governments" (April 26, 2017), available at <https://www.lw.com/thoughtLeadership/hail-hail-freedomia-frequently-asked-questions-SEC-registration-schedule-B-sovereign-issuers>, pp. 3 and 8.

case the issuer's bond are not subject to TRACE reporting. FIF agrees with this approach, as determining whether any individual debt security qualifies as a foreign sovereign debt security is subjective and relies upon facts and circumstances that trading firms often do not possess. The underwriter is most likely to be privy to the individual issuer's situation. While underwriters have knowledge of an individual issuer's situation, given the lack of clarity as to which issuers qualify under Schedule B, it is important for FINRA to provide objective criteria that can be readily applied to assist underwriters in determining how an issuer should be classified.

In cases when the underwriter of a foreign sovereign is not available, given the subjectivity of determining whether any individual debt security qualifies as a foreign sovereign debt security, FIF members believe that FINRA should make this determination. In the Rule Filing, FINRA reports on the number of outstanding U.S. dollar-denominated foreign sovereign debt and supranational securities, which means that FINRA has made a determination as to how these securities should be classified.¹³ Furthermore, it is inefficient for trading firms to make this determination. As multiple firms are trading the same bond and the decision is highly subjective, it is unlikely that all firms will come to the same conclusion.

If trading firms are required to include this categorization on the New Issue Form, FIF recommends that FINRA accept the trading firm's categorization on the New Issue Form and amend the issuer's bond status as needed. If FINRA intends to review the trading firm's classification on the New Issue Form prior to adding the bond to the TRACE security master, FINRA should make this determination on an expedited basis. As noted above, to the extent that a firm is required to categorize an issuer, it is important for FINRA to provide objective criteria that can be readily applied to assist reporting firms in determining how an issuer should be classified. One possible approach would be to classify any issuer that has a corporate structure as a corporate issuer, regardless of whether it has government ownership or purpose.

FIF further requests that FINRA provide written guidance to industry members as to the steps an industry member should take if the industry member disagrees with the current classification of a bond as a foreign sovereign or private bond or believes that the bond's classification should be changed based on a change in circumstances.

Currently outstanding foreign sovereign debt securities

According to the Rule Filing, as of December 31, 2021 there were approximately 2,400 outstanding U.S. dollar-denominated foreign sovereign debt securities and approximately 3,414 U.S. dollar-denominated supranational securities.¹⁴ FIF members recommend that FINRA include these securities in the TRACE security master flagged as foreign sovereign debt securities. This should be done prior to the date that foreign sovereign debt securities first become reportable to TRACE and sufficiently in advance of that date so that firms have a reasonable time period for testing. This approach is consistent with prior actions by FINRA. For example, when FINRA introduced reporting of securitized products, FINRA added

¹³ Rule Filing, pp. 30 and 32.

¹⁴ Rule Filing, pp. 30 and 32.

these securities to the TRACE security master prior to the date on which securitized products first became reportable to TRACE.

Bonds that are reclassified by FINRA

FIF members request confirmation that if FINRA reclassifies a bond from private to sovereign or from sovereign to private (including in response to information provided by an industry member), firms would not be required to cancel and resubmit transactions in that bond that were executed prior to the reclassification by FINRA. These types of retroactive corrections would be very challenging for firms to implement since firm reporting systems are often explicitly designed to prevent resubmitting duplicate reports.

Since this would likely significantly delay implementation and increase costs on the firm side, if reclassification of a bond is required, any updates and any associated dissemination of transaction-related data should be handled by FINRA using the already submitted reports.

Nominal vs. trade currency

FIF members feel that whether a bond is a foreign sovereign bond should be based on the nature of the security rather than a specific transaction. A security can be denominated in one currency (sometimes referred to as the “nominal currency”), and a trade in that security can be executed in a different currency (sometimes referred to as the “trade currency”). The nominal currency is the currency in which a bond is originally issued. FIF members request that FINRA issue an FAQ confirming that “United States (U.S.) dollar-denominated” is based on nominal currency and not trade currency.

FIF members further request guidance as to how a firm should report a transaction in a foreign sovereign bond that has a nominal currency of U.S. dollars where the transaction is executed in a foreign currency. This should include additional guidance for firms on how to perform the currency conversion when reporting the transaction price.

Report cards

FIF members request guidance as to whether FINRA will issue separate report cards for reporting in foreign sovereign bonds or whether any of the current report cards (for example, the report cards for corporate bonds) will be updated to include reporting for foreign sovereign bonds. FIF members expect that for a period of time the error rates for foreign sovereign bonds will be higher than the error rates for other TRACE-reportable securities as it is common to have higher error rates for newly-introduced reporting requirements.

Foreign municipal securities

FIF members request clarification that foreign municipal securities would become reportable to TRACE and would not be reportable to any reporting system operated by the Municipal Securities Rulemaking Board.

FINRA trade surveillance

FIF members note that trading in the U.S. might represent only a small percentage of the overall trading in certain U.S. dollar-denominated foreign sovereign debt securities. For these securities, FINRA will need to look to other sources, such as foreign reporting systems and foreign regulators, for a more comprehensive view of overall trading activity.

Implementation timeframe

It is important to ensure that industry members will have sufficient time to properly implement the planned reporting changes. Any timetable should run from the date that FINRA publishes technical specifications and interpretive FAQs.

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FIF appreciates the opportunity to comment on SR-FINRA-2022-011. 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.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Appendix A

Currently treated as foreign private company (reportable)

XS2468421248

Istanbul Buyuksehir Belediyesi (Istanbul Metropolitan Municipality) is the state institution responsible for municipal affairs of the province of Istanbul, Turkey and provides emergency and social services, libraries and museums, investment and financial services, licensing and transportation services.

XS2180643889

Nederlandse Waterschapsbank is a fully state-owned bank established to lend money to Dutch Water boards and provides funding to water boards and other government programs. Only the Dutch state and local entities may be shareholders in the bank.

US29245JAM45 - compare with Uzbekneftegaz Jsc / Nogaholding Sukuk Limited

Empresa Nacional Del Petroleo (National Petroleum Company) is a state-owned company in Chile, created by law in 1950.

US716743AP46 - compare with Uzbekneftegaz Jsc / Nogaholding Sukuk Limited

Petronas Capital's parent Petroliam Nasional Bhd is wholly owned by the Government of Malaysia and manages the oil and gas resources of the country as enshrined in law. It provides over 20% of the government revenue for the last few years.

US45604HAG20 - compare with Emirates Development Bank

Industrial Bank of Korea is a stake owned bank established by law for the purpose of supporting small and medium sized Korean companies.

XS2399149694 - compare with Mumtalakat Sukuk Holding Company (Bahraini sov wealth)

Sovereign Wealth Fund Samruk-Kazyna Jsc is a Kazakhstan sovereign wealth fund that holds national companies as a single entity under state control. It was established by presidential decree.

US44985GAE17 - compare with Mumtalakat Sukuk Holding Company (Bahraini sov wealth)

IPIC GMTN Limited is an entity related to the United Arab Emirates sovereign wealth fund, Mubadala Investment Company. It is government owned with gov't purpose, and we believe it should not be TRACE eligible.

Currently foreign sovereign (and not reportable)

XS2352309681 - compare with Industrial Bank of Korea

Emirates Development Bank P.J.S.C. is a 100% state-owned development bank incorporated via legal statute and overseen by the Ministry of Finance.

US91825MAB90 - compare with Empresa Nacional Del Petroleo / / Petronas Capital

Uzbekneftegaz Jsc is a fully state-owned holding company for Uzbekistan's oil and gas industry and focuses on providing resources to the domestic (Uzbek) market.

US65526QAA85 - compare with Empresa Nacional Del Petroleo / Petronas Capital
Nogaholding Sukuk Limited is a subsidiary of The Oil and Gas Holding Company (Nogaholding). A national company established by government degree and fully owned by the Kingdom of Bahrain.

XS2103157991 - compare with IPIC GMTN Limited (United Arab Emirates sovereign wealth)
The bond is issued by Mumtalakat Sukuk Holding Company, the sovereign wealth fund of the government of the Kingdom of Bahrain (<https://mumtalakat.bh/> [mumtalakat.bh]).