

**WRITTEN SUBMISSION BY THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
TO THE EUROPEAN COMMISSION:
MARKET REGULATION AND ITS RELATION TO DATA TRANSPARENCY
FOR EQUITY AND DEBT SECURITIES
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The Financial Industry Regulatory Authority, Inc. (FINRA) appreciates the opportunity to offer its views today. The topics that the Commission is addressing in these hearings are critical to the effective regulation and functioning of equity, debt and derivatives markets alike. As we all know, these markets are largely global, but as regulators or policy-makers, however, we operate within more narrowly defined jurisdictions. The opportunity to appear here today as a representative of a US regulatory organization is a testament to the efforts the Commission and the EU as a whole are making to address this challenge head-on. Accordingly, FINRA is pleased to contribute its views on the role of transparency in market oversight as the Commission reviews the Markets in Financial Instruments Directive (MiFID).

I. INTRODUCTION

FINRA is the largest non-governmental regulator for securities firms doing business with the public in the United States. FINRA's twin goals are investor protection and market integrity. We strive to achieve these goals through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing and enforcing its rules and the US securities laws, informing and educating the investing public, providing trade reporting and other industry utilities, and administering the largest dispute resolution forum for investors and registered firms.

As a regulator focused on investor protection and market integrity, FINRA recognizes the importance of transparency both to regulators and to the marketplace, i.e., investors, traders and other market participants. In this regard, it is important to bear several points in mind. First, transparency for regulators is not synonymous with transparency for the marketplace. For example, when FINRA first started receiving corporate bond transaction reports as part of TRACE, information on only a subset of bonds was disseminated to the public. At that point, the market was transparent on a post-trade basis to FINRA, but only partially transparent to market participants. (I discuss the evolution of TRACE more fully below.)

Second, within the context of a “transparent” market, the data needs for a regulator and the marketplace differ significantly. As a consequence, a market that might be considered transparent to a trader or investor may be considered relatively opaque from a regulator's perspective. To perform their responsibilities effectively, regulators typically require substantially more information beyond that typically disseminated to the public. For example, in the United States, trade reports include the names of the counterparties to a trade and here in Europe some regulators even receive client-level information; for obvious reasons, this sort of information is not, and should not be, transparent to the market.

Finally, regulatory transparency and market transparency have different acceptable time horizons. A regulator conducting comprehensive post-trade surveillance can receive high quality data on a T+1 basis or even later and still have adequate transparency. In fact, as markets fragment and necessary regulatory data is more dispersed, maintaining data quality becomes more important, leading to perhaps more time to validate data prior to its use for surveillance purposes. From an investor's or trader's perspective, however, this sort of time delay would likely be unacceptable and would render the market dark.

As the Commission moves forward in its decision-making on transparency requirements, it may wish to bear these considerations in mind as they have significant policy, operational, and cost implications.

I turn now to the major challenges and questions that we see in the United States that may have a bearing on the issues currently before the Commission. My goal in doing so is not to propose solutions -- that is obviously the prerogative of the responsible authorities in Europe -- but simply to draw on lessons that we have learned that may be helpful in your thinking. I look first at the equity markets and then at the debt markets.

II. EQUITY MARKET ISSUES

A. Improving/Maintaining Market Place Transparency

FINRA has been following the policy debates prompted by two consultation papers issued by the Committee of European Securities Regulators in the first half of 2010 that raise specific issues regarding marketplace and regulatory transparency, respectively. In the April 2010 consultation (CESR/10-394) entitled *CESR Technical Advice to the European Commission in the Context of the MiFID Review—Equity Markets (CP-1)*, CESR identified several issues aimed at improving the quality, timeliness, and comparability of post-trade transparency data for equity securities traded in multiple EU venues, including over-the-counter (OTC) markets. Essentially, CESR proposed incorporating into MiFID unified standards and procedures that would govern the content, timing, and publication of real-time transaction information for equities transactions regardless of the execution venue (e.g., regulated markets, multilateral trading facilities, firms engaged in systematic internalization, and OTC matching systems).

The standardization initiative outlined in CP-1 reflects the need for national regulators to adapt the regulatory framework to the fragmented market structure that has emerged post-MiFID as a result of increased competition for order flow among conventional and newly-established securities market centers. Given this environment, the policy goal is to amend regulations to achieve dissemination of post-trade information of uniform quality that facilitates price discovery, analysis of price trends, and more efficient pricing of prospective orders for any equity security tradable in multiple venues. Hence, CP-1 outlines a methodical approach to standardize the quality and timing of post-trade information on a pan-EU basis.

Assuming adoption of the new marketplace transparency reporting standards, the EU market centers that currently originate post-trade information for real-time publication will continue to do so. However, it is not entirely clear how oversight responsibility will be allocated among national regulators and what

advanced tools they will need to ensure high levels of compliance with the unified standards across all trading venues. Addressing these practical issues is important because achieving the relevant market-efficiency goals depends on strict and consistent adherence to the proposed standards. FINRA would recommend, therefore, that that EU policy makers give prompt consideration to the questions of (1) allocating regulatory responsibility and (2) defining business requirements for electronic surveillance techniques that could be applied to monitor compliance with unified data standards on a pan-EU basis. Indeed, it would appear that these oversight issues must be resolved before the new standards could be launched. A framework for adherence to these standards must be in place to ensure that the data provides a foundation for robust surveillance.

FINRA observes that adapting the EU regulatory framework to meet this challenge could take several forms. For example, oversight of post-trade data standards might be allocated to a new committee (or a subcommittee or working group under a standing committee such as CESR-Pol) under the auspices of ESMA. The committee's charter could include developing protocols for electronic surveillance to detect patterns of non-compliance at the level of the reporting party; assigning responsibility for investigation and enforcement action; developing sanction guidelines; establishing minimum quality-of-performance standards; and evaluating future changes to the unified standards based on experience gained, and input from industry experts. Alternatively, it may be feasible to consider outsourcing the surveillance function to a regulatory utility funded by various market centers (in proportion to their volume of reported equity transactions), but subject to oversight by a consortium of national regulators acting under the auspices of ESMA. The outsourcing would be done under a competitive bid process that would set broad standards for surveillance protocols and delivery of exceptions or alerts to the affected national regulators. The latter would handle all investigations and enforcement actions for the reporting parties under their jurisdiction. In sum, we believe the key goals are developing a regulatory framework that (1) tests compliance with data standards systematically and comprehensively across all execution venues on a continuing basis and (2) provides useful outputs (i.e., alerts) for regulators to respond timely to patterns of non-compliance, regardless of the number or types of trading venues subject to their jurisdiction.

We make these observations based upon our experience in the U.S. In our case, front-line monitoring and enforcement of trade reporting standards has traditionally been allocated to the national securities exchanges for their markets, and to FINRA (and its predecessor, the National Association of Securities Dealers, Inc. (NASD)) for the OTC equities market. This allocation made sense because the exchanges and FINRA were self-regulatory organizations (SROs) and already had an infrastructure to perform electronic surveillance for possible trading violations in their respective venues. The SEC, by regulation, set many of the benchmark standards governing the content and timing of post-trade information in the equities markets (and the standards were typically incorporated into the SRO rules as well), but chose not to duplicate the SROs' surveillance efforts. Instead, the SEC has relied on oversight inspections and performance reporting by the SROs to enforce the applicable standards for collection and dissemination of post-trade data.¹

¹ In the event that a SRO fails to enforce the applicable trade reporting standards against its member firms, the SEC retains enforcement jurisdiction over such matters. Moreover, the SEC has the authority to bring an enforcement action against an SRO for failure to enforce its own rules, or the federal regulations for which the affected SRO has front-line responsibility.

More recently, there has been a trend among for-profit market centers in the U.S. to outsource some or all of their market regulation functions, including monitoring for compliance with trade reporting standards. With respect to the NASDAQ market, FINRA has performed that SRO's market surveillance functions for trading abuse (e.g., cases of price/volume manipulation) as well as violation of the market's trade reporting rules under a regulatory services agreement since August 2006. In May 2010, FINRA assumed similar responsibilities for market regulation with respect to NYSE Euronext's U.S. trading venues, which encompass the NYSE, NYSE-AMEX, and NYSE-Arca market centers.² At least in the U.S., there has been a trend toward centralization of market surveillance within FINRA, which, although an SRO, no longer operates any trading venues. With this consolidation, while not perfect, FINRA now has a more holistic picture of equity trading across the NYSE markets and NASDAQ. This enhanced picture provides a great opportunity to detect misconduct. Hence, based on our experience, along with the transparency standards proposed in CP-1, we believe that the notion of a surveillance utility to monitor for EU-wide compliance with fraud, manipulation, insider trading and other trading rules merits consideration.

B. Development of a Consolidated Transaction Tape for Equities Markets

1. Voluntary Approach

Building on the concept of standardized post-trade information, CP-1 also proposes two potential models for achieving a pan-EU consolidated transaction tape for equities transactions. Model 1 would build upon the existing, commercially-driven processes and infrastructure by requiring investment firms to publish post-trade data through one or more service providers labeled Approved Publication Arrangements (APAs).³ Under this model, the various competent authorities would oversee the qualification and approval of selected entities to function as APAs, subject to initial and continued compliance with specified standards. Approved APAs would enter into contractual agreements with the affected firms (and possibly regulated markets as well) to fulfill the parties' obligation to publish transparency information under MiFID. Thus, approved APAs would have front-line responsibility for collecting, validating, and publishing post-trade transparency information obtained from their contractual counterparts in a manner that achieves a pan-EU consolidated tape. Nonetheless, CP-1 did not propose that the APAs achieve a consolidated tape by a date certain or that a particular authority undertake overarching responsibility for planning and oversight of the consolidated tape's development under this model. Commercial incentives would be the primary driver of the consolidated tape's development under Model 1.

2. Mandated Approach

Under Model 2, CP-1 envisions an EU-mandate that all reportable trades be made available to, and published via a single consolidated tape. This model would permit competing aggregators of post trade information, but only a single consolidator as the operator of the Mandatory Consolidated Tape (MCT).

² In addition to NASDAQ and NYSE Euronext, FINRA performs certain levels of market surveillance for trading abuse among other, smaller markets in the U.S. With the assumption of market regulation for NYSE-Euronext's U.S. markets, FINRA estimates that its market surveillance activities will cover approximately 80% of trades made in the U.S. equities markets.

³ According to CP-1, an APA could be a regulated market, MTF, or another organization.

Thus, regulated markets, MTFs, and APAs would be required to collect and send trade reports to the MCT operator in a standardized format. The MCT operator would charge a subscription fee for access to its real-time information (while allowing access to 15 minutes-delayed information at no cost) and rebate any surplus generated to the parties that submitted the post-trade information. CP-1 proposed that the MCT operator be structured as a not-for-profit entity chosen by competitive tender and subject to regulation and supervision by ESMA. Finally, the MCT operator would be subject to separate standards regarding the conduct of its business (e.g., data retention, data security, and data screening to prevent dissemination of inaccurate or duplicative information).

In many respects, Model 2 resembles the model followed in the U.S. for creation of a consolidated tape. More specifically, this development was driven by a statutory mandate to integrate competing exchange and OTC markets into a national market structure that would preserve competition while providing consolidated market data to enhance market efficiency and price discovery. Moreover, the statute envisioned widespread access to consolidated information through competing vendors and pricing structures. To carry out this mandate, the SEC was vested with broad powers and discretion to achieve the national market objectives outlined in the statute. Generally, the SEC exercised these powers to regulate standard-setting, access requirements, fees, inter-market linkages, and the operation/governance of exclusive securities information processors, a function comparable to that envisioned for the MCT operator under Model 2.

Based on the U.S. experience, the statutory mandate for a consolidated tape has been achieved through a single data consolidator, with competition in data dissemination and data analytics to end users. This model continues to function effectively and has withstood the test of time. However, this result required that a single regulator, the SEC, have overarching responsibility for the policy outcomes and broad authority to implement the measures needed to achieve those outcomes. Hence, we would recommend that the EC weigh this experience in determining the appropriate model for a organizing a pan-EU consolidated tape.

C. Consolidation of Quotation/Order Information Across Competing Markets

CP-1 goes into significant detail regarding standard setting and organizational structures to achieve the consolidation and dissemination of post-trade information in real time. It does not expressly address the pre-trade consolidation of quotation information or top-of-the-book order prices as a component of a more integrated market for equity securities traded in multiple venues. This type of information is equally important for purposes of price discovery and judging best execution opportunities across multiple venues competing for order flow in various securities.

In the U.S., the statutory mandate that drove establishment of a consolidated tape also drove the development of a consolidated quotation system. Implementation of this system followed that of the consolidated tape. It resulted in the calculation and dissemination of national best bid/offer prices (NBBO prices) for all equity securities. The regulatory approach taken by the SEC generally followed that used in the development of the consolidated tape, with the focus on entities functioning as exclusive processors of quotation information, fairness of access terms/fees, and standardization of data and transmission requirements. As with transaction reporting requirements, front-line responsibility for monitoring the quality of quotation data typically rests with the SROs that operate equity markets. This area is critical to day-to-day operations and normally requires oversight in real-time. Compliance for questionable

quotations typically is either built into the particular trading system (e.g., rejection of out-of-range or clearly erroneous quotations) or alerts are generated on a real-time basis to which the market operator must respond. With the growth of high frequency and algorithmic trading, the volume of quote entries has taxed the capacity of networks that collect and deliver consolidated quotation information originated by the U.S. equities markets. The velocity of the market brought about by electronic trading also has prompted U.S. markets to enhance their validation of quotations.

Based on the U.S. experience, FINRA believes that the development of a consolidated quotation service is a logical next step in the further integration of competing trading venues across the EU. Clearly, access to consolidated quotation and transaction data is complementary in terms of value added to the markets' end users and to the overall efficiency of markets competing for order flow in widely-traded securities. Availability of BBO prices (along with composite size information) provides a benchmark for order routing decisions and assessment of best execution of completed trades. Accordingly, FINRA would recommend that the EU consider possible next steps to adapt the regulatory framework of MiFID to achieve an EU-wide BBO, in real time, for those securities that will be covered by the consolidated trade reporting regime envisioned in CP-1.

D. Regulatory Transparency and Market Regulation

In April 2010, CESR also issued a consultation paper (CESR/10-292) entitled *CESR Technical Advice to the European Commission in the Context of the MiFID Review — Transaction Reporting (CP-2)*. The subject matter of CP-2 dealt with information collected and used by market regulators for regulatory purposes. For purposes of this discussion, we will refer to this as regulatory transparency. Although regulators may not compile this information in real-time, it provides critical data needed to construct transaction audit trails that are electronically analyzed to generate alerts indicative of trading abuses (e.g., potential instances of price/volume manipulation, illicit insider trading, front-running of customer orders, etc.). In the context of CP-2, CESR proposed standardizing data inputs and clarifying the scope of reporting obligations in complex trading scenarios such as riskless principal trades that involved multiple executions to satisfy a single order. Clearly, the objective was to improve the quality and consistency of transactional details that constitute regulatory transparency for purposes of Article 25(3) of MiFID, recognizing the possibility of trade executions across multiple market venues in a given equity security.

Under the U.S. model, there is essentially a single trade reporting process that fulfills the legal requirements for market transparency and regulatory transparency. The standard elements of a trade report include several items that are collected for regulatory purposes, but not disseminated as part of the real-time data stream seen by the public. The data standards are mostly uniform regardless of the execution venue, and are typically incorporated into the market's trade reporting rules. Thus, FINRA's procedures for monitoring the quality of trade data that it collects also serves to support the quality of its transaction audit trail used for market surveillance purposes. Hence, market and regulatory transparency overlap with respect to FINRA's monitoring trade reporting.

By contrast, FINRA utilizes a separate system (Order Audit Trail System (OATS)) to capture full order details for orders accepted and processed by its member firms for execution OTC or in the NASDAQ market. The data elements and operational standards required by OATS are specified in FINRA rules (and those for the NYSE Order Tracking System (OTS) are specified in NYSE rules) and any member firm that accepts client orders for routing or execution in covered securities must meet these requirements.

This data is compiled on a next-day basis (i.e., trade date +1) and provides a complete history of each covered order accepted and processed by a member firm, including the timing of critical actions, such as the time of the order's receipt by the member, time of submission to a display facility, and time of execution or cancellation.

FINRA integrates OATS and transaction audit trail data to have the capacity to reconstruct equities trading by a member firm. The successful prosecution of many serious trading violations requires market reconstruction of the orders that resulted in the violative transactions. Without the ability to link orders with transactions via their audit trails, a significantly greater effort would be required to detect and prove trading violations that involve a pattern of several transactions (e.g., wash sales, prearranged trades, and manipulation of prices by entry/cancellation of orders immediately before execution a large order, and front running of customer orders with a proprietary order).

In sum, regulatory authorities are charged with monitoring markets to detect and deter trading abuses, and to promote market efficiency. An element common to both market and regulatory transparency is consistently high levels of data quality. Definition and enforcement of unified data standards are absolutely essential to this outcome. Moreover, regulators must be alert to refining transparency requirements in response to advances in trading technology (e.g. high frequency and algorithmic trading), new market structures (e.g., dark pools and internalizing firms), and new market access modes (e.g. sponsored access to institutional clients and e-brokerage to retail clients to enable cross-border trading). These issues are only made more complex with multiple trading venues trading the same issue. In the U.S., FINRA has been evolving into an industry utility to provide consolidated cross market surveillance that we believe better serves the twin goals of investor protection and market integrity. Having consolidated quote, trade and order information lays an extremely strong foundation upon which to build robust surveillance tools, but in today's fragmented markets we believe the EU also should give consideration to the need to consolidate cross market surveillance so that there can be a holistic view of the market.

E. Current Challenges

1. Client Identifiers

CP-2 discusses the merits of collecting client information as part of the regulatory reporting regime. Article 13(4) of the MiFID Implementing Regulation gives the national regulators the option to require that investment firms identify the clients for whom they execute transactions and to require the reporting of these identities in the transaction audit trail submitted to the relevant authorities. Having such information greatly enhances the ability of regulators to track clients that attempt to disguise their abusive activities by executing trades in multiple venues in the target security(ies). Although 19 EU jurisdictions already collect client identifying information, CP-2 notes that multiple conventions are used to create the identifiers. Hence, the goal of systematically tracking the activity of selected traders, regardless of venue, requires further work by the affected regulators.

In the U.S., the challenge is even greater in that the SROs for the equity markets do not capture client-level identifiers in their audit trail files. This information has to be obtained, on a case-by-case basis, from the executing broker-dealers whose identities are captured in the audit trail files. Another layer of complexity exists where, for example, broker-dealer A provides sponsored access to broker dealer B (or

institutional client C) and A's client executes trades under A's market participant identifier (MPID). Furthermore, it is possible for firm A to be assigned different MPIDs for trading in different markets that trade overlapping subsets of equity securities. From an oversight perspective, FINRA would welcome client-level identifiers in the audit trail.

Given the review of MiFID currently underway in Europe, FINRA would encourage the Commission to take advantage of the opportunity to achieve an acceptable convention for client level identifiers (covering natural and legal persons) to enhance the quality of regulatory transparency. Of course, costs and benefits must be weighed in achieving a feasible outcome, along with regulatory checks to ensure compliance.

2. Further Integration of Audit Trail Data and Surveillance Procedures

In the US, we are currently discussing issues concerning overall market structure which were articulated in a concept release issued by the SEC in early 2010. In response to that release, FINRA made clear its views on ways to achieve a more efficient regulatory structure grounded on three principles:⁴

- (1) The structure should provide a holistic approach to regulation where regulators can monitor and detect problematic activity across products (i.e., equity, debt, and derivatives), and not just within each market and market segment;
- (2) The structure guarantees that there is sufficient granularity and aggregation of audit trail data across markets and financial products so that regulators can readily identify activities such as direct market access, high frequency trading, and algorithmic trading, among others, so that surveillance systems can be better designed to detect market manipulation and other abusive strategies; and
- (3) The structure ensures that audit trail data is transparent so that market participants' trading activity is discernable to regulators, and the participants are not able to mask their identity by using multiple MPIDs or the MPID of another broker-dealer.

We would urge the EC to give consideration to these principles in the course of its deliberations on transparency issues and the proposed reforms to MiFID.

III. DEBT MARKET ISSUES

FINRA operates the Trade Reporting and Compliance Engine (TRACE) to capture and disseminate trade-by-trade information on various categories of debt securities traded OTC by FINRA members as dealers. Launched in July 2002, TRACE accommodates the collection and dissemination of transaction data in over 30,000 eligible bonds whose outstanding issuance exceeds USD 6 trillion. This data is supplied by approximately 2,000 member firms that are registered with FINRA to trade corporate debt.

Although TRACE began in 2002, its implementation was staggered, reaching the final stage in July 2006. This measured approach was necessary because no transparency facility previously existed for the OTC market in corporate bonds, and FINRA was concerned about liquidity issues as well as the impact of such a facility on spreads. Therefore, the initial TRACE data was collected and studied – without public

⁴ See FINRA comment letter dated, dated April 23, 2010, on Securities Exchange Act Release No. 62358—Concept Release on Equity Market Structure (File No. S7-02-10).

dissemination – to understand elements such as: (1) who the market participants were; (2) the distribution of trade volumes across subsets of reportable bonds as well as institutional and retail investors; and (3) liquidity, execution costs and dealer spreads.

Today, TRACE data is compiled and publicly disseminated in real-time to approximately 40,000 industry professionals, and separately, through FINRA’s web site to individual investors.⁵ This information includes real-time price and volume data for all publicly-traded corporate bonds, as well as aggregate end-of-day statistics (e.g., most active bonds, total volume, advances/declines, and new highs/lows). To fulfill its supervisory duties respecting the OTC bond market, FINRA uses TRACE information to compile audit trails for individual bonds and subjects that data to surveillance to detect potential instances of market manipulation, fraud, excessive markups/downs, and pricing issues in connection with bonds purchased from or sold to investors. In addition, FINRA uses automated tools and sampling techniques during examinations to verify members’ compliance with the TRACE reporting rules. As with equities, validating the accuracy and timing of audit trail data for bonds is critical to market integrity, and the efficiency of price discovery/pricing for prospective orders.

In March 2010, TRACE was expanded to collect and disseminate trade data on debt issued by agencies of the U.S. government, i.e., government corporations and government sponsored enterprises (GSEs), as well as primary market transactions. In February 2010, the SEC approved a further expansion of TRACE to collect trade data on securitized products, i.e., asset-backed securities (ABS) and mortgage backed securities (MBS). However, the ABS-MBS reporting will not take effect until February, 14, 2011 to allow member firms to make the necessary changes to their operations, technology, and compliance procedures. Similar to the approach taken with TRACE in 2002, FINRA will initially collect and analyze the reported data on ABS and MBS. Based on this analysis, FINRA will formulate a policy for the dissemination of this data.

Even before any decision occurs on data publication, the newly-collected data will be captured in audit trail files to enable systematic screening for patterns of potential market abuse of executed orders. As such, this additional data will enhance FINRA’s capacity to carry out its core mission of investor protection and market integrity. Overall, this development will increase to 70% from 28% the proportion of the U.S. debt market subject to FINRA’s surveillance. (This figure includes the market surveillance that FINRA already performs respecting municipal debt instruments on behalf of the Municipal Securities Rulemaking Board.) The major classes of publicly-traded debt securities remaining outside of regulatory mandated trade reporting consist of money market instruments and U.S. Treasury securities.

A. Impact of Transparency Enabled by TRACE in the Corporate Debt Market

Since the launch of TRACE, several independent academic studies have been conducted to gauge the effects of TRACE on the corporate bond market.⁶

⁵ Under FINRA rules, transaction data for reportable bonds must be submitted to FINRA within 15 minutes of trade execution.

⁶ See: *Corporate Bond Market Transparency and Transaction Costs*, by Amy K. Edwards, Lawrence Harris, and Michael S. Piwowar; September 21, 2004; *Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds*, by Hendrick Bessembinder, William F. Maxwell, and Kumar Venkartaraman, November, 2005; *Transparency and Liquidity: A Controlled Experiment on Corporate Bonds*, by Michael A. Goldstein, Edith S. Hotchkiss, and Erik R. Sirri, March

Their findings included the following:

- TRACE has effectively narrowed bid-ask spreads, a development indicative of efficient markets.
- TRACE has reduced significantly trading costs to investors, with the reductions estimated to be USD 1 billion for the full corporate bond market.
- TRACE has contributed to improved valuation precision, e.g., in terms of the dispersion in valuation between different mutual funds holding the same debt instruments.
- There has been no observed loss of liquidity since the launch of TRACE.

B. Observations and Statistics Regarding TRACE

In the eight years of its existence, TRACE has provided the market place and regulators with valuable insights to the corporate bond market derived from empirical data that had not been available previously. Indeed, TRACE data has proved many notions to be inaccurate or incomplete. For example, dealer participation is less concentrated than originally believed; retail investors are much more active than commonly thought; and a broader range of securities trade more actively than predicted by industry experts. More specifically, through year-end 2009, TRACE has processed approximately 26,000 trades per day with an average par value of USD 19.8 billion. Although the credit crisis initially reduced TRACE activity, volumes rebounded sharply beginning in the fourth quarter of 2008. Thus, in the second quarter of 2009, record levels were achieved in terms of the number of transactions reported (averaging 46,000 per day) and par value traded (averaging USD 23.9 billion). The volume of trading is also evident in the breadth of securities being traded. Of the approximately 30,000 TRACE eligible debt securities, 20% of that universe trade at least once per day and almost 50% trade once per month.

Without TRACE, there was simply no vehicle to collect comprehensive and consistent information about the nature, participants, and trading practices of the corporate bond markets in the U.S. Now, with TRACE, compilation and analysis of TRACE data over time provides market participants and regulators with valuable insights on the drivers of change and risks within the bond markets.⁷

IV. CONCLUSION

As the Commission continues its review of MiFID, we trust that FINRA's experience in the US in both the equity and fixed income markets will be beneficial to the transparency dialogue. In sum, we have found three key concepts are crucial regarding transparency.

First, we urge the Commission to establish uniform standards with sufficient granularity and consistency across all trading centers in Europe. Such an approach will increase market integrity and reduce opportunities for regulatory arbitrage.

Second, we believe that there must be consistency in the scope of any audit trail – the combination of orders, trades and quotes. As regulators, we do not believe that the content of a regulatory audit trail

20, 2006; and *Missing the Marks: Dispersion of Corporate Bond Valuations Across Mutual Funds*, by Gjergji Cici, Scott Gibson, and John J. Merrick, May 2008 (Second Draft).

⁷ Such data is published in the FINRA TRACE Fact Book available on FINRA's website www.FINRA.org.

should be a competitive issue and permit forum shopping among market participants when instruments are traded in various market venues.

Third, to assist in combating market abuse and insider dealing, we have found that aggregation of cross market surveillance is beneficial to restoring investor confidence and market integrity.

We appreciate the opportunity to participate in the Commission's deliberations and would be pleased to assist in any way possible as the Commission moves forward.