

# FINANCIAL INFORMATION FORUM

October 16, 2023

**By electronic mail**

Financial Industry Regulatory Authority, Inc.  
1735 K Street, NW  
Attn: Robert McNamee, Associate General Counsel,  
Office of General Counsel

**Re: Impact of 2022 Amendment to FINRA Rule 6732 -- to Expand the Scope of Exemptions That FINRA May Grant ATSs from the TRACE Reporting Requirements -- on the FINRA Trading Activity Fee**

Dear Mr. McNamee,

On January 19, 2022, the Securities and Exchange Commission (“SEC”) approved an amendment to Financial Industry Regulatory Authority (“FINRA”) Rule 6732 to expand the scope of exemptions that FINRA may grant alternative trading systems (“ATSs”) from TRACE reporting requirements.<sup>1</sup> During a recent telephone call, you responded to a written request for guidance previously submitted by the Financial Information Forum (“FIF”) on behalf of FIF members as to whether the amendments to FINRA Rule 6732 would impact whether a broker-dealer purchasing certain TRACE-reportable securities through an ATS is obligated to pay the Trading Activity Fee (“TAF”) for a trade. You indicated during this call that the amendments to FINRA Rule 6732 would not impact a broker-dealer’s obligation to pay the TAF for a trade on an ATS. FIF members request that FINRA document this guidance through a written FAQ or other written guidance.

In Annex 1 we set forth the specific scenario for which FIF previously requested guidance. FIF now requests that this guidance be provided in writing. The diagrams below are intended to illustrate the scenario described in Annex 1. In this scenario, a broker-dealer is a direct participant in an ATS and purchases through the ATS a TRACE-reportable security that is subject to the TAF.<sup>2</sup> The ATS acts as agent. The seller is an institutional investor.

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<sup>1</sup> Exchange Act Release No. 93966 (Jan. 12, 2022), 87 FR 2976 (Jan. 19, 2022) (Order Approving Proposed Rule Change To Amend FINRA Rule 6732 and Expand the Scope of Exemptions That FINRA May Grant ATSs From the TRACE Reporting Requirements) (SR-FINRA-2021-009).

<sup>2</sup> Transactions in Treasury securities are exempted from the TAF. FINRA By-Laws, Schedule A, Section 1(b)(2)(L).

**Diagram 1: TRACE Reporting Without FINRA Rule 6732**

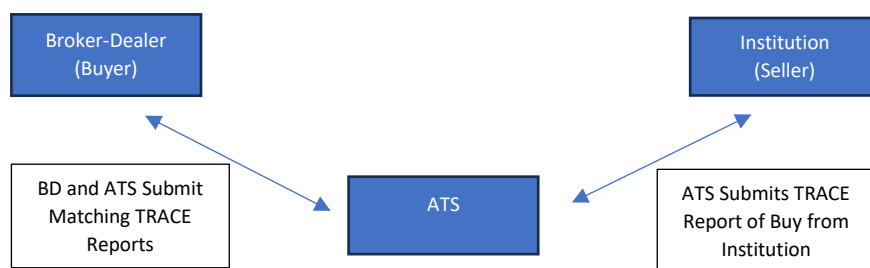


Diagram 1 illustrates TRACE reporting in this scenario for an ATS that has not received a TRACE exemption from FINRA pursuant to FINRA Rule 6732. In this scenario, the broker-dealer and the ATS submit matching reports to TRACE. The ATS also reports to TRACE a purchase from the institution. The broker-dealer, as the buyer, is not responsible for paying the TAF. Since the selling party (the institution) is not a FINRA member, the ATS is responsible to pay the TAF on behalf of the seller.

**Diagram 2: TRACE Reporting with FINRA Rule 6732**

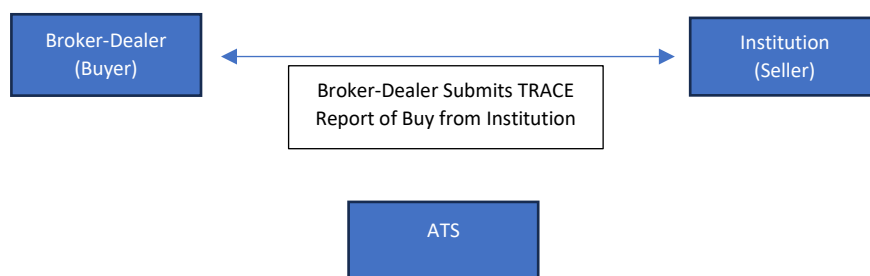


Diagram 2 illustrates TRACE reporting where an ATS has received a TRACE exemption from FINRA pursuant to FINRA Rule 6732. In this scenario, the ATS is not required to report to TRACE, and the broker-dealer submits a TRACE report showing a purchase from the institution. This TRACE report also identifies the ATS. FIF members request for FINRA to provide written guidance that, in this scenario, the broker-dealer is not responsible to pay the TAF as the TAF will be paid by the ATS.

Please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com) if you have any questions or would like any clarification relating to this request for written guidance.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

## Annex 1

### Request for Guidance Previously Submitted by FIF

#### **TRACE exemption for ATSs: request for confirmation that Trading Activity Fee (TAF) is not impacted**

Currently, in the scenario where an ATS matches a buy order from a FINRA member firm acting in a principal capacity with an institutional customer sell order in a TAF eligible security, the member firm would report a trade to TRACE vs. the ATS, and the ATS would report a trade to TRACE vs. the institutional customer and the member firm. The member firm (buyer) would not be subject to TAF, and the ATS (seller) would be subject to TAF. Please note that in this scenario, the institutional customer is a direct participant of the ATS.

If an ATS avails itself of the TRACE reporting exemption, the member firm would now be reporting to TRACE, and be clearing directly, against the institutional customer. FIF members would like to confirm that the member firm would still not be subject to TAF in this scenario since it traded directly against the ATS and did not receive an order from the institutional customer. Additionally, FIF members would like to confirm that the ATS would still be subject to the TAF since it received an order from its institutional customer and executed its customer's trade vs. the member firm.

FIF members believe that the TAF assessment should be based on the nature of the transaction (in this scenario, an ATS cross) and not whether an ATS avails itself of a TRACE reporting exemption. FIF members believe that the following FAQ, which emphasizes order receipt from the selling customer as the deciding factor for who pays the TAF, supports this conclusion:

Q300.7: How is the TAF assessed on debt transactions executed in a principal capacity?

A300.7: When a member, after having received an order from a customer to sell a covered debt security, buys the security as principal from its customer and then sells the security as principal to another customer or to another broker-dealer, the TAF will be assessed on both the member's purchase of the debt security from the customer as a principal and the member's sale of the debt security as a principal. If, however, the original sell order was received from another broker-dealer rather than a customer, the firm acting as the intermediary will only be assessed the TAF once, when the intermediary sells the security as a principal to a customer or another dealer. The TAF for the offsetting purchase will be assessed on the broker-dealer that placed the order to sell with the intermediary.