

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100006; File No. SR-FINRA-2024-004)

April 22, 2024

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute

I. Introduction

On January 11, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rule 6730 to reduce the 15-minute reporting timeframe for transactions reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”) system to one minute, with exceptions for FINRA member firms with de minimis reporting activity and for manual trades. The proposed rule change was published for comment in the Federal Register on January 25, 2024.³ The Commission received comments in response to the proposal.⁴ On February 29, 2024, the Commission extended until April 24, 2024, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99404 (January 19, 2024), 89 FR 5034 (January 25, 2024) (“Notice”).

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-finra-2024-004/srfinra2024004.htm>.

proceedings to determine whether to disapprove the proposed rule change.⁵ This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

As described in more detail in the Notice, FINRA rules currently specify the applicable outer-limit reporting timeframe for different types of TRACE-Eligible Securities.⁷ Most transactions in corporate bonds, agency debt securities,⁸ asset-backed securities (“ABS”),⁹ and

⁵ See Securities Exchange Act Release No. 99640 (February 29, 2024), 89 FR 16042 (March 6, 2024).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ “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 Rule 144(a)(3) under the Securities Act of 1933 (“Securities Act”), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise as defined in Rule 6710(n); (3) a U.S. Treasury Security as defined in Rule 6710(p); or (4) a Foreign Sovereign Debt Security as defined in Rule 6710(kk). “TRACE-Eligible Security” does not include a debt security that is a Money Market Instrument as defined in Rule 6710(o). See Rule 6710(a).

⁸ “Agency Debt Security” means a debt security (i) issued or guaranteed by an Agency as defined in Rule 6710(k); (ii) issued or guaranteed by a Government-Sponsored Enterprise as defined in Rule 6710(n); or (iii) issued by a trust or other entity that was established or sponsored by a Government-Sponsored Enterprise for the purpose of issuing debt securities, where such enterprise provides collateral to the trust or other entity or retains a material net economic interest in the reference tranches associated with the securities issued by the trust or other entity. The term excludes a U.S. Treasury Security as defined in Rule 6710(p) and a Securitized Product as defined in Rule 6710(m), where an Agency or a Government-Sponsored Enterprise is the Securitizer as defined in Rule 6710(s) (or similar person), or the guarantor of the Securitized Product. See Rule 6710(l).

⁹ “Asset-Backed Security” means a type of Securitized Product where the Asset-Backed Security is collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable, and excludes: (i) a Securitized Product that is backed by residential or commercial mortgage loans, mortgage-backed securities, or other financial assets derivative of mortgage-backed securities; (ii) an SBA-Backed

agency pass-through mortgage-backed securities (“MBS”) traded to-be-announced (“TBA”) for good delivery (“GD”)¹⁰ must be reported within 15 minutes.¹¹ The 15-minute reporting timeframe has been in place for corporate bonds since 2005¹² and was implemented later for agency debt (2010),¹³ ABS (2015),¹⁴ and MBS TBA GD (2013).¹⁵ In 2015, the Commission

ABS as defined in Rule 6710(bb) traded To Be Announced as defined in Rule 6710(u) or in a Specified Pool Transaction as defined in Rule 6710(x); and (iii) a collateralized debt obligation. See Rule 6710(cc).

¹⁰ “Agency Pass-Through Mortgage-Backed Security” means a type of Securitized Product issued in conformity with a program of an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise (“GSE”) as defined in Rule 6710(n), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to “pass through” the principal and interest payments to the holders of the security on a pro rata basis. See Rule 6710(v). “To Be Announced” means a transaction in an Agency Pass-Through Mortgage-Backed Security or an SBA-Backed ABS as defined in Rule 6710(bb) where the parties agree that the seller will deliver to the buyer a pool or pool(s) of a specified face amount and meeting certain other criteria but the specific pool or pool(s) to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions “for good delivery” and TBA transactions “not for good delivery” (“NGD”). See Rule 6710(u).

¹¹ See Rule 6730(a). However, a “List or Fixed Offering Price Transaction,” as defined in Rule 6710(q), and a “Takedown Transaction,” as defined in Rule 6710(r) are required to be reported to TRACE by the next business day (T+1). See Rule 6730(a)(2).

¹² See Securities Exchange Act Release No. 49845 (June 14, 2004), 69 FR 35088 (June 23, 2004) (Order Approving File No. SR-NASD-2004-057); see also Notice to Members 04-51 (July 2004).

¹³ See Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving File No. SR-FINRA-2009-010); see also Regulatory Notice 09-57 (September 2009).

¹⁴ See Securities Exchange Act Release No. 71607 (February 24, 2014), 79 FR 11481 (February 28, 2014) (Order Approving File No. SR-FINRA-2013-046); see also Regulatory Notice 14-34 (August 2014).

¹⁵ See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving File No. SR-FINRA-2012-020); see also Regulatory Notice 12-26 (May 2012).

approved FINRA rule amendments generally requiring firms to report transactions in these TRACE-Eligible Securities as soon as practicable but no later than 15 minutes from the time of execution,¹⁶ and FINRA publicly disseminates information on these transactions immediately upon receipt. According to FINRA, 82.9 percent of trades in the TRACE-Eligible Securities that are currently subject to the 15-minute outer-limit reporting timeframe are reported within one minute of execution.¹⁷

According to FINRA, since the implementation of TRACE, fixed income markets have changed dramatically, including a significant increase in the use of electronic trading platforms or other electronic communication protocols to facilitate the execution of transactions. In light of these advances and consistent with FINRA's goals of increasing transparency and improving access to timely transaction data, FINRA is proposing updates to modernize the reporting timeframes and provide timelier transparency.

A. One-Minute Reporting

FINRA is proposing amendments to Rule 6730 to reduce the reporting timeframe for securities currently subject to the 15-minute reporting outer limit to one minute, with exceptions for FINRA member firms with de minimis reporting activity and for manual trades. FINRA would continue to make information on the transactions publicly available immediately upon receipt of the trade reports.

Under existing Rule 6730(a)(1), transactions in corporate bonds, agency debt, ABS, and MBS TBA GD generally must be reported as soon as practicable, but no later than within 15

¹⁶ See Securities Exchange Act Release No. 75782 (August 28, 2015), 80 FR 53375 (September 3, 2015) (Order Approving File No. SR-FINRA 2015-025).

¹⁷ See Notice at Table 1.

minutes of execution.¹⁸ Specifically, transactions executed on a business day at or after 12:00:00 a.m. ET through 7:59:59 a.m. ET must be reported the same day no later than 15 minutes after the TRACE system opens. Transactions executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET must be reported no later than within 15 minutes of the Time of Execution,¹⁹ except for transactions executed on a business day less than 15 minutes before 6:30:00 p.m. ET, which must be reported no later than 15 minutes after the TRACE system opens the next day (and, if reported on T+1, designated “as/of” with the date of execution). Finally, transactions executed on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or trades executed on a Saturday, a Sunday, a federal or religious holiday, or other day on which the TRACE system is not open at any time during that day, must be reported on the next business day no later than 15 minutes after the TRACE system opens (and must be designated “as/of” and include the date of execution).

Amended Rule 6730(a)(1) would provide that transactions must be reported as soon as practicable, but no later than within one minute of the Time of Execution. Amended Rule 6730(a)(1)(B) would require that a transaction executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET must be reported as soon as practicable, but no later than one minute from the Time of Execution, except that, a transaction executed on a business day less than one minute before 6:30:00 p.m. ET, must be reported no later than 15 minutes after the TRACE system opens the next business day (T+1) (and, if reported on T+1, designated “as/of”

¹⁸ See supra notes 12-16.

¹⁹ Under Rule 6710(d), the “Time of Execution” generally means the time when the parties to a transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. For transactions involving TRACE-Eligible Securities that are trading “when issued” on a yield basis, the “Time of Execution” is when the yield for the transaction has been agreed to by the parties to the transaction.

with the date of execution). Any trades executed on a business day prior to the open of the TRACE system, on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day would continue to be reportable as soon as practicable on the next business day (T+1), but no later than within 15 minutes after the TRACE system opens (and must be designated “as/of,” as appropriate, and include the date of execution).

B. Exceptions from One-Minute Reporting

FINRA is proposing two exceptions from the one-minute reporting timeframe for: (1) FINRA member firms with “limited trading activity” in the TRACE-Eligible Securities that are subject to one-minute reporting; and (2) manual trades.²⁰

1. Exception for FINRA Members With “Limited Trading Activity”

New Supplementary Material .08 would provide an exception to the one-minute reporting timeframe for FINRA members with “limited trading activity.” A FINRA member with “limited trading activity” would be defined as one that, during one of the prior two calendar years, reported to TRACE fewer than 4,000 transactions in the TRACE-Eligible Securities that are subject to paragraphs (a)(1)(A) through (a)(1)(D) of Rule 6730 (i.e., corporate bonds, agency debt, ABS and MBS TBA GD), including any manual trades. Supplementary Material .08(b) would require FINRA members relying on the exception to confirm annually their qualification for the exception.²¹ As outlined in Supplementary Material .08(c), qualifying FINRA members

²⁰ FINRA is also proposing a conforming amendment to Supplementary Material .03 to refer to Rule 6730 generally rather than “paragraph (a)” to reflect that members reporting pursuant to one of the exceptions in new Supplementary Material .08 and .09 are still required to report their trades “as soon as practicable.”

²¹ Evidence of this confirmation should be retained as part of the member’s books and records. However, members eligible for the exception would not need to take other

would be required to report these trades as soon as practicable, but no later than within 15 minutes of the Time of Execution.²²

FINRA members exceeding the 4,000-trade threshold for each of two consecutive calendar years would need to comply with the one-minute reporting requirements of paragraphs (a)(1)(A) through (a)(1)(D) of amended Rule 6730 beginning 90 days after the firm no longer meets the criteria for the exception (i.e., beginning 90 days after January 1 of the next calendar year). If a FINRA member's reporting activity subsequently dropped below the 4,000-trade threshold, the member would again be eligible for the exception.²³

2. Manual Trades Exception

New Supplementary Material .09 would provide an exception for manual trades that are not electronic from end to end. Where a trade qualifies for the manual trades exception, a 15-

affirmative steps to have their trade reports processed pursuant to the exception's 15-minute reporting timeframe, such as submitting a certification of eligibility to FINRA or adding a modifier or indicator to their trade reports.

²² However, a trade executed outside of TRACE system hours, less than 15 minutes before 6:30 p.m. ET, or on a Saturday, Sunday, federal or religious holiday, or other day on which the TRACE system is not open at any time during that day, would need to be reported as soon as practicable, but no later than within 15 minutes after the TRACE system opens the next business day (T+1).

²³ For example, a member that reported 3,000 trades in the relevant TRACE-Eligible Securities to TRACE in 2022 and then 4,150 trades in 2023 would continue to be eligible for the exception in 2024; however, if the member then reported 4,100 trades in 2024, the member would be required to comply with the one-minute reporting requirements starting 90 days after January 1, 2025 (with January 1 being day one of 90). If the member proceeded to report 3,500 trades in 2025, the member would once again be eligible for the exception from one-minute reporting for 2026 under the two-year lookback. FINRA believes the two-year lookback period for eligibility for the exception will accommodate fluctuations in trading activity that may be due to unusual market-wide events or unique client demands.

minute outer limit would apply for the first year following implementation; a 10-minute outer limit would apply for the second year; and a five-minute outer limit would apply thereafter.

The manual trades exception would apply to “transactions that are manually executed” or where a “[FINRA] member must manually enter any of the trade details or information necessary for reporting the trade through the TRAQs website or into a system that facilitates trade reporting to TRACE.”²⁴ A trade that requires manual intervention at any point to complete the trade execution or reporting process would qualify. FINRA provided the following non-exhaustive list of situations in which trades would be considered to have a manual component:

- where a FINRA member executes a trade²⁵ by manual or hybrid means, such as by telephone, email, or through a chat/messaging function,²⁶ and subsequently must manually enter into a system that facilitates trade reporting all or some of the information required to book the trade and report it to TRACE;
- where allocations to individual accounts must be manually input in connection with a trade by a dually-registered broker-dealer/investment adviser;
- where an electronic trade is subject to manual review for risk management or regulatory compliance purposes and, as part of or following the review, the trade must be manually approved, amended, or released before the trade is reported to TRACE (e.g., a firm’s risk

²⁴ See Supplementary Material .09(a).

²⁵ As noted above, for purposes of Rule 6730, the reporting timeframe is measured from the Time of Execution as defined by Rule 6710(d), which generally refers to the time that the parties have agreed to all of the terms of the transaction sufficient to calculate the dollar price of the trade (or yield, in the case of when-issued securities priced to a spread).

²⁶ FINRA reminds members of their obligation to retain these electronic communications as part of their books and records, consistent with FINRA and Commission recordkeeping requirements. See, e.g., Notice to Members 03-33 (July 2003).

management procedures require a secondary approver for trades over a certain threshold; a firm's best execution procedures require manually checking another market to confirm that a better price is not available to the customer);

- where a FINRA member trades a bond for the first time and additional manual steps are necessary to set the bond up in the firm's systems to book and report the trade (e.g., entering the CUSIP number and associated bond data into the firm's system); and
- where a FINRA member agrees to trade a basket of securities at a single price and manual action is required to calculate the price of component securities in the basket or to book and report the trade in component securities to TRACE.

According to FINRA, the above examples are illustrative of the types of circumstances in which, due to the manual nature of components of the trade execution or reporting process, reporting a transaction within one minute of the Time of Execution may be unfeasible, even where a FINRA member makes reasonable efforts to report the trade as soon as practicable (as required). FINRA also would assess FINRA members' trade reporting in connection with manual trades to determine whether the five-minute trade reporting timeframe (to become applicable after two years) is appropriate, and would be prepared to adjust, as necessary.

FINRA would review use of the manual trades exception for abuse. FINRA members would not, in any case, be allowed to purposely delay the execution or reporting of a transaction by handling any aspect of a trade manually or introducing manual steps following the Time of Execution. Additionally, considering the overarching obligation to report trades as soon as practicable, FINRA members would be encouraged to consider the types of transactions in which they regularly engage and whether they can reasonably reduce the time between a trade's Time

of Execution and its reporting, and more generally must make a good faith effort to report their trades as soon as practicable.

Under amended Rule 6730(d)(4), any FINRA member that executes or reports a trade manually would be required to append a manual trade indicator to the trade report. The indicator must be included in any manual trade, regardless of whether the FINRA member reports outside of the one-minute timeframe in reliance on the manual trades exception. Application of the indicator would give FINRA greater insight into manual trading and the use of the exception. The indicator would not be included in publicly disseminated TRACE data.

Finally, FINRA is proposing to amend Rule 6730(f) to provide that a pattern or practice of late reporting may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010, absent “reasonable justification” (in addition to the rule’s existing reference to “exceptional circumstances”).²⁷ Recurring issues in the systems of a FINRA member firm or its vendor would not be considered a reasonable justification or exceptional circumstance that excuses a pattern or practice of late trade reporting.²⁸

III. Summary of Comments

The Commission received comments on the proposed rule change.²⁹ Commenters generally address the one-minute reporting timeframe, the exceptions to the timeframe (both in

²⁷ See, e.g., Rule 6623 describing “exceptional circumstances” as instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole.

²⁸ See, e.g., FINRA Trade Reporting Frequently Asked Questions, Q206.21, available at <https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq>.

²⁹ See supra note 4.

general and specifically discussing the manual trades and de minimis exceptions), the gradual five-minute decreases in the manual trades exception, consistent application of reporting requirements, the proposed implementation period, and the proposed rule’s consistency with the Exchange Act.

Several commenters support the proposal to shorten the 15-minute TRACE reporting timeframe to one minute and its aim of increasing transparency in fixed income markets.³⁰ Some commenters support increasing price transparency in general but caution restraint and the need for broad exceptions, citing the potential for reduced liquidity and execution quality.³¹ Some commenters oppose one minute reporting, questioning the feasibility and cost of compliance due to technical limitations and the prevalence of manual processes.³²

³⁰ See, e.g., Letter to Vanessa Countryman, Secretary, Commission, from Tyler Gellasch, President and CEO, Healthy Markets Association (February 15, 2024) (“HMA Letter”) at 7; Letter to Vanessa Countryman, Secretary, Commission, from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel (February 15, 2024) (“Citadel Letter”) at 1; Letter to Vanessa Countryman, Secretary, Commission, from Joanna Mallers, Executive Director, FIA Principal Traders Group (February 15, 2024) (“FIA PTG Letter”) at 1; Letter to Vanessa Countryman, Secretary, Commission, from Gerard O’Reilly, Co-Chief Executive Officer and Co-Chief Investment Officer, Dimensional Fund Advisors LP and David A. Plecha, Global Head of Fixed Income, Dimensional Fund Advisors LP (February 15, 2024) (“Dimensional Letter”) at 1.

³¹ See, e.g., Letter to Vanessa Countryman, Secretary, Commission, from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute and Kevin Ercoline, Assistant General Counsel, Investment Company Institute (February 15, 2024) (“ICI Letter”) at 2; Letter to Vanessa Countryman, Secretary, Commission, from Michael Decker, Senior Vice President, Bond Dealers of America (February 15, 2024) (“BDA Letter”) at 1; Letter to Secretary, Commission, from Howard Meyerson, Managing Director, Financial Information Forum (February 15, 2024) (“FIF Letter I”) at 2.

³² See, e.g., Letter to Vanessa Countryman, Secretary, Commission, from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (February 15, 2024) (“SIFMA Letter”) at 2; Letter to Vanessa Countryman, Secretary, Commission, from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association (February 16, 2024) (“ASA Letter”) at 2; Letter to

Commenters express varied views on the proposed exceptions to one minute reporting. Some commenters state the exceptions are essential to the success of the rule.³³ These commenters cite the burdens of compliance with one-minute reporting on broker-dealers which rely on manual processes.³⁴ Others state that the exceptions are too narrow³⁵ or too broad.³⁶ One commenter that states the exceptions are too narrow also states that anything less than 15-minute reporting is infeasible and cites the concern that compliance costs associated with faster reporting could price small broker-dealers out of fixed income markets.³⁷ Two commenters that state the exceptions are too broad suggest FINRA withdraw the proposal and instead require market participants to report trades as soon as practicable but no later than five minutes after execution.³⁸ Another commenter that states the exceptions are too broad also states that the exceptions “create significant risk to the efficacy and legal durability of the entire rule.”³⁹

Vanessa Countryman, Secretary, Commission, from Melissa P. Hoots, CEO/CCO, Falcon Square Capital (February 15, 2024) (“Falcon Letter”) at 1-2; BDA Letter at 2.

³³ See, e.g., BDA Letter at 1; FIF Letter I at 2; SIFMA Letter at 3-4.

³⁴ See BDA Letter at 1; FIF Letter I at 2; SIFMA Letter at 3-4.

³⁵ See, e.g., ASA Letter at 1-2; Falcon Letter at 1.

³⁶ See, e.g., Dimensional Letter at 2; HMA Letter at 13; Citadel Letter at 2-3; FIA PTG Letter at 1-2.

³⁷ See ASA Letter at 2; see also Falcon Letter at 4 (“[O]ur fear is that the Filing will, over time, eliminate smaller fixed-income brokers like Falcon Square and harm the small and medium-size institutional clients that we serve due to an inability to realistically further reduce the time it takes to conduct these manual trade processes.”).

³⁸ See Citadel at 4; FIA PTG at 4.

³⁹ HMA Letter at 2.

Finally, one commenter encourages FINRA to phase out both exceptions completely over time, which it states would incentivize firms to modernize their execution processes.⁴⁰

Several commenters specifically address the de minimis exception. Some commenters state support for the de minimis exception.⁴¹ One of these commenters states the de minimis exception is appropriately tailored to protect minority, veteran, and women owned business enterprises and small dealers from incurring significant costs.⁴² The commenter also states the proposed two-year look back period will prevent surprise application of the rule and allow newly impacted broker-dealers time to comply.⁴³ Some commenters state opposition to the de minimis exception.⁴⁴ One of these commenters supports the logic behind the de minimis exception but states the proposed 4,000-trade report threshold is too low and insufficiently justified.⁴⁵ This commenter also requests FINRA expand the threshold or at minimum provide more analysis to support its proposed limit.⁴⁶ Another commenter that opposes the de minimis exception states FINRA did not sufficiently justify the need for the exception, nor its decisions to set the exception's threshold at 4,000 annual trades and the lookback period for applicability of the

⁴⁰ See Dimensional Letter at 2.

⁴¹ See, e.g., SIFMA Letter at 9; BDA Letter at 2.

⁴² See SIFMA Letter at 9.

⁴³ See id.

⁴⁴ See, e.g., Falcon Letter at 2-4; HMA Letter at 9-11, 13.

⁴⁵ See Falcon Letter at 2-3.

⁴⁶ See id.

threshold at two years.⁴⁷ This commenter suggests the de minimis exception be abandoned or more narrowly tailored.⁴⁸

Several commenters offer specific views about the manual trades exception. Some commenters characterize the manual trades exception as essential to ensuring compliance with the rule.⁴⁹ Some commenters state it would be more operationally feasible to flag trades subject to one-minute reporting, rather than flagging all manual trades.⁵⁰ One commenter states that the exception should be expanded to include certain fully electronic transactions that cannot feasibly be reported within one minute, such as large post-trade allocations, batch-processed trades, and trades involving multiple systems in trade workflow.⁵¹ This commenter states that post-trade allocations are especially difficult to report within one minute for broker-dealers also registered as investment advisers.⁵² Another commenter states support for FINRA’s proposal to apply the exception to a scenario where a firm has not previously traded a bond.⁵³ This commenter also notes a similar proposal by the Municipal Securities Rulemaking Board (“MSRB”) that would apply to transactions in municipal securities and states that FINRA and MSRB should harmonize

⁴⁷ See HMA Letter at 11.

⁴⁸ See id. at 9.

⁴⁹ See BDA Letter at 1; FIF Letter I at 2; SIFMA Letter at 6.

⁵⁰ See BDA Letter at 3; SIFMA Letter at 9.

⁵¹ See SIFMA Letter at 7-9.

⁵² See id. at 7; see also BDA Letter at 3-4; FIF Letter I at 3 (“FIF members request that FINRA and the MSRB provide an additional exception for the scenario where an entity dually-registered as a broker-dealer and investment adviser . . . is required to report a large number of allocations for a block trade that the dual registrant executes, allocates and reports automatically.”).

⁵³ See FIF Letter I at 4.

the scope of the manual trades exceptions.⁵⁴ Finally, the commenter describes certain scenarios that could be experienced by a reporting firm, questioning whether the manual trades exception would apply, and suggesting a dialogue with industry about such scenarios.⁵⁵

Several comments address the gradual phase-in of five-minute reporting written into the proposed rule for manual trades.⁵⁶ One commenter requests FINRA propose for notice and comment each time it seeks to reduce the timeframe.⁵⁷ The commenter also states FINRA must consider that the proposed rule will be implemented alongside other regulatory initiatives.⁵⁸ Another commenter states support for the phase-in approach, but asks FINRA to maintain close communication with industry during the phase-in period and to remain sensitive to operational roadblocks that market participants could confront.⁵⁹

Several commenters state the manual trades exception is too broad.⁶⁰ Two of these commenters question the lack of estimates in the proposal of the number of transactions expected to qualify for the manual trades exception.⁶¹ These commenters raise the concern that a large

⁵⁴ See id. at 3.

⁵⁵ See Letter to Secretary, Commission, from Howard Meyerson, Managing Director, Financial Information Forum (February 26, 2024) at 2-4; FIF Letter I at 3-4.

⁵⁶ See, e.g., ICI Letter at 3-4; Falcon Letter at 4; SIFMA Letter at 6; BDA Letter at 2-3.

⁵⁷ See ICI Letter at 3; see also Falcon Letter at 4 (stating that FINRA must produce supporting data before proposing a mandatory phase-in period for the manual trades exception); SIFMA Letter at 6 (stating that FINRA should conduct an impact assessment before reducing the reporting window for manual trades to five minutes).

⁵⁸ See ICI Letter at 3-4.

⁵⁹ See BDA at 3.

⁶⁰ See, e.g., HMA Letter at 11-12; Citadel Letter at 2-3; FIA PTG Letter at 2-4.

⁶¹ See Citadel Letter at 2-3; FIA PTG Letter at 2.

proportion of the total number of trades currently reported outside of one minute could fall within the proposed rule's manual trades exception, undermining the goal of increasing post-trade transparency.⁶² These commenters also raise concerns that firms could build manual steps into the trade execution process as a means of qualifying for the longer manual trades reporting window.⁶³

Several commenters raise concerns related to consistent application of reporting requirements. One commenter describes the potential negative consequences of applying different levels of post-trade transparency depending on a trade's mode of execution.⁶⁴ Another commenter raises concern about different reporting requirements under the proposal depending on a trade's time of execution.⁶⁵ The commenter states that under the current rule, trades executed when TRACE is closed must be reported within 15 minutes of TRACE being open, mirroring the deadline for reporting of trades executed when TRACE is open.⁶⁶ But, the commenter continues, under the proposal, trades executed outside of the hours when TRACE is open will still be subject to the deadline to report within 15 minutes of TRACE being open while

⁶² See Citadel Letter at 2-3; FIA PTG Letter at 2.

⁶³ See Citadel Letter at 3; FIA PTG at 3; see also HMA Letter at 12 (“[T]he Proposal . . . does not assuage our concerns that firms may intentionally add a ‘manual’ component to their post-execution processes so as to avoid timely reporting (and dissemination) of their trading activity.”).

⁶⁴ See Citadel Letter at 1-3.

⁶⁵ See HMA Letter at 8.

⁶⁶ See id.

trades executed when TRACE is open will be subject to the new one minute requirement.⁶⁷ The commenter urges consistent reporting times in this scenario.⁶⁸

Some comments address the proposed implementation period. Two commenters request an implementation period of two years from the time of adoption due to the high cost of compliance.⁶⁹ Another commenter states the cost of implementing the proposal is anticipated to be especially high for smaller firms and suggests an implementation period of at least 18 months from the date of FINRA and MSRB publishing updated technical specifications and guidance.⁷⁰ The commenter also requests that FINRA provide an expanded free testing period of 90 days instead of the standard free testing period of 30 days.⁷¹

Several commenters question the proposed rule's consistency with the Exchange Act. Two commenters state that FINRA failed to meet its burden to demonstrate consistency with the Exchange Act, particularly by failing to estimate the number of transactions captured by the manual trades exception.⁷² These commenters also state that the differing reporting windows for manual and electronic trades violate the Exchange Act by discriminating based on the mode of execution and unduly burdening competition.⁷³

⁶⁷ See id.

⁶⁸ See HMA Letter at 9.

⁶⁹ See SIFMA Letter at 10; BDA Letter at 4.

⁷⁰ See FIF Letter I at 5.

⁷¹ See id. at 6-7.

⁷² See Citadel Letter at 3; FIA PTG Letter at 3; see also Falcon Letter at 1 (stating that FINRA did not adequately justify the exceptions to the rule).

⁷³ See Citadel Letter at 3; FIA PTG Letter at 3-4.

IV. Proceedings to Determine Whether to Approve or Disapprove the FINRA Proposal and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Exchange Act⁷⁴ to determine whether the proposed rule change should be approved or disapproved.

Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,⁷⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with: (1) Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest,⁷⁶ and (2) Section 15A(b)(9) of the Exchange Act, which requires that FINRA rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁷⁷ The Commission

⁷⁴ 15 U.S.C. 78s(b)(2).

⁷⁵ 15 U.S.C. 78s(b)(2)(B).

⁷⁶ 15 U.S.C. 78o-3(b)(6).

⁷⁷ 15 U.S.C. 78o-3(b)(9).

asks that commenters address the sufficiency of FINRA’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed exceptions to the one-minute reporting timeframe.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Exchange Act,⁷⁸ any request for an opportunity to make an oral presentation.⁷⁹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person

⁷⁸ 17 CFR 240.19b-4.

⁷⁹ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (Jun. 4, 1975), grants to the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-004 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FINRA-2024-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit

only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-004 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁰

Sherry R. Haywood,
Assistant Secretary.

⁸⁰ 17 CFR 200.30-3(a)(57).