



August 21, 2024

Vanessa Countryman
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-14 to Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB,
File No. SR-MSRB-2024-01

Dear Ms. Countryman,

Belle Haven Investments, LP (CRD# 29278) appreciates this opportunity to provide input to the Securities and Exchange Commission (“SEC”) on the Municipal Securities Regulatory Board’s (“MSRB”) July 18, 2024 amendment (the “Amendment”)¹ to File No. SR-MSRB-2024-01, originally filed with the SEC on January 12, 2024, Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-14 to Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB (“MSRB Filing”).²

Although the MSRB Amendment seeks to placate certain objections with regard to (1) the timing of a phase-in period in reducing the time of reporting of manual trades and (2) the number of transactions for qualifying as a dealer with limited trading activity, the MSRB Amendment fails to address fundamental failings of its MSRB Filing.

As set forth in our letter of February 16, 2024, we challenged the MSRB to provide sufficient evidence upon which the SEC could reach a determination as to whether to approve or disapprove the proposed rule change citing the U.S. Circuit Court of Appeals for the District of Columbia in *Susquehanna Int’l Group, LLP v. SEC*, 866 F.3d 442, 448 (D.C. Cir. 2017), which requires, among other things, that the Commission make its own independent finding based on the evidence in the record.³ MSRB’s Amendment fails to do so.

¹ SEC Release No. 34-100589 (July 25, 2024), 89 FR 61516 (July 31, 2024). *See also* Letter from Ernesto A. Lanza, Chief Regulatory and Policy Officer, MSRB, to Secretary, Commission (Jul. 18, 2024) (discussing the changes made by the MSRB Amendment and responses to commenters) (hereinafter, the “MSRB Letter”).

² 89 FR 5384 (January 26, 2024) (the “MSRB Filing”).

³ Please see our February 16, 2024 submission, **attached hereto**, for a more fulsome review of the SEC’s required standard of review in determining whether to approve or disapprove the MSRB’s rule proposal.



A. The MSRB continues to seek to upend the municipal securities industry without providing quantifiable evidence that mandating 60 second time reporting provides meaningful additional trade transparency.

In our February 16, 2024 submission, we challenged the MSRB to provide quantifiable data to support its underlying assumption that requiring a faster reporting period results in significantly more transparency, as the data previously made available by the MSRB shows that any increase in transparency to trade reporting within 60 seconds was negligible.

The MSRB's 2021 data identified only 3.5% of trades (251,635 trades from a universe of 7,146,711 trades reported) that theoretically could have benefited from execution information of a prior trade. Of this 3.5% of reported trades that could have potentially benefited from the additional information derived from a single trade, less than one in three of these trades would have had the additional one trade report at time of execution had the prior trade been reported within one-minute.

As we previously observed, even with a one-minute reporting requirement, the MSRB itself demonstrated that in all of 2021, 0.95% (67,946 of 7,146,711 reported) of all trades reported that year could have had any additional trade information at all under the proposed 60-second rule. Furthermore, the MSRB has not provided any analysis as to whether this negligible number of trade reports, *i.e.*, 0.95%, would have materially changed any of the following 67,946 trades.

We expected (because it is required for the SEC to make a determination on the rule proposal) the MSRB to respond by providing objective data and analysis to address this observation. Instead, the MSRB Amendment tacitly acknowledges this deficiency, does not contest the calculations based on the 2021 data, and makes no attempt to assert that there is any improved trade transparency in relation to any specific transactions.

Rather, the Amendment moves the goalposts with speculative assertions that reducing trade reporting time to 60 seconds will "likely" have a **secondary effect** on a "universe of potentially benefited transactions".⁴ Yet, the Amendment fails to provide any quantifiable data for this secondary butterfly effect. The Amendment states only MSRB's expectations with the use of "likely" three times in a single paragraph, without a single reference to any data point.⁵

⁴ MSRB Letter at 8.

⁵ The MSRB is obviously able to provide quantifiable analysis when it suits them. For example, to address technology cost concerns raised by commenters, the Amendment cites objective, quantifiable actions taken by the MSRB, including conversing with vendors and several dealers and gathering multiple data points of information regarding the price range of the technology needed if the SEC were to approve the MSRB rule proposal. MSRB Letter at 9.



This approach undermines the integrity of the regulatory process, as it neglects the SEC's requirement for a rigorous, data-driven assessment of rule proposals.

MSRB's Amendment again asks the SEC to do what it cannot, *i.e.*, merely accept the determinations of the MSRB, a conclusion unsupported by substantial evidence, that the rule proposal will significantly improve price transparency. As we stated previously, the MSRB should not be permitted to upend an entire industry without providing the SEC with substantial evidence that meaningful, additional "transparency" will result.⁶

B. The MSRB still does not provide evidence that municipal securities dealers are dilatory in reporting trades or that its radical new policy proposal would improve reporting times.

As documented in our February 16, 2024 submission, the MSRB Filing did not provide the SEC with evidence (1) that manual reporters are not currently reporting as fast as practicable, (2) that manual reporters are currently capable of manual reporting faster or (3) that improvements in electronic automation, which seemingly drive the entire notion of imposing faster reporting time requirements, can act to improve the reporting times of manual files. In sum, the MSRB provided no analysis of the ability of manual trade reporters to report trades within *any* specific time period or the viability of a "phase-in" period.⁷

To promote objective feedback, we presented a variety of questions: What percentage of the time do manual reporters report within 15 minutes or 10 minutes or 5 minutes or 1 minute? Which attributes cause some trades to take longer to report and which types of trades are more amenable to faster manual reporting? What is the basis for the phase-in time periods, or the time reductions (purported 10 minutes and 5 minutes) of the proposed "phase-in"? How

⁶ It may fairly be noted that the MSRB continues to lower its expectations of cost savings to investors. The MSRB originally claimed a hypothetical 2.5 basis spread reduction in cost, which could translate into investor savings of approximately \$24.5 million to \$63.1 million. Now, in its Amendment, the MSRB substantially reduces its estimate, asserting that "even a one-basis point reduction in effective spreads" would generate approximately \$23.1 million of savings to investors for trades with a trade size of \$1,000,000 par value or less. MSRB Letter at 8. It is telling that the "estimates" continue to lower, further raising questions about the efficacy of the rule proposal. Without proper data for analysis, MSRB's beliefs cannot be substantiated.

⁷ The MSRB Filing did not bother to cite a scintilla of statistical or objective support for the need to "phase in" a reduction of reporting times for manual reporters. Most elementarily, the MSRB did not provide evidence that manual reporters can consistently meet a 10-minute deadline, or consistently meet a 5-minute deadline. Nor did the MSRB Filing provide data to support any analysis of the benefits, costs, or other effects of its proposed "phase-in" periods.



were the "costs and risks" associated with the "phase-in" measured? On what criteria did they determine that the "phase-in" was reasonable for the associated cost and risks? Without this analysis, it is completely unknown whether dealers will be able to comply with the proposed rule or cause the elimination of certain dealers from the business.

In its Amendment, the MSRB again confesses that "it does not have specific evidence that dealers are currently, as a matter of practice, reporting trades less rapidly than as soon as practicable,"⁸ severely undercutting any notion that the MSRB has a policy need to require more speed. Further, our questions of fact continue to go unanswered.

The Amendment baldly responds that, "The MSRB *believes* that the phasing-in of the manual trade exception from an initial 15-minute to an eventual 5-minute timeframe is a reasonable approach...." (emphasis added).⁹ Rather than providing the SEC with objective data to support the claimed feasibility and impact of its phase-in plans, the MSRB continues to push a let's-make-it-law-and-then-see-what-happens approach, which is antithetical to proper rulemaking.

C. The MSRB's offer to expand the limited trading activity exception, while laudable, highlights the hypocrisy in proposing a highly disruptive rule change in order to capture, at best, negligible additional transparency.

The Amendment seeks to amend the proposed definition of "dealer with limited trading activity," raising the number of trades from 1,800 to 2,500 for dealers to be exempt from the new proposed time reductions.¹⁰ The Amendment notes that, "[t]he revised 2,500 threshold is expected to exempt a clear majority of dealers, i.e., 476 out of 651 dealers or approximately 73 percent of dealers based on 2021 and 2022 trade reporting data and these dealers would remain eligible to report their trades in 15 minutes or less."¹¹ The Amendment concludes that "these limited activity dealers account for 1.4 percent of total trades and 2.3 percent of the total par value traded, and therefore would have a minimal impact on market transparency."¹²

We applaud any exemptions which would remove some or all dealers from having to comply with a proposed rule unsupported by any meaningful evidence. It should not escape

⁸ MSRB Letter at 17.

⁹ MSRB Letter at 17.

¹⁰ SEC Release No. 34-100589 at 3, 89 FR 61516, 61517.

¹¹ MSRB Letter at 23.

¹² MSRB Letter at 23.



the SEC's notice that in justifying the expansion of the exemption to permit limited activity dealers to continue to report within 15 minutes, the MSRB advised it considers the exclusion of 1.4% of all trades to "have minimal impact on market transparency" while at the same time supporting its entire MSRB rule proposal on capturing an additional trade data point on only 0.95% of all trades. The MSRB's position reveals a clear imbalance between the purported benefits and the actual scope of the proposed rule.

Conclusion

Belle Haven agrees with the MSRB that in all instances, whether trades are electronically or manually reported, whether the firm is large or small, trade reporting should be conducted "as soon as practicable." This is a perfectly reasonable regulatory standard, and it may be properly monitored by the member firms' compliance departments and enforced by the applicable SROs.

Given that the SEC is required to make its own independent finding that a proposed MSRB rule change will promote efficiency, competition, and capital formation based on the evidence in the record, the MSRB's reliance on conclusory statements without background data in support requires the SEC to deny the MSRB's request as inconsistent with the requirements of the Exchange Act.

Sincerely,

Matt Dalton

Matt Dalton

Chief Executive Officer

Exhibit: Belle Haven February 16, 2024 submission to the SEC



February 16, 2024

Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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Dear Secretary,

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Summary

The MSRB Filing, which is based upon the MSRB's request for comment ("MSRB Proposal")² fails to provide adequate evidence upon which the SEC can reach a determination as to whether to approve or disapprove the proposed rule change. The U.S. Circuit Court of Appeals for the District of Columbia in *Susquehanna Int'l Group, LLP v. SEC*, 866 F.3d 442, 448 (D.C. Cir. 2017) makes clear that "unquestioning reliance" of an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of the proposed rule change. The MSRB Filing is deficient of supporting evidence in at least three critical respects, which, in our view, precludes its approval.

First, we fully support the MSRB's purported goal of "transparency," which term the MSRB appears to use to suggest that "more market-wide trades would benefit from more recent trades being reported, as contemporaneous trades would provide more relevant pricing information than distant trades."³ However, the MSRB provides little, if any, evidentiary basis whatsoever that the proposed radical reduction from the current 15-minute reporting time to a 60 second reporting time frame accomplishes that goal.

¹ 89 FR 5384 (January 26, 2024) (the "MSRB Filing").

² MSRB, "Request for Comment on Transaction Reporting Obligations under MSRB Rule G-14 (2022-07) (August 2, 2022).

³ *Id.* at 7.



Second, the MSRB fails to advance quantifiable data to support its assertion that investors will save millions of dollars through such radically reduced reporting times. In this regard, it is salient that the MSRB Filing, despite previous assertions in the MSRB Proposal, no longer claims any particular amount of cost savings, which is strong indication that the MSRB itself knows its claims of cost savings are unsupported by evidence.

Lastly, the MSRB abdicates any responsibility to provide data support for the “phase-in” feature of this rule proposal for those trades which contain a “manual component.” This is unsurprising, since the entire notion of a “phase-in” appears to be a belated effort to quell the serious concerns following the MSRB Proposal that such a monumental shift to a hard 60 second reporting rule for all firms in all trading circumstances will have foreseeable negative effects which could dramatically reduce the current number of dealers, eliminating small business dealers and reducing market liquidity and price competition— precisely the opposite of the stated goal of the proposal. Not only is the “phase-in” regime to be imposed without any study or analysis, but the MSRB Filing provides no rationale or support for the proposed “phase-in” schedule, particularly for trades entered through the MSRB’s own web portal, which does not lend itself to the kind of electronic automation improvements over time that the phase-in period is purportedly designed to allow for.⁴

Belle Haven agrees with the MSRB that in all instances, whether trades are electronically or manually reported, whether the firm is large or small, trade reporting should be conducted “as soon as practicable.” This is a perfectly reasonable regulatory standard, and it may be properly monitored by the member firms’ compliance departments and enforced by the applicable SROs.

Given that the SEC is required to make its own independent finding that a proposed MSRB rule change will promote efficiency, competition, and capital formation based on the evidence in the record, the MSRB’s reliance on conclusory statements without background data in support requires the SEC to deny the MSRB’s request as inconsistent with the requirements of the Exchange Act and return the rule proposal to the MSRB for further study and consideration. Even if the SEC were able to overlook the MSRB’s lack of data analysis regarding transparency and investor savings, it certainly cannot overlook the complete absence of analysis or support for the exceptions and “phase-in” proposals, which the MSRB included prior to filing with the SEC.⁵

⁴ FINRA, another SRO, also filed a Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute, 89 FR 5034 (January 25, 2024). FINRA’s filing similarly fails in providing supporting evidence for its proposed rule. Particularly, there is a complete absence of analysis or support for the FINRA’s exceptions and “phase-in” proposals, which fail to promote efficiency or competition by negatively impacting certain dealers, and, therefore, the SEC is required to deny FINRA’s rule amendment request as well.

⁵ The MSRB Proposal did not include any reference, supporting data or a request for comment on the MSRB’s proposed “phase-in” requirement.



Comments

- A. The proposed MSRB rule contains no quantifiable data to support its assumption that requiring a faster reporting time period will result in significantly more transparency. According to the data provided by the MSRB to its members in 2022, the increase in transparency to trade reporting within 60 seconds is, at best, negligible.**

To justify the enormous reduction of time to report from 15 minutes to a mere 60 seconds, one would expect the MSRB Filing to provide carefully detailed analysis of the clear and substantial benefit to the municipal securities marketplace. The proposal instead makes the claim that its proposal will result in greater market transparency with little, if any, support for this assertion.

The MSRB Filing's key assertion is that a hard 60 second rule would provide more immediate transparency from the 26.4% of trades that were not reported to the MSRB within 60 seconds during 2022.⁶ Specifically, the MSRB Filing contends that, "By implementing the proposed rule change, investors would receive greater advantages on trade pricing information through the reporting of more contemporaneous transactions."⁷

While the MSRB Filing omits much of the hard data upon which to test this assertion, the SEC should have strong reason to doubt this claim of efficacy, based upon the data results the MSRB disclosed in its MSRB Proposal in 2022. There, the MSRB found that 23.1% of trade reports were not submitted within 60 seconds in 2021. In Table 3 of the MSRB Proposal, the MSRB set forth the total universe of trades with same-CUSIP number matched trades between January and December 2021, where a matched trade was executed before the analyzed trade's execution, but the executed trade was reported after the analyzed trade's execution. In other words, the MSRB identified trades executed without the benefit of prior trade information of an already executed trade. For the 2021 calendar year, the MSRB was able to identify only 251,635 trades from a universe of 7,146,711 trade reports that theoretically could have benefited from execution information of a prior trade.

From this starting point of potential benefit with regard to only 3.5% of reported trades, the theoretical benefit continues to narrow. Of this 3.5% of reported trades that could have potentially benefited from the additional information derived from a single trade, less than one in three of these trades would have had the additional one trade report at time of execution had the prior trade been reported within one-minute. In other words, even with a one-minute reporting requirement, the MSRB itself demonstrated that in all of 2021, 0.95% (67,946 of 7,146,711 reported) of all trades reported that year could have had any additional trade information at all under the proposed 60 second rule.

⁶ 89 FR 5391.

⁷ 89 FR 5395.



Neither the MSRB Proposal nor the MSRB Filing provides any analysis as to whether this negligible number of trade reports, *i.e.*, 0.95%, would have actually “benefited” in any way, which is to say that the additional information would have materially changed any of the 67,946 trades. In sum, the MSRB’s “benefit” argument of “greater transparency” amounts to only a meager 0.95% of all trades reported having one additional data point before execution and an assumption without analysis that the few additional data points would meaningfully affect the following trade.⁸

There is no reason to presume that the same meager result would not be replicated for the 26.4% of 2022 trades outside the 60 second window, had the MSRB been willing to reveal to the SEC its underlying data in the MSRB Filing, as it did in the MSRB Proposal. We respectfully suggest the MSRB should not be permitted to upend an entire industry without providing the SEC with solid analysis that meaningful, additional “transparency” will result, as required by *Susquehanna* and previously applied by the SEC.

B. The proposed MSRB rule is without quantifiable data to support its assumption that investors will save millions of dollars through reducing reporting times from 15 minutes to 60 seconds. In fact, the MSRB Filing backs away from its quantification of savings it first claimed in the MSRB Proposal.

On a very thin reed of improving transparency for less than 1% of all trades, the MSRB sweepingly concludes that this “more immediate transparency” will “reduce customer trade effective spread.”⁹ The MSRB Proposal, just a year ago, claimed that the additional transparency would “result in a savings of \$78.3 million annually.”¹⁰ To calculate this purported savings figure, the MSRB cited research indicating that when the reporting requirement was shortened in January 2005 from the “end of the day” to “15 minutes after trade”, there was an 11 to 20 basis point reduction in the effective spread. From this, the MSRB arbitrarily presumed that a reporting requirement shortened

⁸ In fact, as SIFMA pointed out in its 2022 comments to the MSRB and FINRA’s original trade shortening rule proposals, even this tiny universe of potentially benefited trades greatly overestimates the additional reported data available to the marketplace. Given that many broker-dealers engage in reportable transactions that involve a trade with another broker-dealer on the one hand and to separate proprietary or other accounts on the other hand, “the second follow-on trade would merely reflect this type of movement of the bonds and normally would reflect information that is effectively duplicative of the data reported for the first trade, providing no real additional benefit at a high cost of compliance.” SIFMA Asset Management G, Letter on MSRB Notice 2022-07 and FINRA Regulatory Notice 22-17at7 (October 3, 2022) (“SIFMA 2022 Comments”).

⁹ 89 FR 5397.

¹⁰ MSRB Proposal at 10.



from 15 minutes to 60 seconds would necessarily produce an additional 5 basis points reduction in the effective spread, and thereby \$78.3 million in annual savings.¹¹

The MSRB Filing abandons its previous estimate of savings because the MSRB evidently now recognizes that extrapolating a 5-basis point spread reduction (from 15 minutes to 60 seconds) based on an 11 to 20 basis point reduction (from end of day to within 15 minutes of trade) is neither logically coherent nor grounded in empirical evidence. Rather, in the MSRB Filing, the MSRB posits an unquantified amount of savings, baldly asserting “[I]t is expected to yield valuable advantages for investors through the inclusion of more contemporaneous trade data points in the same and/or comparable securities.”¹² Instead of evidence in support of its costs savings claim, the MSRB advances pure hypotheticals, such as that if there is a 2.5 basis spread reduction, there could be savings of approximately \$24.5 million to \$63.1 million.¹³ Yet, even these numbers, which the MSRB acknowledges are not based on any objective analysis, seem wholly implausible where the hard data reflects additional data points for less than 1% of all trades. There is no reason to credit these new hypothetical savings to investors any more than the previously debunked estimated savings.

The MSRB further fails to acknowledge, or provide any analysis, on the investor savings that will be lost by the decline in liquidity, capital resources, and competition, if the SEC were to approve the rule proposal. Small firms, i.e. manual reporting firms, which are incapable of meeting the phased-in time periods, will be eliminated from business. These firms provide bids and asks on countless issues, particularly smaller, local bonds and additionally generate market data on issues that are transacted by other firms. Even where small firms are not the party executing the trade, their market data creates competition, which price benefits municipal securities investors. The retail investor’s liquidity and negotiating power will be eliminated with the competitive landscape reduced to the largest of firms which do not negotiate with retail investors.

C. The MSRB rule proposal includes an illusory “phase-in” period to allow firms which engage in “trades with a manual component” to come into compliance with the newly shortened reporting time regime but fails to provide any quantifiable data to support

¹¹ The MSRB Proposal, with its unsupported presumption of a 5 basis points spread reduction, then applied the 5 basis points to all “non-institutional-sized customer trades only with a trade size of \$1,000,000 or less” thereby calculating a notional savings of \$78.3 million annually. The MSRB Proposal did not provide any evidence or explanation as to how trade information on only 67,946 trades per year (with over 7.1 million transactions per year) could possibly reduce the effective spread for all non-institutional-sized customer trades only with a trade size of \$1,000,000 or less by 5 basis points.

¹² 89 FR 5397.

¹³ 89 FR 5398.



either the need or usefulness of a “phase-in” or the justification for the arbitrary phase-in schedule it has proposed.

In the MSRB Filing, the MSRB acknowledges the numerous public comments submitted in response to the MSRB Proposal which clearly articulated the immediate across-the-board devastation to small firms with the adoption of the radical shift in reporting time requirements as proposed. The MSRB Proposal had grossly underestimated the costs of the proposed rule and its forecastable massive culling of up to 400 MSRB firms, putting them out of business.¹⁴ The MSRB Filing seeks to pacify the outrage by proposing two new exceptions, a “limited trading activity” exception, and a “trades with a manual component”¹⁵ exception.

We commend the MSRB for a “limited trading activity” exception which provides for the smallest of firms to report trades “as soon as practicable, but no later than 15 minutes.”¹⁶ However, the MSRB’s other proposed “trades with a manual component” exception is not a true “exception” but merely a delayed implementation. Specifically, the MSRB has imposed a three-year “phase-in” during which, in each year, the required reporting time periods are reduced from the current 15 minutes to 10

¹⁴ We stated in our comment letter,

We believe the MSRB Proposal grossly underestimates the effect of imposing the rule change. First, the MSRB rule proposal will have the immediate effect of forcing approximately 85% of dealers registered with the MSRB to become habitual violators of the new rule. This consequence will leave such firms with only two choices: (1) close down their business; or (2) violate the rule until the MSRB imposes discipline (and eventually have their business closed down for them). In this way, the MSRB Proposal could have the effect, over time, of reducing reporting firms by 85% to approximately only 100. Second, eliminating 400 or more smaller firms eliminates the markets these firms create. While the MSRB Proposal argues that these firms only transact 6.2% of all transactions reported, it should be understood that these firms also provide bids and asks on countless other issues, particularly smaller, local bonds and additionally generate market data on issues that are transacted by other firms. Even where small firms are not the party executing the trade, their market data creates competition, which price benefits municipal securities investors.

¹⁵ The MSRB defines a “trade with a manual component” as “a transaction that is manually executed or where the dealer must manually enter any of the trade details or information necessary for reporting the trade directly into an RTRS Portal (for example, by manually entering trade data into the RTRS Web Portal) or into a system that facilitates trade reporting (for example, by transmitting the information manually entered into a dealer’s in-house or third-party system) to an RTRS Portal.” 89 FR 5388.

¹⁶ While this rule proposal is so deficient in its evidentiary support that it should be rejected *in toto*, the “as soon as practicable” standard should be retained and applied to the entire industry. Such rule standard supports the speeding of reporting times and thereby, at least conceptually, improves transparency. Such standard also provides sufficient flexibility to allow all MSRB firms to continue their existence. The MSRB would thereby achieve its theoretical goals without unduly burdening and potentially eliminating manual reporting firms from the industry.



minutes and then to 5 minutes. This purported “exception” is a deliberate misnomer; it is rather a means to simply delay by a couple of years the time when firms that report manually, in whole or in part, will be driven out of business by the same factors as decried in the public comments about the MSRB Proposal.

Unlike the flimsy data the MSRB attempts to present in support of “more transparency” and “savings to investors” which provides a surface veneer to the evidentiary support for the proposal, the MSRB does not bother to cite a scintilla of statistical or objective support for the need to “phase in” a reduction of reporting times for manual reporters. Most elementarily, the MSRB Filing does not even provide the SEC with evidence that manual reporters are not currently reporting as fast as practicable, that manual reporters are currently capable of manual reporting faster or that improvements in electronic automation which seemingly drive the entire notion of imposing faster reporting time requirements can act to improve the reporting times of manual files.

Rather, the MSRB Filing concedes it “is not aware of any evidence that dealers are intentionally delaying trade reporting...”¹⁷ Indeed, as SIFMA reminded the MSRB and FINRA in its October 2022 comments to their initial proposals, the self-regulatory organizations are:

not aware of any publicly announced enforcement actions finding that a broker-dealer, while meeting existing 15-minute reporting requirements, has failed to report its trades under the current FINRA Rule 6730(a) requirement that such trades be reported as soon as practicable. This demonstrates that broker-dealers are in fact systematically reporting their trades as soon as practicable, seriously posing the question as to whether mandating shortened trade reporting timeframes would result in an impracticable requirement that would be facially unreasonable and unacceptably burdensome.¹⁸

This failure to provide any evidence in support of the phase-in plan extends to the arbitrarily selected schedule of the phase-in. For example, the MSRB provides no evidence whatsoever that manual reporters can consistently meet a 10-minute deadline, much less any evidence that manual reporters can consistently meet a 5-minute deadline. The MSRB also provides no data to support any analysis of the benefits, costs, or other effects of its proposed “phase-in” periods.¹⁹

As if the MSRB wanted to underscore our deep concerns about this proposal, the MSRB acknowledges in its MSRB Filing to the SEC that it has no data and will need to collect data in order to determine whether its rule is appropriate, but only after the rule is enforced, stating:

¹⁷ 89 FR 5395.

¹⁸ SIFMA 2022 Comments at 22.

¹⁹ The MSRB Filing falsely states that it “has taken a measured and data-driven approach, using available trade reporting data ... to help inform its policy objectives and actions.” 89 FR 5384.

“If the proposed rule change is approved, the MSRB would be reviewing the available trade reporting information and data arising from implementation of the changes to trade reporting introduced by the proposed rule change, including but not limited to the two exceptions to the one-minute reporting requirement, as well as marketplace developments, feedback from market place participants, and examination or enforcement findings from the Commission, FINRA and other appropriate regulatory agencies. Such monitoring would inform any further potential changes by the MSRB to the trade reporting requirements.”²⁰

Nor does the MSRB have any notion of the feasibility of the proposed “phase-in”, stating:

This trade indicator would help the MSRB identify the extent to which the market still operates manually and could help determine whether the proposed gradual reduction in timeframes proposed would be feasible to maintain or to continue reducing in the future.”²¹

Nor does the MSRB have any notion of the impact of the “phase-in,” stating:

In establishing the phase-in period, the MSRB intends ... to provide regulators an opportunity to assess any potential market impact from the gradual reduction in reporting timeframe.”²²

It is entirely unknown what, if any, analysis the MSRB performed on the “phase-in.” For instance, how has the MSRB measured the time periods (purported over 3 years), or the time reductions (purported 10 minutes and 5 minutes) of the proposed “phase-in”? How did they measure the “cost and risks” associated with the “phase-in”? And on what criteria did they determine that the “phase-in” was reasonable for the associated cost and risks? The MSRB Filing is silent on all counts.²³

The MSRB fails to provide any analysis, because the MSRB has failed to collect the data needed for analysis. How many firms manually report? What percentage of the time do manual reporters report within 15 minutes or 10 minutes or 5 minutes or 1 minute? Which attributes cause some trades to take longer to report and which types of trades are more amenable to faster manual reporting? The MSRB has simply failed to provide the most basic of information or analysis in support of a “phase-

²⁰ 89 FR 5385 (emphasis added).

²¹ 89 FR 5398 (emphasis added).

²² 89 FR 5390 (emphasis added).

²³ The MSRB Filing provides no analysis of the costs to be incurred by manual reporters over the 3-year phase in period, nor the anti-competitive results of the phase in, particularly the probable elimination of smaller firms and the harm to the clients that are served by these smaller firms. If firms are forced out of business, due to an inability to reduce the reporting time to five minutes, the overall market will be negatively impacted.



in.”²⁴ The MSRB must be required to collect data to support a reduction in reporting time for manual trades before it proposes a rule to do so.

Analysis

In considering whether to approve or disapprove a proposed rule change by an SRO, the SEC must consider the proposed rule's impact on “efficiency, competition, and capital formation.” 15 U.S.C. 78c(f). In making such a finding, the SEC must rely on the information presented by the SRO, as set forth in 17 CFR § 201.700 (Initiation of proceedings for SRO proposed rule changes and for proposed NMS plans and plan amendments):

The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization is on the self-regulatory organization that proposed the rule change. As reflected in the General Instructions to Form 19b-4, the Form is designed to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all information elicited by the Form, including the exhibits, and must present the information in a clear and comprehensible manner. In particular, the self-regulatory organization must explain why the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements, or that another self-regulatory organization has a similar rule in place, is not sufficient. Instead, the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.²⁵

In interpreting this standard, the SEC has stated that, “The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient

²⁴ With the “manual” indicator, we note that the MSRB will have a mechanism to gather a single data point, *i.e.*, the number of manually reported trades.

²⁵ Emphasis added.



basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.”²⁶

The SEC’s reliance on an SRO’s asserted justifications for a proposed rule change was tested in *Susquehanna*, 866 F.3d 442. The *Susquehanna* court held that the Commission may not “unquestioningly” rely on an SRO’s representations in a proposed rule change, but must make its own independent finding based on the evidence in the record, where, in this instance, the Commission could not do as the record only included conclusory statements without background data:

Why did the SEC find the return reasonable? The Order says only that the Plan is “designed to set the dividends . . . at a level that [OCC’s] Board, with the assistance of independent outside financial experts, has determined to be reasonable for the cost and risks associated” with the shareholders’ obligations. That explanation raises more questions than it answers. Who were those independent experts? How does the SEC know they were independent? What analysis did they and OCC’s Board perform? How did they measure the “level” of the dividends? How did they measure the “cost and risks”? And how did they determine that the dividend level was reasonable for the associated cost and risks? The Order is silent on all counts. Instead, the SEC candidly admits that it simply “rel[ied] on the Board’s analysis” of “the rate of return the Stockholder Exchanges were receiving for their capital investment.” That is, to decide whether the dividend level was reasonable, the SEC took OCC’s word for it.

This is not the reasoned analysis that the Exchange Act and the APA require. The Exchange Act permits the SEC to approve OCC’s proposed rule change only “if it finds that” the proposal is consistent with the requirements of the Act. That is possible only if the SEC “determines that” the rule complies with specified requirements. Thus, to approve the Plan, the SEC must make “find[ings]” and “determin[ations]” -- not merely accept those made by OCC. Nor may the SEC reach a conclusion that is “unsupported by substantial evidence” or “arbitrary [and] capricious.”²⁷

The SEC citing *Susquehanna* has previously rejected proposed rule changes without sufficient data.²⁸ Given the standards clearly articulated by the federal courts and fully adopted by the SEC in rejecting

²⁶ Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (January 26, 2023) (internal quotations omitted) (“2023 Bitcoin Order”).

²⁷ *Id.* at 447 (internal quotations omitted).

²⁸ See 2023 Bitcoin Order at FN 83 (“BZX does not provide data or analysis to address, among other things, whether such risks of increased fees and bitcoin transaction settlement times may affect the arbitrage effectiveness that BZX asserts. Without such data or analysis, the Commission cannot accept BZX’s assertions.”).



rule proposals that are evidentiarily deficient, we respectfully submit that the SEC must act similarly in this instance and decline to approve the MSRB's rule proposal.²⁹

Sincerely,

A handwritten signature in black ink that reads "J Dalton".

Matt Dalton
Chief Executive Officer

²⁹ As noted above, for these same reasons, the SEC must also decline to approve FINRA's filing to amend its rules on reporting timeframes.