

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78323; File No. SR-MSRB-2016-09)

July 14, 2016

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Establish the MSRB Academic Historical Transaction Data Product

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to the MSRB’s facility for the Real-Time Transaction Reporting System (“RTRS”) to establish an historical data product to provide institutions of higher education (“academic institutions”) with post-trade municipal securities transaction data collected through RTRS (“MSRB Academic Historical Transaction Data Product,” hereafter referred to as “RTRS Academic Data Product”) for purchase (“proposed rule change”). If approved by the Commission, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of the regulatory notice announcing Commission approval.

¹ 15 U.S.C. 78s(b)(i).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB is the federal regulatory entity with primary responsibility under the Exchange Act for rulemaking for the municipal securities market. Under the Exchange Act, the MSRB is charged with adopting rules with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers ("dealers") and the municipal advisory activities of municipal advisors.

In addition to developing its comprehensive body of rules governing the activities of dealers and municipal advisors, the MSRB has undertaken to create various market transparency products in furtherance of its statutory duties and its mission, which is, in part, to promote a fair and efficient municipal securities market through the collection and dissemination of market information. Historically, the MSRB has operated information systems to collect key disclosure documents and transaction data to create a central warehouse of information that made most of

these documents and data available to the market—the Electronic Municipal Market Access (“EMMA[®]”)³ website. The MSRB makes post-trade transaction data available to the general public through the EMMA website at no cost, and to data vendors, industry utilities and others on a subscription basis through a real-time data feed and on a delayed basis.

MSRB Rule G-14, on transaction reporting, requires dealers to report all executed transactions in municipal securities to RTRS within 15 minutes of the time of trade, with limited exceptions.⁴ RTRS serves the dual objectives of price transparency and market surveillance. While a comprehensive database of transactions is needed for the surveillance function of RTRS, the MSRB does not believe that all information or transactions reported to RTRS are necessary to serve the transparency objective of the system and, therefore, such information does not qualify for public dissemination. Among other information, the executing broker symbol, which provides the identity of each dealer that executed a transaction reported to RTRS, is not publicly disseminated. The information facility for RTRS serves to outline the high-level parameters by which the MSRB operates the system.

While currently used by researchers from academic institutions (“academics”), through subscription services or in historical data sets, the RTRS data available on the EMMA website do not include any identifying information regarding the dealer reporting each transaction. Thus, the information disseminated from RTRS would not allow such an academic to attribute transactions to the dealers that facilitated them—even anonymously. As a result, some academics have asked whether the MSRB could make an enhanced version of RTRS trade data available that includes

³ EMMA[®] is a registered trademark of the MSRB.

⁴ Transactions in securities without CUSIP numbers, transactions in municipal fund securities and certain inter-dealer securities movements not eligible for comparison through a clearing agency are the only transactions exempt from the reporting requirements of Rule G-14.

dealer identifiers. Further, on July 15, 2014, the MSRB published a Report on Secondary Market Trading in the Municipal Securities Market that utilized dealer identifiers to gain a better understanding of secondary market trading practices in the municipal securities market, including basic patterns of trading, pricing differentials associated with trading patterns and the impact of price transparency on pricing differentials. However, academics wishing to replicate the methodology employed in this report are unable to do so, as it relies, in part, on dealer identifiers.

In July 2015, in response to these requests from academics, the MSRB published a request for comment, proposing to create a new RTRS Academic Data Product that would include anonymized dealer identifiers (“draft proposal”).⁵ In response to the Request for Comment, the MSRB received 13 comment letters, mostly supporting the draft proposal.⁶ After carefully considering all of the comments received, the MSRB determined to file this proposed rule change to the RTRS facility to create the RTRS Academic Data Product, which would be made available only to academic institutions and would include the same transactions included in the current RTRS historical transaction data sets, with the exclusion of list offering price and takedown transactions, which can be used to identify primary market transactions.⁷

While the MSRB understands that anonymized dealer identifiers may be highly useful to academic institutions in connection with their research activities, the MSRB also recognizes that dealers may be concerned with the potential for reverse engineering of anonymized dealer

⁵ MSRB Notice 2015-10 (July 16, 2015) (“Request for Comment”).

⁶ See infra note 11.

⁷ In addition, the MSRB intends to establish a fee for the RTRS Academic Data Product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing.

identifiers to determine dealer identities. To address this issue, in addition to anonymizing dealer identifiers, the MSRB would take additional measures, including:

- providing unique data sets with different anonymized dealer identifiers to each academic;
- excluding list offering price and takedown transactions;
- explicitly requiring subscribers to agree that they will not attempt to reverse engineer the identity of any dealer;
- prohibiting the redistribution of the data in the RTRS Academic Data Product;
- requiring users to disclose each intended use of the data (including a description of each study being performed and the names of each individual who will have access to the data for the study);
- requiring users to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction;
- requiring that the data be returned or destroyed if the agreement is terminated; and
- aging all the transactions included in the RTRS Academic Data Product for no less than 36 months.

The establishment of the RTRS Academic Data Product would add to the MSRB's current offering of data products and further the MSRB's mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions. While academic institutions currently have access to the post-trade municipal securities transaction data disseminated from RTRS, the RTRS Academic Data Product would improve the usefulness of this data by enabling academics to distinguish transactions executed by different dealers.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act⁸ provides that:

[T]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by [dealers] and advice provided to or on behalf of municipal entities or obligated persons by [dealers] and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by [dealers] and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act,⁹ provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Exchange Act because it would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market in municipal securities. Specifically, the RTRS Academic Data Product would enable subscribers of the product to better understand the pricing of certain transactions, as well as how such transactions were executed, which should, in turn, facilitate higher quality research and analysis. Overall, the proposed rule change would contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

⁸ 15 U.S.C. 78o-4(b)(2).

⁹ 15 U.S.C. 78o-4(b)(2)(C).

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act¹⁰ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking. In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed comments relevant to these impacts in other sections of this document.

The MSRB believes that the availability of this data may further research, which could help the MSRB and other regulators: prevent fraudulent and manipulative acts and practices; facilitate transactions in municipal securities and municipal financial products; remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and protect investors, municipal entities, obligated persons and the public interest.

The MSRB acknowledges the potential for reverse engineering of anonymized dealer identifiers to determine dealer identities and has taken a number of measures to reduce this risk and mitigate any potential impact. Given these measures and the aforementioned benefits, the MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ Id.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB received 13 comment letters in response to the Request for Comment.¹¹ The comment letters are summarized below by topic, and the MSRB’s responses are provided.

Support for the Proposed Rule Change

In response to the Request for Comment, several commenters expressed strong general support for the creation of the RTRS Academic Data Product. ABFM, AGFS, Bergstresser, Cusatis, Glassberg, NYU Stern and Ramsey believe it would improve the quality of academic research on, and contribute to enhanced transparency in, the municipal securities market. Further, Gifford opined that the draft proposal would allow for better cost-benefit analysis of public-private partnership projects that access the municipal securities market, and Coastal stated that trade data that would be made available by the draft proposal would contribute to academic research of the municipal securities market and that it should be supported. Finally, Harris

¹¹ See letters from: Robert Doty, American Governmental Financial Services (“AGFS”), dated August 24, 2015; Robert Kravchuck, *et al.*, Association for Budgeting and Financial Management (“ABFM”), dated September 13, 2015; Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated August 24, 2015; Daniel Bergstresser (“Bergstresser”), Associate Professor of Finance, Brandeis University, International Business School, dated September 14, 2015; Chris Melton, Executive Vice President, Coastal Securities (“Coastal”) dated August 5, 2015; Patrick J. Cusatis (“Cusatis”), Associate Professor of Finance, Penn State Harrisburg, School of Business Administration, dated September 10, 2015; Jonathan L. Gifford (“Gifford”), Professor and Director of Center for Transportation P3 Policy, George Mason University, dated September 1, 2015; Andrew Glassberg (“Glassberg”), dated August 17, 2015; Lawrence Harris (“Harris”), Professor of Finance and Business Economics, University of Southern California, Marshall School of Business, dated September 6, 2015; John Mousseau (“Mousseau”), dated July 29, 2015; Norman White *et al.*, New York University, Leonard N. Stern School of Business (“NYU Stern”), dated September 16, 2015; James R. Ramsey (“Ramsey”), President, University of Louisville, dated September 4, 2015; Sean Davy, Managing Director, Capital Markets Division, and David L. Cohen, Managing Director and Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association (“SIFMA”), dated September 11, 2015.

strongly supports the RTRS Academic Data Product and commented that the draft proposal would “allow the MSRB to better regulate markets for the public good.”

Risk of Reverse Engineering Trade Data

In the Request for Comment, the MSRB recognized that dealers may be concerned with the potential for reverse engineering of anonymized dealer identifiers to determine dealer identities from the data provided by the RTRS Academic Data Product, and it proposed several measures to prevent and deter those that would try to reverse engineer the trade data. Several commenters addressed this issue and proposed modifications to the draft proposal for purposes of preventing reverse engineering.

General Comments

BDA expressed concern that the draft proposal would allow reverse engineering of a dealer’s trading/investment strategy and the requirements of the subscription agreement would not sufficiently protect dealers, thus, exposing them to an “unnecessary business risk.” BDA further stated that data on municipal securities transactions that are currently available to the public for academic research “include a sufficient level of detail to support rigorous study.” SIFMA also expressed concern that the proposed anonymization of dealer identifiers would not effectively protect dealer identities. Harris commented that use of the RTRS Academic Data Product may result in some reverse engineering, which may cause some level of harm to dealers, but he also stated that, while he believes engaging in reverse engineering would be inappropriate, it may “serve the public interest” by revealing “price differentials (known as markups by many) . . . to [dealers’] customers.” ABFM commented that the planned terms of the subscription agreement intended to prevent reverse engineering would be a sufficient deterrent.

Since the inception of this rulemaking initiative, the MSRB has been acutely aware of the potential for reverse engineering the trade data that would be included in the RTRS Academic Data Product. Indeed, the MSRB acknowledges that the data provided in the RTRS Academic Data Product could be reverse engineered. However, the MSRB believes that the measures it would take—e.g., anonymizing dealer identifiers, imposing liability on subscribers of the data for breaching the terms of the subscription agreement (which would, among other things, include a provision prohibiting reverse engineering), and limiting subscribers to academic institutions—, on balance, sufficiently reduce the risk of reverse engineering, and of harm resulting therefrom. Further, in response to the concerns raised by commenters, the MSRB is now proposing to: increase the aging requirement for the trade data from 24 to 36 months prior to its release; provide unique data sets with different anonymized dealer identifiers to each academic, which may both help guard against coordinated efforts at attempting reverse engineering dealer identities, as well as assist in identifying the source of conduct that violates the subscription agreement; exclude list offering price and take down transactions, which can be used to identify primary market transactions; require users to ensure the sufficient aggregation of any data presented in work product, which would protect against reverse engineering by readers of published works; and not include primary offering trades in the trade data. Overall, the MSRB has proposed numerous measures that should mitigate the risk of reverse engineering, and the residual risk is warranted by the benefits to the municipal securities market that would result from creation of the RTRS Academic Data Product and greater transparency of dealer behavior. The MSRB may consider amending or discontinuing the RTRS Academic Data Product, as currently proposed, if future experience shows that anonymized dealer identifiers are reverse engineered by researchers.

Aging Trade Data

As noted above, as part of the MSRB's effort to prevent and deter reverse engineering of dealer identities, the draft proposal required that the trade data made available to subscribers of the RTRS Academic Data Product would be for trades that were executed at least 24 months prior to the date that they were provided to the subscriber. SIFMA stated, in combination with other concerns about the draft proposal, that 24 months is too short of a time period to adequately protect against reverse engineering, and, instead, suggested that the MSRB age the trade data for 48 months. In contrast, ABFM believed 12 months, rather than 24, would be a sufficient time period to ensure that trades could not be reverse engineered, and Ramsey also suggested 12 months would be preferable to 24 months to ensure the data is timely. Harris argued that 24 months would be more than sufficient for aging the data to remove the usefulness of that data for the purpose of reverse engineering, in part, because he believes dealer positions change in no more than two months, and he also noted that as few as six or up to 12 months would be a better length of time because it would allay the concerns of dealers and allow for the "identifying [of] parasitic trading strategies as quickly as possible." Coastal believes 12 months would be too short a time period to sufficiently mitigate the reverse engineering risk but that 24 months would be appropriate and would not encumber research because, in its opinion, municipal securities market practices and conditions are "slow to evolve," making the data still relevant to academics studying market behavior.

Based on careful consideration of all of the diverse comments on this issue, the MSRB believes, at this time, that a 36-month period is appropriate to protect against, and mitigate the risk and potential harm from, any reverse engineering, while still providing useful trade data for academics to study.

Grouped Versus Individual Dealer Identifiers

In the draft proposal, the MSRB proposed anonymizing identifiers for each individual dealer for the trade data made available through the RTRS Academic Data Product to protect against the potential of subscribers reverse engineering the data to determine dealer identities. A few commenters suggested alternative methods to anonymize dealer identities. Specifically, BDA stated that grouping dealers by size, as opposed to issuing individual anonymized identifiers, would better protect the trade data from reverse engineering if the MSRB does not plan on changing the dealer identifiers on a regular basis because, without periodic changes, it would become easier to identify dealers based on trading data over a long period of time. SIFMA similarly supported making the trade data available through “groupings of comparable dealers,” arguing that the MSRB and FINRA should “adopt the peer group criteria used in MSRB and FINRA report cards to aggregate dealers into reportable groups.” Further, Coastal stated that, if dealers were not grouped by size, then reverse engineering would likely occur, while grouping by size would not substantially encumber research uses of the trade data. Coastal also argued that contracting with subscribers to prevent reverse engineering would not be effective, and BDA noted that any subscription agreement would not extend to readers of studies produced by subscribers.

In support of individual identifiers, Harris stated that the “empirical work [of academics] requires high quality data that can inform their analyses as to what dealers do. Dealer identities thus need to be revealed, at a minimum in anonymized form, so that academics can understand how dealer trading decisions relate to their previous trading decisions.” To this point, Harris stated that grouping dealers would likely provide better trade data than is currently available to academics, but that such grouped data would not provide academics with the information needed

to understand specific dealer behavior. He stated, “[D]ealer decisions to offer, not offer, and take liquidity are made by individual dealers in response to their individual needs and inventory conditions. Groups of dealers acting in concert do not make these decisions. To better understand these decisions, you must see who is making them.” Additionally, Bergstresser argued that grouping dealers by size would substantially hinder the purpose of the RTRS Academic Data Product because it would reduce “the information content of the data [and] would negate the entire purpose of having (anonymized) dealer identities, which is to be able to identify round-trip transactions.” Similarly, Ramsey stated that anonymizing dealer identifiers would be reasonable if it allowed tracking unique trades, which groupings by size or volume would not, and ABFM commented that the potential beneficial research that could result from the RTRS Academic Data Product with individual dealer identifiers would likely be much greater than if “the dealer identifier is less precise (e.g., a categorical identifier based on dealer size or average daily trading volume).”

The MSRB believes, at this time, that it would better further the principal purpose of creating the RTRS Academic Data Product—namely, to foster detailed research and analysis of municipal securities trading—if the trade data identifies dealers individually rather than by group. The MSRB believes that grouping dealers would result in too great a reduction in the usefulness of the RTRS Academic Data Product, and, as previously mentioned, that the protections incorporated in the proposed rule change, including, but not limited to, the 36-month aging of the data, and terms planned to be included in the subscription agreement will, on balance, adequately mitigate the risk of reverse engineering without the grouping of dealers.

Primary Offering Data

As proposed in the Request for Comment, the RTRS Academic Data Product would make trade data available from transactions in both the primary and secondary markets. SIFMA believes that the potential for reverse engineering primary market trade data is particularly acute because, in its view, the currently available public data that does not have dealer identifiers is already subject to reverse engineering. SIFMA recommended that, if made available on a dealer-by-dealer basis, the data provided by the RTRS Academic Data Product exclude primary trades from the data set and periodically scramble dealer identifiers.

The MSRB agrees with SIFMA regarding primary market trades, in light of trade data products currently offered by the MSRB to provide academics and other interested parties with information about the primary market for municipal securities. Therefore, the RTRS Academic Data Product would not include list offering price and takedown transactions, which can be used to identify primary market transactions.

Release of Full Trade Sizes in RTRS Academic Data Product

Harris commented that the RTRS Academic Data Product should provide full trade sizes and that the utility of the RTRS Academic Data Product would be reduced if the trade data did not reveal the sizes of the largest trades.

The MSRB understands the potential issues academic researchers could encounter if the full size of trades is not included in the trade data, and, therefore, the proposed rule change would provide the full size of each trade that is included in the RTRS Academic Data Product.

Limiting RTRS Academic Data Product to Academic Institutions

As proposed in the Request for Comment, the RTRS Academic Data Product would only be made available to academics in connection with their research activities. Commenters had

differing views as to whether or not the subscriber base should be larger. First, Bergstresser suggested that the MSRB broaden the set of individuals who could have access to the RTRS Academic Data Product to include, for example, researchers associated with the Federal Reserve Board, individual Federal Reserve Banks, and other institutions such as the Brookings Institution, the American Enterprise Institute, and the Urban Institute. Bergstresser stated further that excluding researchers from such institutions would be “inappropriate and would hamper the progress of research on the municipal bond market.” Second, Harris stated that “[i]t would not be fair or in the public interest if interested industry groups could not replicate academic studies or produce their own” and that the RTRS Academic Data Product should be available to anyone. Harris added that the trade data needs to be made widely available so that academics can have a reasonable expectation that others will replicate, and potentially challenge, the research they conduct on the trade data. In contrast, Coastal argued that the availability of the RTRS Academic Data Product should be limited to academics to provide additional protection against reverse engineering of the trade data. ABFM affirmatively stated that it took no position on whether the data product should be limited to, or expanded beyond, academics, but stated that the MSRB should not base access to the RTRS Academic Data Product on the content, or results, of the requesting researcher’s previously published works. Similarly, Harris also stated that access to the RTRS Academic Data Product should not be made contingent on the resulting research produced. Finally, SIFMA stated that the RTRS Academic Data Product should be available to “[a]ny not-for-profit that has a separately identifiable Research Department and regularly publishes research reports” on the same terms that it would be available to academics, but only if other modifications suggested by SIFMA were made, such as anonymizing dealer identities by group and aging the data for 48 months.

The establishment of the RTRS Academic Data Product was conceived as a means of advancing a goal of the MSRB's Long-Range Plan for Market Transparency Products¹² by facilitating access to municipal market data for academics to conduct research on the municipal securities market. The MSRB believes that limiting the availability of the RTRS Academic Data Product to academic institutions will facilitate transparency, while not exposing the trade data to institutions or organizations that could have a more direct incentive to use the trade data for commercial purposes. The MSRB is committed to increasing market transparency and, in the future, after the use of the RTRS Academic Data Product has been observed, the MSRB may reconsider providing access to the data to a larger group of researchers. However, at this time, the MSRB believes that limiting the RTRS Academic Data Product to academic institutions helps address the concerns of dealers about the use of the data, while advancing the purpose of the product to foster academic research on the municipal securities market.

Pricing of the RTRS Academic Data Product

As proposed in the Request for Comment, the RTRS Academic Data Product would be made available for a fee of \$500 per calendar-year data set (with a one-time initial set-up fee of \$500).¹³ Harris commented that academics should either pay a reduced rate, when compared to the fee charged to industry participants and their various organizations and consultants, or be given access for free because, in his opinion, academics are often not paid to conduct their

¹² MSRB Long-Range Plan for Market Transparency Products (January 27, 2012), available at: <http://www.msrb.org/msrb1/pdfs/Long-Range-Plan.pdf>.

¹³ The MSRB notes that the Request for Comment proposed the availability of the RTRS Academic Data Product in calendar-year data sets, but, as it does with other data products and as described above, the MSRB would make the RTRS Academic Data Product available on a rolling basis in one-year data sets.

research while the public obtains a benefit from the research being conducted. ABFM believes the fee is reasonable.

As noted above, the MSRB intends to establish a fee for the RTRS Academic Data Product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing in which Harris' comment will be addressed.¹⁴

Subscription Agreement

As part of the Request for Comment, the MSRB included a draft description of the subscription agreement into which recipients of the RTRS Academic Data Product ("Recipients") would be required to enter with the MSRB before access to the data would be granted ("Draft Agreement"). Some commenters requested clarification of, and others raised concerns about potential issues that could arise from, the terms of the Draft Agreement.

Liability for Breach of Draft Agreement

The MSRB included a liability provision in the Draft Agreement to, in part, deter and prevent reverse engineering and/or other misuse of the trade data provided by the RTRS Academic Data Product. Several commenters expressed concern regarding this provision that would hold Recipients "liable to the MSRB for any breach of the [Draft Agreement] resulting from the action/inaction of Recipient's internal users or any other individual or entity that accesses the [RTRS Academic Data Product] via Recipient or to whom Recipient provides any derivative works." In particular, ABFM commented that the inclusion of the provision would be overly burdensome for academic institutions and may preclude some from subscribing. ABFM further suggested, as an alternative, that liability be limited to two times the price paid by the Recipient for the data and that holding a Recipient liable to the extent described by the Draft

¹⁴ See supra note 7.

Agreement would be unreasonable. Bergstresser, Cusatis and Ramsey expressed similar views, and each stated that the liability exposure could prevent an academic institution from signing the Draft Agreement and using the RTRS Academic Data Product. In contrast, Harris stated that the terms of the Draft Agreement generally were sufficient and not unduly restrictive.

Publication of Works Based on Data

In the Request for Comment, the MSRB asked whether academics would be opposed to including, as a term of the agreement, a requirement that a copy of all derivative works that rely on the RTRS Academic Data Product be provided to the MSRB upon publication. In response, Harris requested that the MSRB provide more specifics regarding what is meant by the term “publication” because, in his view, academics may have differing understandings of when works of research are considered “published.” Harris further stated that, if academics are required to send published works to the MSRB, they should only be required to do so after the work is no longer described by its author as a “Working Draft—Not for Quotation—Subject to Change” and can be found via an internet search. ABFM stated that it believes that academics would not be opposed to providing the MSRB with all published works relying on the data from the RTRS Academic Data Product, so long as the MSRB did not require the academic to share authorship of the work or the copyright of such works.

Permissible Use and Security of the Trade Data

SIFMA commented that the draft proposal did not state who at academic institutions would be able to access the trade data and requested that the MSRB modify the draft proposal to include “parameters around who may be considered an ‘Internal User’ or ‘Recipient/Licensee.’” In addition, SIFMA also suggested that the MSRB further limit “Authorized Use” to serve the purpose of research and to exclude any commercial use of the trade data. Overall, SIFMA

expressed a concern that the creation of the RTRS Academic Data Product would lead to an inevitable data breach, revealing dealer trading and distribution strategies, which could have a negative impact on market liquidity. Similarly, BDA noted that nothing in the Draft Agreement would require academic institutions to have a minimum level of data security protections in place, making the data susceptible to theft.

The MSRB understands and appreciates the comments provided in response to the terms of the Draft Agreement presented in the Request for Comment. The MSRB included those terms and solicited comment on them primarily to determine whether to establish the RTRS Academic Data Product, and the subscription agreement into which academics and/or academic institutions would be required to enter (“Final Agreement”), and the terms thereof, have yet to be finalized. If the RTRS Academic Data Product is approved, the MSRB will, as it does for all of its subscription service agreements, conduct a thorough legal and risk analysis to ensure that it is adequately protected from possible breaches of the agreement, as well as consider the potential burdens placed on all parties to the agreement in light of the intended benefits. In performing this analysis, the MSRB will take all of the above comments into consideration.

As noted above, given the potential risk of the trade data included in the RTRS Academic Data Product being reverse engineered, the MSRB believes the subscription agreement will be an important complement to the measures included in the proposal to mitigate that risk. As such, the MSRB expects that the Final Agreement will include a liability provision substantially similar to the one included in the Draft Agreement to deter and prevent reverse engineering and other potential breaches of the agreement. The MSRB also expects that the Final Agreement will include a definition of “publication” to provide clarity to academics on what work product to provide to the MSRB and when, and will not require any form of joint authorship with the

MSRB. Finally, the MSRB expects that the Final Agreement will define “Internal User” to clarify to whom access to the data may be provided and require reasonable security measures to protect the data from unauthorized access by controlling how they are used, accessed, processed, stored and/or transmitted.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2016-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2016-09. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2016-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).