

MEMO# 35593

January 23, 2024

FINRA and MSRB Submit Rule Change Filings with the SEC to Shorten Reporting Timeframes for TRACE-Eligible Securities and Municipal Securities

[35593]

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TO: ICI Members

Fixed-Income Advisory Committee

Municipal Securities Advisory Committee SUBJECTS: Fixed Income Securities

Investment Advisers

Municipal Securities

Trading and Markets RE: FINRA and MSRB Submit Rule Change Filings with the SEC to Shorten Reporting Timeframes for TRACE-Eligible Securities and Municipal Securities

On January 19, 2024, the Securities and Exchange Commission (SEC) published a notice to solicit comments on proposed rule changes filed, pursuant to Exchange Act Rule 19b-4, by the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) to shorten the timeframe from 15 minutes to one minute for reporting trades in certain Trade Reporting and Compliance Engine (TRACE)-eligible securities^[1] and municipal securities, respectively.^[2] Both FINRA and MSRB would continue to disseminate the reported trading data immediately, subject to volume caps currently in place. Comments are due 21 days after the notices are published in the Federal Register. As of the date of this memorandum, the notices have not yet been published.

Prior FINRA and MSRB Proposals

In August 2022, FINRA and MSRB both issued proposals and requested comment regarding reducing the trade reporting timeframe from 15 minutes to one minute for certain transactions reported to TRACE and the Real-Time Transaction Reporting System (RTRS), respectively.^[3] On October 3, 2022, ICI filed a comment letter on behalf of members discussing certain concerns with the proposals that many members had.^[4] The letter explained that while ICI members are generally in favor of increased transparency in the fixed income markets and more robust reporting that will increase the reliability of publicly available information, many ICI members had concerns regarding the potential effects that broadly reducing the trade reporting timeframe to one minute may have. ICI noted that

some members were concerned that reporting and disseminating large trades and trades in less liquid securities within one minute may result in reduced liquidity and increased price volatility in the fixed income markets or otherwise may not be appropriate.

The letter recommended that FINRA and MSRB adopt a measured and phased approach in implementing any changes to trade reporting and dissemination, similar to what each has done over the past two decades, and that any shortened trade reporting timeframe should be implemented through an incremental, data-driven approach, with a focus on the impacts, by asset class and transaction size, that reduced reporting times may have on liquidity, market structure, and execution quality. ICI requested that FINRA and MSRB examine the attributes of large trades and trades in less liquid securities that are currently reported later than one minute before requiring a shorter reporting time for these transactions, as the data provided by FINRA and MSRB in the proposals demonstrated large trades and trades in thinly traded securities being reported later than a minute and, according to feedback from ICI's members, are often traded via voice or other non-electronic methods.

Summary of the Proposed FINRA and MSRB Rule Changes Filed With the SEC

In response to comments received, both FINRA and MSRB have amended the proposed rule changes to address market participants' concerns. While still reducing the 15-minute reporting timeframe to one-minute, FINRA and MSRB will each be adopting two new exceptions for (1) member firms with "limited trading activity"; and (2) manual trades. The amended rules would require, regardless of the timeframe limit, that transactions be reported as soon as practicable after execution.^[5] In addition to the exceptions, discussed in turn below, FINRA and MSRB provided additional information and guidance on when "time of execution" (under FINRA regulations) or "time of trade" (under MSRB regulations) occurs. If approved by the SEC, both FINRA and MSRB will announce the effective date of the proposed rule changes in a regulatory notice, although each regulator alluded to an 18-month compliance period in their respective filings.

Limited Trading Activity Exception

A member with "limited trading activity" would be defined as a member that, during one of the prior two calendar years, reported to TRACE fewer than 4,000 transactions in the TRACE-eligible securities subject to a one-minute reporting timeframe (for FINRA regulations) or reported to the RTRS fewer than 1,800 transactions in municipal securities (for MSRB regulations).^[6] Members qualifying for the exception would be required to report these trades as soon as practicable, but no later than within 15 minutes of execution. Members that exceeded the trade threshold two calendar years in a row would be required to comply with the one-minute reporting requirements 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 member's reporting activity subsequently dropped below the trade threshold, the member would once again be eligible for the exception.

Manual Trade Exception

Where a trade qualifies for the manual trade exception, a 15-minute outer limit would apply for the first year following implementation; a 10-minute outer limit would apply for the second year; and a 5-minute outer limit would apply thereafter. The manual trades exception would apply narrowly only to "transactions that are manually executed" or where a "member must manually enter any of the trade details or information necessary for reporting the trade through the [TRAQS website/RTRS portal] or into a system that

facilitates trade reporting to [TRACE/RTRS portal]."[\[7\]](#) Thus, a trade that requires manual intervention at any point to complete the trade execution or reporting process would qualify for the manual trades exception.[\[8\]](#)

FINRA and MSRB provide a list of manual trades qualifying for the extended reporting timeframe, which while not exhaustive, includes:

- where a member executes a trade by manual or hybrid means, such as by telephone, email, or through a chat/messaging function 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/RTRS;
- where allocations to individual accounts must be manually input in connection with a trade by a dually-registered broker-dealer/investment adviser;[\[9\]](#)
- 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/RTRS (e.g., a firm's risk 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 member trades a bond for the first time (or under other circumstances where the security master information may not already be populated) 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 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/RTRS.[\[10\]](#)

Both FINRA and MSRB note that they will continue to assess 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 will be prepared to adjust as necessary. Further, each will be reviewing the use of the manual trades exception, as members may not, in any case, purposely delay the execution or reporting of a transaction by handling any aspect of a trade manually or introducing manual steps following execution. Finally, FINRA and MSRB propose to require that any member that executes or reports a trade manually to identify the trade by appending a manual trade indicator to the trade report, which will be used solely for regulatory purposes and would not be included in the data publicly disseminated.

"Time of Execution"/"Time of Trade"

Many commenters raised questions as to the exact time when a trade is actually executed. In response, FINRA and MSRB provided guidance in their filings. FINRA reiterated that under FINRA 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. FINRA noted however, that 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.

MSRB provided additional guidance and elaboration. As stated in MSRB's filing, the "time of trade" is the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.[\[11\]](#) The time taken to report the trade is

measured by comparing the "time of trade" reported by the dealer with the timestamp assigned when the initial trade report is received by an RTRS portal. For transaction reporting purposes, "time of trade" is considered to be the same as the time that a trade is "executed" and, generally, is consistent with the "time of execution" for recordkeeping purposes. For example, if a trade is executed on a trading desk but not entered for processing until later, the time of execution (not the time of entering the record into the processing system) is required to be reported as the "time of trade."^[12]

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Notes

^[1] FINRA's proposed amendments would affect most transactions in corporate bonds, agency debt securities, asset-backed securities (ABS), and agency pass-through mortgage-backed securities (MBS) traded to-be-announced (TBA) for good delivery (GD). For securities not currently subject to a 15-minute reporting timeframe, such as commercial mortgage-backed securities and collateralized debt obligations, the proposals would not affect those securities' reporting and dissemination requirements.

^[2] 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, Exchange Act Release No. 99404 (Jan. 19, 2024), available at <https://www.sec.gov/files/rules/sro/finra/2024/34-99404.pdf>; 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, Exchange Act Release No. 99402 (Jan. 19, 2024), available at <https://www.sec.gov/files/rules/sro/msrb/2024/34-99402.pdf>.

^[3] See FINRA, TRACE Reporting Timeframe, FINRA Regulatory Notice 22-17 (Aug. 2, 2022), available at <https://www.finra.org/rules-guidance/notices/22-17#notice>; MSRB, Request for Comment on Transaction Reporting Obligations under MSRB Rule G-14, MSRB Notice 2022-07 (Aug. 7, 2022), available at <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2022-07.ashx??n=1>. For ICI's memorandum summarizing the proposals, please see ICI Memorandum No. 34245 (Aug. 9, 2022), available at <https://www.ici.org/memo34245>.

^[4] We filed one letter to both FINRA and MSRB. Letter from Sarah A. Bessin, Associate General Counsel, ICI, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA and Ronald W. Smith, Corporate Secretary, MSRB (Oct. 3, 2022), available at https://www.finra.org/sites/default/files/NoticeComment/Investment%20Company%20Institute_Sarah%20A.%20Bessin_10.3.2022_22-17.pdf. For ICI's memorandum summarizing the letter, please see ICI Memorandum No. 34301 (Oct. 3, 2022), available at <https://www.ici.org/memo34301>.

^[5] While FINRA has always required trades to be reported "as soon as practicable," this would be a new requirement for MSRB.

^[6] Calculations would include manual trades.

^[7] Quoting the FINRA filing, but the MSRB filing is substantially similar.

[8] As further elaborated in the MSRB filing, this "manual" exception would apply narrowly, and would normally encompass any human participation, approval, or other intervention necessary to complete the initial execution and reporting of trade information after execution, regardless of whether undertaken by electronic means (e.g., keyboard entry), physical signature or other physical action. To qualify as a trade with a manual component, the manual aspects of the trade generally would occur after the relevant execution time. Any manual aspects that precede the execution time (e.g., phone calls to locate bonds to be sold to a customer before the dealer agrees to sell such bonds to a purchasing customer) would normally not be relevant for purposes of the exception unless they have a direct impact on the activities that must be undertaken post-execution to enter information necessary to report the trade.

[9] MSRB's filing made clearer that this example is intended to cover block trades by phrasing the example as "where a dually-registered broker-dealer/investment adviser executes a block transaction that requires allocations of portions of the block trade to the individual accounts of the firm's advisory clients that must be manually inputted in connection with a trade[.]"

[10] MSRB's filing provided additional examples, such as: 1) where a dealer executes a trade (typically a larger-sized trade) that requires additional steps to negotiate and confirm details of the trade with a client and manually enter the trade into risk and reporting systems; 2) where a dealer's trade execution processes may entail further diligence following the "time of trade" involving a manual step (e.g., manually checking another market to confirm that a better price is not available to the customer); 3) where a broker's broker engages in mediated transactions that involve multiple transactions with multiple counterparties; and 4) where a dealer reports a trade manually through the RTRS web portal.

[11] MSRB noted that while the principles of contract law are mostly governed by state statutory and common law, generally, in order to form a valid contract, there must be at least an offer and acceptance of that offer. As a result, dealers should consider the point in time at which an offer to buy or sell municipal securities was met with an acceptance of that offer. This offer and acceptance, or a "meeting of the minds," cannot occur before the final material terms, such as the exact security, price and quantity, have been agreed to and such terms are known by the parties to the transaction.

[12] To further refine when "time of trade" occurs, MSRB provided as an example that when a sales representative of a dealer takes a customer order, but is unable to execute that order until their trader performs supervisory or other firm-mandated reviews or approvals of such order—such as, to determine that the customer order does not exceed internally-set risk and compliance parameters or to complete best-execution, suitability/best interest or fair pricing protocols that may result in a changed price or quantity to the customer or in not completing execution of the trade—the dealer reasonably may determine that the "meeting of the minds" has not yet occurred until such processes, procedures or protocols have been completed and the dealer has affirmatively "accepted" the order. In such circumstances, the dealer should be clear in its communications with its counterparty regarding the final terms of the trade and how such terms would be conveyed between the parties to ensure that such a valid trade contract has been formed, such as clearly communicating to the customer that the order should not be viewed as accepted until such processes, procedures or protocols are completed and the trade is finally executed. MSRB noted that this was similar to prior MSRB interpretations related to new issue securities where the transaction is effected on a "when, as and if issued" basis, which cannot be

executed, confirmed or reported until the municipal security has been formally awarded by the issuer.

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