

October 3, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Steet NW
Washington DC 20005

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

Dear Mr. Smith and Ms. Mitchell,

The Bond Dealers of America (“BDA”) is happy to provide comments on companion proposals from the MSRB and FINRA to shorten the time for dealers to report trades to the MSRB’s Real-time Trade Reporting System (“RTRS”) and FINRA’s Trade Reporting and Compliance Engine (“TRACE”). The MSRB proposal—Notice 2022-07, “Request for Comment on Transaction Reporting Obligations under MSRB Rule G-14” (the “MSRB Proposal”)—and the FINRA proposal—Regulatory Notice 22-17, “FINRA Requests Comment on a Proposal to Shorten the Trade Reporting Timeframe for Transactions in Certain TRACE-Eligible Securities From 15 Minutes to One Minute” (the “FINRA Proposal”, together the “Proposals”)—relate to very similar initiatives, and this letter addresses both. BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

BDA and its 82 broker-dealer members support price transparency in the fixed income markets. Currently, FINRA Rule 6730 requires dealers to report most trades in covered securities to the TRACE platform as soon as practicable but no later than 15 minutes after execution. While MSRB Rule G-14 does not explicitly include this “as soon as practicable” provision, Rule G-14 does specify that dealers must report trades “promptly, accurately and completely.” In addition, MSRB staff have informed us they believe a dealer delaying a trade report longer than necessary would be in violation of MSRB Rule G-17. If true, that means municipal securities dealers are effectively required to submit trade reports as soon as practicable—and in no case later than 15 minutes, of course—as well. Since Rules G-14 and 6730 were adopted, BDA members have worked hard to ensure compliance with trade reporting requirements and to reduce trade reporting times even without new regulatory mandates. However, there are good reasons why dealers are not already reporting 100 percent of trades within one minute despite both Rules explicitly or effectively requiring trade reporting “as soon as practicable.” Reducing the mandated reporting time from 15 minutes to one minute would be overly burdensome for dealers to comply with. The potential benefits of the Proposals are speculative at best. For these reasons BDA strongly opposes the Proposals and we urge the MSRB and FINRA to abandon these initiatives and continue to allow the industry to improve reporting times organically.

Trade reporting times

Rule 6730 and, effectively, Rule G-14 already require dealers to report trades “as soon as practicable.” That means dealers are already reporting trades as fast as they can. Neither Proposal offers any suggestion that dealers are not submitting reports as soon as they are able. If it was possible for dealers

to report 100 percent of trades within one minute, they would already be adhering to that standard since the Rules explicitly or effectively require reporting as soon as practicable. If dealers are already reporting trades as fast as they can, it is unreasonable to impose a one-minute requirement they cannot always meet.

The industry has made consistent improvements in trade reporting times since the RTRS and TRACE schemes were put in place. As the MSRB Proposal demonstrates, the portion of municipal trades reported within one minute has grown from 69.5 percent in 2005 to 80.2 percent in 2019. Although the FINRA Proposal does not provide these time-series data for TRACE-eligible securities, we believe TRACE reporting times have improved by comparable margins since FINRA Rule 6730 was imposed. These improvements should be celebrated. They reflect the industry's ever-improving technologies and practices which benefit investors. There is every reason to believe dealers will continue to shorten trade reporting times, as we have for 17 years, without the imposition of one-minute reporting requirements.

Moreover, the additional compliance costs dealers would face if the Proposals are adopted would ultimately be borne by customers and clients. Although dealers cannot and do not pass through these costs directly, dealers obviously must cover all their expenses, including increased compliance costs associated with the Proposals, in order to remain profitable.

Constraints on shorter trade reporting

Dealers generally report trades as soon as they are able. Dealers do not sit on trade reports until the 15-minute deadline. Due to requirements that explicitly or effectively mandate trades to be reported as soon as practicable, purposely delaying a trade report would be a rule violation. When trades take longer than one minute to report, there are reasonable and legitimate reasons.

- If a firm has never traded a particular bond, before a trade in that CUSIP can be reported to the RTRS or TRACE, the dealer must enter or import a descriptive security record into its trade order management system, a step not necessary if a firm has traded the bond before. That virtually always means the trade cannot be reported within one minute.
- If a dealer clears transactions through a third-party clearing firm, that clearing firm generally performs the trade reporting function. That means before trades can be reported to RTRS or TRACE, they must first be transmitted to the clearing firm. This can cause a delay in the reporting process. In addition, the clearing firm must also have a security record in its system before the trade can be reported; if not, the record must be added before the trade report, consuming valuable seconds.
- Under TRACE reporting guidance, a broker-dealer who is dually registered as a Registered Investment Advisor ("RIA") must follow additional reporting steps for trades with the affiliated RIA for single trades that are allocated among numerous RIA accounts. The dealer must report both the single trade with the RIA and the allocations to the RIA's sub-accounts, which can number in the thousands. This process invariably takes longer than one minute.
- Some dealers, especially small firms, enter some or all trades into RTRS and TRACE manually. This virtually ensures trade reports take longer than one minute. This applies for some firms even for trades conducted on electronic platforms.
- Trades negotiated and executed by phone, still the predominant execution method for block-sized trades in municipals, corporates, asset-backed securities, collateralized mortgage

obligations (“CMOs”), mortgage-backed securities involving specified pools, and others, require human involvement and data entry, delaying the reporting process easily past one minute. Indeed, some TRACE-eligible products like certain structured mortgage- and asset-backed securities essentially do not trade electronically at all and likely will not in the near to medium future.

- Clocks on different systems—such as clocks on reporting firms’ systems versus clocks on clearing firms’ systems or clocks on the RTRS or TRACE systems themselves—can be set to times which are seconds apart. With a 15-minute reporting deadline, differences in seconds are relatively insignificant. If the reporting deadline becomes one minute, every second will count. Clocks off by a few seconds can mean the difference between being in or out of compliance.
- Bank dealers of all sizes who are not also FINRA members only recently as of September 1, 2022 started reporting certain trades to TRACE under Federal Reserve System rulemaking.¹ It would be unreasonable to expect these firms to reduce their reporting time as they are just becoming familiar with the requirements. Moreover, the Federal Reserve Rule applies not only to bank trading portfolios but also bank investment portfolios, which otherwise generally participate in the markets as customers, not dealers.
- Perhaps most important, reporting trades within one minute leaves no margin for error, especially for trades that are not fully automated. A 15-minute deadline gives firms time to correct erroneous or conflicting reports and still be in compliance with the Rule; one minute does not. Measuring regulatory compliance by seconds is fundamentally unwise.

Regulating dealers out of business

Many small broker-dealers manually input their trades into RTRS and TRACE because their volume of trades does not warrant the cost to employ automated solutions. As both Proposals demonstrate, manually inputting trades means the reporting process takes longer. As the FINRA Proposal cites, only 14 percent of trades entered via the TRACE Web portal and nine percent entered via Web Multi-entry are reported within one minute versus 83 percent of trades entered automatically via the FIX interface.

Shortening the reporting deadline would effectively eliminate manual entry entirely. It would force small firms, those with the thinnest compliance resources, to utilize expensive front-end trade order management systems in order to automate the reporting process. This undue pressure on small firms—effectively forcing them to contract with expensive technology vendors in order to automate trade reporting and comply with the amended Rules—would cause many to exit fixed income secondary trading altogether, inhibiting competition, concentrating risk among a smaller number of dealers, and empowering those remaining dealers with respect to prices.

Indeed, the MSRB Proposal even anticipates this outcome, stating “some smaller firms may find it difficult to meet the new reporting times due to the high costs relative to the amount of business they conduct.” The MSRB Proposal also states “if these dealers choose to relinquish their secondary market trading business, there should not be any significant reduction in the supply of services to investors.” It almost feels as if the MSRB and FINRA are *trying* to squeeze small firms out of the market with these Proposals.

¹ 86 *Federal Register* 59716.

Small dealers are a vital element of the capital markets. Small dealers provide services to issuer and investor clients who may otherwise be overlooked by larger firms. And forcing small dealers out of the secondary fixed income trading markets, as the Proposals would, would effectively block them from serving as underwriters as well. Both issuers and investors expect an underwriter to provide liquidity and support trading in securities they underwrite. It is simply not possible to run an underwriting business without a corresponding secondary trading business.

Regulating firms out of business would be an unacceptable outcome of the Proposals. Any marginal benefits associated with faster trade reporting would be undercut by negative outcomes for small firms and their customers. With some small dealers being forced out of business due to the Proposals, the MSRB and FINRA would effectively be compelling those firms' customers to change brokerage firms if they want to continue to participate in the fixed income markets. That is not an outcome consistent with investor protection.

Alternatives

We urge the MSRB and FINRA to abandon the Proposals entirely. Trade reporting times will continue to improve even without regulatory mandate as more of the fixed income markets move to electronic execution and firms continue to improve their technology and practices. One-minute trade reporting would be damaging and unnecessary.

If the MSRB and FINRA decide to move forward with one-minute reporting despite the predictable negative outcomes, we recommend significant changes to the Proposals, including maintaining 15-minute reporting for trades executed by telephone, manually inputted into RTRS or TRACE, cleared through third-party clearing firms, allocated to a dually registered RIA's sub-accounts, or trades that require a dealer to populate their security record before reporting. Without these changes, the Proposals are so burdensome that violations would spike and some firms would exit the secondary fixed-income markets altogether.

Summary

Trade reporting for RTRS- and TRACE-eligible securities has been a great success. The secondary fixed income trading markets are more transparent than ever, transaction costs have fallen, and trade reporting times have improved substantially. Rules G-14 and 6730 have performed exactly as regulators intended. Forcing one-minute reporting onto RTRS- and TRACE-reporting dealers is unnecessary. The benefits to investors would be marginal and would be eclipsed by substantial additional compliance costs to the industry and the withdrawal of small dealers from relevant fixed income markets.

The Proposals are unnecessary because dealers are already explicitly or effectively required to report trades as soon as practicable. Trades not reported within one minute are mostly those described above where the dealer must obtain a security record before reporting, enter the trade manually, execute the trade via telephone, etc. If dealers are already required to report trades as fast as they can, forcing a one-minute deadline would be unreasonable.

We strongly oppose the Proposals. We urge the MSRB and FINRA to abandon these initiatives and allow the industry to continue to improve trade reporting times on its own as we have for 17 years. If you determine to adopt the Proposals despite the expected negative fallout, we ask you to maintain 15-minute reporting for those categories of trades that require more than one minute as described above.

We are pleased to comment on the Proposals and we would welcome meetings with MSRB and FINRA staff to address questions and expand on the points made here.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Decker". The signature is fluid and cursive, with the first name "Michael" and last name "Decker" clearly distinguishable.

Michael Decker
Senior Vice President for Public Policy