

February 15, 2024

Via Electronic Mail (rule-comments@sec.gov)

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: 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;¹ File No. SR-FINRA-2024-004

Dear Ms. Countryman:

The Healthy Markets Association² writes to express our support for the TRACE Reporting Time Proposal, which would generally shorten the time period within which trades in corporate bonds, agency debt securities, asset-backed securities, and some agency pass-through mortgage-backed securities would have to be reported to FINRA.

¹Notice 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, SEC, Exch. Act Rel. No. 34-99404, Jan. 19, 2024, available at <https://www.sec.gov/files/rules/sro/finra/2024/34-99404.pdf> (“TRACE Reporting Time Proposal”).

² The Healthy Markets Association is a not-for-profit member organization focused on improving the transparency, efficiency, and fairness of the capital markets. Healthy Markets promotes these goals through education and advocacy to reduce conflicts of interest, improve timely access to market information, modernize the regulation of trading venues and funding markets, and promote robust public markets. Its members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.



In August 2022, FINRA solicited public comment on shortening the reporting time frame from 15 minutes to one minute.³ HMA, which has long pushed to make TRACE a more useful tool for market participants, expressed our support.⁴

We appreciate that FINRA is moving forward with shortening the reporting time for many fixed income securities.

Unfortunately, rather than just substitute a new one minute rule for the current 15 minute rule, the TRACE Reporting Time Proposal would establish new exceptions that raise important, unaddressed policy considerations and complexities. As discussed more fully below, these new exceptions should be revised materially or jettisoned, lest they create significant risk to the efficacy and legal durability of the entire rule.

We urge the Commission to continue its efforts to improve fixed income market transparency,⁵ work with FINRA to improve the Proposal, and approve it.

Background

FINRA's predecessor first obtained Commission approval to establish a corporate bond trade reporting and dissemination facility in 2001.⁶ The facility, known as TRACE, has operated since 2002.

While the scope of what trades must be reported has expanded over the years, the time period during which trades must be reported generally has not. FINRA members are allowed up to 15 minutes following execution to report to TRACE transactions in

³ *TRACE Reporting Timeframe*, FINRA, Reg. Notice. 22-17, Aug. 2, 2022, available at <https://www.finra.org/sites/default/files/2022-08/Regulatory-Notice-22-17.pdf>. We also appreciate that FINRA has clearly abandoned its ill-advised 2019 proposal to delay trade reporting to TRACE (to which HMA had objected), and is instead seeking to improve the timeliness and scope of fixed income trade reporting and dissemination. See, *Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on a Proposed Pilot Program to Study Recommended Changes to Corporate Bond Block Trade Dissemination*, FINRA, Reg. Notice 19-12, (Apr. 2019), available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-19-12.pdf; and Letter from Tyler Gellasch, HMA, to Marcia Asquith, FINRA, June 6, 2019, available at <https://healthymarkets.wpengine.com/wp-content/uploads/2019/06/FINRA-Block-Trade-Comment-6-11-19.pdf>.

⁴ Letter from Tyler Gellasch, HMA, to Jennifer Mitchell, FINRA, Aug. 29, 2022, available at <https://healthymarkets.org/wp-content/uploads/2022/08/HMA-Letter-on-TRACE-Reporting-8-29-22-1.pdf>.

⁵ See, e.g., *Order Approving Proposed Rule Change Relating to Dissemination of Information on Individual Transactions in U.S. Treasury Securities and Related Fees*, SEC, Exch. Act Rel. No. 34-99487 (Feb. 7, 2024), available at <https://www.sec.gov/files/rules/sro/finra/2024/34-99487.pdf>.

⁶ *Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System*, SEC, Exch. Act Rel. No. 43873, 66 Fed. Reg. 8131 (Jan. 29, 2001), available at <https://www.govinfo.gov/content/pkg/FR-2001-01-29/pdf/FR-2001-01-29.pdf>.



corporate bonds, agency debt securities, asset-backed securities, and some agency pass-through mortgage-backed securities.⁷

In the nearly two decades since the 15 minute rule was first implemented, the markets for fixed income securities have changed dramatically. Electronic trading now comprises a significant portion of trading in many fixed income markets, and the vast majority of trading in US Treasury Securities. In some securities, trading decisions across various related products are made and executed within fractions of a second.

Because fixed income markets don't generally include a standardized "market open" and "market close," like the US equities markets, FINRA has linked the reporting timing obligations to when TRACE itself opens and closes.⁸ Generally speaking, trades executed during the open period have to be reported within 15 minutes, and trades within 15 minutes of the close of the TRACE system, or outside of the "open" hours must be reported within 15 minutes of TRACE next being open.

Unfortunately, while there are many fixed income trading venues,⁹ there is not a consolidated quotation collection and dissemination mechanism like exists in equities trading. As a result, different participants with different subscriptions and relationships to different venues and independent data providers often have different views of the markets in real time (i.e., as they are making their trading decisions).

That said, while it doesn't offer useful quotation information, TRACE does provide investors and other market participants with reliable, comprehensive reports of transactions.

⁷ See, *Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Reduce the Reporting Period for Transactions in TRACE-Eligible Securities*, SEC, Exch. Act Rel. No. 34-49854 (Jun 14, 2004), available at <https://www.sec.gov/files/rules/sro/nasd/34-49854.pdf> (for corporate bonds); *Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as modified by Amendment No. 2 Thereto, Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions*, SEC, Exch. Act Rel. No. 34-60726 (Sept. 28, 2009), available at <https://www.sec.gov/files/rules/sro/finra/2009/34-60726.pdf> (for agency debt); *Order Granting Approval of Proposed Rule Change Relating to Post-Trade Transparency for Agency PassThrough Mortgage-Backed Securities Traded TBA*, SEC, Exch. Act Rel. No. 34-66829 (Apr. 18, 2012), available at <https://www.sec.gov/files/rules/sro/finra/2012/34-66829.pdf> (for some mortgage-backed securities); and *Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to TRACE Reporting and Dissemination of Transactions in Asset-Backed Securities*, SEC, Exch. Act Rel. No. 34-71607 (Feb. 24, 2014), available at <https://www.sec.gov/files/rules/sro/finra/2014/34-71607.pdf> (for asset-backed securities).

⁸ Rule 6730: Transaction Reporting, FINRA, available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6730>.

⁹ See, e.g., Editorial, *Too Much Choice in Fixed Income Trading*, Traders Magazine, Sept. 27, 2017, available at <https://www.tradersmagazine.com/departments/fixed-income/too-much-choice-in-fixed-income-trading/>.



Unfortunately, TRACE is generally too slow and jumbled to be useful for market participants seeking to identify relevant transactions across multiple venues either while making their trading decisions, or while examining their historical trade execution performance. As we wrote in 2023, “[t]he lack of timely, comprehensive order and execution information may benefit some parties, including large market intermediaries and a handful of very large investors, but it generally harms most investors.”¹⁰

Improving the timeliness and scope of information provided to and disseminated by TRACE could significantly better inform trading decisions in real time, and improve best execution for investors. At the same time, it could reduce economic rents collected by market intermediaries.

Proposal

The TRACE Reporting Time Proposal would generally reduce the trade reporting timeframe for securities currently subject to the 15 minute rule to one minute, for most trading during the “open” period for TRACE.

Rather than simply replacing all of the existing 15 minute reporting requirements with the new one minute reporting requirement, the Proposal would only apply the new one minute reporting requirement to trades “executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET.”¹¹ For trades executed on a business day less than one minute before 6:30:00 p.m. ET, they would need to be reported to TRACE within the first 15 minutes of the TRACE system opening on the next business day, with an “as/of” designation for the date of execution.¹² Similarly,

trades executed on a business day prior to the open of the TRACE system, on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day would continue to be reportable as soon as practicable on the next business day (T+1), but no later than within 15 minutes after the TRACE system opens (and must be designated “as/of,” as appropriate, and include the date of execution).¹³

¹⁰ See generally, Letter from Tyler Gellasch, HMA, to Marcia Asquith, FINRA, June 6, 2019, *available at* <https://healthymarkets.wpengine.com/wp-content/uploads/2019/06/FINRA-Block-Trade-Comment-6-11-19.pdf>.

¹¹ Proposal, at 6-7.

¹² Proposal, at 7.

¹³ Proposal, at 7.



The Proposal also includes exceptions for brokers with “limited trading activity” and for manual trades.”¹⁴

The Proposal would define members with “limited trading activity” to be those that, for at least “one of the prior two calendar years, reported to TRACE fewer than 4,000 transactions in the TRACE-Eligible Securities that are subject to paragraphs (a)(1)(A) through (a)(1)(D) of Rule 6730 (i.e., corporate bonds, agency debt, ABS and MBS TBA GD), including any manual trades.”¹⁵

In other words, a broker may generally avoid the new one minute rule if it executes:

1. Outside of the TRACE open period; or
2. In aggregate, less than 4,000 trades per year in either of the two preceding years.

Firms seeking to rely on the de minimis exception would have to certify annually that they meet the qualifications.

Separately, the Proposal would exempt from so-called “manual trades”, which would include instances where:

- trades are executed “by telephone, email, or through a chat/messaging function, and subsequently must [be] manually ente[ed]r into a system that facilitates trade reporting all or some of the information required to book the trade and report it to TRACE;”¹⁶
- “allocations to individual accounts must be manually input in connection with a trade by a dually-registered broker-dealer/investment adviser;”¹⁷
- “an electronic trade is subject to manual review for risk management or regulatory compliance purposes and, as part of or following the review, the trade must be manually approved, amended, or released before the trade is reported to TRACE (e.g., a firm’s risk 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);”¹⁸
- “a member trades a bond for the first time and additional manual steps are necessary to set the bond up in the firm’s systems to book and report the trade (e.g., entering the CUSIP number and associated bond data into the firm’s system);”¹⁹ and

¹⁴ TRACE Reporting Time Proposal, at 5.

¹⁵ Proposal, at 8.

¹⁶ Proposal, at 10.

¹⁷ Proposal, at 10.

¹⁸ Proposal, at 10.

¹⁹ Proposal, at 11.

- “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.”²⁰

Firms would be required to append a “manual” trade tag to any such trades, would be prohibited from intentionally delaying reporting, and would be subject to enforcement for “conduct inconsistent with high standards of commercial honor and just and equitable principles of trade,” if they have “a pattern or practice of late reporting,” absent “reasonable justification.”²¹

Lastly, while the Proposal declares that FINRA would disseminate the information “immediately” upon receipt, the details of such disseminations are not discussed.²²

Standard of Commission Review and Consideration of TRACE Reporting Time Proposal

The Commission shall approve FINRA’s rules only if it finds that such rules are consistent with the Exchange Act,²³ including that the rules:

- “are designed to prevent fraudulent and manipulative acts and practices;”²⁴
- “are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”²⁵
- provide for the “equitable allocation of reasonable dues, fees, and other charges;”²⁶
- “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter”;²⁷ and
- are designed to protect investors and the public interest.

Notably, the Commission must “find” or “determine” that the rule meets the requirements of the Exchange Act,²⁸ and that approval must “examine the relevant data

²⁰ Proposal, at 11.

²¹ Proposal, at 12.

²² The dissemination would not – in reality – be “immediate,” due to technological and other factors. Given that electronic trading of fixed income securities has become so prevalent, and that such electronic trading strategies may make order and messaging decisions in fractions of one second, we would like FINRA to further specify and publish the latencies in its dissemination of such information.

²³ 15 U.S.C. § 78s(b)(2)(C); *see also, Susquehanna Int’l Group LLP, et al, v. SEC*, 866 F.3d 442, 445 (D.C. Cir. 2017)(vacating a Commission approval of a SRO filing for failure by the Commission to make such a finding).

²⁴ 15 U.S.C. § 78o-3(b)(6).

²⁵ 15 U.S.C. § 78o-3(b)(6).

²⁶ 15 U.S.C. § 78o-3(b)(5).

²⁷ 15 U.S.C. § 78o-3(b)(9).

²⁸ *Susquehanna*, at 446.



and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’²⁹

Analysis

Modern Markets Demand Shorter Reporting Times

The Proposal explicitly cites the rise in electronic trading and other market changes since the 15 minute rule was adopted as necessitating modernization.

In light of the technological advances in the intervening 18 years since FINRA first adopted the 15-minute reporting requirement, including the increase in electronic trading, and consistent with FINRA’s longstanding goals of increasing transparency and improving access to timely transaction data, FINRA is proposing updates to modernize the reporting timeframes and provide timelier transparency. FINRA will continue to assess its TRACE reporting requirements and member reporting and consider whether any adjustments to the one-minute requirement are warranted.³⁰

We agree.

In a world where 42% of investment grade corporate bond trades and 30% of high yield bond trades were electronic,³¹ and trading decisions are often measured in fractions of a second, measuring trade reporting times in a period of minutes is facially unreasonable.

While transatlantic personal travel may have once been a function of wooden ships sailing across the vast sea for months, steamships and later airplanes have rendered monthly time horizons obsolete. So, too, it must be with trade reporting time delays.

Dramatically shortening reporting delays is also particularly important when other financial products that are explicitly linked to these products are traded, and subject to different reporting and information dissemination requirements. With so many fixed income exchange traded products outstanding, we are concerned about significant information asymmetries and potential trading manipulation and abuse opportunities arising from wildly disparate reporting periods for linked financial products. This concern

²⁹ *Susquehanna*, at 445 (internal citations omitted).

³⁰ Proposal, at 5.

³¹ Kevin McPartland, *January Spotlight: U.S. Corporate Bond Market Structure in 2023 by the Numbers*, Coalition Greenwich, Jan. 22, 2024, available at <https://www.greenwich.com/market-structure-technology/january-spotlight-us-corporate-bond-market-structure-2023-numbers>.



will likely expand as CME begins trading futures contracts based on corporate bond indexes later this year.³²

Further, the Proposal should be relatively easy to implement, and would not materially impact most trade reporting.

While, as discussed below, we believe FINRA's and the Commission's analysis of the rule change is insufficient to support some of the elements of the Proposal, we note that one area where the analysis is robust is examining the current reporting times for different assets and different parties. For example, the Proposal explains that the vast majority of trades subject to it are already reported to TRACE within one minute. As the Proposal explains, "FINRA has found that 82.9 percent of trades in the TRACE-Eligible Securities that are currently subject to the 15-minute outer-limit reporting timeframe were reported within one minute of execution."³³

FINRA's Proposed Policy Change to Create a Time Gap Between On-Hours and Off-Hours Trading Must Be Supported or Abandoned

The timeliness of reporting is presumably relevant for all trades reported to TRACE.

Nevertheless, the Proposal does not examine the characteristics of trades executed outside of TRACE "open" periods, nor does it analyze them.

Surprisingly, then, the Proposal would treat those trades materially different for reporting purposes than it would all other trades. The existing 15 minute rule doesn't create this distinction. Today, in general, trades have to be reported within 15 minutes of execution or, if outside of TRACE being open or within 15 minutes of TRACE closing, within 15 minutes of TRACE being open. The 15 minute rule generally applies universally.

However, in the Proposal, some trades would now be subject to the new one minute requirements, but trades executed outside of the "open" periods would remain subject to the current 15 minute rule. We worry that the new distinction may distort the markets by leading to more "off" hours trading. We also worry about new opportunities for firms to engage in potentially manipulative trading strategies across different, related markets and products.

We assume that the Proposal retained the 15 minute rule for "off hours" trade executions as an accommodation to brokers seeking to use legacy systems. However,

³² Wesley Bray, *CME Group to launch US corporate bond index futures this summer*, The Trade, Feb. 6, 2024, available at <https://www.thetradenews.com/cme-group-to-launch-us-corporate-bond-index-futures-this-summer/>.

³³ Proposal, at 5.



there are no relevant facts provided, and no meaningful discussion of that determination.

Put simply, the Proposal would change existing policy, but does not provide facts or relevant analysis to help the Commission or public understand why. Further, there is no meaningful discussion of potential new market information asymmetries or impacts of its policy change. This is an insufficient record to support the Commission approving of the change.

Accordingly, we urge the Commission to ensure that the reporting time is consistent – as it has been for years – or is more fully explained, analyzed, and justified.

The De Minimis Broker Exception Should Be Abandoned, or More Narrowly Tailored

As with its change in policy for treatment of off-hours trading, the Proposal similarly never thoroughly explains why it would establish a de minimis exception, nor does it provide sufficient relevant data to support the exception it would create.

Rather, the Proposal simply declares that:

FINRA considered basing the relief on the par value traded rather than the number of trade reports. A par value-based de minimis exception would require even less-active dealers to meet the one-minute reporting requirement if they engaged in significant aggregate dollar volume trading and thus this approach could result in more large trades being subject to the one-minute reporting requirement. However, FINRA believes that the number of trade reports submitted over the period is a more appropriate measurement. The number of trade reports tracks more closely the costs that firms incur when reporting and the necessary investments in speeding up their reporting. Additionally, the proposed exception (using the proposed 4,000-trade report threshold) would only impact a de minimis percent of par value traded. FINRA also considered a combination of the par value and the number of trades as the threshold for the de minimis exception, but that would have unnecessarily increased the complexity of the exception.³⁴

FINRA did not provide the specific details to support those statements.

While we are sensitive to concerns of smaller brokers, who may not have systems in place today to comply with a one minute reporting requirement, we have several

³⁴ Proposal, at 34.

concerns with the Proposal’s broad “de minimis exception” for firms with purportedly “limited trading activity.”

First, in general, the de minimis exception would create a new, significant information asymmetry, which may lead to gamesmanship, evasion, and market distortions. While the exception is focused on relieving perceived burdens on brokers, the consequence would be that investors and the markets would lose the transparency benefits of the proposed change. Worse, rather than provide details to support its several policy decisions surrounding de minimis exception, the Proposal offers essentially fact-less analysis that would likely be insufficient to withstand scrutiny under the Administrative Procedures Act.

For example, while FINRA summarily dismissed alternatives linked to par values traded, the Proposal offers no data to support the conclusion. While FINRA explicitly stated that it considered adopting a higher trading threshold (of 10,000 trades per year), and offered a two statistics to support its conclusion to reject it,³⁵ the Proposal declines to offer even a single statistic to support its decision to not provide any par value-linked component to the de minimis exception.

Setting aside whether this rudimentary analysis is sufficient to withstand legal challenge, it is also simply bad policy. The law requires the administrative record to reflect that the Commission has “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”³⁶ Yet, the Proposal offers so few facts and such limited analysis surrounding its decision to ignore value traded or market impacts of those trades that neither the Commission nor commenters can understand, much less second-guess, FINRA’s decisions.

Second, as suggested above, creating an exception that is based solely upon the number of trades conducted on an annual basis – irrespective of size or market impacts – is inconsistent with the purposes of the rule. The risks to market participants and market integrity from larger orders exist irrespective of whether the broker responsible trades a large or small number of orders per year. In fact, the potential impacts and market risks for larger orders may be greater if they are executed by firms that engage in less frequent trading. Neither the Proposal nor the Commission’s release even identify or seek to address this inconsistency.

Third, the de minimis exception could incentivize a firm seeking to mask its trading activities (which may be significant in dollars or market impacts) to use an “excepted” broker to effectuate its trading. Put simply, FINRA is creating a new incentive for market distortions based upon the availability of a new reporting loophole. Again, neither the

³⁵ Proposal, at 34 (“74 members reporting between 4,000 and 10,000 trades traded more than \$1 billion par value, with the highest par value traded being \$452 billion”).

³⁶ *Susquehanna*, at 445 (internal citations omitted).



Proposal nor the Commission's release identify, assess, or seek to address this new opportunity for evasion – or its impact on other investors and the markets.

Fourth, the Proposal's requirement that a broker exceed the 4000 trades per year for two consecutive years prior to having to comply with the one minute rule is not supported in the release by facts or analysis provided. What is the difference between a one year lookback and a two-year lookback? If, for example, a firm engaged in 5 trades in one year, and 100,000 trades in the following year, why should the firm not have to comply with the requirements in year three? What is the impact on market participants and the markets themselves? Is there a risk that firms will toggle trading between different entities from year to year so as to qualify for the exception? None of this is materially examined in the Proposal.

As with other new deviations from the existing 15 minute rule, we are left to speculate – without essential data – why the exception is structured as proposed, and what the impacts might be. That is not what the APA requires.

Ultimately, if FINRA wants to modify the scope of its 15 minute rule to provide relief to firms' trading outside of TRACE "open" hours, then it should articulate why those trades should not be subject to the new one minute rule. It should examine the impacts of its choice to subject some trades to a one minute rule, and others to 15 minutes. This is a policy choice, and FINRA should evaluate both its own choice, but also other options.

Similarly, if FINRA wants to modify the scope of its current 15 minute rule to provide relief to firms that do not trade a lot, it must explain why it chose specific metrics over others, and the thresholds it chose – including the number of nature of firms it would capture and exclude. It should also consider alternatives, such as metrics based upon trade sizes.

Ultimately, we believe that any "de minimis" exception should be sufficiently narrowly tailored so as to not materially undermine the purposes of the rule. Investors and the public should be able to see trades quickly for their own trading and risk management purposes.

Put simply, any exception should be limited to only such firms that (1) don't engage in significant, market-impacting trading activity, and (2) due to their very rare engagement in the markets, could not be reasonably expected to build the necessary infrastructure to comply with modernized, automated reporting timelines. We do not currently have enough information with which to determine whether the proposed exception meets that test.

The Manual Trade Exception Should Be Materially Narrowed

Investors and other market participants are subjected to greater risk for having incomplete, untimely information each time a "manual" exception is relied upon. Yet, the

Proposal makes no reference to why they should be subjected to these greater risks, or what the impacts upon them may be as a result of this new exemption.

While the Proposal notes that “FINRA has extensive experience and data regarding members’ historic behaviors reporting transactions to TRACE under a myriad of scenarios,”³⁷ that does not assuage our concerns that firms may intentionally add a “manual” component to their post-execution processes so as to avoid timely reporting (and dissemination) of their trading activity.

The Proposal makes clear that FINRA is concerned with this possibility, as it promises that “FINRA will be reviewing the use of the manual trades exception”³⁸ and declares that “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 the Time of Execution.”³⁹

While FINRA rules state that members “must make a good faith effort to report their trades as soon as practicable,”⁴⁰ the incentives for the firm may run in the opposite direction. Worse, the broadly scoped language of the “manual” trade exception appears to create more than ample opportunities for firms to – consistent with those delineated activities – build in a sufficient “manual” process so as to qualify.

Worse, by explicitly threatening enforcement for artificial delays in reporting only when there is a “pattern or practice,” FINRA appears to be opening the door for episodic delays that may be intended to intentionally mask and delay dissemination of specific trades.

We urge FINRA to materially revise the extremely broad examples provided in the Proposal of “manual” trades and further offer relevant guidance as to when a “manual” component or process may nevertheless not qualify for the exception.

Conclusion

The TRACE Reporting Time Proposal would dramatically improve market transparency, thereby reducing risks for abuses, and improving market efficiencies.

However, we are concerned that, as proposed, the revisions could exacerbate, rather than reduce, information asymmetries within the markets, and lead to potential abuses. While FINRA has seemingly started with the objective of shortening the reporting period, it has undertaken no meaningful discussion as to why that’s important for investors and market participants. Market participants need more timely TRACE

³⁷ Proposal, at 11.

³⁸ Proposal, at 11.

³⁹ Proposal, at 11.

⁴⁰ Proposal, at 11-12.



reporting and dissemination so that they may have more accurate understandings of the markets when they are making trading decisions, and when they are reviewing their trade execution quality. More timely reporting will improve best execution for investors, in addition to providing regulators with tools to help identify and address market abuses.

If investors' needs for more timely information are recognized as a primary purpose for the revisions, then it should be immediately obvious that Proposal's limitations and exceptions create material substantive and legal weaknesses to its Proposal.

Accordingly, we urge the Commission to approve the Proposal, subject to revisions that

- the new one minute rule be consistently applied;
- any "de minimis" exception be unavailable for firms that execute large, market-moving trades, or have other significant capital markets activities; and
- narrow the scope of so-called "manual" trades exception.

If you have any questions, please contact me at (202) 909-6138 or ty@healthymarkets.org. Thank you for your consideration.

Sincerely,

President and CEO
Healthy Markets Association