September 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: Financial Industry Regulatory Authority, Inc.; Notice of Partial Amendment No. 1 to Proposed Rule Change to Amend FINRA Rule 6730 to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute;[1] File No. SR-FINRA-2024-004

Dear Ms. Countryman:

The Healthy Markets Association[2] writes to supplement our past support for shortening 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's TRACE. For years, we have urged FINRA and the Commission[3] to shorten the reporting and dissemination periods for fixed income trades.

Sadly, the Revised Proposal's broad "manual" trade exception not only eviscerates any potentially added value from the "electronic" provisions, but also dramatically encourages the return to "manual" trading by those seeking to avoid transparency.

Accordingly, we now urge the Commission to reject the Revised Proposal.

Discussion

[1] *Notice of Partial Amendment No. 1 to Proposed Rule Change to Amend FINRA Rule 6730 to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute*, SEC, Exch. Act Rel. No. 100594, Jul 25, 2024, *available at* https://www.sec.gov/files/rules/sro/finra/2024/34-100594.pdf ("Revised 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.

[3] *See, e.g.*, Letter from Tyler Gellasch, HMA, to Jennifer Piorko 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 and Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, Feb. 15, 2024, *available at* https://healthymarkets.org/wp-content/uploads/2024/03/Ltr-to-SEC-re-FINRA-re-TRACE-2-15-24.pdf.

TRACE is a critical tool that serves two distinct purposes: an audit trail for regulators and a trade dissemination mechanism for market participants.

In general, regulators need a broad spectrum of data fields so that they may have a clear picture of who did what when. However, because regulators generally don't intervene in markets in real time or conduct enforcement investigations on an instantaneous basis, this information can generally be modestly delayed – such as on an end-of-day basis.

For market participants, by contrast, the number of decision-useful data fields is likely far more limited, but the need for timeliness of the information is much greater. After all, market participants rely on dissemination of TRACE data to make informed trading and risk mitigation decisions on a real-time basis. The closer to real time dissemination, the better.

Put simply, the number of essential data fields needed by regulators generally exceeds those needed by market participants, while the need for more timely public dissemination of information is greatest for market participants.

The Revised Proposal puts these separate purposes into the spotlight.

Looking to shove all of the necessary data for regulators into a shorter reporting and dissemination timeframe is not surprisingly creating significant resistance, including as it relates to "manual" trades. However, the proposed "manual" trade exemption itself creates a host of significant concerns.

Under the Initial Proposal, we were concerned that:

> 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 [manual] exemption.
>
> [FINRA] 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" 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."

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> While FINRA rules state that members "must make a good faith effort to report their trades as soon as practicable," 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.[4]

That isn't what the Revised Proposal would do. Under the guise of improving market transparency, the Revised Proposal would exacerbate, rather than reduce, information asymmetries within the markets, and lead to potential abuses. The Revised Proposal would create a significant new opportunity for those seeking to avoid transparency to simply "opt in" for manual executions and "opt out" of timely reporting – impacting not only themselves, but countless other firms in the marketplace.

The massive disparity in timeliness of reporting between the two execution methods not only creates a significant risk of losing the benefits of transparency,[5] but also creates new opportunities to manipulate markets. Parties may essentially choose to disclose some trading electronically so as to advantage trading that isn't subject to timely reporting, essentially engaging in strategies that may resemble spoofing. Investors should not be subjected to different risks based on the methods of execution chosen by their competitors or others.

FINRA must undertake a legally defensible analysis of how its Revised Proposal will impact investors and trade execution activity. It hasn't so far.

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[4] Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, Feb. 15, 2024, *available at* https://healthymarkets.org/wp-content/uploads/2024/03/Ltr-to-SEC-re-FINRA-re-TRACE-2-15-24.pdf (internal citations omitted).

[5] Letter from Stephen Berger, Citadel Securities, to Vanessa Countryman, SEC, Aug. 13, 2024, (on file with HMA, as we were unable to locate the letter on the Commission's website)("[B]y introducing a new material distinction between fully electronic and "manual" transactions in terms of the outer reporting limit, there is a risk that the overall percentage of manual transactions will increase because of perceived regulatory arbitrage. This could, in turn, undermine positive developments in the fixed income markets, including the ongoing transition to electronic trading.").

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More broadly, we urge the Commission and FINRA to work with market participants to expand and revise TRACE reporting and dissemination to better balance the tool's dual roles. Key elements for all trades should be reported and disseminated more quickly, while the elements that are useful to just regulators could be reported on a slightly delayed basis to ease the compliance burden while potentially improving the accuracy of reporting. Further, the Commission and FINRA should undertake a review of TRACE reporting more broadly to eliminate unnecessary duplication and complexity.

The Revised Proposal – and the "manual" trade exemption in particular – doesn't strike the appropriate balance between the needs for market participants, the needs for regulators, and the burdens on reporting entities.

It is not adequately detailed or analyzed, and would likely reduce transparency. It should not be approved.

Conclusion

FINRA and the Commission should improve the timeliness of TRACE reporting and dissemination. However, if the "manual" trade exemption isn't fixed, then doing nothing would likely be better than adopting such a facially flawed Revised Proposal.

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