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October 3, 2022

Ronald W. Smith Corporate Secretary Municipal Securities Rulemaking Board 1300 I Street, NW, Suite 1000 Washington, DC 20005	Jennifer Piorko Mitchell Office of the Corporate Secretary Financial Industry Regulatory Authority 1735 K Street, NW Washington, DC 20006
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Re: MSRB Notice 2022-07 and FINRA Regulatory Notice 22-17 – Requests for Comment on Proposals to Shorten Fixed Income Trade Reporting Timeframes

Dear Mr. Smith and Ms. Mitchell:

Herbert J. Sims & Co., Inc. (“HJS”) appreciates this opportunity to respond to Notice 2022-07¹ (the “MSRB Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) and Regulatory Notice 22-17² (the “FINRA Notice” and, together with the MSRB Notice, the “Notices”) issued by the Financial Industry Regulatory Authority (“FINRA” and, together with the MSRB, the “SROs”). The Notices request comment on shortening the trade reporting timeframe for transactions in covered fixed income securities required to be reported to each of the SRO’s respective trade reporting system (together, the “Proposals”). The MSRB’s Real-Time Transaction Reporting System (“RTRS”) is the system operated by the MSRB for the reporting of trades in most municipal securities,³ and the Trade Reporting and Compliance Engine (“TRACE” and, together with RTRS, the “Reporting Systems”) is the system operated by FINRA for the reporting of trades in most dollar-denominated debt securities of corporate issuers, federal agencies, government-sponsored enterprises and the US Treasury (collectively, TRACE-Eligible Securities”).⁴ Except where otherwise specifically provided, our comments in this letter apply to both Proposals and with respect to both Reporting Systems.

HJS is a privately-owned wealth management, investment banking and institutional services firm that has been in operation since 1935. We fall on the line between Group 3 and Group 4 firms as identified in the MSRB Notice.⁵ In reviewing the Notices, we believe that the SROs failed to take into account several critical points that would

¹ MSRB Notice 2022-07 (August 2, 2022).

² FINRA Regulatory Notice 22-17 (August 2, 2022).

³ Reporting of trades in municipal securities to RTRS is governed by MSRB Rule G-14, on Reports of Sales or Purchases.

⁴ TRACE-Eligible Securities are defined in, and the reporting of trades in TRACE-Eligible Securities to TRACE is governed by, the FINRA Rule 6700 Series, on Trade Reporting and Compliance Engine (TRACE).

⁵ Group 3 firms are those firms that account for between 0.01% and 0.1% of trades, and Group 4 firms are those that account for 0.01% or less of trades. HJS accounts for approximately 0.011% of trades using 2021 trade volume.

alter the underlying basis for the Proposals and that these items require further research and review on the part of the SROs before implementation of the Proposals.

1. *The Notices assume that parties are not already reporting as soon as practicable and that a faster reporting time is possible and would not result in an increase of inaccurate trade data being submitted.*

While the advent of electronic trading systems and the improvements the industry implemented since the 15 minute rule was established have vastly decreased the time of reporting, we believe that the current data on trade reporting times represents the fastest practicable reporting time for trades. The heterogenous nature of the securities that fall within the jurisdiction of these Notices makes a “one-size-fits-all” approach (or “one-minute-fits-all” approach) inappropriate.

Numerous commentators have already submitted their perspectives regarding the reason that larger trades require additional time. As HJS has historically focused on underwriting and dealing in non-rated, high yield investments, our comments will focus on the inappropriate application of the Proposals to those scenarios. HJS does report via ATS for a portion of its trading business, but it also conducts a significant percentage of its business through voice trading, either directly or through a voice broker. In these circumstances the traders are communicating verbally and negotiating the price of a security. In addition to the basic components of a trade in a particular security (size, maturity, coupon), there are numerous other components of a security in the non-rated, high yield investing world – e.g. industry, issuer, conduit borrower underlying credit, state of issuance and tax environment in that state, authorized denominations, cash trades and forward settlement dates, distressed bonds that trade without accrued interest, Cinderella bonds (taxable municipal bonds that convert to tax-exempt status) – that impact the negotiations and price for a particular security. These items, as well as other matters specific to the individual buyer or seller or the type of trade (e.g. a fractional trade), are matters that are not manageable in an ATS world.

There is no data provided in the Notices that indicates that the SROs have taken into account the heterogeneous nature of the securities marketed and the importance of voice trading and voice brokerage to the market. Even if all systems were able to be modified to permit all securities to be traded electronically, the investing community, specifically some of our retail investors that refuse to use electronic media for trading, would not uniformly adopt electronic trading as its sole method to conduct trades.

With the inability to completely automate trading in certain securities, human intervention is still required. With multiple parties involved, dealer counterparties and brokers, the idea of a trade being entered within one minute becomes improbable. A one-minute reporting period also eliminates the ability for there to be second layer of human supervisory review and common sense checks. When you layer the number of corrections that are currently caught during the 15 minute trade reporting window that will no longer be able

to be caught and corrected prior to the end of the reporting window,⁶ the SROs are at risk of opening the market to much less accurate data, therefore hindering the goal of providing enhanced transparency.

The Notices assume, without evidence to the contrary, that it is possible for trades to be entered more rapidly than they already are. This is simply not our experience. In our experience, our traders already ensure that a trade is reported as soon as practicable to facilitate an ongoing efficient business process and to permit them to direct their attention to additional customer needs. Thus, there is no need to modify the rules to create additional efficiency in the market, as it is already as efficient as is practicable.

2. *The Notices do not adequately contemplate how a shorter reporting period would fit into the business model of managing retail customer accounts where the retail customer is uncomfortable using or unwilling to use electronic trading systems.*

SIFMA's response letter accurately covers this exact issue. We are repeating their response in our response as it reflects our experience with some of our retail client relationships and it represents the importance of providing access to all investors regardless of their preferred avenue of trading. See the following excerpt:

As the SROs and the SEC have repeatedly emphasized in connection with their focus on the needs of elder investors, many of these and other retail investors may not be accustomed to using, may not have access to, or may simply prefer not to use the electronic means of trading that the Proposals seem poised to make effectively obligatory. Other than self-directed investors, retail investors typically need to have a conversation with their broker-dealer to arrive at an investment decision that ultimately results in an agreement to make a trade that starts the clock for trade reporting purposes. In fact, that conversation is at the center of broker-dealers' compliance with any number of disclosure, best interest and other customer-focused regulatory obligations. In addition, the conversation is often an iterative process with potential refinements, adjustments or clarification of terms that would create challenges in ensuring that the terms are finalized and the trade is reported within the confines of one minute. Further, some firms require best

⁶ Common issues that can sometimes be corrected during the 15 minute trade reporting period but would not be caught in a 1 minute trade reporting period include issues with:

- Fractional trades (e.g. Puerto Rico bonds) where some counterparties have systems that cannot handle them and require breakdowns into two trades.
- Trades in bonds that are distressed and trade with no interest; sometimes one counterparty processes it properly while the other side inadvertently includes accrued interest.
- Trades in unusual denominations – for example, those that have an initial required purchase of \$100,000 followed by integral multiples of \$5,000.
- Trades that require manual entries. Even though platforms like Muni Center, ICE and TradeWeb all channel to Bloomberg TOMS, some will still require additional manual entries.
- A client changing the account into which the trade is to be booked.
- An auto-execute routes the trade to the wrong sales book.
- A counterparty changed its MPID identifier but has not notified HJS previously.

execution or fair pricing reviews to occur on retail trades before the trades are placed into the execution stream. These would need to occur nearly instantaneously or may need to be eliminated, left exclusively to post-trade retrospective review, or moved to a much earlier part of the process that might not be as effective at ensuring executions are as advantageous to the customer as the then-current and potentially moving market will allow. While the personalized negotiation effectively occurs prior to the formal time of execution that marks the beginning of the trade reporting process, the two stages are inextricably linked. Mandating one-minute trade reporting across the board would require a de-linking of these two processes, which could introduce artificiality into the broker-client relationship and hinder execution until adequate technological advances are developed.

It may be helpful for the SROs to visualize a typical office visit or phone call by a retail investor – which still occurs, even if less frequently than before online brokerage became available – and how that conversation would flow under a one-minute trade reporting scenario. Do broker-dealers have to structure those conversations in a way so that they can immediately act on their customers' directions to meet regulatory timeframes, with potentially multiple pauses during the course of the conversation to do so? Getting a fuller picture of how customer transactions with retail investors are negotiated and executed, and a clearer understanding of how regulators may expect such process to change, would be critical for a successful tightening of reporting timeframes.

It is also important that the SROs understand that the small “retail size” trades they observe through electronic venues do not all represent trades with a retail customer. A significant proportion of trades with a retail customer have one or more interdealer trades associated with it, representing the movement of the security from the selling retail customer of one broker-dealer to the ultimate purchasing retail customer of another broker-dealer. While these interdealer trades may be executed electronically or may not otherwise entail the additional complications of personalized negotiation, the execution of trades directly between the retail customers and their broker-dealers would typically arise through personalized negotiation. The manner in which these two different types of trades of the same retail-sized block of securities are executed would have a critical impact on the ability to timely report the trades under a one-minute reporting mandate. This distinction is important to properly assess the burdens on retail customers and the professionals servicing them and must not be obscured by focusing on aggregate data for small trades.

3. *The Notices assume that implementation of a shorter reporting period would only require one-time systems upgrades, one-time legal costs to upgrade compliance policies and procedures and minor ongoing costs relative to ensuring compliance, all of which would be “relatively minor.”*

This set of assumptions, specifically discussed in the MSRB Notice on pages 10-13 and the FINRA Notice on page 13, completely ignores the voice trading and voice brokerage activities, which are a significant component of the fixed income securities markets. Due to the human factor of these activities and the impracticability, if not impossibility, of automating these modes of trading, any attempt to decrease reporting time would require additional personnel to essentially shadow traders, preparing tickets with the applicable information and performing simultaneous accuracy checks and best execution and suitability checks while the trader is verbally negotiating the terms of the transaction with the counterparty or broker. This cost would be ongoing, would not be minor, and still would not address the aforementioned concerns about the practicability of entering these types of trades within one minute and ensuring the accuracy of the information conveyed within a one minute window.

4. *The Notices assume that the increased transparency resulting from faster reporting times would provide investors with information that would impact their price negotiations.*

The MSRB notes that there were 251,635 “analyzed trades” with same-CUSIP number “matched trades” in 2021, where a matched trade was executed before the analyzed trade was reported but after the analyzed trade’s execution. This represents 3.5% of all trades executed in 2021. Of the analyzed trades, only 27.9% (70,206.165) had their matched trade executed more than a minute after the analyzed trade was reported. This data does not take into account that the analyzed trades may have had matched trades because voice brokers were involved making the trades – seller trades with voice broker and voice broker trades with buyer. Even if you assume that all 70,206 analyzed trades had matched trades arising from an unrelated, third-party trade, that accounts for less than 0.01% of the volume of trading for 2021 and presupposes that if the parties in the matched trade had knowledge of the analyzed trade it would have somehow impacted the pricing calculus.

While we support transparency in the markets and improving the efficiency of the markets, our experience has shown that traders already report trades “as soon as practicable.” We do not believe that, and the SROs have not provided sufficient data to support the idea that, a decrease in the reporting time (i) is possible or (ii) would provide any benefit to the investing community let alone a benefit that would outweigh the costs to the broker-dealer community. There was scant data in the Notices regarding the actual costs to the broker-dealer community or the benefit to the investing community. We have not been asked to, nor have we attempted to, undertake a comprehensive analysis of the projected costs involved.

If the SROs would like to reduce the reporting time, we would request that, in light of the lack of data available to analyze the cost and benefit of implementing such a reduction, the SROs (i) embark upon a broader data-gathering

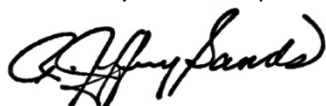
mission to analyze the potential costs and benefits of such a proposal, (ii) implement any reduction in reporting time in stages to permit time for feedback to be provided and data to be gathered, and (iii) contemplate exceptions for trades that require human intervention – whether that is because the trade is conducted as a voice trade or with a voice broker, is of a size that requires internal human approval prior to reporting, or in a security, the nature of which requires personalized negotiation.

Thank you for your time and attention. We welcome the opportunity to respond to any questions and provide further information to help inform your decisions.

Melissa Messina, Esq.

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William Sims



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General Counsel

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