



Municipal Securities Rulemaking Board

July 18, 2024

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

**Re: Response to Comments on File No. SR-MSRB-2024-01**

Dear Ms. Countryman:

On January 12, 2024, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to (i) amend Rule G-14 RTRS Procedures under MSRB Rule G-14, on reports of sales or purchases (“Rule G-14”), to shorten the amount of time within which brokers, dealers and municipal securities dealers (“dealers”) must report most transactions to the MSRB, require dealers to report certain transactions with a new trade indicator, and make certain clarifying amendments, and (ii) make conforming amendments to MSRB Rule G-12, on uniform practice, and the MSRB’s Real-Time Transaction Reporting System (“RTRS”) Information Facility (“IF-1”) to reflect the shortened reporting timeframe (collectively, the “original proposed rule change”).<sup>1</sup> The Commission received fourteen (14) comment letters regarding the proposed rule change in connection with the initial comment period.<sup>2</sup>

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<sup>1</sup> See Exchange Act Release No. 99402 (Jan. 19, 2024), 89 FR 5384 (Jan. 26, 2024) (File No. SR-MSRB-2024-01) (“MSRB Filing Notice”). The proposed rule change is available at [https://www.msrb.org/sites/default/files/2024-01/SR-MSRB-2024-01\\_0.pdf](https://www.msrb.org/sites/default/files/2024-01/SR-MSRB-2024-01_0.pdf). Except as expressly defined herein, the defined terms used in this letter shall have the meanings as defined in the proposed rule change. A similar proposal was filed with the Commission by the Financial Industry Regulatory Authority (“FINRA”) to amend FINRA Rule 6730 on Transaction Reporting for fixed income securities in other markets. See Exchange Act Release No. 99404 (Jan. 19, 2024), 89 FR 5034 (Jan. 25, 2024) (File No. SR-FINRA-2024-004) (“FINRA Filing Notice”).

<sup>2</sup> See letters to Vanessa A. Countryman, Secretary, Commission, from: Michael Noto, FINRA Registered Representative dated Jan. 31, 2024 (“Noto Letter”); J. Ben Watkins, Director, Division of Bond Finance, State of Florida dated Feb. 13, 2024 (“State of Florida Letter”); Matthew Kamler, President, Sanderlin Securities LLC dated Feb. 14, 2024 (“Sanderlin Securities Letter”); J. D. Colwell dated Feb. 15, 2024 (“Colwell Letter”); Gerard O’Reilly, Co-Chief Executive Officer and Co-Chief Investment Officer and David A. Plecha, Global Head of Fixed Income, Dimensional Fund Advisors LP dated Feb. 15, 2024 (“Dimensional Fund Advisors Letter”); Michael Decker, Senior Vice President, Bond Dealers of America (“BDA”) dated Feb. 15, 2024 (“BDA Letter”); Sarah A. Bessin, Deputy General Counsel and Kevin Ercoline, Assistant General Counsel, Investment Company Institute dated Feb. 15, 2024 (“ICI Letter”); Kenneth E. Bentsen,

On April 22, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>3</sup> to determine whether to approve or disapprove the proposed rule change (“Order Instituting Proceedings”), and provided notice of the grounds for disapproval under consideration.<sup>4</sup> Specifically, the Commission asked that commenters address the sufficiency of the MSRB’s statements in support of the proposed rule change, as set forth in the MSRB Filing Notice, and stated that the additional time provided by the Order Instituting Proceedings would allow for additional analysis and input from commenters regarding the scope and implementation of the proposed exceptions to the one-minute reporting timeframe.<sup>5</sup> The Commission received ten (10) comment letters regarding the proposed rule change during the comment period for the Order Instituting Proceedings.<sup>6</sup>

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Jr., President and CEO, Securities Industry and Financial Markets Association (“SIFMA”) dated Feb. 15, 2024 (“SIFMA Letter”); Howard Meyerson, Managing Director, Financial Information Forum (“FIF”) dated Feb. 15, 2024 (“FIF I Letter”); Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated Feb. 16, 2024 (“Bloomberg Letter”); Melissa P. Hoots, CEO/COO, Falcon Square Capital, LLC dated Feb. 16, 2024 (“Falcon Square Capital Letter”); Matt Dalton, Chief Executive Officer, Belle Haven Investments, LP dated Feb. 16, 2024 (“Belle Haven Letter”); and Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association (“ASA”) dated Feb. 16, 2024 (“ASA Letter”). After the close of the comment period, one commenter submitted a supplemental letter. See letter to Ms. Countryman, Commission, from Mr. Meyerson, FIF dated Feb. 26, 2024 (“FIF II Letter”). These comment letters are available at <https://www.sec.gov/comments/sr-msrb-2024-01/srmsrb202401.htm>.

<sup>3</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>4</sup> See Exchange Act Release No. 100003 (Apr. 22, 2024); 89 FR 32485 (Apr. 26, 2024) (“Order Instituting Proceedings”). The Commission cites Exchange Act Section 15B(b)(2), 15 U.S.C. 78o-4(b)(2), and subclause (C) thereof, 15 U.S.C. 78o-4(b)(2)(C), in its notice of the grounds for disapproval under consideration. Order Instituting Proceedings, 89 FR at 32490.

<sup>5</sup> Order Instituting Proceedings, 89 FR at 32490. See also MSRB Filing Notice, 89 FR at 5387–90 (summarizing the two relevant exceptions).

<sup>6</sup> See letters to Ms. Countryman, Commission, from: David C. Jaderlund dated Apr. 23, 2024 (“Jaderlund OIP Letter”); Ronald P. Bernardi, President and CEO, Bernardi Securities, Inc. dated May 14, 2024 (“Bernardi Securities OIP Letter”); Frank Fairman, Managing Director, Piper Sandler & Co. dated May 17, 2024 (“Piper Sandler OIP Letter”); Mr. Iacovella, ASA dated May 17, 2024 (“ASA OIP Letter”); Mr. Decker, BDA dated May 17, 2024 (“BDA OIP Letter”); Mark D. Griffin, Senior Vice President and Risk Control Manager, FHN Financial dated May 17, 2024 (“FHN OIP Letter”); Mr. Meyerson, FIF dated May 17, 2024 (“FIF OIP Letter”); Richard G. Wallace, Senior Vice President and Associate General Counsel, LPL Financial LLC dated May 17, 2024 (“LPL OIP Letter”); Lisa Gayle Melnyk dated May 17, 2024 (“Melnyk OIP Letter”); and Mr.

Separately, on December 4, 2023, the MSRB published a request for information soliciting stakeholder input regarding the impact of MSRB rules on smaller regulated entities (“Small Firm RFI”).<sup>7</sup> Eight of the comment letters received by the MSRB in response to the Small Firm RFI discussed the proposed rule change or a draft version of the proposed rule change previously published for comment.<sup>8</sup>

The MSRB appreciates the participation of commenters in the rulemaking process. This letter addresses the Commission’s stated grounds for disapproval under consideration pursuant to the Order Instituting Proceedings, the comments in the letters received on the proposed rule change and the Order Instituting Proceedings, and the comments on or relevant to the proposed rule change included in the comment letters on the Small Firm RFI.<sup>9</sup> After carefully considering the comments and the Order Instituting Proceedings, the MSRB is filing this day, Amendment No. 1 to File No. SR-MSRB-2024-01 (“Amendment No. 1” and, together with the proposed rule change, the “proposed rule change”) to amend the original proposed rule change to (i) revise the definition of a “dealer with limited trading activity” in proposed subsection (d)(xi) of Rule G-14 RTRS Procedures and (ii) modify the pace of phasing-in the shortened reporting timeframe for a “trade with a manual component” in proposed Supplementary Material .02(b), as discussed below and in further detail in Amendment No. 1.

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Bentsen, SIFMA dated May 17, 2024 (“SIFMA OIP Letter”). These comment letters are available at <https://www.sec.gov/comments/sr-msrb-2024-01/srmsrb202401.htm>.

<sup>7</sup> See MSRB Notice 2023-11 (Request for Information on Impacts of MSRB Rules on Small Firms) (Dec. 04, 2023), available at <https://www.msrb.org/sites/default/files/2023-12/2023-11.pdf>.

<sup>8</sup> See letters to Ronald W. Smith, Corporate Secretary, MSRB, from: Mike Petagna, President, Amuni Financial, Inc. dated Jan. 8, 2024 (“Amuni RFI Letter”); Mr. Kamler, Sanderlin Securities LLC dated Jan. 26, 2024 (“Sanderlin Securities RFI Letter”); Robert S. Searle, President, Searle & Co., Inc. dated Feb. 16, 2024 (“Searle RFI Letter”); Brad Harris, Director of Fixed Income – Municipal Bonds, Herold & Lantern Investments dated Feb. 22, 2024 (“HLI RFI Letter”); Jessica R. Giroux, General Counsel, ASA dated Feb. 26, 2024 (“ASA RFI Letter”); Mr. Decker, BDA dated Feb. 26, 2024 (“BDA RFI Letter”); Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, SIFMA dated Feb. 26, 2024 (“SIFMA RFI Letter”); and Stern Brothers & Co. dated Feb. 26, 2024 (“Stern Bros. RFI Letter”). All comment letters received in response to the Small Firm RFI are available at <https://www.msrb.org/Regulatory-Documents?id=13895>. A draft version of the proposed rule change was published for comment in MSRB Notice 2022-07 (Request for Comment on Transaction Reporting Obligations under MSRB Rule G-14) (Aug. 2, 2022) (“2022 Request for Comment”), available at <https://www.msrb.org/sites/default/files/2022-09/2022-07.pdf>.

<sup>9</sup> Some commenters raised certain issues that were not related to the material aspects of the proposed rule change. The MSRB is therefore not responding to these comments as they are not germane to the proposed rule change.

## Response to Stated Grounds for Disapproval Under Consideration Pursuant to the Order Instituting Proceedings

Exchange Act Section 15B(b)(2)<sup>10</sup> requires, in relevant part, that the MSRB propose and adopt rules to effect the purposes of the Exchange Act with respect to transactions in municipal securities effected by dealers. Subclause (C) thereof further provides, in relevant part, that such rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.<sup>11</sup>

As described in the MSRB Filing Notice,<sup>12</sup> and after considering the comments received, the MSRB continues to believe that the proposed rule change, as amended by Amendment No. 1, would promote just and equitable principles of trade because it would further reduce information asymmetry between market professionals (such as dealers and institutional investors) and retail investors by ensuring progressively increased access to more timely information about executed municipal securities transactions for all investors. Currently, market professionals may in some circumstances have better or more rapid access to information about trade prices through market venues or tools to which retail investors do not have access, and the reduction in the timeframe for trade reporting would reduce the period during which any such asymmetry may exist.

In addition, the proposed rule change, as amended by Amendment No. 1, would foster cooperation and coordination with persons engaged in regulating and processing information, facilitating a consistent standard for trade reporting across many fixed income products, including municipal securities. The proposed rule change was developed in close coordination with the Financial Industry Regulatory Authority (“FINRA”) which is proposing a similar shortened trade reporting requirement for many TRACE-eligible securities as described in the FINRA Filing Notice.<sup>13</sup> Fostering a consistent standard across classes of securities would facilitate greater and more efficient compliance among MSRB-registered dealers, the majority of which also transact in other fixed income securities that are subject to FINRA’s regulatory authority. Consistent trade reporting requirements reduce the risk of potential confusion and may reduce compliance burdens resulting from inconsistent obligations and standards for different classes of securities. A shortened trade reporting time, as set forth in the proposed rule change, would promote regulatory consistency, reducing potential compliance violations caused by market participants’ imperfect application of differing standards when executing and reporting various types of transactions in fixed income securities, including municipal securities.

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<sup>10</sup> 15 U.S.C. 78o-4(b)(2).

<sup>11</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>12</sup> MSRB Filing Notice, 89 FR at 5393.

<sup>13</sup> See, generally FINRA Filing Notice, 89 FR 5034.

Furthermore, the MSRB continues to believe that the proposed rule change, as amended by Amendment No. 1, would remove impediments to a free and open market in municipal securities by making publicly available more timely information about the market and the prices at which municipal securities transactions are executed, which is central to fairly priced municipal securities and a dealer's ability to make informed quotations.

The proposed rule change would promote investor protection and the public interest through increased market transparency by reducing the timeframe for trade reporting, providing the market with more efficient pricing information, which would further enhance investor confidence in the market. At the same time, the proposed new intra-day exceptions balance potential burdens for dealers with limited trading activity in municipal securities by permitting such dealers to report trades as soon as practicable but not later than the currently applicable 15-minute reporting requirement.<sup>14</sup> The proposed rule change also addresses potential burdens faced by dealers engaged in complex transactions, including voice/electronically negotiated transactions involving a manual post-transaction component, by specifying a phase-in period for a gradual implementation of the shorter reporting timeframe. This approach would enable market participants to achieve compliance with the shortened reporting target over a period of time while not adversely affecting their ability to execute such transactions consistent with applicable MSRB or Commission rules.<sup>15</sup>

### Response to Comment Letters

Commenters were generally supportive of the MSRB's goal of facilitating equal access to information and market transparency.<sup>16</sup> However, some commenters opposed the proposal, with many expressing a concern that the MSRB failed to demonstrate how a one-minute reporting requirement, particularly an across-the-board requirement without the types of exceptions proposed in the proposed rule change, would clearly and substantially benefit the municipal market.<sup>17</sup>

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<sup>14</sup> As described in Amendment No. 1, the proposed amendment to the definition of dealer with limited trading activity pursuant to Amendment No. 1 would not materially alter the potential burdens for dealers with limited trading activity under the proposed amended definition as compared to the original definition described in the MSRB Filing Notice.

<sup>15</sup> As described in Amendment No. 1, the proposed modification of the pace of phasing-in the shortened reporting timeframe for a trade with a manual component would not materially adversely alter the potential burdens for dealers reporting manual trades as compared to the original phase-in timeframe described in the MSRB Filing Notice and would afford the MSRB with greater opportunity to identify and potentially address any adverse impacts or burdens of the phase-in of the manual trade exception.

<sup>16</sup> See, e.g., SIFMA Letter; BDA Letter; ICI Letter; Dimensional Fund Advisors Letter; Belle Haven Letter; Bernardi Securities OIP Letter at 3.

<sup>17</sup> See, e.g., BDA Letter at 1; Noto Letter; State of Florida Letter at 1–2; Sanderlin Securities Letter at 2–4; SIFMA Letter at 2; ASA Letter at 1 and Exhibit at 1–2; Falcon

### ***Benefit to Municipal Securities Market***

As previously noted, Section 15B(b)(2) of the Exchange Act requires, among other things, that the MSRB propose and adopt rules to effect the purposes of the Exchange Act with respect to transactions in municipal securities effected by dealers. In doing so, the MSRB takes into consideration many factors, including the cost and benefit to the municipal market and harm to investors. The MSRB has identified and considered harms that the proposed rule change would address, including the reduction of opacity, disparity and delay in price discovery in the municipal securities market, the reduction of the possibility of as well as reducing spread disparities, among other harms that the proposed rule change is designed to reduce. Furthermore, while an identified harm to the market or investors can be a significant consideration, it is not dispositive in the MSRB's rulemaking analysis or authority. In particular, Section 15B(b)(2)(C) of the Exchange Act anticipates that the MSRB undertake rulemaking to, among other purposes, remove impediments to and perfect the mechanism of a free and open market in municipal securities.<sup>18</sup>

The MSRB believes that it appropriately demonstrated the estimated costs and benefits that the proposed rule change would likely provide to the municipal securities market in the MSRB Filing Notice, and continues to believe that such benefits, on balance, outweigh the costs and support the adoption of the proposed rule change, as amended by Amendment No. 1.

One way to assess the magnitude of such potential benefits is to compare the amount investors are paying (or might pay in the future as a result of rulemaking) to the amount they would otherwise pay in a more efficient market. As noted in the MSRB Filing Notice, when the MSRB previously shortened the trade reporting deadline from end-of-day to 15 minutes from the

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Square Capital Letter at 1–2; Belle Haven Letter at 3–6; ICI Letter at 2 n.4; Jaderlund OIP Letter; LPL OIP Letter at 1. One commenter stated that the MSRB Filing Notice failed to identify specific instances of investor harm attributable to current requirements. See ASA Letter at 1.

<sup>18</sup> Section 15B(b)(2) of the Exchange Act (15 U.S.C. 78o-4(b)(2)) does not limit the MSRB's rulemaking authority solely to circumstances where specific instances of investor harm are identified. For example, as noted above, subclause (C) of Section 15B(b)(2) provides various purposes for which the MSRB may appropriately undertake rulemaking that are not limited to addressing specific instances of investor harm but instead are grounded in broader market-wide goals, including the perfection of the mechanism of a free and open market. As noted, the MSRB believes that many of the benefits identified in the MSRB Filing Notice and in this letter, such as reducing information asymmetries, reducing spreads for investors and promoting more contemporaneous pricing to better reflect current market conditions, are fully consistent with the rulemaking authority conferred by the Exchange Act on the MSRB. In the context of one commenter's assertion that no harms have been identified, these benefits are appropriately characterized as harm reduction. See, generally Malcolm K. Sparrow, *The Character of Harms: Operational Challenges in Control* (Cambridge University Press, 2008).

Time of Trade in 2005, the MSRB's analysis of data collected shows a significant reduction in average customer trade effective spreads with a drop between 11 to 28 basis points, all else being equal.<sup>19</sup> The MSRB's analysis also shows that effective spreads for customer trades continued to decline in the last decade with progressively faster trade reporting due to technology improvements undertaken by the industry to execute trades more quickly and efficiently. This means investors were paying more when the market was more opaque and more contemporaneous information was not available, and illustrates that, working together, market competition and regulatory changes could serve to protect investors in a manner that promotes market integrity and is mutually beneficial.<sup>20</sup> However, this downward trend has become less pronounced in recent years and, as of September 2023, retail-sized trades continue to have about three times higher effective spreads than institutional-sized customer trades.<sup>21</sup> Therefore, the average retail investor is paying significantly more for the same bond compared to institutional investors.<sup>22</sup>

The proposed rule change would result in reduced transaction costs for investors (i.e., reduced effective bid-ask spread on customer trades) and increased trading volume from the effective spread reduction because investors are more likely to trade when the cost to trade is lowered.<sup>23</sup> The MSRB forms its belief based on two academic studies on the impact from the 2005 accelerated trade reporting requirement from the end of a trading day to 15 minutes after trade execution, which estimated a savings of 11 to 28 basis points in trading costs for customer trades.<sup>24</sup> Since the proposed rule change would further reduce the trade reporting requirement from 15 minutes to one minute for a portion of trades, a further reduction in transaction costs to investors by way of progressively lower effective spreads for customer trades is likely.<sup>25</sup> The MSRB, however, continues to acknowledge that the likely reductions for effective spreads resulting from the proposed rule change would be less than those observed following the 2005 transition, and likely realized at a slower pace because the magnitude of change is scaled down and the implementation is gradual, or "phased-in".

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<sup>19</sup> MSRB Filing Notice, 89 FR at 5396 n.76.

<sup>20</sup> Id. at 5397.

<sup>21</sup> These patterns are depicted in "Chart 1. Effective Spread for Fixed-Rate Municipal Securities Customer Trades" in the MSRB Filing Notice, id. at 5397.

<sup>22</sup> See, generally id. at 5388–99.

<sup>23</sup> This is consistent with the economic theory on the price and demand dynamics. See Davenant, Charles, *An Essay upon the Probable Methods of Making a People Gainers in the Ballance of Trade* (London: James Knapton, 1699).

<sup>24</sup> Sirri, Erik, "Report on Secondary Market Trading in the Municipal Securities Market," Research Paper, MSRB, July 2014; Chalmers, John, Liu, Yu (Steve) and Wang, Z. Jay, "The Difference a Day Makes: Timely Disclosure and Trading Efficiency in the Muni Market," *Journal of Financial Economics*, 2021.

<sup>25</sup> See MSRB Filing Notice, 89 FR at 5396–98 (explaining the methodology of the MSRB's analysis).

In the MSRB Filing Notice, the MSRB included several hypothetical scenarios where the amount of reduction in effective spread was 2.5 basis points and 5 basis points as a proxy, which is much smaller than the estimated effective spread reduction that was predicted after the 2005 trade reporting transition.<sup>26</sup> With the proposed rule change, the corresponding total savings to customer trades would be in the approximate range of \$63 million to \$126 million as demonstrated in two of those hypothetical scenarios, assuming that the proposed rule change only affects customer trades with a trade size of \$1,000,000 par value or less and does not take into consideration the impact on larger trades from such a reduction in customer effective spreads.<sup>27</sup> Furthermore, the MSRB estimates that even a one-basis point reduction in effective spreads for customer trades with a trade size of \$1,000,000 par value or less would generate approximately \$23.1 million of savings for investors. While these figures are estimates rather than definitive forecasted savings, the MSRB believes that the underlying assumptions and bases for making these estimates with respect to the hypothetical scenarios are not only reasonable and appropriate, but also conservative.

One commenter interpreted certain data described in the MSRB Filing Notice regarding a subset of trades<sup>28</sup> in 2021 to suggest that the universe of trades that would benefit from the proposed rule change would be extremely small.<sup>29</sup> However, the MSRB expects that the universe of potentially benefited transactions and trading volume is significantly larger than the commenter described. For example, a recently executed trade in one specific bond would likely be indicative not only of the value of all other bonds issued by the same issuer with similar characteristics, but also of the value of comparable bonds issued by different issuers with similar issuer ratings, and furthermore would likely be informative towards the value of any other bonds that share similar characteristics with the traded bond. In addition, market participants frequently price municipal securities using yield curves developed by vendors (including, in many cases, a real-time yield curve), and the vast majority of yield curves receive input from reported trades in nearly all municipal securities, not just reported trades of a specific security. A shorter trade reporting window would likely result in yield curves that more accurately reflect the prevailing market conditions because of lower information lags in reported trade prices.<sup>30</sup> Therefore, the benefits of the proposed rule change are far broader than the specific subset of trades analyzed in connection with the proposed rule change.

### ***Technology Costs and Impact on Competition and Liquidity***

Several commenters raised concern that the one-minute reporting requirement would increase costs of new technology infrastructure or third-party technology/subscriptions (as well

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<sup>26</sup> Id. at 5388–99.

<sup>27</sup> Additionally, for two other hypothetical scenarios, if the proposed rule change is assumed to only affect customer trades with a trade size of \$100,000 or lower par value, the savings would be between \$24.5 million and \$49 million.

<sup>28</sup> See id. at 5395 n.74.

<sup>29</sup> See Belle Haven Letter at 3.

<sup>30</sup> See MSRB Filing Notice, 89 FR at 5398.



as potential increased personnel costs), which commenters argued could impair municipal market liquidity and competition in the market by putting small and mid-sized firms out of business.<sup>31</sup> Two commenters mentioned an annual cost of \$250,000 to \$500,000 or more<sup>32</sup> to adopt electronic trade reporting processes and platforms necessary to comply with the proposed one-minute trade reporting rule, an estimate apparently based upon only one vendor product with a range of functionalities going beyond what would be necessary to comply with the proposed rule change.<sup>33</sup>

The MSRB observes that most small and mid-sized firms that would otherwise need to shoulder higher technology or service costs would likely qualify as dealers with limited trading activity for which the proposed exception from the one-minute reporting timeframe would apply. Therefore, such firms would not need to obtain additional, and potentially more sophisticated, technology infrastructure or services beyond their current arrangements. Dealers that would be subject to the proposed one-minute reporting timeframe, appear to have multiple options for third-party electronic trade reporting services that could have annual subscription costs that are significantly lower than the \$250,000–\$500,000 range, based on the MSRB’s conversations with vendors and several dealers. For example, one electronic platform vendor informed the MSRB that it charges between \$500 and \$1,000 per month for straight-through electronic processing of trades, or between \$6,000 and \$12,000 annually, depending on the number of traders utilizing the platform, the size of the dealer and the dealer’s trading activity. The same vendor also charges \$5,000 per month, or \$60,000 a year, for bundled subscription services which include the electronic trade reporting component. Several other small dealers mentioned approximately \$2,000 monthly, or \$24,000 annually, to incorporate electronic trade reporting. One broker’s broker informed the MSRB that it currently pays \$2,000 per month, plus \$500 per workstation. Based on this information, the MSRB anticipates that a dealer with two traders would be charged approximately \$3,000 per month, or \$36,000 annually, for this product.

Based on the conversations the MSRB had with both vendors and dealers, and to be aggressive (i.e., conservative) in the cost estimate, for the trade execution and reporting components (excluding additional and unrelated bundled services), the MSRB determined to use in its analysis annual technology subscription costs of \$60,000 for relatively small dealers that

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<sup>31</sup> See, e.g., BDA Letter at 3–4; State of Florida Letter at 2; Sanderlin Securities Letter at 1–3; Falcon Square Capital Letter at 2; Colwell Letter at 1. See also Amuni RFI Letter at 1; Sanderlin Securities RFI Letter *passim*; Searle RFI Letter at 1; HLI RFI Letter *passim*; ASA RFI Letter at 1; Stern Bros. RFI Letter at 2–3.

<sup>32</sup> See Sanderlin Securities Letter at 1; Falcon Square Capital Letter at 2. Commenters primarily expressed views on on-going subscription and related costs; the MSRB discussed estimated upfront implementation costs in the MSRB Filing Notice, 89 FR at 5398–99.

<sup>33</sup> The MSRB Filing Notice notes that this product can be used for many purposes, such as sales, trading, risk management, compliance and operations, and not just for electronic trade reporting, and also can be used for many fixed-income products such as treasury securities and corporate bonds, and not solely for municipal securities. See MSRB Filing Notice, 89 FR at 5399 n.90.

would not qualify for the exception for a dealer with limited trading activity (e.g., a dealer that reports 2,500–16,800 transactions annually), and \$100,000 for larger dealers (a dealer that reports more than 16,800 transactions annually). The MSRB believes that these references to costs by commenters are mostly overstated, as a quote of \$60,000 annually is the most expensive example quote provided to the MSRB, although a dealer may choose a more expensive solution that may provide additional services beyond trade reporting.<sup>34</sup>

Thus, the MSRB believes that the potential adverse impacts on competition and liquidity raised by some commenters are appropriately mitigated by the two exceptions from the one-minute reporting requirement included in the proposed rule change, which would allow dealers of all sizes, levels of market activity, manners of executing transactions, and business models to continue to engage in municipal securities activities to promote a fair, efficient, robust and more modern municipal securities market consistent with investor protection.

Finally, one commenter stated that the use of any specific financial identifiers should not be regulatorily mandated and that the Commission and the MSRB should consider the use of alternate identifiers based on open data licenses, such as the Financial Instrument Global Identifier (“FIGI”) where appropriate.<sup>35</sup> The commenter pointed to the expected adoption in the future of data standards under the Financial Data Transparency Act of 2022. The MSRB will consider this comment at such time as these data standards are adopted and would need to be implemented.

### ***Proposed Exceptions to One-Minute Trade Reporting Requirement***

Several commenters maintained that the exceptions to the one-minute reporting requirement were requisite to implementing the proposed rule change, which would otherwise be unworkable,<sup>36</sup> with some emphasizing the necessity of the exceptions in response to the Order

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<sup>34</sup> The MSRB also provided an estimated \$5.1 million for the upfront costs as related to updating policies and procedures, training and education in the MSRB Filing Notice. Additionally, the MSRB stated in the MSRB Filing Notice that there would be a one-time upfront cost for software or compliance system upgrades to flag manual trades and to reprogram systems to comply with the shorter reporting timeframe, though the MSRB does not have sufficient data and information presently to estimate the cost.

<sup>35</sup> See Bloomberg Letter at 2.

<sup>36</sup> See, e.g., BDA Letter at 1; ICI Letter at 3; SIFMA Letter at 2; FIF I Letter at 2; Sanderlin Securities Letter at 5.

Instituting Proceedings.<sup>37</sup> One commenter, however, strongly encouraged the MSRB to fully phase-out the exceptions.<sup>38</sup>

The MSRB agrees that the two proposed new exceptions to the one-minute trade reporting timeframe, consisting of trades with a manual component and trades by a dealer with limited trading activity, are important components of the proposed rule change, as amended by Amendment No. 1. The MSRB agrees with the commenters that asserted that the exceptions are critical to making the proposed rule change workable and provide for an orderly transition to a more rapid trade reporting paradigm. The MSRB believes that consideration of whether or when one or both of the proposed exceptions should be phased out is premature, because the MSRB currently lacks sufficient data to support such a decision. The MSRB intends to monitor trade reporting activity and potential impacts on the marketplace to determine whether any changes to the proposed rule change should be considered in the future.<sup>39</sup>

a. Proposed Exception for Manual Trades

The proposed new intra-day exception for manual trades received mixed responses, with more positive support on balance, including from commenters that were skeptical of the shortening of the reporting timeframe. One commenter emphasized the importance of consistency of the scope of the manual trade exception.<sup>40</sup> Some commenters noted that the manual trade exception balances shortening reporting requirements while avoiding undue disruptions to the municipal securities market or materially impairing liquidity.<sup>41</sup> However, one commenter argued that the MSRB had not provided any data to support a reduction in reporting

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<sup>37</sup> See, e.g., BDA OIP Letter at 2; FIF OIP Letter at 2; SIFMA OIP Letter at 2–3, 7; Bernardi Securities OIP Letter at 3; Piper Sandler OIP Letter at 1; FHN OIP Letter at 1; LPL OIP Letter at 2. See also Bernardi Securities OIP Letter at 2 (noting that it was highly critical of the draft proposal included in the 2022 Request for Comment and observed that the original proposed rule change “represents a marked improvement”).

<sup>38</sup> See Dimensional Fund Advisors Letter at 2.

<sup>39</sup> The manual trade indicator would serve to enhance the ability of the MSRB and the other regulatory organizations to monitor the impact of the proposed rule change and help regulators to understand the extent to which manual intervention is required to execute and report a municipal securities transaction. While the MSRB believes that its economic analysis of the proposed rule change provides fulsome support for adopting the proposal, and appropriately considers the unique nature of the municipal securities market including the noteworthy differences between the equity market, monitoring the impact of the proposed rule change would allow for the development of additional empirical evidence going forward that would inform any potential future changes to the proposal, through the normal rulemaking process, either during the phase-in period or thereafter.

<sup>40</sup> See FIF I Letter at 3.

<sup>41</sup> See, e.g., ICI Letter at 2 n.4, 3; SIFMA Letter at 3–4 (noting that the proposed manual trade exception is an attempt to promote continued liquidity of the subject fixed-income markets).

time for manual trades or any evidence that firms that are currently reporting manually are not already reporting as soon as practicable.<sup>42</sup> This commenter also maintained that the phase-in period could eliminate small firms which are incapable of meeting the phased-in time periods.<sup>43</sup> Another commenter remained troubled by the language of the manual trade exception as it suggested the possibility of leading to further reductions or even the elimination of the manual trade exception.<sup>44</sup> As a potential solution, commenters noted that the MSRB could collect data and conduct impact assessments prior to each phase-in period to ensure continued market integrity.<sup>45</sup>

In response to various questions raised by commenters and to provide further information sought by the Commission pursuant to the Order Instituting Proceedings, the MSRB discusses below certain aspects of the proposed manual trade exception to provide further clarity in connection with the implementation of that proposed exception.

**Consistency in the Scope of Proposed Rule Change.** The scope of the proposed manual trade exception is designed, to the extent possible, to be consistent across the various fixed income markets. The MSRB fully intends that the proposed new intra-day exceptions for trade reporting of municipal securities work in the same manner and at the same pace, and therefore consistent with, requirements for other fixed income securities.

**Consistency in Implementation.** In response to some commenters that recommended an implementation path for municipal securities that is staggered and not at the same time as other fixed income securities,<sup>46</sup> the MSRB emphasizes that greater consistency in implementing changes across the various fixed income markets can be better achieved if the proposed requirements are applied to the entire fixed income industry at the same time. Consistency, not only in reporting requirements but also implementation of those requirements, helps avoid confusing and different reporting standards for the industry. A lag in implementing changes to one segment of the fixed income market over the other could lead to unintended consequences such as confusion in the application of otherwise parallel reporting rules, increase compliance risks and could potentially increase related enforcement action by regulatory authorities.

**Pre-Trade Activity and Certain Minimal Manual Activity Not Covered by the Manual Trade Exception.** Some commenters asked whether the proposed exception for manual trades would apply in certain situations where manual steps may have been taken prior to trade execution in the course of working with a customer to determine whether to enter into a trade,

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<sup>42</sup> Belle Haven Letter at 7.

<sup>43</sup> Id. at 5.

<sup>44</sup> ASA Letter at 2.

<sup>45</sup> See, e.g., SIFMA Letter at 6–7; ICI Letter at 3–4; BDA Letter at 3. See also BDA OIP Letter at 3; SIFMA OIP Letter at 6.

<sup>46</sup> See, e.g., BDA Letter at 4; FIF I Letter at 5–6; ICI Letter at 2; SIFMA at 10.

but where the execution itself and the subsequent trade reporting workflow may be fully automated.<sup>47</sup>

The MSRB has reviewed these examples and observes that many of the workflows associated with such examples may contain pre-trade components that are unrelated to the scope of the exception. Rather than addressing each potential example, which also could be fact specific, the MSRB reiterates, as stated in the MSRB Filing Notice, that to qualify as a trade with a manual component, the manual aspect of the trade workflow generally would only occur after the relevant Time of Trade (i.e., the time at which a meeting of minds has occurred, for example, where parties have already reached agreement regarding the terms and elements of execution and at what point a contract is formed for the transaction).<sup>48</sup> Any manual aspects that precede the Time of Trade (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 or negotiations over the phone regarding the price or security or something else) would normally not be relevant for purposes of the exception.<sup>49</sup> The exception is intended to apply only to the trade execution and reporting portions of the workflow. If those portions do not contain any manual steps, the trade is reportable within one minute after the Time of Trade (absent another exception), and the manual trade indicator should not be used to reflect any pre-trade activity that might have occurred prior to execution. Furthermore, under proposed new Supplementary Material .02(a), in no event may a dealer purposely delay the execution of an order, introduce any manual steps following the Time of Trade, or otherwise modify any steps to execute or report the trade by handling a trade manually to delay reporting if such actions are for the purpose of claiming this exception.

Finally, where trade execution and reporting processes are fully electronic, a minimal triggering action (e.g., click “accept”) to prompt the electronic execution of a trade at the beginning of the process, by itself, typically would not be sufficient to constitute a manual step qualifying the trade for the manual trade exception. For example, if the trade execution and reporting process is started by the clicking of a link or button on a trade management or other similar system (such as in a request for quote process for a bond, and the trader clicks to accept the desired bond), and thereafter all processes are fully electronic, that single act of clicking the link or button at the Time of Trade would not, depending on the facts and circumstances, normally be sufficient by itself to qualify the trade for the manual trade exception.

**Certain Fully Automated Trades That May Not Be Reportable Within One Minute.**

Commenters provided examples of instances where systems processing limitations would prevent certain fully automated trades to be reported within one minute.<sup>50</sup> These examples

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<sup>47</sup> See, generally BDA Letter; FIF I Letter; ICI Letter; SIFMA Letter. See also ASA Letter at 2.

<sup>48</sup> For additional information, please see the “Time of Trade Discussion” section of the MSRB Filing Notice, 89 FR at 5386–87.

<sup>49</sup> Id. at 5388–89.

<sup>50</sup> See BDA Letter at 4; Searle Letter at 2; SIFMA Letter at 3, 7–8; FIF I Letter at 3.

include trades involving large post-trade automated allocations, portfolio trades, trades involving batch processing, and trades where multiple systems are involved in a trade workflow.

To the extent that these trades are fully automated—both the execution and the trade reporting—the manual trade indicator would not apply and should not be used, and the exception for trades with a manual component also would not apply. Rather, a dealer that complies with the proposed new requirement under Rule G-14 RTRS Procedures subsection (a)(ii) to report trades as soon as practicable and with proposed new Supplementary Material .03 relating to policies and procedures for complying with the “as soon as practicable” reporting requirement would, under circumstances where a trade cannot be reported within the required one-minute timeframe, consider whether any exceptional circumstances or reasonable justification may apply to the particular reporting scenario.

The MSRB reiterates that analysis of such scenarios related to fully automated trades under the proposed rule change is likely to be highly fact specific. Depending on the facts and circumstances of a particular scenario, and assuming the dealer is otherwise reporting as soon as practicable, reasonable justification may exist for why a dealer was unable to timely report. For example, the MSRB Filing Notice noted three examples of potentially reasonable justification for not reporting within the prescribed timeframe but recognizes that these are not the exclusive circumstances that could constitute reasonable justification.<sup>51</sup> Because this is a facts and circumstances determination, no exhaustive list of examples is possible; rather, dealers should document the circumstances giving rise to such delays and consider potential alternatives for reasonable ways to improve the timing of trade reporting under such circumstances. The MSRB does not believe that an additional exception is necessary because this scenario may be accommodated within the proposed framework. Dealers are reminded of the overarching obligation to report trades as soon as practicable in light of the effects of such circumstances or justification.<sup>52</sup> Thus, if such circumstances or justification exist, dealers must act in good faith and consistent with the obligation to report the trade as soon as practicable, even if not within the applicable one-minute timeframe. The failure to report such trades as soon as practicable could be a factor weighing against the determination of whether the exceptional circumstances or reasonable justification provisions of the proposed rule change would be available to a dealer making such late reports.

Some commenters suggested that the MSRB revisit trade reporting and dissemination requirements related to block trades and allocation trades, and requested clarification in the context of dual registrants as well as when a dealer allocates a block trade to allocation trades.<sup>53</sup> The MSRB provided, in the MSRB Filing Notice, examples of when the manual trade exception may be appropriate, some of which related to these scenarios.<sup>54</sup> In particular, the third, seventh

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<sup>51</sup> MSRB Filing Notice, 89 FR at 5391.

<sup>52</sup> Id.

<sup>53</sup> See BDA Letter at 4; SIFMA Letter at 7; Falcon Square Capital Letter at 3–4; FIF I Letter at 3. See also LPL OIP Letter at 2; SIFMA OIP Letter at 5; BDA OIP Letter at 1–2.

<sup>54</sup> MSRB Filing Notice, 89 FR at 5389.

and eighth examples involve varying circumstances that, in essence, illustrate the potential handling of multiple transactions requiring separate trade reporting.<sup>55</sup> Depending on the specific facts and circumstances, the MSRB believes that in most cases where an initial and separate block trade is executed and reportable electronically without manual intervention between its execution and reporting, whether in connection with the scenario of a dually registered broker-dealer/investment adviser or in some other context (such as a large block trade that is subsequently allocated to other dealers, a broker's broker transaction, or a large portfolio trade), the report of such block trade or large trade would not normally qualify for the manual trade exception (absent legitimate, post-execution manual component(s) of the respective workflow), although the resulting portfolio trades or allocations may separately qualify for the manual trade exception.<sup>56</sup>

In other words, where a dealer executes a large or block transaction that requires allocations of portions of the trade to individual accounts, unless the initial large or block trade independently qualifies for the manual trade exception and absent another exception, the large or block transaction normally would not qualify for the manual trade exception and instead would be subject to the one-minute reporting requirement. The manual trade exception may, however, be available for any resulting allocations to individual accounts that may be required to be reported and such reporting involves manual input or other manual steps.<sup>57</sup> Under these

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<sup>55</sup> The third example consists of 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. These allocations must, in turn, be manually inputted in connection with a trade. The seventh example consists of where a dealer receives a large order or a trade list resulting in a portfolio of trades with potentially numerous unique securities involving rapid execution and frequent communications on multiple transactions with multiple counterparties, and the dealer must then book and report those transactions manually, one by one. The eighth example consists of where a broker's broker engages in mediated transactions that involve multiple transactions with multiple counterparties. See id.

<sup>56</sup> The MSRB acknowledges that this discussion may be less applicable to the broker's broker example given the differences in the trade flow and nature of the mediation that may occur in that situation but serves to remind broker's brokers that they should be considering each trade individually and that those portions of a multi-party transaction occurring in steps or not substantially simultaneously should be evaluated independently.

<sup>57</sup> Under MSRB rules, where a dealer sells municipal securities to a third-party investment adviser, such dealer currently is only required to report the block trade and not the deliveries made to individual accounts as allocated by the investment adviser, which may differ from the reporting requirements for other fixed income asset classes. However, in those circumstances, such as where a dually registered broker-dealer/investment advisor executes a block trade for allocation to its own advisory clients, such allocations are generally handled, for trade reporting purposes, in the same manner as for other asset classes and to the extent the allocation trades contain a manual component, those allocation trades may be eligible for the manual trade exception.

circumstances, if the initial large or block transaction would not qualify for one of the exceptions to the one-minute trade reporting timeframe, the reporting of that transaction should not be delayed on account of the potentially later reporting of manual allocation transactions that do qualify for the manual trade exception.

Finally, one commenter requested clarification regarding a footnote in the MSRB Filing Notice relating to the seventh example describing a scenario where a dealer receives a large order or a trade list resulting in a portfolio of trades with potentially numerous unique securities involving rapid execution and frequent communications on multiple transactions with multiple counterparties, and the dealer must then book and report those transactions manually, one by one.<sup>58</sup> The footnote stated that, in instances where a dealer trades a basket of securities at a single price for the full basket, rather than individual prices for each security based on its then-current market price, such price likely would be away from the market, requiring inclusion of the “away from market” special condition indicator and qualifying for an end-of-trade-day reporting exception under proposed Rule G-14 RTRS Procedures subparagraph (a)(ii)(A)(3).<sup>59</sup> The commenter expressed concern that this language could be viewed as requiring the reporting of a portfolio trade modifier to RTRS for such situations.<sup>60</sup>

The MSRB clarifies that this language from the MSRB Filing Notice was not intended to create a requirement for portfolio trades to be reported with a trade indicator under MSRB Rule G-14, and no such portfolio indicator is proposed by or would be required pursuant to the proposed rule change. Instead, this language was intended to highlight a potential scenario where a dealer could, depending on the facts and circumstances, appropriately determine that the prices assigned to the individual securities traded within a portfolio that was priced at a single, portfolio-wide price might differ substantially from such individual securities’ respective market prices. If this is the case, and such individual portfolio trades were to be reported with the “away from market” indicator, then such trades would be subject to an end-of-day reporting deadline under current Rule G-14 RTRS Procedures subparagraph (a)(ii)(C).<sup>61</sup> Pursuant to Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions,<sup>62</sup> the use of the “away from market” indicator is mandatory for trade reports in the three trading scenarios listed therein and identified by the commenter<sup>63</sup> or if the transaction price differs substantially from the market price for multiple reasons or for a reason not covered by another special

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<sup>58</sup> See FIF OIP Letter at 3–4.

<sup>59</sup> MSRB Filing Notice, 89 FR at 5389.

<sup>60</sup> See FIF OIP Letter at 3–4.

<sup>61</sup> Under the proposed rule change, this provision would be re-designated as Rule G-14 RTRS Procedures subparagraph (a)(ii)(A)(3).

<sup>62</sup> Available at <https://www.msrb.org/sites/default/files/RTRS-Specifications.pdf>.

<sup>63</sup> The three identified scenarios consist of customer repurchase agreement transactions, unit investment trust (UIT)-related transactions; and tender option bond (TOB)-related transactions. See FIF OIP Letter at 4; MSRB, Specifications for Real-Time Reporting of Municipal Securities Transactions (Version 4.1, November 2022), Section 4.3.2.



condition indicator.<sup>64</sup> The MSRB further clarifies that it has not made a determination as to whether an “away from market” indicator would be required in connection with any particular portfolio transaction, and therefore does not assess whether or not the individual price of any such transaction is likely to be away from the market, notwithstanding the statement in footnote 42 of the MSRB Filing Notice.

**Lack of Evidence of Trade Reporting Timing Problem.** The MSRB disagrees with one commenter that questioned whether dealers are capable of faster manual reporting (in effect, that they are already reporting as soon as practicable) or that there is a need to phase in a reduction of reporting time for manual trades.<sup>65</sup>

The MSRB believes that the phasing-in of the manual trade exception from an initial 15-minute to an eventual 5-minute timeframe is a reasonable approach, which would allow dealers that would be required to report manual trades within such timeframes (which would exclude manual trades by dealers with limited trading activity, thereby avoiding application to most small dealers) to adapt to the new requirement. Therefore, this phased-in approach provides for an orderly transition to a more rapid trade reporting paradigm and is preferable to requiring an immediate—after the initial implementation period—reduction to 5 minutes. The approach taken under the proposed rule change would mitigate or greatly reduce the risk of unintended consequences, including potential adverse distortions to market practices or unforeseen changes in market structure or liquidity, that may not be beneficial to the overall market.

The MSRB notes that it does not have specific evidence that dealers are currently, as a matter of practice, reporting trades less rapidly than as soon as practicable. However, to the extent any dealers are not already doing so, the MSRB believes that the new requirement for reporting as soon as practicable would have the effect of increasing the proportion of trades being reported within shorter timeframes than they currently are, without regard to a one-minute, five-minute or 15-minute deadline, potentially translating into significant improvement in market-wide average reporting times. This, in turn, would have the likely effect of reducing market-wide lags in pricing information being made available to the public and market professionals, including vendors that produce yield curves and other tools used by dealers and municipal advisors to determine current price levels in the market on behalf of investors and issuers, thereby reducing the opportunity for information arbitrage and the potential for missing market movements due to less timely access to pricing information. Further, as noted above, for those trades that dealers might not be able to report within the prescribed deadlines, the ability to establish that such dealers nonetheless reported the trades as soon as practicable would be a

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<sup>64</sup> See MSRB, Specifications for Real-Time Reporting of Municipal Securities Transactions (Version 4.1, November 2022), Section 4.3.2. See also MSRB Notice 2007-25 (SEC Approval Relating to Reporting Special Condition Indicators for Certain Special Trading Situations) (August 13, 2007), available at <https://www.msrb.org/SEC-Approval-Relating-Reporting-Special-Condition-Indicators-Certain-Special-Trading-Situations>.

<sup>65</sup> See Bell Haven Letter at 7. This commenter also expressed a concern for the elimination of small firms which are incapable of meeting the accelerated reporting timeframe for manual trades. *Id.* at 5.

relevant factor in considering whether exceptional circumstances or reasonable justification may exist. The MSRB would monitor the reporting of trades pursuant to the proposed rule change and could, if warranted, undertake further rulemaking to address material documented problems resulting from the shortening of the trade reporting window for manual trades.<sup>66</sup>

**Preference for an Automated Trade Indicator.** Two commenters indicated a preference that any required trade indicator identify fully automated trades that would not qualify for the manual trade exception, rather than an indicator identifying trades with a manual component, due to a perceived operational simplicity.<sup>67</sup> The MSRB has evaluated this suggestion and is concerned that the benefits of any such operational simplicity likely would be outweighed by a heightened likelihood of inaccurately characterizing the nature of a trade in the context of whether such trade qualifies for the exception for trades with a manual component. The MSRB believes that there are circumstances where a trade that a dealer might characterize as fully electronic through automated means might still otherwise qualify for the manual trade exception, for example, if certain post-trade manual compliance processes (such as with respect to risk management or regulatory compliance for best execution) are undertaken by dealers.<sup>68</sup> However, the manual trade exception would not be available with regard to trades that are potentially subject to automated compliance/risk checks but are not in fact selected for manual review/approval, or for trades that were subject to a pre-execution compliance or risk review, but that do not involve manual intervention between the time of execution and the trade report.

The MSRB is also concerned that dealers may develop systems to automatically label transactions processed through such systems as electronic and the exception process for removing such automated indicator for trades that are in fact manual in nature may be more likely to generate unintended mislabeling of trades without adequate oversight. More generally, there would be a risk that dealers could underutilize an electronic trade indicator, such as programming an electronic trade indicator for certain identified electronic trade flows but not programming the indicator for other trades that are executed fully electronically through different processes. Such electronic trades that do not use a pre-programmed automated process for appending an electronic trade indicator would require a manual intervention to include the electronic trade indicator (which intervention would be, in the MSRB's view, an inappropriate basis for qualifying for the manual trade exception). Otherwise, if not appending the electronic trade indicator, such trade reports would, because of a lack of the indicator where it would have been required, incorrectly indicate to the regulators that such electronic trades can benefit from the longer trade reporting timeframe for trades with a manual component. Furthermore, dealers

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<sup>66</sup> One of the intended purposes of the manual trade indicator is to provide regulators with the information necessary to make thoughtful and pragmatic changes and identify roadblocks to achieving faster trade reporting for trades with a manual component. Thus, while the proposed rule change provides a scheduled phase-in of the reduced reporting timeframe for manual trades, the MSRB will be using the manual trade indicator to assess whether taking further action in the course of such phase-in might be warranted.

<sup>67</sup> See, e.g., SIFMA Letter at 9; BDA Letter at 3.

<sup>68</sup> In such a case, a dealer might need to adopt exception processes that might give rise to heightened potential for being overlooked in an otherwise fully electronic workflow.

are already successfully processing other trade indicators that must be applied on an individualized basis in the context of manual and electronic trades and the MSRB believes that existing processes can be modified to include the manual trade indicator with only limited additional effort and expense.

Maintaining the proposed exception for manual trades included in the original proposed rule change would give more direct assurance that a particular trade is in fact a trade with a manual component based on the affirmative action of a dealer labeling the trade as such, thereby likely enhancing the reliability of the data that would provide the MSRB and the market with better and more insightful information on the extent of manual trading activity and the characteristics of those trades. This would more reliably inform future rulemaking, market surveillance and enforcement in understanding whether reasonable justification may exist for delayed reporting. Finally, from a regulatory policy perspective, the MSRB believes that it is more appropriate to have dealers append an indicator as part of a process of consciously electing to take advantage of a rule exception rather than having such qualification for a rule exception inferred by the lack of an indicator that a trade is not eligible for the exception. Such an approach also may be more confusing to market participants.

One commenter requested that the RTRS web portal default to the manual trade indicator for trades reported through that venue.<sup>69</sup> The MSRB expects that the RTRS web portal would facilitate the inclusion of the manual trade indicator with little or no additional effort on the part of the submitter upon implementation of the proposed rule change. Further, this commenter requested that the MSRB not make the manual trade indicator a matching criterion.<sup>70</sup> The MSRB does not intend to make the manual trade indicator a matching criterion for purposes of trade execution or reporting.<sup>71</sup>

**Phase-In Period or Potential Elimination of the Manual Trade Exception.** One commenter expressed concern for the possibility of further reductions or even the elimination of the manual trade exception without these changes being proposed for public comment.<sup>72</sup> Other

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<sup>69</sup> See FIF I Letter at 4.

<sup>70</sup> See *id.* at 7.

<sup>71</sup> One commenter stated that the MSRB should consider scenarios where a firm corrects a technical issue and then submits automatically. See FIF I Letter at 4; see also FIF OIP Letter at 3; FIF II Letter *passim* (consisting of examples of such scenarios and requesting corresponding clarification). As described in the MSRB Filing Notice, the trade correction process does not change the character of the original trade report as being a manual or electronic trade. See MSRB Filing Notice, 89 FR at 5389 n.40, 5390 n.50.

<sup>72</sup> See ASA Letter at 2. This commenter also expressed concern for the possibility of further reductions or even the elimination of the manual trade exception might occur without being proposed for public comment. *Id.* The MSRB notes that this concern is misplaced since no further reductions in such timeframe, and no elimination of the manual trade exception, could be possible without additional formal rulemaking by the MSRB and filed with the Commission, and any such change would be subject to the required notice and comment process under Section 19 of the Exchange Act. 15 U.S.C. 78s.

commenters noted that the MSRB could collect data and conduct impact assessments prior to each phase-in period to ensure continued market integrity.<sup>73</sup>

In light of concerns expressed by commenters regarding potential difficulties in achieving dramatically shortened reporting timeframes for at least some trades with a manual component and whether dealers would have sufficient time to make the necessary changes to processes and technology to achieve such shortened timeframes, the MSRB has determined to modify the pace of phasing-in the shortened reporting timeframe for trades with a manual component to extend the period during which such trades would be reportable by no later than 10 minutes after the Time of Trade from one year to two years. As a result, the MSRB is proposing to amend proposed new Supplementary Material .02(b) included in the proposed rule change pursuant to Amendment No. 1 as described below.

The proposed rule change sets out a phased-in implementation of the exception for manual trades that would provide for an ultimate five-minute timeframe for the reporting of such trades. No further reductions in such timeframe, and no elimination of the manual trade exception could be possible without additional formal rulemaking by the MSRB that would be filed with the Commission, and any such change would be subject to the required notice and comment process under Section 19 of the Exchange Act.<sup>74</sup>

Furthermore, as noted above, the MSRB would monitor the implementation of the proposed rule change and, going forward, would analyze trade data related to the operation of the proposed two new exceptions to, among other things, determine whether the eventual five-minute trade reporting timeframe that would become applicable after two years continues to be feasible and appropriate in light of the empirical data collected through the earlier phases of implementation. The MSRB would be prepared to take action to provide appropriate guidance or undertake appropriate modifications in connection with the phase-in of the manual trade exception should circumstances warrant any such action. Specifically, within nine to 12 months of the effectiveness of the 10-minute trade reporting phase for manual trades, the MSRB intends to publish a request for information soliciting input from dealers and other market participants regarding the operation and impact of the reduced reporting timeframe for these manual trades. The MSRB would evaluate RTRS data, and the comments received and consider if any measures are appropriate, including filing an immediately effective proposed rule change prior to the effectiveness of the final five-minute reporting timeframe to extend the implementation of, or eliminate, the five-minute reporting requirement for manual trades, as warranted.

**Amendment to Extend the Phase-In of Shortened Reporting Timeframe for Trades with a Manual Component.** As noted above, Amendment No. 1 would, in part, amend

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<sup>73</sup> See SIFMA OIP Letter at 6–7 (noting uncertainty regarding the technological capability to meet the proposed phase-in timeframes, and requesting the MSRB to undertake ongoing monitoring, analysis and stakeholder engagement); ICI Letter at 3–4 (expressing concern regarding the potential impacts of implementing the proposed phase-in timeframes and requesting additional measures similar to those requested in the SIFMA OIP Letter).

<sup>74</sup> 15 U.S.C. 78s.

proposed Supplementary Material .02(b) to provide in clause (ii) that a trade with a manual component must be reported no later than 10 minutes after the Time of Trade for the second and third calendar years (rather than only the second year) from the effective date of the proposed rule change and to provide in clause (iii) that a trade with a manual component would become reportable no later than 5 minutes after the Time of Trade after the conclusion of the third calendar year (rather than the second calendar year) from the effective date of the proposed rule change.

Amendment No. 1 would provide for a modified phase-in of the shortened reporting timeframe for trades with a manual component that the MSRB believes would foster a more effective transition to more rapid reporting of manual trades. In addition, as noted above, Amendment No. 1 would allow the MSRB to undertake a more meaningful and timely analysis of potential impacts of the intermediate 10-minute reporting stage in the phase-in process. Specifically, the extended timeframe would provide more time and data for the MSRB to understand whether any adverse impacts have developed as a result of the shortened reporting timeframe to 10 minutes so that the MSRB can determine if it should undertake additional rulemaking to modify implementation or phase-in of the final step to a 5-minute timeframe.

The MSRB has determined, as described in Amendment No. 1, that the proposed modified phase-in of the shortened reporting timeframe for trades with a manual component would not materially adversely impact the economic analysis contained in the original proposed rule change. Further, the modified phase-in would afford the MSRB with greater opportunity to identify and potentially address any adverse impacts or burdens of the phase-in of the manual trade exception.<sup>75</sup>

#### b. Proposed Exception for Dealers with Limited Trading Activity

Commenters generally viewed the proposed exception from the one-minute trade reporting timeframe for dealers with limited trading activity favorably.<sup>76</sup> One commenter, however, argued that the proposed 1,800-trade threshold was far too low and requested that the MSRB either significantly expand the threshold or conduct further analysis to justify the 1,800 threshold.<sup>77</sup>

**Threshold for Dealers with Limited Trading Activity.** The MSRB reviewed the proposed 1,800-trade threshold in the definition of dealer with limited trading activities to consider the comments received with regard to the threshold and to confirm that the MSRB's exception was comparable to the exception for members with limited trading activity contained in FINRA's parallel proposal.<sup>78</sup> As described in the MSRB Filing Notice:

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<sup>75</sup> See Amendment No. 1 for a discussion of the impact on the MSRB's economic analysis.

<sup>76</sup> See, e.g., SIFMA Letter at 9; BDA Letter at 2; Falcon Square Capital Letter at 3; Belle Haven Letter at 6; FIF I Letter at 2. See also BDA OIP Letter at 2–3; SIFMA OIP Letter at 3.

<sup>77</sup> See Falcon Square Capital Letter at 3.

<sup>78</sup> See FINRA Filing Notice, 89 FR at 5036.

A threshold of 1,800 trades a year was selected to demonstrate that Dealers with Limited Trading Activity as a whole had a relatively small impact on the entire market and transparency, with approximately 98.5 percent of trades in 2022 conducted by Active Dealers collectively and only 1.5 percent of trades conducted by all Dealers with Limited Trading Activity. When calculating the market share by par value traded, Active Dealers conducted 98.2 percent of par value traded in 2022 while Dealers with Limited Trading Activity conducted only 1.8 percent of par value traded. In 2022, out of 647 dealers conducting at least one transaction in municipal securities 474 were Dealers with Limited Trading Activity and 173 were Active Dealers.<sup>79</sup>

The MSRB Filing Notice explained that the proportion of trades in municipal securities conducted by dealers with limited trading activity is aligned with the proportion of aggregate trades conducted by dealers with limited trading volume in TRACE-eligible securities subject to the FINRA proposal under the FINRA Filing Notice when using FINRA’s annual transactions threshold of 4,000 trades.<sup>80</sup>

Upon further review, the MSRB has determined to increase the threshold to 2,500 trades.<sup>81</sup> As a result, the MSRB is proposing to further amend the proposed rule change pursuant to Amendment No. 1 as described below.

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<sup>79</sup> MSRB Filing Notice, 89 FR at 5395 (footnotes omitted).

<sup>80</sup> Id. at 5395 n.70.

<sup>81</sup> As described in Amendment No. 1, upon further review of the methodology used for proposing a 1,800-trade threshold for qualifying for the dealer with limited trading activity exception in the original proposed rule change, the MSRB has determined to increase the threshold to 2,500 trades based on a modification of its methodology described below. In establishing the original proposed threshold of 1,800 trades, the MSRB had used an approach consistent with other instances where MSRB rules and related transparency activities are based on inter-dealer trade report activity that rely solely on the sell-side inter-dealer trade reports so as to avoid, for those specific purposes, potential double counting if both the sell-side and buy-side were to be used. For example, the manner in which the MSRB disseminates trade reports for compared inter-dealer trades and assesses its transaction and trade count fees for inter-dealer trades under MSRB Rule A-13(d) is based solely on sell-side trade reports for the reasons described in Amendment No. 1. As a result, the calculations discussed in the MSRB Filing Notice underlying the 1,800-trade threshold in the proposed definition of “dealer with limited trading activity” was lower and did not fully account for inter-dealer trade reports since only the sell-side inter-dealer trade reports were taken into account. In order to maintain compatibility with the plain meaning of the language of the MSRB’s proposed definition of “dealer with limited trading activity,” the MSRB has recalculated the applicable threshold for such definition to be 2,500 trades, taking into account both sell-side and buy-side inter-dealer trade reports together with reports of dealer trades with customers, regardless of whether the dealer bought or sold in the customer transaction.

**Amendment to Modify Definition of Dealer with Limited Trading Activity.**

Amendment No. 1 would, in part, amend the definition of dealer with limited trading activity in proposed subsection (d)(xi) of Rule G-14 RTRS Procedures by changing the threshold from 1,800 trades as described in the MSRB Filing Notice to 2,500 trades in Amendment No. 1. In addition, Amendment No. 1 would add clarifying language to reflect that the threshold is based on both sell-side and buy-side inter-dealer and customer trade reports. The MSRB has recomputed the related data and statistics and notes in Amendment No. 1 that there is no material impact to the economic analysis contained in the original proposed rule change.<sup>82</sup>

In response to a commenter's statement that the proposed 1,800-trade threshold was too low and should be expanded,<sup>83</sup> the MSRB notes that, as a point of comparison, in the Commission's Large Trader Reporting Rule adopted in July 2011, the Commission used 0.01 percent of the total market volume as a minimum threshold for defining large traders.<sup>84</sup> In comparison the 2,500 threshold represents approximately a 0.015 percent of the total 16.8 million trades reported in 2022, a year known for high trading volume. Therefore, the MSRB believes the 2,500-trade threshold, as amended, continues to be fair and, in fact, less stringent. The revised 2,500 threshold is expected to exempt a clear majority of dealers, i.e., 476 out of 651 dealers or approximately 73 percent of dealers based on 2021 and 2022 trade reporting data and these dealers would remain eligible to report their trades in 15 minutes or less. As the revised Table 2 in Amendment No.1 shows, these limited activity dealers account for 1.4 percent of total trades and 2.3 percent of the total par value traded, and therefore would have a minimal impact on market transparency.

The MSRB believes that the threshold for a dealer with limited trading activity, as amended by Amendment No. 1, establishes the appropriate level of activity for purposes of the effective implementation of the proposed rule change consistent with investor protection.

***Implementation Period***

Two commenters requested a two-year implementation period and requested that the MSRB remain open to the creation of FAQs or the provision of implementation guidance to achieve greater compliance.<sup>85</sup> One commenter requested an eighteen-month implementation period from the date the MSRB publishes technical specifications and guidance, sought a free testing period with additional supports and enhancements ahead of final implementation, and a transitional period during which dealers would not be required to include the manual indicator on trades with a manual component.<sup>86</sup>

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<sup>82</sup> See Amendment No. 1 for a discussion of the recomputed data and statistics and of the impact on the MSRB's economic analysis.

<sup>83</sup> See Falcon Square Capital Letter at 3.

<sup>84</sup> See Exchange Act Release No. 64976 (Jul. 27, 2011), 76 FR 46960, 46967 (Aug. 3, 2011).

<sup>85</sup> See BDA Letter at 4; SIFMA Letter at 10.

<sup>86</sup> See FIF I Letter at 5–7. See also SIFMA OIP Letter at 8.

In the original proposed rule change, the MSRB stated that, if it were to be approved by the Commission, the MSRB would announce an effective date (for example, approximately within 18 months from such Commission approval) in a notice published on the MSRB website, and that such effective date would be intended to maintain implementation of the proposed rule change on substantially the same implementation timeframe as the comparable FINRA proposal.<sup>87</sup> The MSRB continues to intend to maintain an implementation schedule for the proposed rule change that is aligned with the implementation for other fixed income securities. The MSRB will take the commenters' suggestions into account as it coordinates an effective date for the two proposals, if approved.

As is generally the protocol for RTRS and Information Facility changes, the MSRB will endeavor to publish updated technical specifications as far as possible in advance of the effective date(s) and will work with dealers to provide interpretive guidance, where needed. Prior to such effective date(s), the MSRB will facilitate free testing that would include test CUSIP numbers and other appropriate support to ensure that all dealers have a significant opportunity to prepare their systems and processes to achieve full compliance with the requirements of the proposed rule change, if approved. Regarding the requested interim period for optional use of the manual trade indicator, the MSRB contemplates providing dealers with sufficient time to implement and test the use of the indicator and does not intend at this time to provide an optional reporting period.

### ***Regulatory Process***

Finally, some commenters challenged the proposed rule change as circumventing regulatory obligations pursuant to the Exchange Act and requested that the MSRB conduct further analysis before implementing the proposed rule change.<sup>88</sup> Other commenters defended the process undertaken by the MSRB in connection with the proposed rule change.<sup>89</sup>

The MSRB is confident that the current rulemaking has been undertaken fully in compliance with applicable statutory and regulatory requirements and has had the benefit of fulsome input from market participants and is backed by extensive data analysis. While not required by statute, the MSRB published a draft version of the proposal for comment in October 2022, including a preliminary economic analysis of such draft proposal,<sup>90</sup> and received over 50

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<sup>87</sup> See MSRB Filing Notice, 89 FR at 5392.

<sup>88</sup> See, e.g., Belle Haven Letter at 2; ASA Letter at 3; ASA OIP Letter at 2; Falcon Square Capital Letter at 6.

<sup>89</sup> See, e.g., Bernardi Securities OIP Letter at 2; Piper Sandler OIP Letter at 1–2.

<sup>90</sup> See 2022 Request for Comment, available at <https://www.msrb.org/sites/default/files/2022-09/2022-07.pdf>. See also MSRB, Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>.



comment letters in response.<sup>91</sup> The MSRB thereafter revised the draft version in response to comments received and, upon approval by the MSRB's board of directors, filed it with the Commission as the original proposed rule change as required under Section 19(b) of the Exchange Act. Also as required by Section 19(b) of the Exchange Act, the Commission published the MSRB Filing Notice for comment.<sup>92</sup> Based on these comments, the Commission instituted proceedings to obtain further input on the original proposed rule change and the MSRB has now addressed the comments received on the MSRB Filing Notice in this letter.<sup>93</sup> In part due to such extensive input, the MSRB has determined to file Amendment No. 1 to the original proposed rule change.

In response to one commenter's suggestion that the proposed rule change represents indirect rulemaking by the Commission,<sup>94</sup> while the MSRB has consulted with FINRA and the Commission throughout this rulemaking process, the MSRB board of directors and staff have exercised their independent judgment in formulating the proposed rule change, which represents the culmination of MSRB deliberation on this topic stretching back to 2013.<sup>95</sup> The MSRB has every expectation that the Commission will undertake its own requisite independent review to take final action on the proposed rule change.

\* \* \* \* \*

The MSRB appreciates commenters' input on the proposed rule change and believes that the foregoing responds to the material issues raised by the commenters on the rule filing. The MSRB continues to believe that the proposed rule change, as amended by Amendment No. 1, would significantly enhance investor protection and a fairer and more efficient market. The MSRB will continue engaging with stakeholders to support implementing the proposed rule change.

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<sup>91</sup> All comment letters received in response to the 2022 Request for Comment are available at <https://www.msrb.org/sites/default/files/2023-03/All-Comments-to-Notice-2022-07.pdf>.

<sup>92</sup> See MSRB Filing Notice.

<sup>93</sup> See Order Instituting Proceedings.

<sup>94</sup> See ASA OIP Letter at 2.

<sup>95</sup> See MSRB Notice 2013-02 (Request for Comment on More Contemporaneous Trade Price Information Through a New Central Transparency Platform) (Jan. 17, 2013); MSRB Notice 2013-14 (Concept Release on Pre-Trade and Post-Trade Pricing Data Dissemination through a New Central Transparency Platform) (July 31, 2013); MSRB Notice 2014-14 (Request for Comment on Enhancements to Post-Trade Transaction Data Disseminated Through a New Central Transparency Platform) (Aug. 13, 2014).

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If you have any questions, please feel free to contact me, John Bagley, Chief Market Structure Officer, or Thushara C. Perera, Director, Market Regulation, at 202-838-1500.

Sincerely,



Ernesto A. Lanza  
Chief Regulatory and Policy Officer