

Legal Update

FINRA and MSRB Propose Shortening Trade Reporting Timeframes for Certain Fixed Income Securities Transactions

Proposed Changes Would Require Reporting within One Minute of Execution

On August 2, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") proposed to amend FINRA Rule 6730(a)(1) (the "FINRA Proposal") to reduce the Trade Reporting and Compliance Engine ("TRACE") reporting timeframe for transactions in "TRACE-Eligible Securities"¹ currently subject to a 15-minute outer limit reporting timeframe to one minute.² The one-minute outer limit reporting timeframe would apply to most transactions in corporate and agency debt securities,³ asset-backed securities ("ABS")⁴ and agency pass-through mortgage-backed securities ("MBS") traded to-be-announced ("TBA") for good delivery ("GD"),⁵ but it would not apply to a list or fixed price transaction or takedown transaction,⁶ transactions in certain securitized products⁷ and U.S. Treasury Securities transactions.⁸ FINRA would continue to make information on these reported transactions publicly available immediately upon receipt.

The FINRA Proposal requests comment on whether it is appropriate for FINRA to reduce the reporting timeframe for such transactions to one minute in light of the technological advances since adoption of the 15-minute reporting requirement in 2005, as well as the potential transparency benefits of more timely trade reporting.⁹ Comments are due by October 3, 2022.

Also on August 2, 2022, the Municipal Securities Rulemaking Board ("MSRB") proposed to amend MSRB Rule G-14(a)'s outer limit reporting timeframe on transactions in municipal securities from 15 minutes to one minute (the "MSRB Proposal"),¹⁰ noting the potential benefits of harmonizing MSRB trade reporting requirements for municipal securities with FINRA requirements for other fixed income securities.¹¹ Comments are also due by October 3, 2022.¹²

In light of the similarity between the FINRA Proposal and the MSRB Proposal, this Legal Update focuses on the FINRA Proposal.

Background

TRACE provides post-trade transparency to market participants and provides regulators with critical data to support regulatory policy decisions and market surveillance and oversight.¹³ Information on transactions in TRACE-Eligible Securities has been subject to immediate public dissemination since January 2006 and expanded to additional transaction types over time.¹⁴ Likewise, over time, the reporting timeframe has been reduced from

75 minutes at TRACE's launch in 2002, to 15 minutes in 2005.¹⁵ Currently, FINRA Rule 6730(a)(1) generally requires reporting a transaction in a TRACE-Eligible Security as soon as practicable, but not later than within 15 minutes of execution.¹⁶

The FINRA Proposal arises from the SEC's post-trade transparency agenda, in connection with which SEC Chair Gary Gensler remarked earlier this year that TRACE and MSRB trade reporting "has not kept pace with changes in our markets and with technological advances."¹⁷ Chair Gensler therefore called for improvements to post-trade transparency by shortening the reporting timeframes from 15 minutes to one minute.¹⁸

Overview of the FINRA Proposal

The FINRA Proposal would amend FINRA Rule 6730(a)(1) to provide that:

- For transactions executed on a business day at or after 12:00:00 a.m. ET through 7:59:59 a.m. ET, firms would be required to report the trade the same day, no later than one minute after the TRACE system opens;
- For transactions executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET (*i.e.*, standard TRACE system hours), firms would be required to report the trade as soon as practicable, but no later than one minute of the "time of execution,"¹⁹ except that, for transactions executed on a business day less than one minute before 6:30 p.m. ET, firms would be required to report the trade no later than one minute after the TRACE system opens on T+1 (and, if reported on T+1, designated "as/of" with the execution date); and
- For transactions executed on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or for trades executed on a Saturday, a Sunday, a federal or religious holiday, or other day on which the TRACE system is not open at any time during that day, firms would be required to report the trade on T+1 no later than one minute after the TRACE system opens (and must designate the trade "as/of" and include the execution date).

FINRA believes the proposed reporting timeframe reduction will "improve transparency and allow investors and other market participants to obtain and evaluate pricing information more quickly—creating a qualitative increase in market transparency for these securities."²⁰ In FINRA's view, "[r]educing the reporting timeframe will solidify the benefits of the technological advancements that have occurred since 2005 by requiring timelier reporting in the rule."²¹

In its economic impact assessment relating to the FINRA Proposal, FINRA found that 81.9% of trades in TRACE-Eligible Securities currently subject to the 15-minute reporting timeframe were reported within one minute of execution.²² FINRA acknowledges that the FINRA Proposal would likely result in costs for firms to implement changes to their operational processes and technology systems in order to comply with the new timeframe, including establishing or enhancing automated reporting systems or opting to use a third-party reporting system.²³ The FINRA Proposal may be particularly impactful for certain types of firms and products; for example, FINRA found that, for trades in TRACE-Eligible Securities currently subject to the 15-minute timeframe, ABS were reported the slowest (52% reported within one minute), followed by equity-linked notes and agency debt securities (77% and 75% of trades, respectively, reported within one minute).²⁴

FINRA requests comment on various aspects of the FINRA Proposal, including the potential implications of the proposed one-minute reporting timeframe across the types of TRACE-Eligible Securities, by trade size and by firm type (such as those with limited trading volumes). FINRA also requests information regarding expected

compliance costs, operational challenges, potential changes in market participant behavior and market liquidity, and the appropriate implementation period.

Conclusion

The proposed one-minute outer limit reporting timeframe under FINRA Rule 6730(a)(1) and MSRB Rule G-14(a) aligns with the SEC's agenda to improve post-trade transparency in fixed income markets. For this reason, FINRA and the MSRB likely seek to adopt these rule changes as proposed. Because shortening the reporting timeframes is likely to present operational and technological challenges, firms should identify required process and technology changes early, especially since FINRA and the MSRB may adopt an aggressive implementation schedule for their respective proposals.

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Endnotes

¹ FINRA Rule 6710(a) defines the term "TRACE-Eligible Security" to mean a debt security that is U.S. dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Rule 144(a)(3) of the Securities Act of 1933 (the "Securities Act"), sold pursuant to Securities Act Rule 144A, (2) issued or guaranteed by an Agency or a Government-Sponsored Enterprise as defined in paragraphs (k) and (n) of FINRA Rule 6710, respectively, or (3) a U.S. Treasury Security as defined in FINRA Rule 6710(p). This definition expressly excludes a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in FINRA Rule 6710(o). We note that in May 2022, FINRA filed a proposed rule change to expand TRACE reporting requirements to trades in U.S. dollar-denominated foreign sovereign debt securities, which, among other things, would amend FINRA Rule 6710(a) to include the term "Foreign Sovereign Debt Security" in the definition of TRACE-Eligible Security. See [SR-FINRA-2022-011](#), Notice of Filing of a Proposed Rule Change to Expand TRACE Reporting Requirements to Trades in U.S. Dollar-Denominated Foreign Sovereign Debt Securities (May 6, 2022). The Securities and Exchange Commission ("SEC") extended the date by which it must take action on this proposed rule change to August 15, 2022. See Securities Exchange Act of 1934 [Release No. 95161](#) (File No. SR-FINRA-2022-011) (Jun. 27, 2022).

² See FINRA [Regulatory Notice 22-17](#) (August 2022).

³ See FINRA Rule 6710(l) (defining "Agency Debt Security").

⁴ See FINRA Rule 6710(cc) (defining "Asset-Backed Security").

⁵ FINRA Rule 6710(u) and (v) (defining "To Be Announced" and "Agency Pass-Through Mortgage-Backed Security," respectively).

⁶ See FINRA Rule 6730(a)(2); see also FINRA Rule 6710(q) and (r) (defining "List or Fixed Offering Price Transaction" and "Takedown Transaction," respectively).

⁷ See FINRA Rule 6370(a)(3)(A), (C), (E), (F), (G) and (H).

⁸ See FINRA Rule 6370(a)(4); see also FINRA Rule 6710(p) (defining "U.S. Treasury Security").

⁹ See Proposal at 2-3.

¹⁰ See MSRB [Notice 2022-07](#); see also 15 USC § 78c(a)(29) (defining “municipal securities”). MSRB Rule G-14(a) currently requires brokers, dealers and municipal securities dealers to report information about transactions in municipal securities to the MSRB’s Real-Time Transaction Reporting System (“RTTS”), absent an exception, as soon as practicable, but no later than within 15 minutes of the time of trade. MSRB Rule G-14(d)(iii) defines the term “Time of Trade” to mean the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price. Similar to FINRA Rule 6730(a)(1)’s 15-minute reporting timeframe, MSRB Rule G-14(a)’s 15-minute reporting timeframe became operative in 2005. MSRB Proposal at 3.

¹¹ MSRB Proposal at 13.

¹² Among other things, the MSRB seeks comment on whether a one-minute reporting timeframe may be appropriate in light of the evolution of market practices and technology since 2005 and the potential transparency benefits that could be achieved through more contemporaneous trade reporting.

¹³ See *id.*

¹⁴ For example, agency pass-through MBS that are TBA and transactions executed pursuant to SEC Rule 144A became subject to public dissemination in November 2012 and June 2014, respectively. See FINRA [Regulatory Notice 12-26](#) (May 2012) and [Regulatory Notice 13-35](#) (October 2013). TRACE data are publicly disseminated through market-data vendors as well as FINRA’s Market Data Center. See FINRA, [TRACE at 20 – Reflecting on Advances in Transparency in Fixed Income](#) (Jun. 28, 2022).

¹⁵ See NASD [Notice to Members 04-51](#) (July 2004) (reducing the period to report a transaction in a TRACE-Eligible Security in two stages: (i) from 45 minutes to 30 minutes, effective October 1, 2004, and (ii) from 30 minutes to 15 minutes, effective July 1, 2005).

¹⁶ The “time of execution” for a transaction in a TRACE-Eligible Security generally is the time at which the parties to the transaction agree to all the material terms of the transaction that are sufficient to calculate the dollar price of the trade. See FINRA Rule 6710(d).

¹⁷ SEC Chair Gary Gensler, Speech: [“The Name’s Bond:” Remarks at City Week](#) (Apr. 26, 2022).

¹⁸ *Id.* Chair Gensler also suggested other possible improvements through “reporting on (i) the trading protocol and platform fees paid to do a trade; and (ii) the ‘spread’ relative to Treasuries, when that is the agreed-upon term of trade.” *Id.* In addition, Chair Gensler stated that, to further improve post-trade transparency on TRACE, FINRA should consider codifying its existing dissemination protocols. *Id.* We note that the U.S. Department of the Treasury (“Treasury”) recently issued a Request for Information seeking comment on additional post-trade transparency for data regarding secondary market transactions in U.S. Treasury Securities, including the potential benefits and risks of several potential ways to build on existing public transparency. See Treasury, Notice Seeking Public Comment on Additional Transparency for Secondary Market Transactions of Treasury Securities, 87 FR 38259 (Jun. 27, 2022).

¹⁹ See *supra* note 16 (defining “time of execution”).

²⁰ Proposal at 4.

²¹ *Id.*

²² *Id.* at 5. With respect to reporting times by individual reporters, 16.4% of reporters submitted 95% of their trades within one minute. *Id.* at 13.

²³ *Id.*

²⁴ *Id.*