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Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Via email to rule-comments@sec.gov

Re: File No. SR-FINRA-2024-004 – Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA") in response to comments received by the Securities and Exchange Commission ("SEC" or "Commission") regarding the above-referenced rule filing.[1] The proposed rule change would amend FINRA Rule 6730 to reduce the 15-minute outer limit TRACE reporting timeframe to require reporting as soon as practicable, but no later than within one minute from the time of execution, with exceptions for member firms with *de minimis* reporting activity and for manual trades. Manual trades would ultimately be subject to a five-minute outer limit reporting timeframe, following a phase-in period. Firms eligible for the *de minimis* exception would be required to continue to report as they do today—*i.e.*, as soon as practicable, but generally no later than 15 minutes from the time of execution.[2] The Proposal would apply to most transactions in corporate

1 *See* Securities Exchange Act Release No. 99404 (January 19, 2024), 89 FR 5034 (January 25, 2024) (Notice of Filing of File No. SR-FINRA-2024-004) ("Proposal").

2 Trades executed outside of TRACE system hours would similarly continue to be required to be reported within 15 minutes of the TRACE system open on the next business day. FINRA Rule 6710(t) defines "TRACE system hours" as "the hours the TRACE system is open, which are 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day, unless otherwise announced by FINRA."

bonds, agency debt securities, asset-backed securities, and agency pass-through mortgage-backed securities traded to-be-announced for good delivery.

The Commission published the proposed rule change for public comment in the Federal Register on January 25, 2024.[3] The Commission received 20 comment letters on the Proposal.[4] Commenters' views on the Proposal were mixed, including regarding the benefits and burdens associated with reducing the TRACE trade reporting timeframe and the proposed exceptions to the one-minute reporting requirement.

Below, FINRA responds to the material aspects of the comments received.[5]

I. Appropriateness of Proposing a Timeframe Reduction

While most commenters either supported or did not oppose the Proposal's shortening of the TRACE trade reporting timeframe,[6] other commenters questioned the regulatory need or benefits of reducing the trade reporting timeframe.[7] BDA stated its belief that accelerated trade reporting is best achieved through the dynamics of healthy market competition, rather than top-down regulatory intervention, but nevertheless supported the Proposal because its membership believes that the *de minimis* and manual trades exceptions will limit the harms and unintended consequences of a one-minute trade reporting obligation.[8] Similarly, PSC questioned the benefits of the Proposal relative to its potential costs to implement, but it supported the Proposal as an appropriate balance between shortening the reporting timeframe and providing exemptions to the one-minute reporting requirement that are important to the functioning of the impacted fixed income markets. ASA opposed the Proposal and stated, among other things, that FINRA lacks evidence of a market failure to justify a change to the TRACE reporting timeframe, that the Proposal will not provide a tangible benefit to investors, and that the Proposal failed to adequately consider the ways different trades are executed and how that may impact

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3 *See supra* n.1.

4 *See* Attachment A for the list of commenters.

5 Commenters raised a number of issues that were not related to the proposed timeframe reduction, exceptions, or manual trade indicator. FINRA is therefore not responding to these comments as they are not germane to the instant filing.

6 *See* Baerlein; Citadel; Dimensional; FIA PTG; FIF; HMA; ICI; Moment.

7 *See* ASA; ASA 2; BDA 2; FHN; FSC; PSC; SIFMA; SIFMA 2.

8 *See* BDA 2.

reporting timelines.[9] FSC also opposed the Proposal, stating that FINRA did not provide sufficient evidence to support a view that the rule change would result in a material improvement to the fixed income securities markets. FHN likewise questioned the evidence and rationale for shortening the trade reporting timeframe but stated that the manual trades exception is vital for dealer compliance and continued market liquidity. SIFMA expressed concerns regarding the Proposal and stated that the manual trade and *de minimis* exceptions would be required to make the Proposal more workable and to protect smaller firms.[10] Among other things, SIFMA requested that FINRA reconsider whether a one-minute trade reporting requirement is appropriate for the fixed income markets and recommended that FINRA implement a pause at the ten-minute reporting standard for manual trades to provide an opportunity to determine whether a further reduction to five minutes is appropriate.

FINRA has based the Proposal on extensive data analysis and believes that it appropriately considers the unique nature of the market for the impacted TRACE-eligible securities. As detailed in the Proposal, approximately 83% of transactions in TRACE-eligible securities currently subject to the 15-minute reporting timeframe are reported within one minute of execution under requirements that, for some TRACE-eligible securities, have been in place for nearly 20 years, and FINRA believes it is appropriate and prudent to consider whether this timeframe continues to meet regulatory objectives given the passage of time and the changes in the fixed income securities industry in the intervening years.

FINRA believes that identifying possible regulatory improvements need not be limited to instances where there has already been a market failure. FINRA acknowledges that there continue to be noteworthy differences between the equity market—where trades are required to be reported as soon as practicable but no later than 10 seconds after execution—and the market for TRACE-eligible securities warranting different treatment.[11] FINRA has carefully considered these differences. FINRA also has carefully considered the different ways trades can be executed in the fixed income markets and crafted the manual trades exception to address a range of execution and reporting scenarios to account for these differences. FINRA continues to believe that the Proposal represents an important step in modernizing the trade reporting timeframes for TRACE-eligible securities to facilitate more timely transaction data, enhancing transparency and the value of disseminated transaction data by allowing investors and

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9 *See* ASA; ASA 2.

10 *See* SIFMA; SIFMA 2. SIFMA also raised other concerns regarding the workability of the Proposal, as discussed below.

11 *See* Proposal, 89 FR 5034, 5042.

other market participants to obtain and evaluate more timely pricing information for the impacted securities.[12] FINRA estimates that, after adjusting for the proposed *de minimis* exception and prior to accounting for the manual exception, the Proposal could result in up to 16.4% of current annual trading volume, or up to 6.1 million trades and 20 trillion dollars in par value, being reported faster.[13] As further detailed in the Proposal, for non-ATS trades (some of which may qualify for the manual trades exception), 96.9% were reported within five minutes.[14] Given that some non-ATS trades are fully electronic while others involve manual intervention between execution and trade reporting, FINRA conservatively estimates that the Proposal would result in at least another 2.03%, or over 755,000 trades representing approximately $3.702 trillion traded (accounting for the impact of the proposed *de minimis* exception), being reported faster.

The Proposal also supports adherence to the rule's fundamental reporting standard—requiring that trades be reported as soon as practicable—by codifying the advances in reporting practicability achieved by members through technology and process enhancements. Importantly, when timelier trade reporting is achieved, this results in more timely pricing and other transaction information for the market, which supports more efficient price formation.[15] While firms may benefit directly from the expedited price discovery, investors are also likely to benefit from better execution prices from firms, including because investors (and other market participants) would be able to obtain and evaluate pricing and other market information more quickly.[16] As evidenced by FINRA's analysis of trades executed between one and 15 minutes after a prior trade of the same bond but before the prior trade was reported,[17] the Proposal could potentially benefit the ability to evaluate pricing in a substantial amount of trades—over 486,100

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12 *See* Proposal, 89 FR 5034, 5042; HMA ("Improving the timeliness and scope of information provided to and disseminated by TRACE could significantly better inform trading decisions in real time, and improve best execution for investors. At the same time, it could reduce economic rents collected by market intermediaries.").

13 *See* Proposal, 89 FR 5034, 5042.

14 *See* Proposal, 89 FR 5034, 5042.

15 *See* Proposal, 89 FR 5034, 5042.

16 *See* Proposal, 89 FR 5034, 5042-43.

17 These trades could have potentially benefited from knowledge of the material terms of the prior (as yet unreported) trade had the prior trade been reported within one minute instead of within 15 minutes. *See* 89 FR 5034, 5043.

corporate bond trades alone representing approximately $459.6 billion traded (accounting for the impact of the proposed *de minimis* exception). Additionally, while this analysis looked specifically at the impact on the reported bond, timelier reporting may also create similar benefits for related or linked securities.

II. The Manual Trades Exception

Most commenters supported the manual trades exception.[18] BDA emphasized that, without the manual trades exception (and *de minimis* exception), the Proposal would be unworkable, and its members unanimously agreed that the manual trades exception is essential for dealer compliance with the Proposal.[19] FIF supported the manual trades exception, arguing that absent an exception for manual executions, FINRA's Proposal would severely impair the ability of firms to continue to trade manually, which would result in less liquidity and wider spreads to the significant detriment of end investors.[20] ICI stated that the manual trades exception strikes the appropriate balance between shortening reporting timeframes and avoiding disruption to the marketplace or causing undue burdens. FHN and PSC similarly emphasized the need for the manual trades exception, should the Proposal move forward. SIFMA likewise argued that reporting requirements should reflect the nature of the liquidity of the various underlying fixed income markets and, in this context, viewed the manual trades exception as necessary to accommodate current market structure and technological reality in order to promote the continued liquidity of the subject fixed-income markets. ASA[21] and FSC supported an exception for manual trades and suggested FINRA's proposed exception did not go far enough to accommodate manual trades.

Other commenters did not support the manual trades exception, arguing, among other things, that it was overbroad or unnecessary and would undermine the benefits of the Proposal.[22] Citadel and FIA PTG opposed the manual trades exception on the basis

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18 *See* ASA; ASA 2; BDA; BDA 2; ICI; FHN; FIF; FIF 3; FSC; PSC; SIFMA; SIFMA 2 (while ASA, FHN, FSC, and SIFMA opposed reducing the TRACE trade reporting timeframe, they emphasized the need for the exception to the extent FINRA decided to proceed).

19 *See* BDA; BDA 2.

20 *See also* FIF 3 (noting that the manual trades exception is important to avoid disruption to current trading practices for bonds).

21 *See* ASA; ASA 2.

22 *See* Citadel; FIA PTG; HMA; Moment. Dimensional did not oppose the exception for manual trades but suggested that it be phased out over time.

that it would result in a tiered reporting structure that was not adequately analyzed, and instead expressed a preference for an alternative timeframe (*i.e.*, five minutes) that would apply for all transactions, irrespective of the mode of execution.

FINRA does not agree with these comments. FINRA notes that, as is the case today, under the Proposal members would be required to report the subject transactions to TRACE—including manual trades—"as soon as practicable" but no later than the applicable outer limit from the time of execution.[23] Therefore, the current reporting requirements already account for the various ways that trades can be executed and the resultant differences in the reporting times—some trades may be reported in 30 seconds and others in two minutes today, depending upon the mode of execution and reporting, and what is practicable under the circumstances. Thus, the Proposal is not introducing tiers or causing additional variance; rather it is reducing the permissible variance by significantly refining the outer limit for both manual and electronic trades. The proposed five-minute outer limit for reporting that eventually would be applicable to manual trades recognizes, consistent with other FINRA trade reporting rules, that trades that are manually executed or reported may not be able to be reported as quickly as trades that are electronically executed and reported.[24]

HMA argued that the manual trades exception incentivizes firms to build in manual processes so as to qualify for the exception and avoid timely reporting and urged FINRA to materially narrow the exception. FINRA disagrees and has explicitly considered and addressed this concern in the Proposal. Specifically, the text of the manual trades exception would explicitly prohibit a member from "purposely delay[ing] the execution or reporting of a transaction by handling a trade manually or introducing manual steps following the Time of Execution."[25] FINRA also is very familiar with members' usual reporting timeframes and possesses extensive data with which to establish a baseline for comparison in identifying changes in behavior. As noted in the Proposal, FINRA will review members' use of the manual trades exception and their reporting timeliness in light of their historic behaviors reporting transactions to

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[23] *See* proposed Rule 6730.09.

[24] *See, e.g.*, FINRA Rule 6622.03(b).

[25] *See* proposed Rule 6730.09(a). Under Rule 6710(d), "time of execution" means the time when the parties to a transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade (or, for transactions involving securities that are trading "when issued" on a yield basis, when the yield for the transaction has been agreed to by the parties).

TRACE.[26] Thus, FINRA believes that the manual trades exception continues to be appropriate and balanced in order to support the overall goal of the Proposal—facilitating more timely access to market information—while ensuring that compliance is achievable for the subset of trades that rely on manual intervention between the trade's time of execution and when it is reported to TRACE.

Some commenters that generally supported the manual trades exception discussed various scenarios for which it would be important that the manual trades exception be available to provide a pathway to compliance for firms. Most of the scenarios raised were previously addressed in the Proposal,[27] and FINRA confirms that the manual trades exception could apply to each of the five scenarios described below, so long as the manual intervention occurred between the trade's time of execution and when it is reported to TRACE. Manual intervention before a trade's time of execution would not qualify a trade for the manual trades exception because the relevant period when assessing TRACE trade reporting timeframe compliance runs from the time of execution to the time the trade is reported to TRACE.

1. BDA,[28] FIF,[29] and SIFMA[30] discussed the need for additional time in scenarios where a firm has not previously traded a bond and must set it up in its system before the trade can be reported to TRACE. As discussed in the Proposal, FINRA contemplates that the manual trades exception would be available "where a member trades a bond for the first time and additional manual steps are necessary to set the bond up in the firm's systems to book and report the trade (*e.g.*, entering the CUSIP number and associated bond data into the firm's system)."[31]

2. BDA and SIFMA discussed the need for additional time in scenarios where a dually-registered broker-dealer/investment advisor manually allocates a block trade to individual accounts.[32] As discussed in the Proposal, FINRA

[26] *See* Proposal, 89 FR 5034, 5036.

[27] *See* Proposal, 89 FR 5034, 5036, 5044-45.

[28] *See* BDA; BDA 2.

[29] *See* FIF; FIF 3.

[30] *See* SIFMA; SIFMA 2.

[31] *See* Proposal, 89 FR 5034, 5036, 5045.

[32] *See* BDA; BDA 2; SIFMA; SIFMA 2.

contemplates that the manual trades exception would apply "where allocations to individual accounts must be manually input in connection with a trade by a dually-registered broker-dealer/investment adviser."[33] However, FINRA notes that, if the separate block trade was executed electronically without manual intervention between its execution and reporting, the manual trades exception would not be available for that separately executed block trade (and the block trade therefore would be subject to the one-minute reporting requirement).

3. SIFMA discussed the need for additional time in scenarios where a member executes a basket trade at a single price and must manually calculate or manually input information necessary to calculate the price of the component securities to report the trade.[34] As discussed in the Proposal, FINRA contemplates that the manual trades exception would apply "where a member agrees to trade a basket of securities at a single price and manual action is required to calculate the price of component securities in the basket or to book and report the trade in component securities to TRACE."[35] However, if manual action was not required to calculate the price of component securities included in the basket or other steps necessary to book and report the trades to TRACE, then the manual trades exception would not be available. Therefore, for example, if the firm employed an automated process to calculate prices for, and book and report the trades in, the component securities, the manual trades exception would not be available since this process was completed electronically without manual intervention.[36]

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33 *See* Proposal, 89 FR 5034, 5036, 5045.

34 *See* SIFMA; SIFMA 2.

35 *See* Proposal, 89 FR 5034, 5036, 5045.

36 FIF requested clarification as to whether the manual trade indicator is distinct from the portfolio trade indicator applicable to specified transactions in corporate bonds. FINRA confirms that these two requirements are distinct (*i.e.*, none, one, or both of these indicators may apply to a corporate bond trade, depending upon the circumstances). For example, for a fully electronic portfolio trade in a corporate bond that meets the criteria set forth in Rule 6730(d)(4)(H) (*e.g.*, executed between two parties, at a single agreed price, involving at least 10 unique issues), the portfolio trade indicator must be appended, but not the manual indicator. Whereas, for a portfolio trade where manual intervention is required to calculate the price of component securities in the basket or to complete other steps

4. BDA and SIFMA[37] discussed the need for additional time in scenarios where trades are executed manually (*e.g.*, over the phone, by chat, or email). As discussed in the Proposal, FINRA contemplates that the manual trades exception would apply "where a member executes a trade by manual or hybrid means, such as by telephone, email, or through a chat/messaging function, and subsequently must manually enter into a system that facilitates trade reporting all or some of the information required to book the trade and report it to TRACE."[38] FINRA notes however that, where the only manual step involved is to prompt the electronic execution of a trade (*e.g.*, click "accept"), the manual trades exception would not be available. Therefore, if, for example, after issuing a request for a quote for a bond, the trader clicks to accept the desired trade, which is then automatically executed, booked and reported to TRACE, there is no manual intervention between the time of execution and trade reporting, and therefore the manual trades exception is not available for the transaction.

5. SIFMA discussed the need for additional time in scenarios where trades are subject to post-trade compliance or risk management review.[39] As discussed in the Proposal, FINRA contemplates that the manual trades exception would apply "where an electronic trade is subject to manual review for risk management or regulatory compliance purposes and, as part of or following the review, the trade must be manually approved, amended, or released before the trade is reported to TRACE."[40] However, the manual trades exception would not be available with regard to trades that are subject to automated compliance/risk checks but that are not 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.

SIFMA also raised scenarios where traders who are engaging with multiple clients or trading multiple securities simultaneously may not be able to report trades

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necessary to book and report the trades to TRACE, both the manual and portfolio trade indicators would be applicable.

37 *See* SIFMA; SIFMA 2.

38 *See* Proposal, 89 FR 5034, 5036.

39 *See* SIFMA; SIFMA 2.

40 *See* Proposal, 89 FR 5034, 5036.

within one minute.[41] As noted above, to the extent these trades require manual intervention in the trade execution or reporting process, they would qualify for the manual trades exception so long as the manual intervention occurred between the trade's time of execution and when it is reported to TRACE.

FINRA continues to believe that the manual trades exception appropriately accommodates transactions that cannot feasibly be reported within one minute, balancing the burdens on members with the benefits to transparency and mitigating the potential for the proposed reporting timeframe reduction to have a negative impact on liquidity or execution quality.

In addition, a number of commenters raised concerns regarding the Proposal's automatic phase-in of a five-minute reporting standard for manual trades after two years.[42] These commenters stated that reporting all manual trades within five minutes is not currently, and may never be, feasible for all manual trades. As a result, these commenters recommended that FINRA study and assess (and provide an opportunity for public comment on) the feasibility of five-minute reporting for manual trades prior to its implementation[43] or maintain a 15-minute reporting requirement for manual trades.[44]

As discussed in the Proposal, FINRA notes that over 96% of non-ATS trades are already reported within five minutes;[45] therefore, FINRA believes that the vast majority of manual trades are already reported within five minutes. However, FINRA appreciates that members may be concerned by the degree to which some manual trades are not reported within five minutes today. In response to these comments, FINRA has amended the manual trades exception to provide firms with an additional year to transition to five-

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41 *See* SIFMA 2.

42 *See* ASA; ASA 2; BDA; BDA 2; FSC; ICI; LPL; SIFMA; SIFMA 2.

43 *See* BDA; BDA 2; ICI; SIFMA; SIFMA 2.

44 *See* ASA; FSC. ASA 2 suggests that FINRA intends to eliminate over time and without further assessment or opportunity for formal industry input the proposed exceptions (the manual trades and *de minimis* exceptions); however, to the extent FINRA in the future sought to further amend the reporting requirements, including any changes to alter or eliminate exceptions, such efforts would be subject to a separate proposed rule change with the Commission and as such, subject to notice and comment.

45 *See* Proposal, 89 FR 5034, 5042.

minute reporting for manual trades.[46]

As originally proposed, members would have been required to transition to five-minute reporting for manual trades two years after the effectiveness of the proposed amendments. Specifically, under the original Proposal, a member relying on the manual trades exception would have been required to report a manual trade as soon as practicable and no later than within 15 minutes of the time of execution (for up to one calendar year from the effectiveness of the proposed amendments), within 10 minutes of the time of execution (for up to two calendar years from the effectiveness of the proposed amendments), and within five minutes of the time of execution (two or more calendar years from the effectiveness of the proposed amendments). Pursuant to Partial Amendment No. 1, members will instead have three years to transition to five-minute reporting for manual trades. Specifically, a member relying on the manual trades exception will be required to report the manual trade as soon as practicable and no later than within 15 minutes of the time of execution (for up to one calendar year from the effectiveness of the proposed amendments), within 10 minutes of the time of execution (for up to three calendar years from the effectiveness of the proposed amendments), and within five minutes of the time of execution (three or more calendar years from the effectiveness of the proposed amendments).

If the Proposal, as amended, is approved, FINRA will assess members' trade reporting times in connection with manual trades to determine whether the five-minute trade reporting timeframe (to become applicable after three years) is feasible and appropriate, and will be prepared to make adjustments, as necessary. In this regard, FINRA intends to closely study the trade reporting data (this will be facilitated by the manual trade indicator, which will allow FINRA to identify manual trades) and will continue its engagement with members on whether feasibility concerns continue to exist once firms review and revise their trade reporting processes in light of the Proposal. Moreover, within nine to 12 months of the effectiveness of the 10-minute outer-limit reporting timeframe for manual trades, FINRA intends to publish a *Regulatory Notice* soliciting comment from members regarding the operation and impact of the reduced reporting timeframe for these manual trades. FINRA would evaluate TRACE 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 five-minute reporting timeframe to extend the implementation of, or eliminate, the five-minute reporting requirement for manual trades, as warranted.

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46 *See* File No. SR-FINRA-2024-004.

III. Manual Trade Indicator

BDA and SIFMA[47] recommended that, instead of requiring firms to append an indicator to identify manual trades, FINRA should require firms to identify fully electronic trades that are subject to one-minute reporting. Specifically, these commenters noted that fully electronic trades would be easier for firms to identify, and the indicator could be appended systematically whereas a manual trade indicator would be more difficult to implement because it would require manual action by personnel.

FINRA disagrees that the Proposal should require firms to identify fully electronic trades that are subject to the one-minute requirement. First, FINRA does not believe it is appropriate to require firms to specially identify fully electronic trades that are subject to the one-minute reporting requirement that would become standard under the Proposal. Instead, identifying manual trades would be more appropriate from a regulatory perspective because manual trades are the universe of trades for which additional time may be warranted under the proposed framework, and requiring members to identify these trades would align the responsibility for assessing and representing the nature of the trade to FINRA with the legal framework for reporting. As stated in the Proposal, FINRA believes that the proposed manual trade indicator would provide FINRA with important insights into manual trading and the use of the exception.[48]

FIF also requested clarification regarding the operation of the manual trade indicator in certain contexts.[49] First, FIF requested clarification regarding whether the manual trade indicator must be reported for trade reports that are manually corrected. As discussed in the Proposal, "FINRA understands that trade report corrections often involve manual intervention (*e.g.*, a customer calling or instant messaging/chatting to request a change to the trade, which change is then manually made to the trade ticket/booking entry)" and "[u]nder such circumstances, the trade would qualify for the extended reporting timeframe applicable to manual trades."[50] As stated in the Proposal, "[t]o the extent the trade was originally fully electronic, when the member amends the trade report, it should add the Manual Trade Indicator."[51]

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47 *See* SIFMA; SIFMA 2.

48 *See* Proposal, 89 FR 5034, 5037.

49 *See* FIF; FIF 2; FIF 3.

50 *See* Proposal, 89 FR 5034, 5046.

51 *See* Proposal, 89 FR 5034, 5046 n.67. FIF 3 also raised the scenario where an electronic trade was incorrectly reported with the manual trade indicator. In this

Second, FIF requested clarification as to whether the manual trade indicator is applicable with respect to general systems fixes necessary to correct a technical issue that adversely impacted trade reporting.[52] As proposed, the manual trade indicator must be appended "[i]f reporting a transaction that is manually executed or where such member must manually enter any of the trade details or information necessary for reporting the trade through the TRAQS website or into a system that facilitates trade reporting to TRACE." The technical fixes described in the FIF and FIF 2 letters do not appear to comport with the scope of the proposed indicator.

Finally, FIF requested confirmation that the manual trade indicator would not be included in TRACE's trade report matching criteria. As noted by FIF, "there are scenarios where a firm can report a trade automatically and the counter-party to the trade requires manual steps to report the same trade." FINRA confirms that it does not intend to use the manual trade indicator in TRACE's trade report matching criteria.

IV. The *De Minimis* Exception

Commenters also discussed the *de minimis* exception, which would provide that members that reported to TRACE fewer than 4,000 transactions in the relevant TRACE-eligible securities during one of the prior two calendar years would be permitted to continue to report transactions pursuant to the existing standards (*i.e.*, as soon as practicable, but no later than within 15 minutes of the time of execution). Some commenters supported the *de minimis* exception as proposed;[53] SIFMA specifically supported the 4,000-trade threshold, nothing that it was appropriately sized to provide important relief to firms that would otherwise be disproportionately impacted by the Proposal. BDA similarly expressed its view that the proposed 4000-trade threshold represented an insignificant portion of the market and receiving and disseminating these dealers' trades in 15 minutes (instead of one minute) would not materially affect market transparency.[54] ASA[55] and FSC expressed a degree of support for a *de minimis* exception, but believed that, as proposed, the *de minimis* exception would not provide adequate relief. In particular, FSC argued that the 4,000-trade threshold was too low, should be significantly expanded, and criticized the Proposal for failing to provide

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instance, the firm would be required to correct the report by removing the manual trade indicator in connection with the original fully electronic trade.

52 *See* FIF; FIF 2.

53 *See* BDA; BDA 2; FIF; FIF 3; PSC; SIFMA; SIFMA 2.

54 *See* BDA 2.

55 *See* ASA; ASA 2.

support or analysis for how FINRA arrived at the threshold. Two commenters, however, disagreed with the proposed *de minimis* exception.[56] As with the manual trades exception, Moment viewed the exception as complicating the rollout of the reporting timeframe reduction and unnecessarily depriving market participants of information necessary to achieve full market transparency. HMA argued, among other things, that the proposed *de minimis* exception would create information asymmetries, could lead to gamesmanship, evasion, and market distortions, and stated that the need for the proposed exception was not sufficiently explained or supported.

FINRA continues to believe that the proposed *de minimis* exception balances the regulatory goal of providing for timelier reporting with the impact and burdens on members that are less active in this space, including smaller market participants. In response to *Regulatory Notice* 22-17, numerous commenters expressed concern regarding the impact that a one-minute reporting standard would have on small member firms, including minority, women, and veteran-owned broker-dealers.[57] Some of these commenters believed that small broker-dealers would exit the market for fixed income secondary market trading because of the high implementation and compliance costs and cautioned that this would harm retail investors that depend on small member firms for access to the market.[58] These concerns were outlined and thoroughly discussed in the Proposal;[59] accordingly, FINRA believes the Proposal adequately established the need for the *de minimis* exception.

With respect to the 4,000-trade threshold (with a two-year lookback) for the *de minimis* exception, as discussed in the Proposal, FINRA believes that the proposed threshold is appropriately tailored to balance the compliance and implementation burdens on members with the benefits to transparency.[60] Based on 2022 data, the proposed *de minimis* threshold would provide relief to 640 (out of 838 currently active) members that,

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56 *See* HMA; Moment. Dimensional did not oppose the *de minimis* exception but suggested that it be phased out over time.

57 *See* Proposal, 89 FR 5034, 5044 (discussing comments regarding small firm impact).

58 *See* Proposal, 89 FR 5034, 5044.

59 *See* Proposal, 89 FR 5034, 5043 (discussing anticipated costs), 89 FR 5034, 5044 (discussing alternatives considered and comments regarding small firm impact).

60 *See* Proposal, 89 FR 5034, 5043 (discussing anticipated costs), 89 FR 5034, 5044 (discussing alternatives considered).

in the aggregate, accounted for 1.41% of trades or 0.43% of the total par value traded.[61] FINRA continues to believe that this threshold appropriately balances the benefits of timelier reporting with the potential costs of disrupting markets and disproportionally impacting less active and smaller participants.[62] Additionally, based on FINRA's analysis of historical trading data over the last five years, FINRA does not believe that some of the concerns raised by HMA about the two-year lookback are likely to occur (*e.g.*, that a firm may go from five trades in one year to 100,000 the next). FINRA's analysis of trading data indicates that, in reality, the difference between a one- and two-year lookback impacted only 11 firms annually, on average, whose activity increased over the 4,000-trade threshold by 67% on average and a maximum of 421%. Thus, FINRA continues to believe that the two-year lookback appropriately accommodates fluctuations in trading activity that may be due to unusual market-wide events or unique client demands.

Nor does FINRA believe that the exception will lead to gamesmanship, evasion, or market distortions. Importantly, members relying on the *de minimis* exception continue to be subject to the requirement that they report their trades to TRACE as soon as practicable. Existing requirements under Rule 6730.03(a) make clear, among other things, that firms' policies and procedures must be reasonably designed to comply with the "as soon as practicable" reporting requirement by implementing systems that commence the trade reporting process at the time of execution without delay, and that "[i]n no event may a member purposely withhold trade reports, *e.g.*, by programming its systems to delay reporting until the end of the reporting time period." Second, to the extent commenters are concerned that market participants may begin routing orders to members qualifying for the *de minimis* exception to take advantage of the longer outer-limit reporting timeframe, FINRA notes that this would increase the member's activity level and, if significant, would cause the firm to no longer be eligible for the *de minimis* exception. As with the manual trades exception, FINRA has extensive trading data history for members and can monitor for unusual trading patterns that might indicate gamesmanship or efforts to delay the reporting of large trades.

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61 *See* Proposal, 89 FR 5034, 5043.

62 As discussed in the Proposal, FINRA estimates that, as a result of this proposed rule change, after adjusting for the proposed *de minimis* exception, up to 16.4% of current annual trading volume, or 6.1 million trades and 20 trillion dollars in par value, might potentially be reported faster (this represents an upper end estimate—impacted by the extent to which firms do or do not rely on the proposed manual trades exception with respect to such trades (manual trades are not currently identifiable as such in TRACE data)). *See* Proposal, 89 FR 5034, 5038.

V. Other Issues

HMA argued that the Proposal's continued application of a 15-minute reporting timeframe to afterhours trades must be supported by further analysis or abandoned, expressing its concern that this distinction may lead to more afterhours trading and distort the markets. BDA countered that HMA's concern is unfounded because very few bond trades take place after hours and there is no evidence that the provision under current rules that permits after-hours trades to be reported the next day has been abused or exploited.[63]

As discussed in the Proposal, the continued application of a 15-minute reporting timeframe to afterhours trades would impact a small portion of trading activity—only 1.18% of total par value.[64] Consistent with members' obligation to report trades as soon as practicable, a significant portion of these trades are already reported well before the 15-minute outer limit, (*e.g.*, over 90% of trades executed before 8:00 a.m. or after 6:29 p.m. ET or on a nonbusiness day were reported within three minutes of the TRACE system open),[65] and FINRA's analysis of trading near the close of TRACE system hours found no indication that market participants execute trades near the close of TRACE system hours to delay reporting.[66] Accordingly, FINRA does not believe, at this time, that the potential benefits of a one-minute reporting requirement for afterhours trades outweigh the burdens such a requirement may impose. In particular, FINRA is sensitive to the concerns previously expressed by commenters that reporting afterhours trades within one minute of the TRACE system open would present operational obstacles.[67] FINRA also notes that the Proposal's continued application of a 15-minute reporting timeframe for afterhours trades is consistent with the rules governing other trade

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63 *See* BDA 2.

64 Proposal, 89 FR 5034, 5040.

65 *See* Proposal, 89 FR 5034, 5040 (Table 4).

66 Under the current rule, trades executed between 6:15 p.m. ET and 6:29 p.m. ET can be reported either on the same day before TRACE closes or the next business day no later than 15 minutes after the TRACE system opens. FINRA analyzed trading across the day and found no increase in trading volume during this 6:15 to 6:29 p.m. ET period, indicating that members are not delaying trades until the end of the day so that they can be reported on a delayed, next day basis.

67 *See* Proposal 89 FR 5034, 5045 n.52.

reporting facilities.[68]

BDA, FIF, and SIFMA[69] each raised concerns regarding the feasibility of reporting some fully electronic trades within one minute where systems limitations may reduce processing speeds. For example, these commenters stated that firms that are dually registered as a broker-dealer and investment adviser may not be able to report within one minute a large number of allocation trades (which may number in the thousands), even if the allocation trades are fully electronic. SIFMA raised similar concerns for large portfolio trades, which can have hundreds of components. FINRA would not expect that instances of late reporting by firms due to the processing speed of a large number of fully electronic allocation trades would occur with substantial frequency per firm. As FINRA discussed in its Proposal, FINRA examined transaction reporting times for trades that were subsequently suballocated across multiple accounts and found that, for allocated trades, 68% were reported within one minute, and 90.6% were reported within three minutes.[70] FINRA was unable to distinguish between allocations that involved manual intervention from fully electronic allocations in the data; therefore, reporting within one minute for fully electronic allocations may be greater than 68%.[71] Nonetheless, FINRA realizes that processing times for fully electronic allocations are an area of particular concerns for members, and FINRA will continue to study reporting times in this area and engage in dialogue with members to see if any regulatory changes are appropriate. FINRA also notes that the Proposal provides, among other things, that a pattern or practice of late reporting without reasonable justification may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010. In considering whether "reasonable justification" exists under proposed Rule 6730(f), FINRA will take into account factors such as the size and complexity of the trade, such as in the case of allocation and portfolio trades.

Finally, commenters also provided recommendations related to FINRA's implementation timeframe.[72] BDA and SIFMA recommended that FINRA provide an implementation period of 24 months to allow for the necessary system and process

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68 *See generally* FINRA Rule 6622(a)(2)(C) and (D).

69 *See* SIFMA; SIFMA 2.

70 *See* Proposal, 89 FR 5034, 5041.

71 As stated in the Proposal, an allocation flag does not exist in TRACE, so FINRA used heuristics to identify these trades. *See* Proposal, 89 FR 5034, 5041 n.32.

72 *See* BDA; FIF; ICI; SIFMA.

changes; FIF suggested an implementation timeline of at least 18 months, running from the date that FINRA publishes updated technical specifications and relevant regulatory guidance. As noted in the Proposal, FINRA intends to provide members with a sufficient implementation timeframe (for example, approximately within 18 months from any SEC approval) to make the changes necessary to comply with the Proposal. If approved by the SEC, FINRA will announce the effective date of the Proposal in a *Regulatory Notice*. As is generally the case for TRACE rule changes, FINRA will endeavor to publish updated technical specifications as far as possible in advance of the effective date(s) and will work with members to provide interpretive guidance, where needed.

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FINRA believes that the foregoing responds to the material issues raised by the commenters on the rule filing. If you have any questions, please contact me at (202) 728-8363.

Sincerely,

/s/ Racquel Russell

Racquel L. Russell
Senior Vice President
Director of Capital Markets Policy

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2024-004

1. Ursula Baerlein (May 14, 2024)

2. Kenneth E. Bentsen, Jr., Securities Industry and Financial Markets Association ("SIFMA") (February 15, 2024)

3. Kenneth E. Bentsen, Jr., Securities Industry and Financial Markets Association (May 17, 2024) ("SIFMA 2")

4. Stephen John Berger, Citadel ("Citadel") (February 15, 2024)

5. Sarah A. Bessin & Kevin Ercoline, Investment Company Institute ("ICI") (February 15, 2024)

6. Michael Decker, Bond Dealers of America ("BDA") (February 15, 2024)

7. Michael Decker, Bond Dealers of America (May 17, 2024) ("BDA 2")

8. Frank Fairman, Piper Sandler & Co. ("PSC") (May 17, 2024)

9. Tyler Gellasch, Healthy Markets Association ("HMA") (February 15, 2024)

10. Mark D. Griffin, FHN Financial Capital Markets and FHN Financial Securities Corp. ("FHN") (May 17, 2024)

11. Melissa P. Hoots, Falcon Square Capital, LLC ("FSC") (February 15, 2024)

12. Christopher A. Iacovella, American Securities Association ("ASA") (February 16, 2024)

13. Christopher A. Iacovella, American Securities Association (May 17, 2024) ("ASA 2")

14. Joanna Mallers, FIA Principal Traders Group ("FIA PTG") (February 15, 2024)

15. Howard Meyerson, Financial Information Forum ("FIF") (February 15, 2024)

16. Howard Meyerson, Financial Information Forum (February 26, 2024) ("FIF 2")

17. Howard Meyerson, Financial Information Forum (May 17, 2024) ("FIF 3")

18. Gerard O'Reilly & David A. Plecha, Dimensional Fund Advisors LP ("Dimensional") (February 15, 2024)

19. Dylan Parker, Moment Technology Inc. ("Moment") (May 15, 2024)

20. Richard G. Wallace, LPL Financial LLC ("LPL") (May 17, 2024)