SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101121; File No. SR–FINRA–2024–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend FINRA Rule 6730 (Transaction Reporting) To Reduce the 15-Minute TRACE Reporting Timeframe to One Minute

September 20, 2024.

I. Introduction

On January 11, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6730 to reduce the 15-minute reporting timeframe for transactions reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'') system to one minute, with exceptions for FINRA members with de minimis reporting activity and for manual trades. The proposed rule change was published for comment in the **Federal Register** on January 25, 2024.[3] On February 29, 2024, the Commission extended until April 24, 2024, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On April 22, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 18, 2024, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designated September 20, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change.[7] Also on July 18, 2024, FINRA filed a partial amendment to the original proposal (''Partial Amendment No. 1''). On July 25, 2024, the Commission published notice of Partial Amendment No. 1.[8] The Commission received comment letters in response to publications of the Notice, OIP, and Partial Amendment No. 1,[9] as well as a letter from FINRA.[10] This order approves the proposed rule change, as modified by Partial Amendment No. 1 (collectively, ''Proposal'').

II. Description of the Proposed Rule Change

FINRA has collected and disseminated transaction information in fixed income securities through TRACE since 2002.[11] FINRA rules currently specify the applicable outer-limit reporting timeframe for different types of TRACE-Eligible Securities.[12] Most transactions [13] in corporate bonds, agency debt securities,[14] asset-backed securities (''ABS''),[15] and agency pass-through mortgage-backed securities (''MBS'') traded to-be-announced (''TBA'') for good delivery (''GD'') [16] must be reported within 15 minutes. The 15-minute reporting timeframe has been in place for corporate bonds since 2005,[17] and was implemented later for agency debt (2010),[18] ABS (2015),[19] and MBS TBA GD (2013).[20] In 2015, the Commission approved FINRA rule amendments requiring FINRA members to report transactions in these TRACE-Eligible Securities as soon as practicable but no later than 15 minutes from the time of execution,[21] and FINRA publicly disseminates information on these transactions immediately upon receipt. According to FINRA, ''in 2022, 82.9 percent of the trades [in TRACE-Eligible Securities] executed after 8:00 a.m. and before 6:15 p.m. [Eastern Time (''ET'')] were reported within one minute of execution.'' [22]

According to FINRA, ''[s]ince the implementation of TRACE, the fixed income markets have changed dramatically, including a significant increase in the use of electronic trading platforms or other electronic communication protocols to facilitate the execution of transactions.'' [23] In light of these advances and consistent with FINRA's goals of increasing transparency and improving access to timely transaction data, FINRA proposed updates to modernize the reporting timeframes and provide timelier transparency.[24]

A. One-Minute Reporting

FINRA proposed amendments to Rule 6730 to reduce the reporting timeframe for securities currently subject to the 15-minute reporting outer limit to one minute, with exceptions for FINRA member firms with de minimis reporting activity and for manual trades. FINRA would continue to make information on the transactions publicly available immediately upon receipt of the trade reports.[25]

Under existing Rule 6730(a)(1), transactions in corporate bonds, agency debt, ABS, and MBS TBA GD generally must be reported as soon as practicable, but no later than within 15 minutes of execution.[26] Specifically, transactions executed on a business day at or after 12:00:00 a.m. ET through 7:59:59 a.m. ET must be reported the same day no later than 15 minutes after the TRACE system opens. Transactions executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET must be reported no later than within 15 minutes of the Time of Execution,[27]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99404 (January 19, 2024), 89 FR 5034 (January 25, 2024) (''Notice'').

[4] *See* Securities Exchange Act Release No. 99640 (February 29, 2024), 89 FR 16042 (March 6, 2024).

[5] *See* Securities Exchange Act Release No. 100006 (April 22, 2024), 89 FR 32475 (April 26, 2024) (''OIP'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 100555 (July 18, 2024), 89 FR 59948 (July 24, 2024).

[8] *See* Securities Exchange Act Release No. 100594 (July 25, 2024), 89 FR 61514 (July 31, 2024) (''Partial Amendment No. 1'').

[9] Comments received are available at: *https://www.sec.gov/comments/sr-finra-2024-004/srfinra2024004.htm.*

[10] *See* Letter from Racquel L. Russell, Senior Vice President, Director of Capital Markets Policy, Office of General Counsel, FINRA, dated July 18, 2024, available at *https://www.sec.gov/comments/sr-finra-2024-004/srfinra2024004-491763-1411786.pdf* (''FINRA Letter'').

[11] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (Order Approving File No. SR–NASD–99–65).

[12] *See* FINRA Rule 6710(a) (providing a definition for ''TRACE-Eligible Security'').

[13] A ''List or Fixed Offering Price Transaction,'' as defined in Rule 6710(q), and a ''Takedown Transaction,'' as defined in Rule 6710(r) are required to be reported to TRACE by the next business day (T+1). *See* Rule 6730(a)(2).

[14] *See* FINRA Rule 6710(l) (providing a definition for ''Agency Debt Security'').

[15] *See* FINRA Rule 6710(cc) (providing a definition for ''Asset-Backed Security'').

[16] *See* FINRA Rule 6710(v) (providing a definition for ''Agency Pass-Through Mortgage-Backed Security'') and FINRA Rule 6710(u) (providing a definition for ''To Be Announced'').

[17] *See* Securities Exchange Act Release No. 49845 (June 14, 2004), 69 FR 35088 (June 23, 2004) (Order Approving File No. SR–NASD–2004–057); *see also* Notice to Members 04–51 (July 2004).

[18] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving File No. SR–FINRA–2009–010); *see also* Regulatory Notice 09–57 (September 2009).

[19] *See* Securities Exchange Act Release No. 71607 (February 24, 2014), 79 FR 11481 (February 28, 2014) (Order Approving File No. SR–FINRA–2013–046); *see also* Regulatory Notice 14–34 (August 2014).

[20] *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving File No. SR–FINRA–2012–020); *see also* Regulatory Notice 12–26 (May 2012).

[21] *See* Securities Exchange Act Release No. 75782 (August 28, 2015), 80 FR 53375 (September 3, 2015) (Order Approving File No. SR–FINRA 2015–025).

[22] *See* Notice, 89 FR at Table 1.

[23] *See id.* at 5034.

[24] *See id.* at 5035.

[25] *See id.*

[26] *See supra* notes 17–21.

[27] Under Rule 6710(d), the ''Time of Execution'' generally means the time when the parties to a

except for transactions executed on a business day less than 15 minutes before 6:30 p.m. ET, which must be reported no later than 15 minutes after the TRACE system opens the next day (and, if reported on T+1, designated ''as/of'' with the date of execution). Finally, transactions executed on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or 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, must be reported on the next business day no later than 15 minutes after the TRACE system opens (and must be designated ''as/of'' and include the date of execution).

Amended Rule 6730(a)(1) would provide that transactions must be reported as soon as practicable, but no later than within one minute of the Time of Execution. Amended Rule 6730(a)(1)(A) would provide that transactions executed on a business day at or after 12:00:00 a.m. ET through 7:59:59 a.m. ET must be reported the same day as soon as practicable after the TRACE system opens, but no later than within 15 minutes after the TRACE system opens. Amended Rule 6730(a)(1)(B) would require that a transaction executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET must be reported as soon as practicable, but no later than one minute from the Time of Execution, except that, a transaction executed on a business day less than one minute before 6:30:00 p.m. ET, must be reported no later than 15 minutes after the TRACE system opens the next business day (T+1) (and, if reported on T+1, designated ''as/of'' with the date of execution). Any trades executed on a business day prior to the open of the TRACE system, on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or 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 would continue to be reportable as soon as practicable on the next business day (T+1), but no later than within 15 minutes after the TRACE system opens (and must be designated ''as/of,'' as appropriate, and include the date of execution).

transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. For transactions involving TRACE-Eligible Securities that are trading ''when issued'' on a yield basis, the ''Time of Execution'' is when the yield for the transaction has been agreed to by the parties to the transaction.

B. Exceptions From One-Minute Reporting

FINRA proposed two exceptions from the one-minute reporting timeframe for: (1) FINRA member firms with ''limited trading activity'' in the TRACE-Eligible Securities that are subject to one-minute reporting; and (2) manual trades.[28]

1. Exception for FINRA Members With ''Limited Trading Activity''

New Supplementary Material .08 would provide an exception to the one-minute reporting timeframe for FINRA members with ''limited trading activity.'' A FINRA member with ''limited trading activity'' would be defined as one that, during one of the prior two calendar years, reported to TRACE fewer than 4,000 transactions in the TRACE-Eligible Securities that are subject to paragraphs (a)(1)(A) through (a)(1)(D) of Rule 6730 (*i.e.,* corporate bonds, agency debt, ABS and MBS TBA GD), including any manual trades. Proposed Supplementary Material .08(b) would require FINRA members relying on the exception to confirm annually their qualification for the exception.[29] As outlined in proposed Supplementary Material .08(c), qualifying FINRA members would be required to report these trades as soon as practicable, but no later than within 15 minutes of the Time of Execution.[30]

FINRA members exceeding the 4,000-trade threshold for each of two consecutive calendar years would need to comply with the one-minute reporting requirements of paragraphs (a)(1)(A) through (a)(1)(D) of the Rule beginning 90 days after the member no longer meets the criteria for the exception (*i.e.,* beginning 90 days after January 1 of the next calendar year). If a FINRA member's reporting activity subsequently dropped below the 4,000-trade threshold, the FINRA member would again be eligible for the exception.[31]

2. Manual Trades Exception

New Supplementary Material .09 would provide an exception for manual trades that are not electronic from end to end. Where a trade qualifies for the manual trades exception, a 15-minute outer limit would apply for the first year following implementation; a 10-minute outer limit would apply for the second and third years; and a five-minute outer limit would apply thereafter.

The manual trades exception would apply to ''transactions that are manually executed'' or where a ''[FINRA] 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.'' [32] A trade that requires manual intervention at any point to complete the trade execution or reporting process would qualify.[33] According to FINRA,[34] it contemplates that the exception would be available for a variety of situations, including, for example:

- where a FINRA member executes a trade [35] by manual or hybrid means, such as by telephone, email, or through a chat/messaging function,[36] and

[28] FINRA also proposed a conforming amendment to Supplementary Material .03 to refer to the Rule generally rather than ''paragraph (a)'' to reflect that FINRA members reporting pursuant to one of the exceptions in new Supplementary Material .08 and .09 are still required to report their trades ''as soon as practicable.''

[29] Evidence of this confirmation should be retained as part of the FINRA member's books and records. However, FINRA members eligible for the exception will not need to take other affirmative steps to have their trade reports processed pursuant to the exception's 15-minute reporting timeframe, such as submitting a certification of eligibility to FINRA or adding a modifier or indicator to their trade reports. *See* Proposed FINRA Rule 6730 Supplementary Material .08(b).

[30] However, a trade executed at or after 12:00:00 a.m. through 7:59:59 a.m. ET would need to be reported as soon as practicable the same day, but no later than within 15 minutes after the TRACE system opens. Additionally, a trade executed on a business day at or after 6:30:00 p.m. through 11:59:59 p.m. ET; on a business day less than 15 minutes before 6:30 p.m. ET; or on a Saturday, Sunday, federal or religious holiday, or other day on which the TRACE system is not open at any time during that day, would need to be reported as soon as practicable, but no later than within 15 minutes after the TRACE system opens the next business day (T+1).

[31] For example, a FINRA member that reported 3,000 trades in the relevant TRACE-Eligible Securities to TRACE in 2022 and then 4,150 trades in 2023 would continue to be eligible for the exception in 2024; however, if the FINRA member then reported 4,100 trades in 2024, the member would be required to comply with the one-minute reporting requirements starting 90 days after January 1, 2025 (with January 1 being day one of 90). If the FINRA member proceeded to report 3,500 trades in 2025, the member would once again be eligible for the exception from one-minute reporting for 2026 under the two-year lookback. FINRA states that it believes the two-year lookback period for eligibility for the exception will accommodate fluctuations in trading activity that may be due to unusual market-wide events or unique client demands. *See* Notice, 89 FR at 5036.

[32] *See* Notice, 89 FR at 5036.

[33] *See id.*

[34] *See id.*

[35] As stated above, for purposes of Rule 6730, the reporting timeframe is measured from the Time of Execution as defined by Rule 6710(d), which generally refers to the time that the parties have agreed to all of the terms of the transaction sufficient to calculate the dollar price of the trade (or yield, in the case of when-issued securities priced to a spread). *See* Notice, 89 FR at n. 15.

[36] *See* Notice, 89 FR at 5036. FINRA reminds its members of their obligation to retain these electronic communications as part of their books and records, consistent with FINRA and SEC recordkeeping requirements. *See, e.g.,* Notice to Members 03–33 (July 2003).

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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 (FINRA further explains ''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'' [37]); [38]

- where allocations to individual accounts must be manually input in connection with a trade by a dually-registered broker-dealer/investment adviser (FINRA states that if a block trade, allocated to individual accounts by a dually-registered broker-dealer/investment adviser, were ''executed electronically without manual intervention between its execution and reporting, the manual trades exception would not be available for that separately executed block trade'' [39]); [40]
- 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 (*e.g.,* a firm's risk management procedures require a secondary approver for trades over a certain threshold; a firm's best execution procedures require manually checking another market to confirm that a better price is not available to the customer) (FINRA explains that the 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'' [41]); [42]
- where a FINRA 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); [43] and
- where a FINRA 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 (FINRA further states that ''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'' [44]).[45]

According to FINRA, the above examples are illustrative of the types of circumstances in which, due to the manual nature of components of the trade execution or reporting process, reporting a transaction within one minute of the Time of Execution may be unfeasible, even where a FINRA member makes reasonable efforts to report the trade as soon as practicable (as required). FINRA also states that it will assess FINRA members' trade reporting in connection with manual trades to determine whether the five-minute trade reporting timeframe (to become applicable after three years) [46] is appropriate, and will be prepared to adjust, as necessary.[47]

FINRA will review use of the manual trades exception. FINRA members may not, in any case, purposely delay the execution or reporting of a transaction by handling any aspect of a trade manually or introducing manual steps following the Time of Execution. Additionally, FINRA states that, considering the overarching obligation to report trades as soon as practicable, FINRA members should consider the types of transactions in which they regularly engage and whether they can reasonably reduce the time between a trade's Time of Execution and its reporting, and more generally must make a good faith effort to report their trades as soon as practicable.[48]

Under amended Rule 6730(d)(4), any FINRA member that executes or reports a trade manually would be required to append a manual trade indicator to the trade report. The indicator must be included in any manual trade, regardless of whether the FINRA member reports outside of the one-minute timeframe in reliance on the manual trades exception. FINRA states that application of the indicator would give FINRA important insight into manual trading and the use of the exception.[49] The indicator would not be included in publicly disseminated TRACE data.[50]

Finally, FINRA proposed to amend Rule 6730(f) to provide that a pattern or practice of late reporting may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010, absent ''reasonable justification'' (in addition to the rule's existing reference to ''exceptional circumstances'').[51] Recurring issues in the systems of a FINRA member firm or its vendor would not be considered a reasonable justification or exceptional circumstance that excuses a pattern or practice of late trade reporting.[52]

III. Summary of Comments, FINRA's Response, and Commission Findings

After carefully reviewing the Notice, Partial Amendment No. 1, and comment letters received, the Commission finds that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[53] In particular, the Commission finds that the Proposal is consistent with Section 15A(b)(6) of the Act,[54] which requires, among other things, that FINRA rules be designed 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 securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the Proposal is consistent, in particular, with Section 15A(b)(9) of the Act,[55] which requires that FINRA rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In approving the original TRACE rules in 2002, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency

[37] FINRA Letter at 9.

[38] *See* Notice, 89 FR at 5036.

[39] FINRA Letter at 8.

[40] *See* Notice, 89 FR at 5036.

[41] FINRA Letter at 9.

[42] *See* Notice, 89 FR at 5036.

[43] *See id.*

[44] FINRA Letter at 8.

[45] *See* Notice, 89 FR at 5036.

[46] FINRA Letter at 11.

[47] *See* Notice, 89 FR at 5036.

[48] *See id.*

[49] *See id.* at 5037.

[50] *See id.*

[51] *See, e.g.,* Rule 6623 describing ''exceptional circumstances'' as instances of system failure by a FINRA member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole.

[52] *See, e.g.,* FINRA Trade Reporting Frequently Asked Questions, Q206.21, available at *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[53] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f); *see also infra* sections III.A (discussing the Proposal's impact on efficiency of U.S. capital markets); and III.B and III.G (discussing comments and responses regarding the Proposal's burden on competition).

[54] 15 U.S.C. 78*o*–3(b)(6).

[55] 15 U.S.C. 78*o*–3(b)(9).

of U.S. capital markets.[56] Since 2002, FINRA has increased transparency by requiring more contemporaneous reporting and broadening the scope of securities included in TRACE. In 2005, FINRA shortened the deadline for reporting most transactions to TRACE to 15 minutes.[57] From 2010 through 2013, FINRA gradually expanded the classes of TRACE-eligible securities subject to reporting within 15 minutes.[58] In 2015, FINRA required FINRA member firms to report transactions in TRACE-Eligible Securities as soon as practicable but no later than within 15 minutes of the Time of Execution or other timeframe specified in FINRA Rule 6730.[59]

A. One-Minute Reporting

The Commission received comments on the proposed rule change.[60] Several commenters support the proposal to shorten the 15-minute TRACE reporting timeframe to one minute and its aim of increasing transparency in the fixed income markets.[61] Some commenters support increasing price transparency in general through reporting but caution restraint and the need for broad exceptions, citing the potential for reduced liquidity and execution quality.[62] Some commenters oppose one minute reporting, questioning the feasibility and cost of compliance due to technical limitations and the prevalence of manual processes.[63] Some commenters that oppose one minute reporting state that if the Commission moves forward with the adoption of the one minute reporting requirement, it should only do so in conjunction with the manual trades and de minimis exceptions.[64] Some commenters suggest FINRA withdraw the Proposal and instead require market participants to report trades as soon as practicable but no later than five minutes after execution.[65] One commenter also states that the one-minute reporting timeframe for electronic trades ''will not meaningfully change the status quo for fully electronic trades,'' as ''FINRA acknowledges that the overwhelming majority of fully electronic transactions are already reported within one minute.'' [66] Some commenters that oppose one minute reporting state FINRA did not sufficiently justify the need for the rule.[67] One commenter states that the Proposal ''lack[s] evidence of a market failure to justify'' the changes.[68] Another commenter states that Commission should reject the Proposal as amended by Partial Amendment No. 1.[69] This commenter states that ''FINRA and the Commission should improve the timeliness of TRACE reporting and dissemination,'' [70] but also states that the manual trades exception ''eviscerates any potentially added value from the 'electronic' provisions'' and ''encourages the return to 'manual' trading by those seeking to avoid transparency.'' [71]

FINRA states that ''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.'' [72] Additionally, FINRA states that it believes that ''identifying possible regulatory improvements need not be limited to instances where there has already been a market failure.'' [73] FINRA further states that it 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 other market participants to obtain and evaluate more timely pricing information for the impacted securities.'' [74] Additionally, with respect to feasibility of one-minute reporting, especially with respect to fully electronic allocated trades, FINRA acknowledges this concern and describes its approach to enforcement of late reporting of transactions to TRACE under the Proposal by stating ''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,'' but FINRA adds: ''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

[56] *See supra* note 11.

[57] *See supra* note 17.

[58] *See supra* notes 17–20.

[59] *See supra* note 21; *see also https://www.finra.org/rules-guidance/notices/15-41.*

[60] *See supra* note 9.

[61] *See, e.g.,* Letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel (February 15, 2024) (''Citadel Letter I'') at 1; Letter from Joanna Mallers, Executive Director, FIA Principal Traders Group (February 15, 2024) (''FIA PTG Letter'') at 1; Letter from Gerard O'Reilly, Co-Chief Executive Officer and Co-Chief Investment Officer, Dimensional Fund Advisors LP and David A. Plecha, Global Head of Fixed Income, Dimensional Fund Advisors LP (February 15, 2024) (''Dimensional Letter'') at 1; Letter from Ursula Baerlein (May 14, 2024); Letter from Dylan Parker, Chief Executive Officer, Moment Technology (May 15, 2024) (''Moment Technology Letter'') at 1.

[62] *See, e.g.,* Letter from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute and Kevin Ercoline, Assistant General Counsel, Investment Company Institute (February 15, 2024) (''ICI Letter'') at 2; Letter from Frank Fairman, Managing Director, Piper Sandler (May 17, 2024) (''Piper Sandler Letter'') at 1.

[63] *See, e.g.,* Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (February 15, 2024) (''SIFMA Letter I'') at 2; Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (May 17, 2024) (''SIFMA Letter II'') at 2 (suggesting transitioning to one-minute reporting would ''expos[e] the broker-dealer community to significant regulatory risk and clients to diminished liquidity and service from their broker-dealers''); Letter from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association (February 16, 2024) (''ASA Letter I'') at 2; Letter from Melissa P. Hoots, CEO/CCO, Falcon Square Capital (February 15, 2024) (''Falcon Letter I'') at 1–2; Letter from Melissa P. Hoots, CEO/CCO, Falcon Square Capital (August 21, 2024) (''Falcon Letter II'') at 2; Letter from Mark D. Griffin, SVP & Risk Control Manager, FHN Financial (May 17, 2024) (''FHN Letter'') at 2; LPL Letter at 1; Letter from Michael Decker, Senior Vice President, Bond Dealers of America (February 15, 2024) (''BDA Letter I'') at 2.

[64] *See, e.g.,* SIFMA Letter I at 2; SIFMA Letter II at 2; FHN Letter at 2; BDA Letter I at 1; Letter from Michael Decker, Senior Vice President, Bond Dealers of America (May 17, 2024) (''BDA Letter II'') at 2; LPL Letter at 2.

[65] *See* Citadel at 4; FIA PTG at 4. *But cf.* SIFMA Letter II at 9 (stating that any alternative proposal that materially differs from the existing Proposal must be subject to notice and comment rulemaking and an economic analysis).

[66] Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel (August 13, 2024) (''Citadel Letter II'') at 1.

[67] *See, e.g.,* Falcon Letter I at 1; ASA Letter I at 2; Letter from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association (May 17, 2024) (''ASA Letter II'') at 1–2; Letter from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association (August 21, 2024) (''ASA Letter III'') at 1–2; FHN Letter at 2; SIFMA Letter II at 2.

[68] *See* ASA Letter I at 1; *see also* Falcon Letter II at 2 (''FINRA has still not substantiated the need for a reduction in reporting time for TRACE-eligible securities'').

[69] Letter from Tyler Gellasch, President and CEO, Healthy Markets Association (September 15, 2024) (''HMA Letter II'') at 1. This commenter states that it is writing to supplement its past support for shortening the TRACE reporting timeframe to more broadly object to the Proposal, citing, among other things, its prior comment letter on the Proposal. *See id.* (citing Letter from Tyler Gellasch, President and CEO, Healthy Markets Association (February 15, 2024) (''HMA Letter I'')).

[70] HMA Letter II at 3.

[71] *Id.* at 1. This commenter also suggests changes to TRACE reporting protocols that are outside of the scope of the Proposal to provide for separate reports of information for price transparency and data useful to just regulators. *See id.* at 2.

[72] FINRA Letter at 3.

[73] *Id.* at 3.

[74] *Id.* at 3–4.

case of allocation and portfolio trades.'' [75]

As discussed below, the Proposal is consistent with the Exchange Act. In particular, the Proposal will further increase price transparency by reducing the 15-minute TRACE reporting window to one minute while providing appropriately tailored exceptions for manual trades and FINRA members with de minimis reporting activity. The as soon as practicable but no later than 15-minute deadline for reporting trades by FINRA member firms with de minimis reporting activity, representing 1.41% of trades or 0.43% of the total par value traded, would remain unchanged.[76] FINRA states that the Proposal will likely result in at least an additional 5.3% of total trades reported within one minute.[77] FINRA additionally 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.'' [78] Accordingly, the Commission views the Proposal as one that is reasonably designed to provide more timely trade reporting.

As the Commission has found previously, more timely reporting promotes fairness and efficiency of the U.S. capital markets.[79] Accordingly, the Commission finds that the Proposal will promote fair and orderly markets and protect investors and the public interest by increasing market transparency and providing the market with more timely pricing information, which may improve price efficiency. And as discussed below, FINRA responded to comments regarding the feasibility of complying with a one minute reporting requirement, including the feasibility and cost of compliance due to technical limitations and the prevalence of manual processes.[80] FINRA also responded to comments with respect to the feasibility of one-minute reporting for fully electronic allocated trades, for which FINRA provides data showing that 68% of allocated trades already were reported within one minute and 90.6% were reported within three minutes,[81] describes its approach to enforcement,[82] and states that it will continue to study reporting times to determine if any regulatory changes are appropriate.[83] Moreover, FINRA responded to comments with respect to gamesmanship of the exceptions.[84] After carefully reviewing the Notice, Partial Amendment No. 1, and comment letters received, the Commission views the Proposal as reasonably balancing the benefits of more contemporaneous transaction reporting and transparency against the burden of requiring all transactions to be reported within one minute. Furthermore, the Commission agrees with FINRA that improving rules need not require a previous market failure.[85]

B. General Comments on Exceptions to One-Minute Reporting

Commenters express varied views on the proposed exceptions to one minute reporting. Some commenters state the exceptions are essential to the success of the rule.[86] These commenters cite the burdens of compliance with one-minute reporting on broker-dealers that rely on manual processes.[87] Other commenters state that the exceptions are too narrow [88] or too broad.[89] One commenter states that for both exceptions, anything less than 15-minute reporting is infeasible and cites the issue that compliance costs associated with faster reporting could price small broker-dealers out of fixed income markets.[90] One commenter that states the exceptions are too broad also states that the exceptions ''create significant risk to the efficacy and legal durability of the entire rule.'' [91] This commenter also states that instead of improving market transparency the Proposal would ''exacerbate, rather than reduce, information asymmetries.'' [92] One commenter encourages FINRA to phase out both exceptions completely over time, which it states would incentivize FINRA members to modernize their execution processes.[93] Another commenter states that both exceptions ''complicate the rollout of the reporting compression process and unnecessarily deprive market participants of information necessary to achieve full market transparency,'' and that ''technological advances, particularly the use of APIs, make the need for these exceptions unnecessary and expensive relative the overall cost savings associated with transparency.'' [94] Another commenter highlights that while 96.9% of non-ATS transactions are reported within five minutes, ''[i]t is curious that the Proposal would sanction an outer reporting limit that is 3 times longer than the time it takes to report the overwhelming majority of 'manual' transactions today.'' [95] The commenter states that this could contribute to undermining the transition to electronic trading in the fixed income markets.[96] Two commenters respond that commenters critical of the exceptions as proposed fail to recognize unique features of fixed income markets, such as the prevalence of manual trading and the heterogeneity of market participants, that make broad exceptions necessary.[97] One commenter also states that phasing out the de minimis exception, as suggested by another commenter, would drive small firms out of the fixed income business.[98]

[75] FINRA Response Letter at 17.

[76] *See* Notice, 89 FR at 5043.

[77] *See* Notice, 89 FR at 5042.

[78] *Id.* at 4.

[79] *See supra* notes 56–59 and accompanying text.

[80] *See infra* sections III.C and III.D (discussing comments, and FINRA's responses, on the de minimis and manual trades exceptions, including with respect to concerns regarding the feasibility of complying and the application of the rule in the context of manual trades).

[81] *See* FINRA Letter at 17 (citing Notice, 89 FR at 5034, 5041).

[82] *See supra* note 75 and accompanying text.

[83] *See* FINRA Letter at 17.

[84] *See infra* notes 117 and 144 accompanying text.

[85] *See infra* section III.H (discussing that the Exchange Act does not require that a self-regulatory organization establish the existence of a market failure to justify a proposed rule change).

[86] *See, e.g.,* BDA Letter I at 1; BDA Letter II at 2; Letter from Michael Decker, Senior Vice President, Research and Public Policy, Bond Dealers of America (August 21, 2024) (''BDA Letter III'') at 2; Letter from Howard Meyerson, Managing Director, Financial Information Forum (February 15, 2024) (''FIF Letter I'') at 2; Letter from Howard Meyerson, Managing Director, Financial Information Forum (May 17, 2024) (''FIF Letter III'') at 2; SIFMA Letter I at 3–4; SIFMA Letter II at 2; FHN Letter at 2; Piper Sandler Letter at 1 (stating that the Proposal ''strike[s] an appropriate balance'').

[87] *See* BDA Letter I at 1; FIF Letter I at 2; FIF Letter III at 2; LPL Financial Letter at 1–2; SIFMA Letter I at 3–4; SIFMA Letter II at 2; *see also* BDA Letter II at 4 (stating small broker-dealers benefit fixed income markets and would be especially negatively affected by higher compliance costs associated with the Proposal).

[88] *See, e.g.,* ASA Letter I at 1–2; Falcon Letter I at 1.

[89] *See, e.g.,* Dimensional Letter at 2; HMA Letter II at I; HMA Letter I at 9–12; Citadel Letter I at 2–3; FIA PTG Letter at 1–2; Moment Technology Letter at 1.

[90] *See* ASA Letter I at 2; *see also* Falcon Letter I at 4 (''[O]ur fear is that the Filing will, over time, eliminate smaller fixed-income brokers''); Falcon Letter II at 1 (''Given the limits of [the de minimis and manual trades] exceptions, smaller broker-dealers like us risk being driven out of the fixed-income markets due to prohibitive costs.''); ASA Letter III at 2 (stating that the commenter's concerns about the Proposal's potential harm to market competition, particularly for smaller and mid-sized broker-dealers, remain unaddressed).

[91] HMA Letter I at 2.

[92] HMA Letter II at 3 (stating that the manual trades exception creates an opportunity to avoid transparency).

[93] *See* Dimensional Letter at 2.

[94] Moment Technology Letter at 2.

[95] Citadel Letter II at 2.

[96] *Id.*

[97] *See* BDA Letter II at 2–3; SIFMA Letter II at 8.

[98] *See* BDA Letter II at 4.

With respect to the manual trades exception, FINRA explains 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. Therefore, the current reporting requirements already account for the various ways that trades can be executed.'' [99]

The Commission finds that the Proposal would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it creates exceptions for manual trades and firms with de minimis reporting activity. In doing so, the Proposal takes into account competitive and liquidity concerns that could arise as a result of the costs associated with complying with a shortened reporting timeframe that could lead some FINRA members to curtail their activities, or lead some FINRA members with less trade volume to exit the market, and thereby reasonably balances the benefits to market participants of increased transparency while mitigating the burdens of a shortened trade reporting deadline. In this regard, the Proposal is also reasonably designed to not permit unfair discrimination between brokers or dealers.

The Commission views the manual trades exception as facilitating greater transparency while still allowing needed time to report for trades with manual processes. Further, the phase-in of the manual trades exception's five-minute outer limit over three years is reasonably designed to provide FINRA members time during which to assess trade execution and post-trade processes and make changes necessary to meet a shorter reporting deadline, thereby facilitating any changes to manual interventions currently employed by FINRA members to complete the trade execution or reporting process.

With respect to the de minimis exception, as discussed below, the exception reasonably and appropriately balances the burdens that would otherwise fall on FINRA members that process limited trade volume without diluting the overall benefits of the Proposal.[100]

FINRA responded to the comments regarding the de minimis and manual trades exceptions, including regarding whether the exceptions are too narrow or too broad, as well as the potential impact of the costs associated with faster reporting for small broker-dealers.[101] After carefully reviewing the Notice, Partial Amendment No. 1, and comment letters received, including the FINRA Letter, the Commission views the Proposal as striking a reasonable balance between requiring more contemporaneous transaction reporting and transparency and the burden of requiring all transactions to be reported within one minute.[102] The Proposal both facilitates greater transparency through faster post-trade reporting and provides FINRA member firms with an exception from the one-minute reporting deadline that will permit continued reliance on manual processes and another for FINRA members that process limited trade volume. Additionally, the Commission disagrees with the comment that the exceptions ''unnecessarily'' deprive market participants of information; the Proposal and its exceptions are a reasonable balance between providing information to market participants, thereby increasing transparency, and mitigating the burdens of one-minute trade reporting.

C. De Minimis Exception

Several commenters specifically address the de minimis exception. Some commenters state support for the de minimis exception.[103] One of these commenters states the de minimis exception is appropriately tailored to protect minority, veteran, and women owned business enterprises and small dealers from incurring significant costs.[104] The commenter also states the proposed two-year look back period will prevent surprise application of the rule and allow newly impacted broker-dealers time to comply.[105] Another commenter that supports the de minimis exception states that market participants falling under the threshold represent an insignificant portion of the market and that the exception will not materially affect market transparency.[106] Some commenters state opposition to the de minimis exception.[107] One of these commenters supports the logic behind the de minimis exception but states the proposed 4,000-trade report threshold is too low and insufficiently justified.[108] This commenter also requests FINRA expand the threshold or at minimum provide more analysis to support its proposed limit.[109] Another commenter that opposes the de minimis exception states FINRA did not sufficiently justify the need for the exception, nor its decisions to set the exception's threshold at 4,000 annual trades and the lookback period for applicability of the threshold at two years.[110] Additionally, this commenter states that the exception would create information asymmetries and could lead to gamesmanship, evasion, and market distortions.[111] Further, the commenter stated that this exception could allow a firm that ''engaged in 5 trades in one year, and 100,000 trades'' the next to continue its 15 minute reporting the following year.[112] In addition, the de minimis exception, the commenter stated, ''could incentivize a firm seeking to mask its trading activities . . . to use an 'excepted' broker to effectuate its trading.'' [113]

FINRA states ''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 [FINRA] member firms, including minority, women, and veteran-owned broker-dealers. Some of these commenters believed that small broker-dealers would exit the market for fixed income secondary market trading

[99] FINRA Letter at 6 (citations omitted).

[100] *See infra* section III.C (discussing comments, and FINRA's responses, on the de minimis exception, including FINRA's data in support of the threshold and look-back period for the exception, as well as the Commission view that the exception strikes an appropriate balance between fulfilling the goal of increased transparency and mitigating any disproportionate cost of compliance on certain, small FINRA members). Also, the Proposal would not phase out the de minims exception, as requested by a commenter and opposed by another commenter. *See supra* notes 93 and 98 and accompanying text; *see also* new Supplementary Material .08 and *supra* section II.B.1.

[101] *See infra* section III.C and III.D (discussing comments, and FINRA's response, on the de minimis and manual trades exceptions, including those regarding the scope of the exceptions and impact on smaller broker-dealers).

[102] *See* FINRA Letter at 2–7, 14–15.

[103] *See, e.g.,* SIFMA Letter I at 9; Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (August 21, 2024) (''SIFMA Letter III'') at 2; BDA Letter I at 2.

[104] *See* SIFMA Letter I at 9; SIMFA Letter II at 7; *see also* BDA Letter II at 4 (''Smaller dealers need [the de minimis] exception because many conduct the trade reporting process entirely manually.'')

[105] *See* SIFMA Letter I at 9; SIMFA Letter II at 7.

[106] *See* BDA Letter II at 4.

[107] *See, e.g.,* Falcon Letter I at 2–4; *see also* HMA Letter I at 9–11, 13 (this commenter also more broadly opposes the Proposal, *see* HMA Letter II).

[108] *See* Falcon Letter I at 2–3; Falcon Letter II at 2–3.

[109] *See id.*

[110] *See* HMA Letter I at 11. As discussed above, this commenter supplemented its prior comments to more broadly object to the Proposal. *See* HMA Letter II at 1; *supra* note 69 and accompanying text.

[111] *See* HMA Letter I at 1 at 10.

[112] *See id.* at 11.

[113] *See id.* at 10.

because of the high implementation and compliance costs and cautioned that this would harm retail investors that depend on small [FINRA] member firms for access to the market.'' [114] Accordingly, FINRA believes the Proposal adequately established the need for the de minimis exception.[115]

Additionally, FINRA states that ''[w]ith 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 [FINRA] members with the benefits to transparency. Based on 2022 data, the proposed *de minimis* threshold would provide relief to 640 (out of 838 currently active) [FINRA] members that, in the aggregate, accounted for 1.41% of trades or 0.43% of the total par value traded. 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. 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%.'' [116]

Further, FINRA responds to the comment that the exception may lead to ''gamesmanship, evasion, and market distortions'' by stating that ''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 [FINRA] 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.'' [117]

With respect to the de minimis exception, FINRA responded to the comments regarding whether the proposed 4,000-trade threshold is too low, including by providing data and analysis for the threshold and lookback period, and addressed the role of the exception in balancing the goal of timelier reporting and the burden on less active members, including smaller broker-dealers.[118] After carefully reviewing the Notice, Partial Amendment No. 1, and comment letters received, including the FINRA Letter, the Commission views the de minimis exception as reasonably and appropriately balancing the burdens that would otherwise fall on FINRA members that process limited trade volume without diluting the overall benefits of the Proposal. As FINRA states, the de minimis exception is expected to cover 640 FINRA members, which account in aggregate for 1.41% of trades and 0.43% of total par value traded.[119] The Commission is sensitive to comments cautioning that small broker-dealers may exit the market for fixed income secondary market trading because of the burdens associated with one-minute reporting.[120] Retaining the 15 minute outside limit on reporting transactions by FINRA members qualifying for the de minimis exception would avoid imposing the burdens of compliance with one-minute reporting on less active market participants, including smaller broker-dealers. At the same time, FINRA members qualifying for the de minimis exception report a relatively small portion of transactions. Accordingly, the Proposal strikes an appropriate balance between fulfilling the goal of increased transparency and mitigating any disproportionate cost of complying with a shorter reporting deadline on certain, small FINRA members.

D. Manual Trades Exception

Several commenters offer specific views about the scope of the manual trades exception. Some commenters characterize the manual trades exception as essential to ensuring compliance with the rule.[121] One commenter states that the exception should be expanded to include certain fully electronic transactions that cannot feasibly be reported within one minute, such as transactions with a large number of post-trade allocations, batch-processed trades, and trades involving multiple systems in trade workflow.[122] This commenter states that transactions with a large number of post-trade allocations are especially difficult to report within one minute for broker-dealers also registered as investment advisers.[123] Other commenters state support for FINRA's proposal to apply the exception to a scenario where a firm has not previously traded a bond.[124] A commenter also states that FINRA should harmonize the scope of the manual trades exception with a similar proposal by the Municipal Securities Rulemaking Board (''MSRB'') that would apply to transactions in municipal securities.[125] In addition, this commenter describes certain scenarios that could be experienced by a reporting firm, questioning whether the manual trades exception would apply and suggesting a dialogue with industry about such scenarios.[126] A different commenter suggests that the exception apply to ''any manual intervention in

[114] FINRA Letter at 14 (citations omitted).

[115] *Id.*

[116] *Id.* at 14–15 (citations omitted).

[117] *Id.* at 15.

[118] *See supra* notes 114–116 and accompanying text.

[119] *See* Notice, 89 FR at 5043.

[120] *See supra* note 90.

[121] *See* BDA Letter I at 1; BDA Letter II at 2; FIF Letter I at 2; FIF Letter III at 2; SIFMA Letter I at 6; SIFMA Letter II at 3–6; SIFMA Letter III at 2; FHN Letter at 2.

[122] *See* SIFMA Letter I at 7–9; SIFMA Letter II at 6–7; SIFMA Letter III at 2; *see also* LPL Letter at 2.

[123] *See* SIFMA Letter I at 7–8; SIFMA Letter II at 5–7; SIFMA Letter III at 4; *see also* BDA Letter I at 3–4; BDA Letter II at 2 (stating that reporting post-trade allocations in one minute sometimes ''is not feasible even in a fully automated environment''); FIF Letter I at 3; Falcon Letter II at 4 (stating that the concern about manual allocations also extends to broker-dealers that are not dual-registrants).

[124] *See* FIF Letter I at 4; *see also* FIF Letter III at 3 (requesting FINRA provide guidance that a firm would not be held to the applicable reporting timeframe in a scenario where FINRA is delayed in providing a symbol requested by a firm); BDA Letter III at 2 (stating that it would be ''difficult or impossible to report in less than 15 minutes'' trades when a firm trades a bond for the first time); SIFMA Letter III at n. 6 (referencing the time it currently takes to set up and report new bonds using FINRA's TRAQS and New Issue Portal).

[125] *See* FIF Letter I at 3.

[126] *See* Letter from Howard Meyerson, Managing Director, Financial Information Forum (February 26, 2024) (''FIF Letter II'') at 2–4; FIF Letter I at 3–4; FIF Letter III at 3.

the trade execution or reporting process.'' [127] Another commenter states that there should not be a manual trades exception, nor a distinction between manual and electronic trades at all.[128]

Several commenters state the manual trades exception is too broad.[129] Some of these commenters state that FINRA failed to meet its burden to demonstrate consistency with the Act, particularly by failing to estimate the number of transactions expected to qualify for the manual trades exception,[130] and one of these commenters states that the manual trades exception was not included in FINRA Regulatory Notice 22–17, which was issued by FINRA to solicit comment on shortening the trade reporting timeline from 15 minutes to one minute for certain TRACE-Eligible securities.[131] These commenters questioning the lack of estimates in the Proposal raise the issue that a large proportion of the total number of trades currently reported outside of one minute could fall within the proposed rule's manual trades exception, undermining the goal of increasing post-trade transparency.[132] These commenters also raise the issue that firms could build manual steps into the trade execution process as a means of qualifying for the longer manual trades reporting window.[133] One commenter responds to this issue by stating that under the Proposal any action purposefully intended to extend the trade reporting time is a violation.[134] The commenter also states that there is no evidence to suggest market participants intentionally delay reporting transactions, nor do market participants have any incentive to do so.[135] This commenter disagrees with the comment that FINRA has not met the requirements of the Act, stating it is convinced FINRA demonstrated the Proposal's consistency with the Act by providing supporting information and statistics throughout the rulemaking process.[136]

FINRA states that it disagrees with the comments that the manual trades exception should be eliminated and that the distinction between manual and electronic trades should not exist or that the manual trades exception should be expanded to include certain fully electronic trades. Specifically, as discussed above, FINRA states, ''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. 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.'' [137]

With respect to large post-trade allocations, batch-processed trades, and trades involving multiple systems in trade workflow, FINRA states that it ''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.' 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.'' [138] FINRA also states that, as discussed in the 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.'' [139] FINRA also stated that it ''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%.'' [140] As discussed above, FINRA also acknowledges concerns with respect to feasibility of one-minute reporting, especially with respect to fully electronic allocated trades, and describes its approach to enforcement of late reporting of transactions to TRACE.[141]

With respect to post-trade allocations by broker-dealers also registered as investment advisers, FINRA states that the proposed rule ''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.' '' [142]

With respect to a scenario where a firm has not previously traded a bond, FINRA states that the proposed rule ''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).' '' [143]

With respect to the comment that the manual trades exception incentivizes firms to build in manual processes in order to qualify for the exception, FINRA states that it ''has explicitly considered and addressed this concern in the Proposal. Specifically, the text of the manual trades exception would explicitly prohibit a [FINRA] member from 'purposely delay[ing] the execution or reporting of a transaction by handling a trade manually or

[127] *See* Falcon Letter II at 4.

[128] *See* Citadel Letter II at 1–2.

[129] *See, e.g.,* HMA Letter II at 2–3; HMA Letter I at 11–12; Citadel Letter I at 2–3; FIA PTG Letter at 2–4.

[130] *See* Citadel Letter I at 1–3; Citadel Letter II at 3–5; FIA PTG Letter at 2–3; *see also* Falcon Letter I at 1; Falcon Letter II at 2 (both stating that FINRA did not adequately justify the exceptions to the rule).

[131] *See* Citadel Letter I at 2.

[132] *See* Citadel Letter I at 2–3; FIA PTG Letter at 2; Citadel Letter II at 1–3.

[133] *See* Citadel Letter I at 3; FIA PTG at 3; *see also* HMA Letter I at 12 (stating that the Proposal as originally proposed did ''not assuage our concerns that firms may intentionally add a 'manual' component to their post-execution processes so as to avoid timely reporting (and dissemination) of their trading activity.''); HMA Letter II at 3 (stating that the Proposal, as modified by Partial Amendment No. 1, did not materially revise the extremely broad examples of manual trades and further offer relevant guidance as to when a manual component or process may nevertheless not qualify for the exception, and would lead to market abuses); *supra* note 92 and accompanying text.

[134] BDA Letter I at 3.

[135] *Id.*

[136] *See* BDA Letter II at 4.

[137] FINRA Letter at 6 (citations omitted).

[138] *Id.* at 8 (citations omitted, citing Notice, 89 FR at 5036, 5045).

[139] *Id.* at 17 (citing Notice, 89 FR at 5034, 5041).

[140] *Id.* at 17 (citing Notice, 89 FR at 5034, 5041 n.32).

[141] *See supra* note 75 and accompanying text.

[142] *Id.* at 7–8 (citing Notice, 89 FR at 5036, 5045).

[143] *Id.* at 7 (citing Notice, 89 FR at 5036, 5045).

introducing manual steps following the Time of Execution.' FINRA also is very familiar with [FINRA] 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 [FINRA] members' use of the manual trades exception and their reporting timeliness in light of their historic behaviors reporting transactions to TRACE. 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.'' [144]

The Proposal both facilitates greater transparency through faster post-trade reporting and provides FINRA member firms with an exception from the one-minute reporting deadline that will permit continued reliance on manual processes. The Commission agrees with FINRA's statement that ''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.'' [145] Moreover, as described above,[146] FINRA provided additional discussion in its letter in response to specific scenarios raised by commenters regarding the application of the proposed manual trades exception to large post-trade allocations, batch-processed trades, trades involving multiple systems in trade workflow, post-trade allocations by broker-dealers also registered as investment advisers, and scenarios where firms have not previously traded a bond by clarifying that such scenarios would not qualify for the manual trades exception when manual intervention between the time of execution and the trade report does not occur. FINRA also provided data in support of not including fully electronic allocated trades in the manual trades exception and described its regulatory standard for potential violations of its reporting rules. Finally, with respect to the comment that the scope of the manual trades exception should be harmonized with the MSRB's proposal that would apply to transactions in municipal securities, the definitions of ''manual trades'' in proposed Supplementary Material .09 to FINRA Rule 6730 and a ''trade with a manual component'' in proposed MSRB Rule G–14(d)(xii) [147] are consistent.

Additionally, the Proposal's manual trades exception is appropriately tailored for facilitating more timely access to market information as well as promoting compliance, and, as FINRA discussed in the Proposal, the manual trades exception included in the Proposal was informed by comments received in response to FINRA Regulatory Notice 22–17. FINRA is not required under the Act to publish a FINRA notice soliciting comment on a potential proposed rule change prior to filing such change as a proposed rule change with the Commission. FINRA included the manual trades exception in the Proposal as well as a discussion of comments received on FINRA Regulatory Notice 22–17 [148] and the Commission provided three 21-day public comment periods in connection with publication of the Notice, the OIP, and Partial Amendment No. 1. Furthermore, FINRA provided additional analysis and data in its comment letter.[149] As FINRA states, ''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.'' [150] The Commission agrees: the manual trades exception provides a reasonable accommodation for transactions that cannot feasibly be reported within one minute, and FINRA has provided sufficient justification for the Proposal. The Commission anticipates that FINRA will monitor its members to ensure compliance with the ''as soon as practicable'' requirement and detect changes in reporting behavior. This should address concerns about manipulation. In particular, this should address comments regarding FINRA members purposefully delaying the reporting of transactions by building manual steps into the trade execution process and help ensure that the manual trades exception would not result in a degradation in trade reporting timeliness. Additionally, in response to comments concerning FINRA's lack of estimates of the number of trades that are expected to qualify for the manual trades exception, proposed changes to FINRA Rule 6730(d)(4) would require FINRA members to ''append a manual trade indicator to the trade report so that FINRA can identify manual trades. The new manual trade indicator would be required regardless of whether the [FINRA] member reported the manual trade outside of the one-minute timeframe in reliance on the manual trades exception, which would provide FINRA with important insights into manual trading and the use of the exception.'' [151] Accordingly, the addition of the manual trade indicator will allow FINRA to collect data on the extent to which manual processes are employed by FINRA members, data that, due to the current lack of a manual trade indicator, is not currently available.

1. Manual Trade Indicator

Several commenters offer specific views about the manual trade indicator. Some commenters state it would be more operationally feasible to flag trades subject to one-minute reporting, rather than flagging all manual trades.[152] One of these commenters states that requiring personnel to identify the manual component of a trade will hinder compliance and delay reporting.[153] Some commenters state that FINRA should offer an interim period during which firms are permitted, but not required, to report the manual trade indicator.[154] One commenter requests clarification regarding the operation of the manual trade indicator in specific scenarios.[155]

With respect to the manual trade indictor, FINRA states that rather than identifying electronic trades, ''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.'' [156]

[144] FINRA Letter at 6–7 (citations omitted).

[145] *See supra* note 137 and accompanying text.

[146] *See supra* notes 137–143 and accompanying text.

[147] *See* Exchange Act Release No. 99402 (Jan. 19, 2024), 89 FR 5384.

[148] *See* Notice, 89 FR at 5044–5046.

[149] *See, e.g.,* notes 184–185 and accompanying text.

[150] *See* FINRA Letter at 10.

[151] *See* Notice, 89 FR at 5036–5037.

[152] *See* BDA Letter I at 3; SIFMA Letter I at 9; SIFMA Letter II at 7–8.

[153] *See* SIFMA Letter II at 7.

[154] *See* FIF Letter I at 6; SIFMA Letter II at 8.

[155] *See, e.g.,* FIF Letter I at 4–5.

[156] FINRA Letter at 12.

FINRA also responds to one commenter's requests for clarification about certain scenarios. With respect to the commenter's request for clarification about whether the manual trade indicator must be reported for trades that are manually corrected, FINRA states that ''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.' '' [157] For a commenter's request for clarification about whether the manual trade indicator is applicable to general systems fixes necessary to correct a technical issue that adversely impacted trade reporting, FINRA states that ''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.' '' [158] Finally, in response to a commenter's request for clarification that the manual trade indicator would not be included in TRACE's trade report matching criteria, ''FINRA confirms that it does not intend to use the manual trade indicator in TRACE's trade report matching criteria.'' [159]

The Commission agrees with FINRA that the indicator should identify manual trades instead of electronic trades, and that the manual trade indicator will provide FINRA with important insight into the extent to which FINRA members utilize manual intervention between execution and trade reporting. Electronic trades will be required to be reported as soon as practicable but no later than one minute and adding a requirement for FINRA members to identify electronic trades could introduce a delay in reporting such electronic trades. Further, to the extent that the manual trade indicator requirement adds a burden on reporting manual trades that otherwise would not be present on electronic trades, FINRA members may have an incentive to eliminate manual intervention to complete the trade execution or reporting process, which would result in a greater number of electronic trades facilitating greater transparency through faster post-trade reporting. Accordingly, the manual trade indicator requirement reasonably balances the benefits gained against any compliance hinderance or reporting delay for manual trades. The Commission is not persuaded by the view that there should be an interim period for voluntary use of the manual trade indicator because such a period would reduce the benefits of the insights into manual trading and the use of the exception.

2. Five-Minute Reporting Phase-In

Several commenters address the gradual phase-in of five-minute reporting written into the proposed rule for manual trades.[160] Multiple commenters request FINRA propose for notice and comment each time it seeks to reduce the timeframe.[161] One of these commenters also states that FINRA must consider that the proposed rule will be implemented alongside other regulatory initiatives, such as the shortened securities settlement cycle (T+1), and potentially other rules that have been proposed.[162] Other commenters state that the absence of data in the Proposal justifying accelerated reporting timeframes for manual trades reflects insufficient understanding of the complexities involved in manual trade reporting.[163] Another commenter states that FINRA's amendment to extend the 10-minute reporting timeframe from one year to two is ''encouraging.'' [164]

FINRA states that it ''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 FINRA members with an additional year to transition to five-minute reporting for manual trades.'' [165] In particular, a FINRA 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).'' [166] FINRA's original proposal, as described in the Notice, would have required FINRA members relying on the manual trades exception to report such manual trades as soon as practicable but no later than five minutes of the time of execution two or more calendar years from the effectiveness of the proposed amendments.

In addition to this extended phase-in timeline, FINRA states that it ''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 [FINRA] 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 [FINRA] 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.'' [167] FINRA states that such measures could include filing a ''proposed rule change with the Commission 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.'' [168]

The Commission views the phase-in of the manual trades exception's five-minute outer limit over three years as reasonably designed to provide FINRA members time during which to assess trade execution and post-trade processes

[157] *Id.* at 12.

[158] *Id.* at 13.

[159] *Id.*

[160] *See, e.g.,* ICI Letter at 3–4; Falcon Letter at 4; SIFMA Letter I at 6; SIFMA Letter II at 6; BDA Letter I at 2–3; ASA Letter II at 2.

[161] *See* ICI Letter at 3; *see also* SIFMA Letter I at 6 (stating that FINRA should conduct an impact assessment before reducing the reporting window for manual trades to five minutes); SIFMA Letter II at 6; ASA Letter II at 2 (stating that the proposal to gradually phase in the reporting window for manual trades without opportunity for formal industry input presents risk and complicates compliance for market participants); Falcon Letter at 4 (stating that FINRA must produce supporting data before proposing a mandatory phase-in period for the manual trades exception); LPL Letter at 2 (stating FINRA should examine impact on liquidity, depth, concentration, and transparency prior to further decreasing reporting times); BDA Letter II at 3, 5 (asking FINRA to commit to seeking public comment before any reduction in trade reporting times for manual trades takes effect). *But see* BDA Letter I at 3 (stating support for the phase-in approach, but asking FINRA to communicate with industry during the transition period regarding operational roadblocks that could arise). One commenter states that extension of the phase-in in Partial Amendment No. 1 does not address its earlier comment that any alteration of the compliance threshold should necessitate additional input from stakeholders, such as through a formal request for comment or a new proposal. *See* ASA Letter III at 1.

[162] *See* ICI Letter at 3–4.

[163] *See* ASA Letter II at 2; *see also* Falcon Letter II at 3–4.

[164] SIFMA Letter III at 3.

[165] FINRA Letter at 10–11 (citations omitted).

[166] *Id.* at 11; *see also* Partial Amendment No. 1, 89 FR at 61515.

[167] *Id.*

[168] *Id.*

and make changes necessary to meet a shorter reporting deadline. As part of the Proposal, FINRA included in new Supplementary Material .09 to FINRA Rule 6730 a schedule for implementing reductions in the deadline for reporting trades eligible for the manual trades exception. The three-year phase-in of the manual trades exception reasonably balances the costs of implementation with the goal of increased transparency, by giving FINRA members more time to meet the requirements. FINRA need not provide an additional round of notice and comment for every phase of the transition. But FINRA nonetheless intends to engage with and solicit comment from FINRA members throughout the phase-in period regarding implementation of the reduced reporting requirement for manual trades.[169] The Commission will consider any future proposed rule changes filed with the Commission regarding the implementation. Additionally, in response to the comment stating that the Proposal would need to be implemented alongside other regulatory initiatives, the Commission views FINRA's statement that it ''will endeavor to publish updated technical specifications as far as possible in advance of the effective date'' [170] as a reasonable response, as the more time FINRA members are afforded to implement system changes to conform to updated technical specifications in support of the Proposal, the greater flexibility FINRA members will have to schedule such system changes. Further, in response to the comment specifically referencing the implementation of amendments to SEC rules to shorten the standard settlement cycle to T+1, the compliance date for such amendments was May 28, 2024.[171] In addition, the other proposals cited by the commenter have not been adopted, so FINRA cannot take such possible regulatory changes into consideration in determining the compliance dates as part of this Proposal.

E. Reporting Requirement Consistency

Several commenters discuss the consistent application of reporting requirements,[172] including some that state that the differing reporting windows for manual and electronic trades violate the Act by discriminating based on the mode of execution and unduly burdening competition.[173] Two commenters describe the potential negative consequences of applying different levels of post-trade transparency depending on a trade's mode of execution.[174] One of these commenters states that ''[t]he massive disparity in timeliness of reporting between the two execution methods not only creates a significant risk of losing the benefits of transparency, but also creates new opportunities to manipulate markets.'' [175]

Another commenter raises the issue of different reporting requirements under the proposal depending on a trade's time of execution.[176] The commenter states that under the current rule, trades executed when TRACE is closed must be reported within 15 minutes of TRACE being open, mirroring the deadline for reporting of trades executed when TRACE is open.[177] But, the commenter continues, under the Proposal, trades executed outside of the hours when TRACE is open will still be subject to the deadline to report within 15 minutes of TRACE being open while trades executed when TRACE is open will be subject to the new one minute requirement.[178] The commenter urges consistent reporting times in this scenario.[179] One commenter responds to this comment, stating that few bond trades take place after hours because of limited liquidity and that no evidence suggests market participants abuse existing exceptions to permit next-day reporting of after-hours trades.[180]

In response to the comment to make consistent the different times of reporting trades executed when TRACE is closed and open, FINRA states that ''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. Consistent with [FINRA] 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), 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. 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. 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 reporting facilities.'' [181]

With respect to the potential negative consequences of applying different levels of post-trade transparency depending on a trade's mode of execution, FINRA states 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. Therefore, the current reporting requirements already account for the various ways that trades can be executed and the resultant differences in the reporting times.'' [182]

The Proposal will set three outside limits for reporting transactions: a one-minute default deadline, a 15-minute deadline that will shorten to five minutes three years after the Proposal becomes operative for transactions eligible for the manual trades exception, and a 15-minute deadline for FINRA member firms with de minimis reporting activity. The Commission disagrees with the comment that this will result in varying levels of post-trade transparency or create new opportunities for market manipulation.[183] The Proposal's varying reporting deadlines do not change the existing requirement that transactions be reported as soon as practicable, which applies to all transactions covered by the Proposal, and is accommodative of unique aspects of different transactions. Because of the current ''as soon as practicable'' requirement, FINRA-provided data show that 82.9% of transactions are reported within one minute, 97.6% reported within five minutes, and

[169] *See supra* note 167 and accompanying text.

[170] FINRA Letter at 18.

[171] *See* Securities Exchange Act Release No. 96930 (February 15, 2023), 88 FR 13872 (March 6, 2023); *see also* 17 CFR 240.15c6–1.

[172] *See, e.g.,* Citadel Letter I at 1–3; HMA Letter II at 1–3; HMA Letter I at 8–9; BDA Letter II at 3.

[173] *See* Citadel Letter I at 3; FIA PTG Letter at 3–4.

[174] *See* Citadel Letter I at 1–3; HMA Letter II at 3

[175] *See* HMA Letter II at 3.

[176] *See* HMA Letter I at 8.

[177] *See id.*

[178] *See id.*

[179] *See* HMA Letter I at 9.

[180] BDA Letter II at 3.

[181] FINRA Letter at 16–17 (citations omitted).

[182] FINRA Letter at 6 (citations omitted); *see also supra* section III.D (discussing comments and responses, including the Commission's views, on the potential for manipulation).

[183] *See supra* notes 174 and 176.

99.4% reported within 15 minutes.[184] Accordingly, transaction reporting times currently are variable. However, ''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. 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. 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.'' [185] Additionally, FINRA states that ''[a]s 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, the Proposal could potentially benefit the ability to evaluate pricing in a substantial amount of trades—over 486,100 corporate bond trades alone representing approximately $459.6 billion traded (accounting for the impact of the proposed *de minimis* exception).'' [186] Thus, the Proposal will reduce variation in reporting times by shortening the outer limit reporting time for FINRA member firms with more than de minimis reportable activity.

A similar proposed rule change by the MSRB,[187] on which the MSRB closely coordinated with FINRA,[188] would result in a consistent standard for trade reporting for municipal securities and the TRACE-Eligible Securities covered by the Proposal. Accordingly, the Commission finds that the Proposal would foster cooperation and coordination between the MSRB and FINRA by establishing consistent trade reporting requirements across various classes of fixed income securities. Consistent trade reporting requirements for municipal securities covered by MSRB rules and the TRACE-Eligible Securities covered by the Proposal also may reduce compliance burdens resulting from inconsistent obligations and standards for different classes of fixed income securities.

F. Implementation Period

Some commenters address the implementation period.[189] Two commenters request an implementation period of two years from the time of approval due to the high cost of compliance.[190] Another commenter states the cost of implementing the proposal is anticipated to be especially high for smaller firms and suggests an implementation period of at least 18 months from the date of publication of updated technical specifications and guidance.[191] The commenter also requests that FINRA provide an expanded free testing period of 90 days instead of the standard free testing period of 30 days.[192]

FINRA responds that it ''intends to provide [FINRA] 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 [FINRA] members to provide interpretive guidance, where needed.'' [193]

The Commission views FINRA's statements with respect to implementation as reasonable and appropriate. As stated above, FINRA intends to provide FINRA members with a sufficient implementation timeframe, publish updated technical specifications as far as possible in advance of the effective date, and be responsive to requests for interpretive guidance. FINRA represents that it will announce the effective date of the proposed rule change in a FINRA Regulatory Notice.

G. Consistency With the Administrative Procedure Act (''APA'')

One commenter questions the proposed rule's consistency with the APA.[194] This commenter asserts that FINRA filed the proposed rule at the direction of the Commission, and objects to the Commission's alleged use of self-regulatory organizations such as FINRA ''as a conduit to carry out rulemakings that are the ultimate responsibility of the Commission.'' [195] The commenter further argues that there is ''no demonstrable market failure in the fixed income markets that would justify reducing the reporting timeframe from 15 minutes to 1 minute.'' [196]

The Commission did not direct FINRA to file the proposed rule and it is not using FINRA as a conduit to enact the proposed rule.[197] Rather, as FINRA explains, FINRA reassessed the TRACE trade reporting timeframe because FINRA believes that 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.'' [198] FINRA designed the Proposal itself based on ''extensive data analysis,'' ''carefully consider[ing] the different ways trades can be executed in the fixed income markets and craft[ing] the manual trades exception to address a range of execution and reporting scenarios to account for these differences.'' [199] In support of the Proposal, FINRA states that it ''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 other market participants to obtain and evaluate more timely pricing information for the impacted securities.'' [200]

[184] *See* Notice, 89 FR at Table 1.

[185] FINRA Letter at 4 (citations omitted).

[186] *Id.* at 4–5.

[187] *See supra* note 147.

[188] *See, e.g.* Letter from Ernesto A. Lanza, Chief Regulatory and Policy Officer, MSRB, dated July 18, 2024, available at *https://www.sec.gov/comments/sr-msrb-2024-01/srmsrb202401-491663-1411646.pdf.*

[189] *See, e.g.,* SIFMA Letter I at 10; BDA Letter I at 4; FIF Letter I at 5–7; SIFMA Letter II at 8.

[190] *See* SIFMA Letter I at 10; BDA Letter I at 4.

[191] *See* FIF Letter I at 5.

[192] *See id.* at 6–7; *see also* SIFMA Letter II at 8 (encouraging FINRA to eliminate its charge for testing and instead to offer no-cost testing). Comments related to FINRA's free testing period and current practice to charge for testing after such free testing period are outside of the scope of this proposal.

[193] FINRA Letter at 18.

[194] *See* ASA Letter III at 2–3; ASA Letter II at 2; ASA Letter 1 at 3.

[195] *See id.;* ASA Letter III at 2 & n.4.

[196] *See* ASA Letter III at 1; *see also* ASA Letter II at 2; ASA Letter I at 3.

[197] The commenter cites a speech by the Chair in stating to the contrary, but that speech does not specifically address the TRACE trade reporting timeframe at all. *See* ASA Letter III at 2 n.4 (citing Gary Gensler, Chair, Securities and Exchange Commission, Prepared Remarks before SEC Speaks: U.S. Capital Markets and the Public Good (Apr. 2, 2024) (transcript available at *https://www.sec.gov/newsroom/speeches-statements/prepared-remarks-sec-speaks-us-capital-markets-public-good*). And, in any event, the speech reflects the views of the Chair alone, not the Commission.

[198] FINRA Letter at 3.

[199] *Id.*

[200] *Id.* at 3–4.

Nor does the Exchange Act require that a self-regulatory organization establish the existence of a market failure to justify a proposed rule change. Under Section 19(b) of the Exchange Act, the Commission must approve a rule change proposed by FINRA if the Commission finds that the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder, including the requirements of section 15A(b).[201] For the reasons discussed above, the Commission finds that the Proposal is consistent with those requirements because, among other things, it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Proposal also does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[202]

H. Consultation With the Treasury Department

Pursuant to section 19(b)(6) of the Act,[203] the Commission has considered the sufficiency and appropriateness of existing laws and rules applicable to government securities brokers, government securities dealers, and their associated persons in approving the proposed rule change. Pursuant to section 19(b)(5) of the Act,[204] the Commission consulted with and considered the views of the Treasury Department in determining whether to approve the proposed rule change. The Treasury Department did not object to the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[205] that the proposed rule change (SR–FINRA–2024–004), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[206]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–22027 Filed 9–25–24; 8:45 am]

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[201] 15 U.S.C. 78*o*–3(b), 78s(b)(2)(C).

[202] The commenter's references to the Supreme Court's decisions in *Loper Bright Enterprises* v. *Raimondo,* 144 S. Ct. 2244 (2024) and *Ohio* v. *EPA,* 144 S. Ct. 2040 (2024), are similarly misplaced. *Loper Bright* is inapposite because the question here is whether FINRA's proposed rule change is consistent with the requirements of Section 15A(b)—in which case the Exchange Act requires the Commission to approve it—not whether the Commission would have statutory authority to adopt its own market-wide rule. And *Ohio* is inapposite because we explain above why commenters' concerns do not establish that the Proposal is inconsistent with the requirements of the Act.

[203] 15 U.S.C. 78s(b)(6).

[204] 15 U.S.C. 78s(b)(5) (providing that the Commission ''shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor'').

[205] 15 U.S.C. 78s(b)(2).

[206] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101128; File No. SR–ISE–2024–03]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, To Permit the Listing and Trading of Options on the iShares Bitcoin Trust

September 20, 2024.

I. Introduction

On January 9, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on exchange-traded product (''ETP'') shares that represent interests in the iShares Bitcoin Trust (''IBIT'').[3] On January 11, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On January 25, 2024, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.[4] On March 6, 2024, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the Proposal, disapprove the Proposal, or institute proceedings to determine whether to disapprove the Proposal.[6] On April 24, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the Proposal.[8] On July 19, 2024, the Commission designated a longer time for Commission action on the Proposal.[9] The Commission received comments addressing the proposed rule change.[10] On May 23, 2024, ISE submitted a letter providing additional information regarding IBIT and other bitcoin-based ETPs.[11] On August 21, 2024, ISE submitted a second letter that provides additional analysis supporting the proposed position limit of 25,000 contracts for IBIT options.[12] The Exchange filed Amendment Nos. 2 and 3 to the Proposal on August 29, 2024, and September 12, 2024, respectively. On September 12, 2024, the Exchange withdrew Amendment Nos. 2 and 3 and filed Amendment No. 4 to the Proposal.[13] The Exchange filed Amendment No. 5 to the Proposal on September 19, 2024.[14] The Commission is publishing this notice to solicit comments on Amendment Nos. 4 and 5 from interested persons, and is approving the proposed rule change, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust, the Grayscale Bitcoin Trust, and the Bitwise Bitcoin ETF. *See* Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SR–NYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023–028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SR–CboeBZX–2023–044; SR–CboeBZX–2023–072) (''Bitcoin ETP Order'').

[4] *See* Securities Exchange Act Release No. 99396 (Jan. 19, 2024), 89 FR 5047 (Jan. 25, 2024) (''Notice'' or ''Proposal'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 99681 (Mar. 6, 2024), 89 FR 17886 (Mar. 12, 2024).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 100024 (Apr. 24, 2024), 89 FR 34290 (Apr. 30, 2024) (''Order Instituting Proceedings'').

[9] *See* Securities Exchange Act Release No. 100567 (Jul. 19, 2024), 89 FR 60482 (Jul. 25, 2024).

[10] Comment letters on the Proposal are available at *https://www.sec.gov/comments/sr-ise-2024-03/srise202403.htm.*

[11] *See* letter from Greg Ferrari, Vice President, U.S. Options, ISE, dated May 23, 2024 (''ISE Letter I'').

[12] *See* letter from Angela Dunn, Nasdaq ISE, LLC, dated Aug. 21, 2024 (''ISE Letter II'').

[13] Amendment No. 4 amends ISE Options 9, Section 13, Supplementary Material .01 and ISE Options 9, Section 15, Supplementary Material .01, respectively, to establish position and exercise limits of 25,000 contracts for the proposed IBIT options.

[14] Amendment No. 5 amends the Proposal to describe in greater detail the surveillance procedures that will apply to the trading of options on IBIT. The full text of Amendment Nos. 4 and 5 is available at the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ISE/rulefilings.*