



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100003; File No. SR-MSRB-2024-01]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Consisting of Proposed Rule Change to Amend MSRB Rule G-14 to Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB**

April 22, 2024.

#### I. Introduction

On January 12, 2024, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to (1) amend MSRB Rule G-14 (“Rule G-14”), on reports of sales or purchases, to (i) shorten the amount of time within which brokers, dealers, and municipal securities dealers (collectively, “dealers,” and each individually, a “dealer”) must report most transactions to the MSRB; and (ii) require dealers to report certain transactions with a new trade indicator, and make certain clarifying amendments, and (2) make conforming amendments to MSRB Rule G-12, on uniform practice (“Rule G-12”), and the MSRB’s Real-Time Transaction Reporting System (“RTRS”) Information Facility (“IF-1”) to reflect the shortened reporting timeframe (collectively, the “proposed rule change”).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on January 26, 2024.<sup>4</sup> The Commission received comments

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-99402 (Jan. 19, 2024), 89 FR 5384 (Jan. 26, 2024) (“Notice”).

<sup>4</sup> Notice, 89 FR at 5384.

in response to the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

## II. Description of the Proposed Rule Change

Rule G-14 on reports of sales or purchases requires dealers to report their transactions to RTRS within 15 minutes of the Time of Trade,<sup>7</sup> absent an exception,<sup>8</sup> in accordance with Rule G-14, the Rule G-14 RTRS Procedures, and the RTRS Users Manual.<sup>9</sup> Since the current 15-minute requirement went into effect in 2005, 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. As described in more detail in the Notice, the proposed rule change is intended to bring about greater market transparency through more timely disclosure and dissemination of information to market participants and market-supporting vendors so that the information better reflects current market conditions on a real-time basis, while carefully balancing the considerations raised by commenters throughout the rulemaking process.<sup>10</sup> Additionally, the proposed rule change would also make certain conforming technical changes to Rule G-12(f)(i) and IF-1. The MSRB has stated that it will review the available trade reporting information and data arising from implementation of the changes to trade reporting introduced by the proposed rule change,

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<sup>5</sup> Comment letters received by the Commission are available on our website at <https://www.sec.gov/comments/sr-msrb-2024-01/srmsrb202401.htm>.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Rule G-14 RTRS Procedures Section (d)(iii) defines “Time of Trade” as the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.

<sup>8</sup> *See* Notice, 89 FR at 5384 n.5 (describing transactions currently exempt from the reporting requirements under Rule G-14(b)(v)).

<sup>9</sup> The RTRS Users Manual is available at <https://www.msrb.org/RTRS-Users-Manual>.

<sup>10</sup> *Id.*

including but not limited to the two exceptions to the one-minute reporting requirement,<sup>11</sup> to inform any further potential changes by the MSRB, through future rulemaking, to the trade reporting requirements due to increasing marketplace and technology efficiencies, process improvements, continuing or new barriers to accelerated reporting, unanticipated market impacts, or other factors.<sup>12</sup>

A. New Baseline Reporting Requirement: One Minute After the Time of Trade

The proposed amendments to Rule G-14 RTRS Procedures Section (a)(ii) generally would provide that transactions effected with a Time of Trade during the hours of an RTRS Business Day<sup>13</sup> must be reported to an RTRS Portal<sup>14</sup> “as soon as practicable, but no later than one minute” (rather than within the current 15-minute standard) after the Time of Trade, subject to several existing reporting exceptions, which would be retained in the amended rule,<sup>15</sup> and two new intra-day reporting exceptions relating to dealers with limited trading activity and trades with a manual component that would be added by the proposed rule change.<sup>16</sup> Except for those trades that would qualify for a reporting exception, all trades currently required to be reported within 15 minutes after the Time of Trade would, under the proposed rule change, be required to be reported no later than one minute after the Time of Trade.

i. New Requirement to Report Trades “as Soon as Practicable”

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Rule G-14 RTRS Procedures Section (d)(ii) defines “RTRS Business Day” as 7:30 a.m. to 6:30 p.m., Eastern Time, Monday through Friday, unless otherwise announced by the MSRB.

<sup>14</sup> *See* Notice, 89 at 5385 n.13 (discussing the various portals).

<sup>15</sup> *See* Notice, 89 FR at 5385 n.14 (describing the existing exceptions).

<sup>16</sup> The two new intra-day reporting exceptions, consisting of trades by dealers with limited trading activity and trades with a manual component, would be designated as Rule G-14 RTRS Procedures Sections (a)(ii)(C)(1) and (2), respectively. *See* Notice, 89 FR at 5385 n.15.

Section (a)(ii) of the proposed amendment to Rule G-14 RTRS Procedures adds a new requirement that, absent an exception, trades must be reported as soon as practicable (but no later than one minute after the Time of Trade).<sup>17</sup> This “as soon as practicable” requirement would also apply to trades subject to longer trade reporting deadlines under the two new exceptions for dealers with limited trading activity pursuant to Rule G-14 RTRS Procedures Section (a)(ii)(C)(1) and Supplementary Material .01, or trades with a manual component pursuant to Rule G-14 RTRS Procedures Section (a)(ii)(C)(2) and Supplementary Material .02.<sup>18</sup> Although Rule G-14 RTRS Procedures do not currently explicitly prohibit a dealer from waiting until the existing 15-minute deadline to report a trade notwithstanding the fact that the dealer could reasonably have reported such trade more rapidly, the MSRB notes that under the proposed rule change a dealer could not simply await the deadline to report a trade if it were practicable to report such trade more rapidly.<sup>19</sup>

As provided in more detail in the Notice, proposed Supplementary Material .03 would provide guidance relating to policies and procedures for complying with the “as soon as practicable” reporting requirement.<sup>20</sup> The MSRB noted that dealers must not purposely withhold trade reports, for example, by programming their systems to delay reporting until the last permissible minute or by otherwise delaying reports to a time just before the deadline if it would have been practicable to report such trades more rapidly.<sup>21</sup> For trades with a manual component,

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<sup>17</sup> Notice, 89 FR at 5386.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Where a dealer has reasonably designed policies, procedures and systems in place, the dealer generally would not be viewed as violating the “as soon as practicable” requirement because of delays in trade reporting due to extrinsic factors that are not reasonably predictable and where the dealer does not intend to delay the reporting of the trade (for example, due to a systems outage).

<sup>21</sup> *Id.*

and consistent with Supplementary Material .03(b) of FINRA Rule 6730, the MSRB recognized that the trade reporting process may not be completed as quickly as, for example, where an automated trade reporting system is used.<sup>22</sup> The MSRB explained that it expected that the regulatory authorities that examine dealers and enforce compliance with this requirement would take into consideration the manual nature of the dealer's trade reporting process in determining whether the dealer's policies and procedures are reasonably designed to report the trade "as soon as practicable" after execution.<sup>23</sup>

ii. Time of Trade Discussion

The "Time of Trade" is the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.<sup>24</sup> For transaction reporting purposes, the Time of Trade is the same as the time that a trade is "executed" and, generally, is consistent with the "time of execution" for recordkeeping purposes.<sup>25</sup>

iii. Valid Contract Discussion

In general, to form a valid contract, there must be at least an offer and acceptance of that offer. As a result, the MSRB noted that dealers should consider the point in time at which an offer to buy or sell municipal securities was met with an acceptance of that offer. This "meeting of the minds,"<sup>26</sup> cannot occur before the final material terms, such as the exact security, price and

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See* current Rule G-14 RTRS Procedures Section (d)(iii).

<sup>25</sup> *See* Notice, 89 FR at 5386 for a discussion on time of execution and note 22 for additional guidance material on the time of execution.

<sup>26</sup> *See generally* FINRA Regulatory Notice 16-30 (Trade Reporting and Compliance Engine (TRACE): FINRA Reminds Firms of their Obligation to Report Accurately the Time of Execution for Transactions in TRACE-eligible Securities) (Aug. 2016); MSRB Notice 2016-19 (MSRB Provides Guidance on MSRB Rule G-14, on Reports of Sales or Purchases of Municipal Securities (Aug. 9, 2019) (the "2016 RTRS FAQs") at questions 1 and 2.

quantity, have been agreed to and such terms are known by the parties to the transaction.<sup>27</sup> The MSRB further explained that dealers should be clear in their communications regarding the final material terms of the trade and how such terms would be conveyed between the parties<sup>28</sup> to ensure that such a valid trade contract has been formed.<sup>29</sup>

iv. Exceptions to the Baseline Reporting Requirement

Proposed amendments to Rule G-14 RTRS Procedures Section (a)(ii) add two new exceptions to the proposed one-minute reporting requirement: (a) New Section (C)(1) provides an exception for a dealer with “limited trading activity,” and (b) new Section (C)(2) provides an exception for a dealer reporting a “trade with a manual component.”<sup>30</sup>

a. Exception for Dealers with Limited Trading Activity

New Section (a)(ii)(C)(1) would except a dealer with “limited trading activity” from the one-minute reporting requirement and would instead be required to report its trades as soon as practicable, but no later than 15 minutes after the Time of Trade for so long as the dealer remains qualified for the limited trading activity exception, as further specified in new Supplementary Material .01.<sup>31</sup> Proposed Section (d)(xi) of Rule G-14 RTRS Procedures would define a dealer

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<sup>27</sup> See generally MSRB Notice 2004-18 (Notice Requesting Comment on Draft Amendments to Rule G-34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades) (June 18, 2004); 2016 RTRS FAQs at question 1.

<sup>28</sup> Notice, 89 FR at 5386 n.26.

<sup>29</sup> See Notice 89 FR at 5387 (discussing the particulars for when transactions have been executed, confirmed, and reported).

<sup>30</sup> Notice, 89 FR at 5387 (explaining how these exceptions have a narrowly tailored purpose).

<sup>31</sup> The MSRB noted that transactions effected by such a dealer with a Time of Trade outside the hours of an RTRS Business Day would be permitted to be reported no later than 15 minutes after the beginning of the next RTRS Business Day pursuant to Rule G-14 RTRS Procedures Section (a)(iii). The MSRB also noted that, as is the case today, transactions for which an end-of-trade-day or post-trade-day reporting exception is available under redesignated Sections (A) and (B) would continue to have that exception available. Notice, 89 FR at 5387 n.29.

with limited trading activity as a dealer that, during at least one of the prior two consecutive calendar years, reported to an RTRS Portal fewer than 1,800 transactions, excluding transactions exempted under Rule G-14(b)(v) and transactions specified in Rule G-14 RTRS Procedures Sections (a)(ii)(A) and (B) (i.e., transactions having an end-of-trade-day reporting exception).<sup>32</sup> A dealer relying on this exception to report trades within the 15-minute timeframe, rather than the new standard one-minute timeframe, would have to confirm that it meets the criteria for a dealer with limited trading activity for each year during which it continues to rely on the exception (e.g., the dealer could confirm its eligibility based on its internal trade records and by checking MSRB compliance tools which would indicate a dealer's transaction volume for a given year).<sup>33</sup> Notwithstanding the foregoing, the MSRB reminded dealers with limited trading activity of the new overarching obligation to report trades as soon as practicable.<sup>34</sup>

b. Exception for Trades with a Manual Component

Rule G-14 RTRS Procedures Section (a)(ii)(C)(2) would except a "trade with a manual component" as defined in new Section (d)(xii) of Rule G-14 RTRS Procedures from the one-minute reporting requirement. Dealers with such trades would be required to report such trades as soon as practicable and within the time periods specified in new Supplementary Material .02, unless another exception from the one-minute reporting requirement applies under proposed Rule G-14 RTRS Procedures Sections (a)(ii)(A) and (B) (i.e., transactions having an end-of-trade-day or post-trade-day reporting exception) or (a)(ii)(C)(1) (i.e., transactions by dealers with

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<sup>32</sup> This number of transactions is expected to capture approximately 1.5 percent of the trades in the municipal securities markets in a given calendar year. Notice, 89 FR at 5387 n.30.

<sup>33</sup> See Notice, 89 FR at 5387-5388 (using a hypothetical to illustrate variations in dealer eligibility for the limited trading exception).

<sup>34</sup> See Notice, 89 FR at 5386 discussing the new requirement to report trades as soon as practicable.

limited trading activity).<sup>35</sup> Section (d)(xii) of Rule G-14 RTRS Procedures would define a “trade with a manual component” as a transaction that is manually executed or where the dealer must manually enter any of the trade details or information necessary for reporting the trade directly into an RTRS Portal (for example, by manually entering trade data into the RTRS Web Portal) or into a system that facilitates trade reporting (for example, by transmitting the information manually entered into a dealer’s in-house or third-party system) to an RTRS Portal. As described below and in the Notice, a dealer reporting to the MSRB a trade meeting the definition for a “trade with a manual component” would be required to append a new trade indicator so that the MSRB can identify manual trades.<sup>36</sup>

As explained by the MSRB, this “manual” exception would apply narrowly, and would normally encompass any human participation, approval or other intervention necessary to complete the initial execution and reporting of trade information after execution, regardless of whether undertaken by electronic means (e.g., keyboard entry), physical signature or other physical action. To qualify as a trade with a manual component, the manual aspect(s) of the trade generally would occur after the relevant Time of Trade (i.e., the time at which a contract is formed for the transaction). As further explained by the MSRB, any manual aspects that precede the time of trade (e.g., phone calls to locate bonds to be sold to a customer before the dealer agrees to sell such bonds to a purchasing customer) would normally not be relevant for purposes

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<sup>35</sup> As explained by the MSRB, transactions effected with a Time of Trade outside the hours of an RTRS Business Day would be permitted to be reported no later than 15 minutes after the beginning of the next RTRS Business Day pursuant to Rule G-14 RTRS Procedures Section (a)(iii). Notice, 89 FR at 5387 n.38.

<sup>36</sup> Such new indicator would be required for any trade with a manual component, whether the dealer reports such trade within the new one-minute timeframe or the dealer seeks to take advantage of the longer timeframes permitted for trades with a manual component. Notice, 89 FR at 5388 n.39.

of the exception unless they have a direct impact on the activities that must be undertaken post-execution to enter information necessary to report the trade.<sup>37</sup>

The MSRB provided the following non-exhaustive list of situations in which trades would be considered to have a manual component: where a dealer executes a trade by manual or hybrid means, such as voice or negotiated trading by telephone, email, or through a chat/messaging function, and subsequently must manually enter into a system that facilitates trade reporting all or some of the information required to book the trade and report it to RTRS; where a dealer executes a trade (typically a larger-sized trade) that requires additional steps to negotiate and confirm details of the trade with a client and manually enters the trade into risk and reporting systems; where a dually-registered broker-dealer/investment adviser executes a block transaction that requires allocations of portions of the block trade to the individual accounts of the firm's advisory clients that must be manually inputted in connection with a trade; where an electronically or manually executed trade is subject to manual review by a second reviewer for risk management (e.g., transactions above a certain dollar or par amount or other transactions meriting heightened risk review) and, as part of or following the review, the trade must be manually approved, amended or released before the trade is reported to RTRS; where a dealer's trade execution processes may entail further diligence following the Time of Trade involving a manual step (e.g., manually checking another market to confirm that a better price is not available to the customer);<sup>38</sup> where a dealer trades a municipal security, whether for the first time or under other circumstances where the security master information may not already be populated (e.g., information has been removed or archived due to a long lapse in trading the

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<sup>37</sup> The MSRB provided various scenarios to illustrate application of the manual exception would apply. *See generally* Notice, 89 FR at 5389 n.40 and 5390 n.50.

<sup>38</sup> The MSRB noted that dealers experiencing significant levels of post-Time of Trade price adjustments due to such post-trade best execution processes should consider whether these processes are well suited to the dealer's obligations under MSRB Rule G-18 and whether the dealer is appropriately evaluating when a contract has in fact been formed with its customer. Notice, 89 FR at 5389 n.41.

security), and additional manual steps are necessary to set up the security and populate the associated indicative data in the dealer's systems prior to executing and reporting the trade; where a dealer receives a large order or a trade list resulting in a portfolio of trades with potentially numerous unique securities involving rapid execution and frequent communications on multiple transactions with multiple counterparties, and the dealer must then book and report those transactions manually, one by one;<sup>39</sup> where a broker's broker engages in mediated transactions that involve multiple transactions with multiple counterparties; and where a dealer reports a trade manually through the RTRS Web Portal.

The MSRB stated that the appropriateness of treating any step in the trade execution and reporting process as being manual must be assessed in light of the anti-circumvention provision included in the proposed rule change with regard to the delay in execution or insertion of manual tasks for the purpose of meeting this new exception.<sup>40</sup> New Supplementary Material .02(a) would require all trades with a manual component to be reported as soon as practicable and would specify that in no event may a dealer purposely delay the execution of an order, introduce any manual steps following the Time of Trade, or otherwise modify any steps prior to executing or reporting a trade for the purpose of utilizing the exception for manual trades.<sup>41</sup>

New Supplementary Material .03 would require that dealers adopt policies and procedures for complying with the as soon as practicable reporting requirement, including by implementing systems that commence the trade reporting process without delay upon execution

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<sup>39</sup> The MSRB explained that in instances where a dealer trades a basket of securities at a single price for the full basket, rather than individual prices for each security based on its then-current market price, such price likely would be away from the market, requiring inclusion of the "away from market" special condition indicator and qualifying for an end-of-trade-day reporting exception under proposed Rule G-14 RTRS Procedures Section (a)(ii)(A)(3). Notice, 89 FR at 5389 n.42.

<sup>40</sup> See Notice, 89 FR at 5390 (discussing the prohibition on purposeful insertion of manual steps in trade reporting process).

<sup>41</sup> *Id.*

and provides for additional guidance for regulatory authorities that enforce and examine dealers for compliance with this requirement to take into consideration the manual nature of the dealer's trade reporting process.<sup>42</sup>

The MSRB also noted that dealers should consider the types of transactions in which they regularly engage and whether they can reasonably reduce the time between a transaction's Time of Trade and its reporting, and more generally should make a good faith effort to report their trades as soon as practicable.<sup>43</sup> The MSRB currently collects and analyzes data regarding dealers' historic reporting of transactions to RTRS under various scenarios and such data will continue to be available to the regulators for analysis under the proposed one-minute standard. Subject to Commission approval of the proposed rule change, the MSRB explained that it would be reviewing the use of the manual exception and would share with the examining authorities any analyses resulting from such reviews.<sup>44</sup>

#### 1. Phase-In Period for Trades with a Manual Component

New Supplementary Material .02(b) would subject trades with a manual component to a phase-in period for timely reporting over three years ("phase-in period"). During the first year of effectiveness of the exception, trades meeting this definition would be required to be reported as soon as practicable, but no later than 15 minutes after the Time of Trade.<sup>45</sup> During the second

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<sup>42</sup> For trades with a manual component, the MSRB explained that it recognized that the trade reporting process may not be completed as quickly as, for example, where an automated trade reporting system is used. The MSRB further explained that in these cases, the MSRB expects that the regulatory authorities that examine dealers and enforce compliance with this requirement would take into consideration the manual nature of the dealer's trade reporting process in determining whether the dealer's policies and procedures are reasonably designed to report the trade "as soon as practicable" after execution. Notice, 89 FR at 5388.

<sup>43</sup> *Id.* at 5389.

<sup>44</sup> *Id.* at 5390.

<sup>45</sup> While the deadline for reporting during this first year would remain the same as the current 15-minute timeframe, such trade reports would also be subject to the new requirement that they be reported as soon as practicable. *See* Notice, 89 FR at 5390 n.48.

year, such trades would be required to be reported as soon as practicable, but no later than 10 minutes after the Time of Trade. After the second year and thereafter, such trades would be required to be reported as soon as practicable, but no later than five minutes after the Time of Trade. Dealers should remember that the “as soon as practicable” reporting obligation may, depending on the facts and circumstances, require quicker reporting than the applicable outer reporting obligation during and after the phase-in period.

The MSRB explained that it would be reviewing the available trade reporting information and data arising from implementation of the proposed rule, as well as marketplace developments, feedback from market participants, and examination or enforcement findings from the Commission, FINRA and the other appropriate regulatory agencies to inform any further potential changes to the trade reporting requirements.<sup>46</sup>

## 2. Prohibition on Purposeful Insertion of Manual Steps in Trade Reporting Process

New Supplementary Material .02(a) would specifically prohibit dealers from purposely delaying the execution of an order, introducing any manual steps following the Time of Trade, or otherwise purposefully modifying any steps to execute or report a trade to utilize the exception for manual trades. This requirement would not prohibit reasonable manual steps that are taken for legitimate purposes and would not apply to any steps that are taken prior to the time of trade that do not have the effect of delaying the subsequent reporting of such trade.<sup>47</sup>

## 3. Manual Trade Indicator

Proposed amendments to Rule G-14 RTRS Procedures Section (b)(iv) would require the report of a trade meeting the MSRB’s definition for a “trade with a manual component,” as defined in proposed Section (d)(xii) of Rule G-14 RTRS Procedures,<sup>48</sup> to append a new trade

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<sup>46</sup> Notice, 89 FR at 5390.

<sup>47</sup> Notice, 89 FR at 5890.

<sup>48</sup> *See generally* Notice, 89 FR at 5388-90.

indicator<sup>49</sup> to such a trade report. This indicator would be mandatory for every trade that meets the standard to append the indicator,<sup>50</sup> regardless of whether the trade is actually reported within one minute after the Time of Trade, is reported within the applicable timeframe under the manual trade exception or is otherwise subject to another reporting exception.

v. Pattern or Practice of Late Trade Reporting

Current Rule G-14 RTRS Procedures Section (a)(iv) requires that transaction data that is not submitted in a timely and accurate manner must be submitted or corrected as soon as possible—even when a dealer is late in reporting a trade, the dealer remains obligated to report such trade as soon as possible. The proposed amendments further provide that any transaction that is not reported within the applicable time period shall be designated as “late.”<sup>51</sup> The MSRB stated that a pattern or practice of late reporting without exceptional circumstances or reasonable justification may be considered a violation of Rule G-14. The MSRB further noted that the determination of whether exceptional circumstances or reasonable justifications exist for late trade reporting is dependent on the particular facts and circumstances and whether such circumstances are addressed in the dealer’s systems and procedures.<sup>52</sup> The MSRB explained that it expected that the regulatory authorities that examine dealers and enforce compliance with the reporting timeframes established under Rule G-14 RTRS Procedures would focus their

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<sup>49</sup> See Notice, 89 FR at 5391 n.51 (discussing how the manual trade indicator would be used for regulatory purposes).

<sup>50</sup> Current Rule G-14 RTRS Procedures Section (a)(iv) requires that transaction data that is not submitted in a timely and accurate manner must be submitted or corrected as soon as possible. The manual trade indicator is not intended to be used to reflect the manual nature of any correction to a prior trade report. Notice, 89 FR at 5390 n.50.

<sup>51</sup> See generally *id.* at 5391 n.52 (MSRB explaining that late trade designations are currently, and would continue to be, available to regulators and, through the MSRB compliance tool described below in the Notice under “Purpose – Proposed Rule Change – Compliance Tools,” to the dealer submitting the late trade).

<sup>52</sup> See Notice, 89 FR at 5391 for non-exhaustive list of factors that would be considered in determining whether a rule violation has occurred.

examination for and enforcement of the rule’s timing requirements on the consistency of timely reporting and the existence of effective controls to limit late reporting to exceptional circumstances or where reasonable justifications exist for a late trade report, rather than on individual late trade report outliers.<sup>53</sup> Notwithstanding such expectation, where facts and circumstances indicate that an individual late report was intentional or otherwise egregious, or could reasonably be viewed as potentially giving rise to an associated fair practice, fair pricing, best execution or other material regulatory concern under MSRB or Commission rules with respect to that or a related transaction, the MSRB noted that the regulatory authorities could reasonably determine to take action with respect to such late trade in the examination or enforcement context.<sup>54</sup>

vi. Compliance Tools

The MSRB explained that it would continue to provide various compliance tools to assist dealers with compliance and for examining authorities to monitor for compliance.<sup>55</sup>

vii. Proposed Technical Amendments

a. Non-substantive Amendments

Non-substantive amendments to Rule G-14 RTRS Procedures Section (a)(ii) regroup and renumber its current Sections (A) through (C) to new Sections (A)(1) through (A)(3), renumber current Sections (D) and (E) to new Sections (B)(1) and B(2), and correct a cross-reference in Section (b)(iv) to certain of these Sections to be consistent with such renumbering.<sup>56</sup> In addition, a technical amendment to Rule G-14 RTRS Procedures Section (a)(ii) changes the word “of” to

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* (discussing the various compliance tools).

<sup>56</sup> *Id.* at 5392.

“after” and omits the word “within” in the phrase “within 15 minutes of Time of Trade” for clarity and consistency of usage throughout the Rule G-14 RTRS Procedures as amended.<sup>57</sup>

b. Clarifying Amendments – Special Condition Indicators and Trades on an Invalid RTTM Trade Date

Rule G-14 RTRS Procedures Section (b)(iv) currently sets forth information regarding certain existing special condition indicators while also referencing the existence of other special condition indicators in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions. The proposed clarifying amendments to Section (b)(iv) of Rule G-14 RTRS Procedures would incorporate into the language thereof reference to all applicable special condition indicators, including the new trade with a manual component indicator and existing special condition indicators previously adopted by the MSRB but that are currently only documented explicitly in the Specifications for Real-Time Reporting of Municipal Securities Transactions.<sup>58</sup> Other than the addition of the new trade with a manual component indicator, the proposed clarifying amendments to this provision would not make any changes to the types or usage of existing special condition indicators.<sup>59</sup> Rule G-14 RTRS Procedures Section (a)(iii) would be amended to reflect that, in addition to trades effected outside the hours of the RTRS Business Day, inter-dealer trades may be executed on certain holidays (other than those recognized as non-RTRS Business Days) that are not valid RTTM trade dates (“invalid RTTM trade date”), and in either case such trades are to be reported no later than within 15 minutes after the beginning of the next RTRS Business Day. Such invalid RTTM trade date transactions are already subject to this same next RTRS Business Day reporting requirement.<sup>60</sup> The proposed

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<sup>57</sup> *Id.*

<sup>58</sup> *See generally* Notice, 89 FR at 5392 n.55.

<sup>59</sup> *Id.* at 5392.

<sup>60</sup> *See* Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions; Exchange Act Release No. 55957 (June 26, 2007), 72 FR 36532 (July 3, 2007), File No. SR-MSRB-2007-01.

clarifying amendment to this provision would not make any changes to the circumstances or timing of reporting of such trades.<sup>61</sup>

c. Proposed Conforming Amendments to Rule G-12 and RTRS Information Facility

Proposed amendments to Rule G-12, on uniform practice, would make conforming changes to Section (f)(i) thereof to require that each transaction effected during the RTRS Business Day shall be submitted for comparison as soon as practicable, but no later than one minute after the Time of Trade unless an exception applies. The proposed rule change would also modify the IF-1 to clarify lateness checking against the applicable reporting deadline(s) provided for in proposed amendments to Rule G-14 RTRS Procedures, as opposed to the current 15-minute requirement.<sup>62</sup>

III. Summary of Comments Received

The Commission received thirteen comment letters on the proposed rule change.<sup>63</sup>

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<sup>61</sup> Notice, 89 FR at 5392.

<sup>62</sup> *Id.*

<sup>63</sup> *See* letters to Vanessa A. Countryman, Secretary, Commission, from Michael Noto, FINRA Registered Representative dated Jan. 31, 2024 (“Noto”); J. Ben Watkins, Director, Division of Bond Finance, State of Florida dated Feb. 13, 2024 (“State of Florida”); Matthew Kamler, President, Sanderlin Securities LLC dated Feb. 14, 2024 (“Sanderlin Securities”); Gerard O’Rielly, Co-Chief Executive Officer and Co-Chief Investment Officer and David A. Plecha, Global Head of Fixed Income, Dimensional Fund Advisors LP dated Feb. 15, 2024 (“Dimensional Fund Advisors”); Michael Decker, Senior Vice President, Bond Dealers of America dated Feb. 15, 2024 (“BDA”); Sarah A. Bessin, Deputy General Counsel, Investment Company Institute dated Feb. 15, 2024 (“ICI”); Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association dated Feb. 15, 2024 (“SIFMA”); Howard Meyerson, Managing Director, Financial Information Forum dated Feb. 15, 2024 (“FIF I”); Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated Feb. 16, 2024 (“Bloomberg”); Melissa P. Hoots, CEO/COO, Falcon Square Capital, LLC dated Feb. 16, 2024 (“Falcon Square Capital”); Matt Dalton, Chief Executive Officer, Belle Haven Investments, LP dated Feb. 16, 2024 (“Belle Haven”); Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association dated Feb. 16, 2024 (“ASA”). Also, after the close of the comment period, one commenter submitted a supplemental letter. *See* letter from Financial Information Forum dated Feb. 26, 2024 (“FIF II”). The Commission’s Office of Municipal Securities held a meeting with a representative from

Commenters generally supported the MSRB's goal of facilitating equal access to information and market transparency.<sup>64</sup> However, many commenters expressed concern that the MSRB failed to demonstrate how a one-minute reporting requirement would clearly and substantially benefit the municipal securities market.<sup>65</sup> To this end, several commenters raised concern that the one-minute reporting requirement would increase costs of new technology infrastructure which, commenters argued, could impair municipal market liquidity by putting small and mid-size firms out of business.<sup>66</sup> Commenters maintained that the exceptions to the one-minute reporting requirement were requisite to implementing the proposed rule change.<sup>67</sup> Otherwise, commenters asserted that a general one-minute reporting requirement would be unworkable.<sup>68</sup> One commenter, however, strongly encouraged the MSRB to fully phase-out the exceptions.<sup>69</sup> Another commenter noted a similar proposal<sup>70</sup> by the Financial Industry Regulatory Authority, Inc. ("FINRA"), and requested that the MSRB and FINRA harmonize the scope of the manual trade exception.<sup>71</sup>

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the State of Florida on Feb. 13, 2024, and the Commission's Offices of Municipal Securities and Trading and Markets held a meeting with representatives from the BDA. *See* Memoranda from the Office of Municipal Securities regarding 2024 meetings.

<sup>64</sup> *See, e.g.*, letters from SIFMA; BDA; ICI; Dimensional Fund Advisors; Belle Haven.

<sup>65</sup> *See, e.g.*, BDA Letter at 1; Noto Letter; State of Florida Letter at 1-2; Sanderlin Securities Letter at 2-4; SIFMA Letter at 2; ASA Letter at 1 and 5-6; Falcon Square Capital Letter at 1-2; Belle Haven Letter at 3-6; ICI Letter at 2, FN4.

<sup>66</sup> *See, e.g.*, BDA Letter at 3-4; State of Florida Letter at 2; Sanderlin Securities Letter at 1-3; Falcon Square Capital Letter at 2.

<sup>67</sup> *See, e.g.*, BDA Letter at 1; ICI Letter at 3; SIFMA Letter at 2; FIF I Letter at 2.

<sup>68</sup> *See generally* BDA Letter; ICI Letter, SIFMA Letter; FIF I Letter; Belle Haven Letter.

<sup>69</sup> Dimensional Fund Advisors Letter at 2.

<sup>70</sup> *See* Securities Exchange Act Release No. 99404 (Jan. 19, 2024), 89 FR 5034 (Jan. 24, 2024) ("FINRA Notice").

<sup>71</sup> *See* FIF I Letter at 3.

Commenters offered several views relating to the exceptions. Some commenters noted that the manual trade exception balances shortening reporting requirements while avoiding undue disruptions to the municipal securities market.<sup>72</sup> However, one commenter argued that the MSRB had not provided any data to support a reduction in reporting time for manual trades or any evidence that firms that are currently reporting manually are not already reporting as soon as practicable.<sup>73</sup> This commenter also maintained that the phase-in period could eliminate small firms which are incapable of meeting the phased-in time periods.<sup>74</sup> Another commenter remained troubled by the language of the manual trade exception as it suggested the possibility of leading to further reductions or even the elimination of the manual trade exception.<sup>75</sup> As a potential solution, commenters noted that the MSRB could collect data and conduct impact assessments prior to each phase-in period to ensure continued market integrity.<sup>76</sup> Some commenters stated that the proposed use of the manual trade indicator could not be effectively implemented or monitored for compliance and proposed that trades subject to the one-minute reporting requirement should be flagged instead.<sup>77</sup> Commenters generally viewed the limited trading activity exception favorably.<sup>78</sup> One commenter, however, argued that the proposed 1,800-trade threshold was far too low and requested that the MSRB either significantly expand the threshold

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<sup>72</sup> See, e.g., ICI Letter at 3; SIFMA Letter at 3-4 (noting that the proposed manual trade exception is an attempt to promote continued liquidity of the subject fixed-income markets).

<sup>73</sup> Belle Haven Letter at 7.

<sup>74</sup> *Id.* at 5.

<sup>75</sup> ASA Letter at 2.

<sup>76</sup> See, e.g., SIFMA Letter at 6-7; ICI Letter at 3-4; BDA Letter at 3.

<sup>77</sup> See, e.g., SIFMA Letter at 9; BDA Letter at 3.

<sup>78</sup> See, e.g., SIFMA Letter at 9; BDA Letter at 2; Falcon Square Capital Letter at 3; Belle Haven Letter at 6; FIF I Letter at 2.

or conduct further analysis to justify the 1,800 threshold.<sup>79</sup>

Some commenters addressed the proposed implementation period. Two commenters requested a two-year implementation and requested that the MSRB and FINRA remain open to the creation of FAQs or the provision of implementation guidance to achieve greater compliance.<sup>80</sup> One commenter requested an eighteen-month implementation period from the date the MSRB and FINRA publish updated technical specifications and guidance.<sup>81</sup>

Commenters also challenged the proposed rule change as circumventing regulatory obligations pursuant to the Exchange Act and requested that the MSRB conduct further analysis before implementing the proposed rule change.<sup>82</sup>

#### IV. Proceedings to Determine Whether to Approve or Disapprove SR-MSRB-2024-01 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>83</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate, however, that the Commission has reached any conclusion with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>84</sup> the Commission is providing notice of the

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<sup>79</sup> Falcon Square Capital Letter at 3.

<sup>80</sup> See BDA Letter at 4; SIFMA Letter at 10.

<sup>81</sup> See FIF I Letter at 5-7 (commenter also requested a free testing period of 90-days instead of the standard 30-days).

<sup>82</sup> See, e.g., Belle Haven Letter at 2; ASA Letter at 3; Falcon Square Capital Letter at 6.

<sup>83</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>84</sup> *Id.*

grounds for disapproval under consideration. The Commission believes it is appropriate to institute proceedings at this time in view of the legal and policy issues raised by the proposal. In particular, Section 15B(b)(2) of the Act<sup>85</sup> requires that the MSRB propose and adopt rules to effect the purposes of the Act with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors. In addition, Section 15B(b)(2)(C) of the Act<sup>86</sup> requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanisms of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The Commission asks that commenters address the sufficiency of MSRB's statements in support of the proposed rule change, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed exceptions to the one-minute reporting timeframe.

#### V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their

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<sup>85</sup> 15 U.S.C. 78o4-(b)(2).

<sup>86</sup> 15 U.S.C. 78o-4(b)(2)(C).

data, views, and arguments with respect to the issues identified above, as well as any others concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with the Exchange Act and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>87</sup> any request for an opportunity to make an oral presentation.<sup>88</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2024-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2024-01. This file number

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<sup>87</sup> 17 CFR 240.19b-4.

<sup>88</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-MSRB-2024-01 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, pursuant to delegated authority.<sup>89</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>89</sup> 17 CFR 200.30-3(a)(12).