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February 15, 2024

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

We appreciate the opportunity to provide comments to the Securities and Exchange Commission (the "Commission") on FINRA's proposal to reduce the 15-minute TRACE reporting timeframe to one minute for corporate bonds and other fixed income securities (the "Proposal").[1]

We strongly support efforts to increase post-trade transparency in the fixed income markets, including reducing reporting and dissemination timeframes.[2] Unfortunately, we fear that the current Proposal, as drafted, may undermine this goal. Specifically, the Proposal includes a novel and ill-considered "manual trade exception" that exempts any trade that is not fully electronic "end to end" from the new one minute reporting requirement.[3] Importantly, since 83% of all transactions are *already* reported within one minute – and the vast majority of the remaining 17% of transactions will qualify for the manual trade exception – it does not appear that the Proposal will meaningfully increase market transparency as claimed. Instead, by imposing different standards for post-trade transparency depending on the mode of execution, the Proposal may in fact undermine the ongoing transition to electronic trading in fixed income markets and reduce incentives to invest in upgrading operational infrastructure.

The proposed manual trade exception presents serious substantive and procedural concerns. *First*, FINRA has not evaluated the impact of imposing different levels of post-trade transparency depending on the mode of execution. *Second*, FINRA makes little attempt to assess the impact of

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1 Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6730 (Transaction Reporting) To Reduce the 15-Minute TRACE Reporting Timeframe to One Minute, 89 Fed. Reg. 5034 (Jan. 25, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-01-25/pdf/2024-01395.pdf (the "Proposal").

2 *See generally*, Citadel response to FINRA Proposed Rule Change Relating to Dissemination of Information of Individual Transactions in U.S. Treasury Securities and Related Fees (Nov. 30, 2023) available at https://www.sec.gov/comments/sr-finra-2023-015/srfinra2023015-305440-785462.pdf; Citadel Response to the Request for Information on Additional Transparency for Secondary Market Transactions of U.S. Treasury Securities (Aug. 31, 2022) available at https://www.regulations.gov/comment/TREASDO-2022-0012-0028; Citadel Response to the Request for Information on the Evolution of U.S. Treasury Market Structure (Apr. 22, 2016) available at https://www.treasurydirect.gov/instit/statreg/gsareg/RFIcommentletterCitadel.pdf; Remarks by Ken Griffin at the 2015 Roundtable on Treasury Markets and Debt Management (Nov. 20, 2015) available at https://home.treasury.gov/system/files/276/11-20-2015-Ken-Griffin-Treasury-Roundtable-Remarks.pdf.

3 Manual trades would instead be subject to an extended five minute outer-limit reporting time frame, phased in over three years. Proposal at 5036.

the proposed manual trade exception, with *no estimate* of the percentage of transactions that are expected to qualify, and the resulting impact on market transparency. *Third*, this concept was not included in the prior FINRA Regulatory Notice,[4] meaning that this is the first time that market participants have been able to comment on the proposed exception.

For these reasons, FINRA has not met its burden to demonstrate that the Proposal is consistent with the Securities Exchange Act of 1934 ("Exchange Act"). Further, the Proposal is inconsistent with several sections of the Exchange Act, including Section 15A(b)(6) which requires FINRA rules to protect the public interest and prohibit unfair discrimination, and 15A(b)(9) which prohibits unnecessary burdens on competition. We recommend FINRA instead consider as a first step reducing the no later than 15-minute TRACE reporting timeframe to 5-minutes for *all* transactions, irrespective of the mode of execution.

I. <u>The "Manual Trade Exception" Undermines the Stated Regulatory Objectives of the Proposal</u>

FINRA asserts that the Proposal will increase market transparency by meaningfully increasing the number of fixed income transactions reported within one minute.[5] However, the Proposal does not substantiate that assertion in light of the proposed manual trade exception.

First, the proposed manual trade exception appears extremely broad. In particular, the exception would apply if a trade "requires manual intervention *at any point* to complete the trade execution or reporting process."[6] This would include any trade executed by manual or hybrid means, as well as any trade that requires any form of manual intervention during the trade reporting or review process.[7] Thus, the manual trade exception is likely to apply to a meaningful number of trades, particularly those that are not already reported within one minute.

Second, despite the breadth of the exception, FINRA makes no attempt to estimate the number of transactions that are expected to qualify for the manual trade exception. This omission compromises the Proposal's cost-benefit analysis and suggests that the Proposal may not actually increase market transparency at all.

In particular, FINRA acknowledges that 83% of all transactions are *already* reported within one minute, but asserts that "up to 16.4 percent" of the remaining transactions "*might potentially* be reported faster than today" if they are required to be reported within a minute.[8] However, FINRA then admits that "these estimates would [need to] be adjusted further to account for manual trades—to the extent firms rely on the proposed exception with respect to such trades—which

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[4] FINRA Regulatory Notice 22-17 (Aug. 2, 2022) available at https://www.finra.org/rules-guidance/notices/22-17#notice.

[5] Proposal at 5035.

[6] Proposal at 5036 (emphasis added).

[7] *Id*.

[8] Proposal at 5042 (emphasis added).

FINRA is currently unable to identify in the TRACE data."[9] To the extent that nearly all of the remaining 16.4% of transactions qualify for the manual trade exception, then the Proposal will not actually result in *any* increase in transparency. Regrettably, FINRA makes no attempt to assess the impact of the exception it proposes to create or whether the Proposal will actually achieve the key regulatory objective of increasing transparency.[10]

In addition to being unable to substantiate that the Proposal will actually increase market transparency, FINRA ignores the unprecedented approach of imposing different levels of post-trade transparency depending on the mode of execution, and the serious implications this would have on market evolution, competition and efficiency. We are not aware of a similar approach being adopted in any other asset class, and FINRA has not evaluated whether such an approach may create unintended consequences, such as disrupting the ongoing transition to electronic trading in fixed income markets or reducing incentives to invest in upgrading operational infrastructure. The Proposal could even have regressive effects and decrease the percentage of transactions reported within one minute, if, for example, market participants introduce new manual processes or otherwise engage in fewer fully electronic transactions. To the extent there is an unlevel transparency framework based on the mode of execution, and a perceived regulatory arbitrage associated with qualifying for the manual trade exception, these types of unintended consequences may result.

II. FINRA Has Not Met Its Burden to Show that the Manual Trade Exception is Consistent With the Exchange Act

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission may only approve a proposed rule change of a self-regulatory organization if it finds that the proposal is consistent with the requirements of the Exchange Act and the rules thereunder. Under Commission rules, the burden is on FINRA to demonstrate that the proposed rule change is consistent with the Exchange Act and a mere assertion that the proposed rule change is consistent "is not sufficient."[11]

FINRA has not met this burden. By making no attempt to estimate the number of transactions that are expected to qualify for the manual trade exception, FINRA's analysis is inadequate and does not substantiate that the Proposal will in fact increase market transparency. To the extent this key regulatory objective is not achieved, the Proposal cannot be approved.

In addition, the unprecedented approach of imposing different levels of post-trade transparency depending on the mode of execution results in unfair discrimination (in violation of Section 15A(b)(6)) and undue burdens on competition (in violation of Section 15A(b)(9)). FINRA did not consider the potential harms associated with the Proposal. For example, the Proposal's analysis of burdens on competition is limited to a single sentence: "FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate

[9] *Id*.

[10] As another example, FINRA asserts that the Proposal will result in the faster dissemination of pricing information for large trades, which will benefit market participants, but then acknowledges that large trades are more likely to be traded using manual or hybrid means (and therefore may not be reported more quickly at all). Proposal at 5038 and 5043.

[11] 17 C.F.R. § 201.700(b)(3)(i).

in furtherance of the purposes of the Act."[12]

III. FINRA Should Consider Reasonable Alternatives

FINRA should withdraw the Proposal and instead consider requiring market participants to report trades as soon as practicable but no later than five minutes after execution, *irrespective* of the method of execution. As noted above, 83% of all transactions are *already* reported within one minute, which presumably would continue to be the case under this alternative. In turn, the remaining 17% of transactions would be required to be reported within five minutes.

FINRA considered this alternative approach, but its rationale for rejecting it further exposes the lack of any rational basis for the current Proposal. Specifically, FINRA asserted that "reducing the required reporting time to as soon as practicable but no later than five minutes would enhance the timeliness of up to only 2.4 percent of the trades as compared to 17.1 percent by moving to no later than one minute."[13] But, as detailed above, the claimed "17.1 percent" of trades that would be reported more quickly under this Proposal is not a real number, since it does not take into account the impact of the proposed manual trade exception. Therefore, there is no basis to suggest that the current Proposal would increase market transparency any more than the five-minute alternative.

IV. Conclusion

We have strongly advocated for increasing post-trade transparency in fixed income markets, but are unfortunately unable to support this Proposal as drafted. For the reasons detailed above, FINRA's novel manual trade exception makes any purported transparency benefits illusory.

Please feel free to contact the undersigned with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger
Managing Director
Global Head of Government & Regulatory Policy

[12] Proposal at 5037.

[13] Proposal at 5044.