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SIFMA: Life in the (Fixed Income) Fast Lane

A Cautionary Tale About Recent Proposals to Shorten Fixed Income Post-Trade Reporting Timelines

In a speech regarding fixed income markets in early 2022, SEC Chair Gary Gensler noted that current FINRA and MSRB rules require that (most) fixed income trades must be reported as soon as practicable but no later than within 15 minutes of the time of execution and wondered "why couldn't the outer bound be shortened to no later than, for example, 1 minute?"

Later that year FINRA and the MSRB published requests for comment on instituting an across-th--board requirement that most fixed income trades (including most corporate bond, ABS, and municipal securities transactions) be reported in one minute. Welcome to life in the fast lane – but instead of Walsh, Frey and Henley, we're running with the SEC, FINRA and the MSRB.

SIFMA and its Asset Management Group filed a joint response to FINRA and MSRB strongly objecting to a one-minute requirement, noting that "moving directly to a significantly shortened trade reporting timeframe…is destined to be rife with problems…and we strongly oppose the Proposals outlined by the SROs for this reason."

Probably most significantly, such a requirement would destroy the so-called voice markets, which involve transacting by phone, chat, or other non-automated methods, which are very important for fixed income generally, and particularly so for smaller participants in the fixed income markets. It is not practical that these kinds of trades be consistently reported in one minute, especially considering that multiple bonds are commonly traded at the same time, that hedges are put on simultaneously with trades, and other reasons. Firms would either have to stop transacting in voice markets, or severely slow down their activity to ensure that regulatory reporting requirements are met.

FINRA and the MSRB saw the stop signs thrown up by the responses from SIFMA (and many others) to their request for comment, and things didn't take a turn for the worse (at least yet). In 2023, rules were proposed by each regulator that would implement a one-minute reporting requirement, but these new proposals included two exemptions – one for trades with a manual component (e.g., voice trades) and one for firms with low transaction volumes. SIFMA and SIFMA AMG also responded to this proposal. These proposals, and the comments submitted in response, currently await final action from the SEC.

SIFMA's View

While this 2023 proposal is an improvement, it is not a cure for the ills that plagued the original proposal, and the warning lights are still turning red.

SIFMA and its AMG support improvements to post-trade transparency that balance costs and benefits. We believe the existing transparency framework balances timely reporting, benefits to market participants, and burdens related to liquidity and cost. Given that FINRA-member broker-dealers are required to report trades as soon as is practicable, and given that there is no history of widespread violation of this provision of the rules, one should conclude that broker-dealers are currently reporting trades as soon as is practicable, in other words, as quickly as they can.

We do not believe the transition to one-minute reporting has been adequately examined or justified, nor do we believe that the proposed one-minute reporting rule can be adopted without exposing the broker-dealer community to significant regulatory risk and their clients to diminished liquidity and service.

The over-the-counter fixed income markets, including the municipal securities market, are fundamentally different than the centralized and exchange-based equity market. Significant amounts of trading and post-execution processing in the fixed income markets rely on manual or only partially automated processes such as phone calls or chat, or other processes that require human intervention. Full automation of these processes to enable consistent reporting in one minute in some cases is impossible, and in other cases is prohibitively expensive, particularly for smaller firms.

Notwithstanding this, if the Commission intends to move forward with a reduction in trade reporting timelines in the fixed-income markets, the SROs' Proposals to create a manual trade exception and a de minimis exception to protect smaller broker-dealers are a bare minimum component to allowing broker-dealers to achieve a reasonable chance of compliance. However, a mandatory one-minute requirement remains unworkable even for certain fully-electronic trades, and the application of any final rules should reflect this.

As we discussed in our letter to FINRA and the MSRB, they should reconsider if a one-minute trade reporting requirement is appropriate for fixed income markets in the first place, but if a decision is made to proceed with this proposal, then FINRA and the MSRB should:

- Implement a broad exception for manual trades;
- Examine impacts to liquidity, depth, concentration, and transparency prior to decreasing reporting times to shorter intervals to ensure markets are not harmed;
- Provide relief for certain electronic trades where system processing limitations prevent one-minute reporting, including allocation trades; and
- Implement the proposed de-minimis exception for smaller-volume dealers.

With apologies to the Eagles, we should not be so "eager for action and hot for the game" that we hurt the markets that serve U.S. businesses, state and local governments, and consumers in an effort to nominally improve transparency.

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