FALCON SQUARE CAPITAL

February 16, 2024

UPLOADED ELECTRONICALLY

Vanessa Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Comment on SR-MSRB-2024-01

Dear Ms. Countryman,

Falcon Square Capital, LLC appreciates the opportunity to provide comments to SR-MSRB-2024-01,[1] which addresses the proposed alteration of MSRB Rule G-14 to require the reporting of requisite trade information within one minute of Time of Trade, with exceptions for dealers with *de minimis* reporting activity and for manual trades (the "Filing").

Falcon Square is a fixed-income broker-dealer serving institutional investors, corporations, and municipalities. We trade the full spectrum of fixed income securities, including corporates, municipals, treasuries, agencies, RMBS, CMBS, commercial paper, certificates of deposit, and structured products on an agency and riskless principal basis. We are certified Women Owned by the Women's Business Enterprise National Council ("WBENC").

As discussed below, we believe the Filing does not provide evidence to support how the reporting change would result in a material improvement of the fixed-income securities markets. Further, the Filing does not provide sufficient justification for the construction of the *de minimis* and manual trading exceptions. Given the limits of said exceptions, smaller broker-dealers like Falcon Square risk being driven out of the fixed-income markets due to prohibitive costs. For these reasons, we strongly urge that the SEC require the MSRB to revisit its proposal, especially as it relates to smaller firms and specialized trading activity for manual trades.

In general, it is unclear why there needs to be a reduction in reporting time for municipal securities to increase transparency and improve access to transaction data based on the data used to support the Filing. The Filing appears to extrapolate the effects of the 2005 change in reporting time (from the end of the trading day to 15 minutes after trade execution) to support the claim that a further reduction in reporting time would provide more market transparency and immediate access to data for the remaining 26.3% of trades that were not reported to the MSRB

[1] SEC Release No. 34-99402, File No. SR-MSRB-2024-01, *Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-14 To Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB* (Jan. 19, 2024), 89 Fed. Reg. 5384 (Jan. 26, 2024).

within one minute during 2022.[2] It is difficult to discern the significance of this value, however, as the Filing does not provide empirical evidence or statistical examples of the benefits of capturing the remaining 26.3% of trade reports within one minute, and does not measure any purported benefit against either the cost of removing smaller brokers from the market or the costs to comply with the revised reporting requirement. It is also unclear how implementing a one-minute (or 10-minute or five-minute) reporting time will reduce trading costs for investors, as the Filing provides no research or evidence to support that price discovery in the general market would improve with a reduced reporting timeframe.

The Filing also does not accurately acknowledge or address costs that broker-dealers would have to bear to either implement the automated reporting systems required by the rule or narrow the time incurred for manual trades (if seeking to utilize the manual trades exception). Though the MRSB provides certain cost estimates, such as those involved with revising policies and procedures in order to comply with the proposal,[3] the MSRB admits it does not have sufficient information to estimate other, more expensive costs (such as implementing a manual trade flag for each manual trade) due to a lack of available data.[4] Additionally, the MSRB purports that an ongoing technology subscription would cost an estimated $60,000 to $100,000 annually (depending on the activity level of the firm), but it is unclear from where this figure was derived.[5] For example, we estimate a smaller firm like ours would have to spend at least approximately half a million dollars more each year to establish and maintain an automated electronic system in order to meet the one-minute reporting requirement as proposed. The MSRB attempts to soften the financial blow by stating that the cost associated with an electronic trade reporting technology subscription "would generally be appropriately allocated among the various uses that a [firm] is likely to make of it," but claiming that a service has other potential uses is of no help to a firm that cannot afford it in the first place.[6]

As set forth above, the Filing does not adequately address the costs that smaller firms that do not qualify for the *de minimis* exception will be forced to bear to implement more sophisticated and expensive automated reporting systems, nor the anti-competitive results that would consequently follow if such firms were forced from the market because of such costs. The MSRB provides virtually no guidance as to the costs associated with reducing reporting times for manual trading processes like those we use to conduct trades, other than stating the "phase-in" period for manual trades "may reduce the need or the scale to pay for [] technology subscription costs."[7]

[2] Filing at 5, 35 – 36, 40 – 41, 89 Fed. Reg. 5385, 5393 – 5394, 5396.
[3] Filing at 51, 89 Fed. Reg. 5398 – 5399 (estimating between $6,720 and $11,200, depending on the activity level of the firm).
[4] Filing at 43 and 51 – 52 – 38, 89 Fed. Reg. 5395, 5399.
[5] Filing at 54 – 55, 89 Fed. Reg. 5399 – 5400.
[6] Filing at 54 – 55 and FN 90, 89 Fed. Reg. 5399 and FN 90.
[7] Filing at 55, 89 Fed. Reg. 5399.

While we support the logic behind a "limited trading activity" or *de minimis* exception,[8] the proposed 1,800-trade report threshold is far too low. The MSRB does not provide any support or analysis for why it determined to limit the *de minimis* exception threshold to 1,800 trades, other than referencing that dealers with less than 1,800 trades, who the MSRB has deemed to be "Dealers with Limited Trading Activity," conducted 1.5% of trades and 1.8% of par value traded in 2022.[9] This does not sufficiently explain what effect the trade reporting by Dealers with Limited Trading Activity has on the total market or its relevance to pricing or price discovery issues, nor does it explain the relevance of the chosen size of the *de minimis* exception to the data the MSRB collected on fixed income trade reporting by firms of different sizes.[10] This demonstrates the seemingly arbitrary nature of the 1,800 trades threshold. We request that the MSRB significantly expand the threshold for the *de minimis* exception or, at a minimum, conduct further analysis and provide data to support its proposal to limit the *de minimis* trading threshold to 1,800 trades.

If, after sufficient analysis is conducted to support any change to the current fixed income trade reporting requirements, a determination is made to amend the current rule, we support the concept of including an exception for "manual trades."[11] As a broker-dealer servicing institutional customers as an agent/riskless principal that provides customized high-touch execution services, the proposed exception addresses some of our concerns about the feasibility of executing and reporting trades that involve manual, human intervention within a shortened reporting timeframe. However, the manual trades exception as proposed by the MSRB does not address all of our concerns. In this regard, we note that the examples provided by the MSRB of the types of situations which would qualify for the manual trades exception cloud the water by appearing to apply conditions to the types of manual intervention which would trigger the exception. For example, a contemplated situation in the Filing that would meet the parameters of the manual trades exception is "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";[12] however, broker-dealers that are <u>not</u> dual-registrants also may manually allocate portions of a block trade. While the MSRB acknowledges that the list of qualifying situations it provides to illustrate the exception's specified criteria is not exhaustive, the reference to block transactions executed by a dually-registered broker-dealer/investment adviser could be read to establish a very precise condition to meet the exception. Because it would be difficult or impossible to address all of the potential trading and reporting situations that may involve

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[8] Filing at 15, 89 Fed. Reg. 5387.
[9] Filing at 41 – 42, 89 Fed. Reg. 5394 – 5395. Echoing what we have noted throughout this comment, the Filing did not provide sufficient data to evaluate this calculation. Even if the MSRB is correct that the 474 Dealers with Limited Trading Activity – defined in the Filing as firms that have conducted very little trading activity, to the tune of 1,800 trades or less – conducted enough trading to constitute 1.5% of <u>all</u> municipal trades in 2022, the MSRB did not provide any data to support its determination that 1,800 trades is the appropriate standard for its limited trading activity exception.
[10] Filing at 41 – 42, 89 Fed. Reg. 5394 – 5395.
[11] Filing at 18, 89 Fed. Reg. 5388.
[12] Filing at 21, 89 Fed. Reg. 5389.

manual intervention, Falcon Square strongly urges that, rather than attempting to identify certain scenarios that qualify for the exception, the MSRB should clarify that any manual intervention in the trade execution or reporting process qualifies for the manual trades exception.

A more pressing concern is the proposed "phase-in" of increasingly shorter trade reporting times for trades which qualify for the manual trades exception. As currently proposed in the Filing, the manual trades exception would only delay the inevitable reduction or elimination of smaller brokerage firms like ours from the fixed-income securities market. The Filing provides no rationale for the manual trades exception's phased-in time reduction for reporting from 15 minutes to 10 minutes to, ultimately, five minutes. In proposing the exception, the MSRB has recognized that fixed income securities transactions that involve manual intervention take longer than fully automated trades to complete the trade execution or reporting process,[13] specifically noting that "dealers executing voice trades and secondary market trades in newly issued securities may not be able to speed up the trade reporting process due to the manual nature of these trades, even with [] electronic trade reporting technology."[14] However, the MSRB does not provide any support for a need to reduce reporting time for manual trades from 15 minutes to five minutes, nor does the MSRB analyze how it is possible for "manual components" of the execution and trade reporting process to be speeded up by firms to meet a five-minute reporting requirement. In fact, the MSRB stated it "would not at this time be instituting [] a global security master in connection with the proposed rule change," even though firms noted that querying an information service provider to upload missing security master information "takes almost all of the [currently] allotted 15 minutes."[15] The only recommendation the MSRB provides in the Filing is that firms "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,"[16] which is not actionable advice that firms could follow to facilitate faster manual reporting.

Falcon Square is already reporting its trades as soon as practicable; however, confirming both the buy and sell sides of a transaction (which can involve multiple buyers or sellers for a single trade), the CUSIP number, size, price, yield, trade and settle dates, the name, the firm, and accrued interest (often with multiple parties); capturing execution data obtained either electronically or manually; performing risk management and regulatory compliance reviews; sending the trade data to our clearing firm for its own trade information matching and data reporting processes; receiving confirmation the data was received; and addressing any issues if counterparties are not matched appropriately are time consuming processes. We have been able to meet the 15-minute reporting requirement of the current rule on a consistent basis, but

[13] *See generally* Filing at FN 47 and 59 – 60, 89 Fed. Reg. 5389 at FN 47 and 5401 – 5402.
[14] Filing at 52 – 53, 89 Fed. Reg. 5399.
[15] Filing at 81 – 82, 89 Fed. Reg. 5407.
[16] Filing at 23 and 30, 89 Fed. Reg. 5389, 5391.

have little ability to further whittle down the time required to conduct the "manual components" of the aforementioned processes for all manual trades.

Given that the MSRB recognizes that certain types of trades may not be sped up "due to the manual nature of these trades,"[17] such as voice trades, it is unclear how firms with manual trade processes would realistically have any ability to comply with a five-minute reporting time requirement. As the MSRB "is not aware of any evidence that dealers are intentionally delaying trade reporting"[18] (even without an "as soon as practicable" requirement), there is little justification for a phased-in reduction of reporting time to ostensibly enhance information transparency. Additionally, the MSRB acknowledges in the Filing that it does not have data to support a reduction in reporting time to five minutes (or 10 minutes, for that matter), and that it will have to collect data to determine whether the five-minute trade reporting timeframe is feasibly constructed.[19]

We respectfully submit that the SEC must require the MSRB to collect data to support a reduction from the 15-minute reporting period for manual trades <u>before</u> it proposes a phase-in period. Currently, the Filing merely offers an empty promise to do so later, combined with a reduction in reporting time for manual trades which will take effect automatically if the MSRB does not act. As such, our fear is that the Filing will, over time, eliminate smaller fixed-income brokers like Falcon Square and harm the small and medium-size institutional clients that we serve due to an inability to realistically further reduce the time it takes to conduct these manual trade processes. If smaller brokerage firms like Falcon Square are forced out of the fixed income business, the overall market will also be negatively impacted from a pricing and liquidity perspective. We strongly urge the SEC to require the MSRB to reconsider the actual time spent to perform the processes associated with manual trades to determine whether a reduction from 15 minutes is necessary or even feasible.

[17] Filing at 52 – 53, 89 Fed. Reg. 5399.
[18] Filing at 52, 89 Fed. Reg. 5399.
[19] Filing at 50, 89 Fed. Reg. 5398 ("Lastly, any trade that meets the definition of a manual trade would be required to append a new trade indicator to such trade when reported to the MSRB, regardless of when the trade is reported. This trade indicator would help the MSRB identify the extent to which the market still operates manually and could help determine whether the proposed gradual reduction in timeframes proposed would be feasible to maintain or to continue reducing in the future.").

As outlined above, the proposed revisions would be cost prohibitive to smaller firms, be incredibly difficult to meet with more complex or involved manual fixed income trades as the "phase-in" period kicks in, and thus curtail customer access to the fixed income securities market. We strongly encourage the SEC to require the MSRB to revisit this proposal and consider the economic challenges of smaller firms before modifying the current rule.

Sincerely,

/S/
Melissa P. Hoots, CEO/CCO