



March 21, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number SR-FINRA-2016-004: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt FINRA Rule 0151 (Coordination with the MSRB) and Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice SR-FINRA-2016-004 (the “Notice” or “Proposal”) as filed by the Financial Industry Regulatory Authority (“FINRA”) with the Securities and Exchange Commission (the “SEC”) in connection with FINRA’s Notice of Filing and Immediate Effectiveness² and its companion Text of the Proposed Rule Changes.³ In the Notice, FINRA proposes to adopt FINRA Rule 0151 (Coordination with the Municipal Securities Rulemaking Board “MSRB”) and amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities). SIFMA and its members support the adoption of Rule 0151, but have grave concerns about the amendment to Rule 0150, and hereby request the SEC to institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² 81 Fed. Reg. 10306 (Feb. 29, 2016). See: <https://www.gpo.gov/fdsys/pkg/FR-2016-02-29/pdf/2016-04250.pdf>.

³ See: <http://www.finra.org/industry/rule-filings/sr-finra-2016-004>.

Rule 0151

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 added new Section 15A(b)15 to the Securities Exchange Act of 1934 (the “1934 Act” or “Exchange Act”).⁴ Section 15A(b)15 of the Exchange Act mandates that the rules of a national securities association require the association to (i) request guidance from the MSRB in interpretation of the rules of the MSRB,⁵ and (ii) provide information to the MSRB about the enforcement actions and examinations of the association, so that the MSRB may assist in such enforcement actions and examinations and evaluate the ongoing effectiveness of the rules of the MSRB. SIFMA and its members support this effort to codify the increase in coordination between FINRA and the MSRB. We believe proposed Rule 0151 reflects current practices, and that codification will only serve to make the MSRB’s rulemaking more effective, and increase the knowledge and effectiveness in FINRA examiners when conducting enforcement regarding municipal securities. Coordination between FINRA and MSRB is critical to consistent interpretation of the rules governing municipal securities. Also, coordination between the regulators ensures that municipal securities market regulations are enforced in accordance with the MSRB’s intent; this regulatory certainty benefits regulated brokers, dealers, and municipal securities dealers (“broker dealers”) and investors alike. Therefore, we support the proposed Rule 0151, as it benefits regulators, broker dealers and investors.

Rule 0150

In 1975, the MSRB was created by Congress under Section 15B of the 1934 Act.⁶ The 1975 changes to the 1934 Act gave the power to write rules regarding municipal securities transactions to the MSRB. The national securities association, NASD, now FINRA, has a longstanding history with rule provisions that specifically exempted their rules from municipal securities. It is not clear to SIFMA and its members what FINRA is trying to achieve with this proposed change to Rule 0150 at this time. The language in Rule 0150 that states the FINRA rules “do not apply to transactions in, and business activities relating to,” municipal securities is being replaced with “are not intended to be, and shall not be construed as, rules concerning transactions in” municipal securities. SIFMA and its members understand that the proposed amendments to Rule 0150(b) are intended to better align the language of the rule with the relevant language in Section 15A(f) of the Exchange Act. However, SIFMA and its members query whether this change is intended to alter the scope of FINRA’s authority relative to its member firms’ activities in municipal securities.

⁴ 15 U.S.C. 78o-3(b)15.

⁵ 15 U.S.C. 78o-4(b)(2).

⁶ Robert A. Fippinger, *THE SECURITIES LAW OF PUBLIC FINANCE*, § 9:1.4, at 9-28, (2nd ed.).

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It appears clear in the longstanding regulatory history that NASD Rule 0114, which was transferred to NASD Rule 0116, then consolidated into the FINRA rulebook as Rule 0150, has always maintained that FINRA rules are not intended to be, and shall not be construed to apply to transactions in, *and business activities related to* municipal securities.⁷ It appears that this proposed change alters or removes the prohibition on FINRA from writing rules on business activities relating to municipal securities. In the absence of evidence to the contrary, our members have expressed concerns that this amendment is a precursor to FINRA regulating its members' business activities related to municipal securities. Therefore, we object to the amendment to Rule 0150, and request that the SEC institute proceedings to approve or disapprove the amendment, based on the fact that it is a controversial change of regulation. SIFMA and its members would like to make their position clear that, of the self-regulatory authorities, it is the MSRB that is granted the authority to write rules for transactions in, and business activities related to, municipal securities, subject to the approval of the SEC. At this time, SIFMA and its members are not in favor of any change that would grant a self-regulatory authority, other than the MSRB, the power to make rules related to municipal securities.

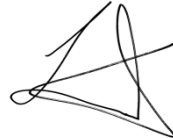
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⁷ See, NASD Rule 0116, available here: http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=2502, (emphasis added).

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We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at [REDACTED].

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Securities and Exchange Commission***
Jessica Kane, Director, Office of Municipal Securities
Rebecca Olsen, Deputy Director, Office of Municipal Securities
Financial Industry and Regulatory Authority
Cynthia Friedlander, Director, Fixed Income Regulation
Robert Mendelson, Attorney Fellow and Senior Advisor
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