



November 21, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

**Re: SR-MSRB-2011-19: Notice of Filing of a Proposed Rule Change
Consisting of Amendments to Rule G-16 on Periodic Compliance
Examination and Rule G-9 on Preservation of Records**

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC”) request for comment on the proposed rule changes filed by the Municipal Securities Rulemaking Board’s (“MSRB”) to MSRB Rule G-16 (Periodic Compliance Examination) and MSRB Rule G-9 (Preservation of Records).

I. Executive Summary

SIFMA agrees that periodic examinations of regulated entities are an important component of the regulatory oversight process and fully supports the MSRB’s goal to facilitate the modernization of the examination process for brokers, dealers, and municipal securities dealers (“Dealers”) that are members of the Financial Industry Regulatory Authority (“FINRA”) and to harmonize the examination cycle of Dealers’ municipal securities activities with the examination of other product activities by FINRA. Accordingly, SIFMA supports the proposed amendments to Rule G-16, which would allow FINRA and the MSRB to establish a risk-based compliance program consistent with FINRA’s requirement for cycle examinations of all other FINRA

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

members. However, SIFMA does not support the proposed amendments to Rule G-9, which would extend certain record keeping requirements from three years to four years. Such a change is not warranted to support the proposed changes to the frequency of the cycle examinations.

II. Risk-Based Cycle Examinations

While SIFMA believes the current examination cycle, permitting FINRA to examine Dealers' municipal securities activities at least once every two calendar years, appears to be working adequately, SIFMA supports the proposed rule change to facilitate the modernization of the examination process for Dealers and to permit greater flexibility in the administration of periodic compliance examinations in order to focus more closely on those Dealers that, by virtue of various "identified factors"², pose the greatest risk to investors and other market participants, as well as to the municipal securities market on a systemic basis. SIFMA believes that such "identified factors" should be specifically enumerated by FINRA and the MSRB after engaging in a dialog with interested market participants and that changes to a Dealer's examination cycle frequency should not be implemented until this process is complete. Additionally, since the voluminous real time transaction data received by the MSRB on a daily basis has allowed FINRA to develop "robust automated surveillance reviews of municipal securities transactions"³, it is critical that such data is leveraged to maximize the efficiency of on-site visits.

III. Additional Record Keeping is Burdensome and Not Necessary

SIFMA believes that the current three year/six year/and lifetime record keeping categories as set forth in MSRB Rule G-9 are sufficient and have long been an industry standard. We believe that the proposed four year recordkeeping requirement is unnecessarily burdensome for member firms. The MSRB's only stated reasoning for increasing the retention period for certain records is to mirror the proposed four year examination cycle. In order to function efficiently, Dealers should be subject to consistent record keeping requirements across product lines. Satisfying these regulations requires dealers to implement procedures, technology and training and a well-established standard such as the current one should not be changed without a more comprehensive discussion of all related issues, including cost estimates compared to the anticipated benefits. For example, requiring Dealers that will be examined on an annual

² MSRB Notice 2011-60

³ MSRB Notice 2011-60

basis (according to the yet-to-be-established risk-based examination cycle) to retain records for an additional year is simply a waste of resources.

Real time transaction data is available for review on a daily basis. When a periodic examination is conducted, FINRA reviews a sampling of transactions occurring during the period of review. The substantial costs of requiring additional record keeping for all Dealers (especially those Dealers that are examined on an annual or semi-annual basis) so that certain records would be available to review at those Dealers that are examined in year four of the proposed four year review cycle (i.e. Dealers with the smallest footprint or risk profile) should be weighed against the nominal benefit of allowing FINRA to review a few records from “year one” for that subset of Dealers. The MSRB, to our knowledge has not conducted any such cost-benefit analysis regarding the impact of the proposed rule changes. In any event, we expect that the on-site cycle examination would be focused on uncovering more recent rule violations (if any).

IV. Cost-Benefit Analysis

We note again that to our knowledge, the MSRB has not conducted a cost-benefit analysis regarding the impact of the proposed changes to Rule G-9. Record keeping is quite costly and any changes to a well established industry standard should not be implemented without carefully weighing the costs of such change to ensure the benefits outweigh the costs. Accordingly, we request that such a cost-benefit analysis be conducted prior to implementing the proposed changes to Rule G-9.

V. Implementation Period

Changes to any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that if the proposed changes to Rule G-9 are approved, the SEC and the MSRB provide for a reasonable implementation period of no less than one year to develop, test, and implement supervisory policies and procedures, as well as systems and controls, before the proposed changes to Rule G-9 become effective.

VI. Conclusion

SIFMA sincerely appreciates this opportunity to comment on the proposed changes to Rule G-16 (Periodic Compliance Examination) and Rule G-9 (Preservation of Records). SIFMA fully supports the MSRB’s initiatives to facilitate the modernization of the examination process for Dealers and to harmonize the examination cycle of Dealers’ municipal securities activities with the examination of other product activities by FINRA by allowing FINRA and the MSRB to establish a risk-based

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compliance program consistent with FINRA's requirement for cycle examinations of all other FINRA members. However, SIFMA does not support the proposed amendments to Rule G-9, which would extend certain record keeping requirements from three years to four years. Such a change is not warranted to support the proposed changes to the frequency of the cycle examinations.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,



David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board

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