MSRB
Municipal Securities
Rulemaking Board

December 12, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Response to Comments on File No. SR-MSRB-2011-19

Dear Ms. Murphy:

On October 13, 2011, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change consisting of amendments to Rule G-16, on periodic compliance examination, and Rule G-9, on preservation of records. The Commission published notice of the above-referenced rule filing[1] and, in response, received two comment letters, one from the Securities Industry and Financial Markets Association ("SIFMA") and another from the Investment Company Institute ("ICI").

The Commission has requested that the MSRB provide responses to these letters. The MSRB appreciates input from SIFMA and ICI and provides the following responses to their comments:

Comments on Periodic Compliance Examination

ICI supports the proposed changes to MSRB Rules G-16 and G-9. It commends the MSRB for continuing to refine its regulations and processes to enhance its effectiveness and the efficient deployment of its limited resources.

SIFMA agrees that periodic compliance examinations of regulated entities are an important component of the regulatory oversight process and supports the modernization of the examination process for brokers, dealers, and municipal securities dealers ("dealers") that are members of the Financial Industry Regulatory Authority ("FINRA").

---

[1] Release No. 34-65631 (October 26, 2011); 76 FR 67503 (November 1, 2011).

1900 Duke Street, Suite 600
Alexandria, VA 22314-3412
p 703 797 6600
f 703 797 6700
www.msrb.org

Further, SIFMA supports the goal of harmonizing the municipal securities examination cycle with the examination cycle for other products and, therefore, supports the proposed amendments to Rule G-16, which would permit FINRA and the MSRB to establish a risk-based examination program consistent with FINRA's overall cycle examination program.

SIFMA suggests that the risk factors identified by FINRA and the MSRB to determine dealers' examination cycles should be disclosed, after engaging in a dialogue with interested market participants and that the frequency of a dealer's cycle examination should not be changed until such disclosure and consultation with market participants. The MSRB notes that FINRA is the designated examination and enforcement authority for its members that are MSRB registered dealers and, although the MSRB provides advice and consultation on examination and enforcement matters, the authority for such examinations rests solely with FINRA for its member firms. While the MSRB has generally described in its filing with the Commission the considerations in determining the frequency of a dealer's examinations, such as the size and scope of its business, the MSRB believes it important to maintain the confidentiality of the specific risk factors and not make them a matter of negotiation. Moreover, the risk factors are dynamic, and additional risk factors may be utilized as new risks emerge and existing risks are mitigated by market conditions or business practices. It would therefore not be in the public interest to refrain from changing a dealer's examination cycle until there is disclosure and consultation with market participants.

Regulators must be positioned to fulfill their mission of investor protection by, among other things, properly and timely addressing risks that arise without an obligation to consult with regulated entities. Nevertheless, it is apparent that the largest, most active firms will be examined more frequently, and the less active firms generally will be examined less frequently. As the MSRB explained in the proposal, based on the analysis of the various identified risks and related factors, those firms that represent higher risks, as well as those firms that pose a systemic threat based on the scope and scale of their underlying municipal securities activities, would be examined annually.

SIFMA also suggests that transaction data collected by the MSRB be leveraged to maximize the efficiency of on-site examinations. The MSRB agrees that transaction reporting by dealers provides an important source of information regarding dealer activity in the municipal securities market. The information is, and will continue to be, of value in surveillance and examinations of dealers.

Comments on Preservation of Records

SIFMA opposes the proposed changes to MSRB Rule G-9 for the following reasons:

- The current recordkeeping requirements have long been an industry standard, and dealers should be subject to consistent recordkeeping requirements across product lines;
- A four year recordkeeping requirement would be unnecessarily burdensome in that a new obligation would require procedures, technology and training;
- No new obligation should be imposed without a cost/benefit analysis;
- The new obligation would be a waste of resources because it would require all dealers, not just those examined every four years, to keep certain records for four years, rather than three years;
- Retaining records for four years may not be necessary because on-site examinations would be focused on uncovering more recent rule violations, if any; and
- If the changes to Rule G-9 are approved, the effective date should be at least one year from the date of SEC approval, in order to provide dealers with an opportunity to modify their policies and systems to comply with the extended retention period.

SIFMA suggests that the current recordkeeping requirements of Rule G-9 have long been an industry standard and that dealers should be subject to consistent recordkeeping requirements across product lines. The MSRB believes that the proposed rule change is not a significant departure from current recordkeeping standards and will not impose an unnecessary burden on dealers that are already subject to a variety of different record retention requirements. Rule G-9 provides that, for dealers that are FINRA members, certain records must be maintained for three years, while other records must be maintained for six years or for the life of the enterprise. The proposal would extend the record retention obligation for certain records by one year. Consequently, dealers would retain records for four years, six years, or the life of the enterprise.

While FINRA's record retention requirements are substantially similar to the current version of Rule G-9, it recently changed the record retention rule for customer complaints, in light of its four year examination cycle. As of December 5, 2011, FINRA requires such records to be retained for four years, under FINRA Rule 4513. Consequently, FINRA members retain records for three years, four years, six years, or

the life of the enterprise. FINRA members that are also registered with the Commission as investment advisers may be subject to other record retention rules.

In a comment letter responding to FINRA's proposal to extend the customer complaint retention period from three years to four years, SIFMA raised concerns that are substantially similar to the concerns described in this letter. In particular, SIFMA commented that proposed FINRA Rule 4513 would be unnecessarily burdensome on dealers, that the only reason for the change was to require the retention of records consistent with FINRA's four year examination cycle, that dealers should be subject to consistent recordkeeping requirements, which require procedures, technology and training to implement, and that such a well-established three year record retention standard should not be changed without a more comprehensive discussion and a cost/benefit analysis. FINRA responded that the four year record retention requirement accommodates FINRA's four year examination cycle for certain members and serves a clear regulatory purpose.

In approving the rule change, the SEC stated that preserving customer complaint records for four years will promote FINRA's ability to supervise its members for compliance with the federal securities laws and FINRA's rules. The same rationale applies with regard to records required to be preserved for three years under Rule G-9. Retention of these records for one additional year is necessary to accommodate the four year examination cycle for certain FINRA-member dealers and serves a clear regulatory purpose.

The MSRB does not believe that the proposal to retain certain records for an additional year will impose an undue burden on dealers or require substantial changes to their systems or procedures, since the rule would merely require that the records be retained for one additional year, which is consistent with FINRA's new requirement for retaining customer complaints. Additionally, given the limited nature of the change proposed, a cost/benefit analysis is unwarranted, since the records are already being retained by dealers and any incremental storage cost and one-time transitional burden of modifying policies and systems should be relatively minimal for firms already in compliance with the existing MSRB and new FINRA recordkeeping rules, with such costs clearly outweighed by the necessity to accommodate the four year examination cycle for a significant number of FINRA members. If the records are unavailable, the examiners may not be able to perform their examinations effectively and comprehensively, resulting in a diminishment in the protections afforded by MSRB rules.

As to the contention that the four year retention requirement would be a waste of resources because it would require all dealers, not just those examined every four years, to retain such records, the MSRB believes this assertion is unsupported because the list of dealers examined every four years may change based on a regulatory tip, firm disciplinary history, growth of the firm or change in business model, or other factors. There is no set list of firms that will consistently be examined every four years. Moreover, for firms examined more frequently, each aspect of their municipal securities business may not be reviewed each cycle. Consequently, a longer retention period would permit examiners to focus on certain areas of the firm without fear that certain records would be unavailable at the next examination.

SIFMA also asserts that the rule change may be unnecessary because on-site examinations focus on more recent rule violations, if any. Even if SIFMA's assertion were true, it is important for dealers to preserve records for the requisite period, so that examiners may, as necessary, trace past activity and isolate problematic patterns or practices. Records, even if older than three years, provide examiners with an important audit trail of dealer activity.

Finally, SIFMA requests that, if the changes to Rule G-9 are approved, the effective date be at least one year from the date of SEC approval, in order to provide dealers with an opportunity to modify their policies and systems to comply with the new retention schedule. The MSRB believes that an extended effective date for Rule G-9 is appropriate but does not believe that a full year is necessary to comply with a new record retention period. Consequently, it requests that the SEC approve the changes to Rule G-16 with an immediate effective date and approve the changes to Rule G-9 with an effective date of six months from date of the SEC approval order.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lawrence P. Sandor
Senior Associate General Counsel

cc: Victoria Crane,
Division of Trading and Markets, SEC