



May 18, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Response to Comments on File No. SR-MSRB-2012-05

Dear Ms. Murphy:

On March 26, 2012, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change consisting of a restatement of an interpretive notice (the “Restated SMMP Notice”) concerning the application of MSRB Rule G-17 (on conduct of municipal securities and municipal advisory activities) to sophisticated municipal market professionals (“SMMPs”). The proposed rule change was published by the Commission for comment in the Federal Register on April 13, 2012, and the Commission received one response.¹ This letter provides the MSRB’s response to that comment letter.

SIFMA said that it fully supports the proposed rule change and, in particular, the harmonization of the Restated SMMP Notice with Rule 2111 of the Financial Industry Regulatory Authority (“FINRA”). SIFMA said that it is “pleased that the MSRB has clarified that there could be a harmonized compliance regime to allow an institutional customer to provide a single affirmation of their desire to exercise independent judgment in selecting investments to satisfy FINRA Rule 2111 for all products, including the MSRB’s requirements for SMMP status.”

The MSRB appreciates SIFMA’s comments and notes that the proposed rule change is indicative of the MSRB’s objective of harmonizing MSRB and FINRA rules to the extent that differences in the municipal securities market do not support different rules.

¹ See Exchange Act Release No. 66772 (April 9, 2012), 77 FR 22367 (April 13, 2012). Comments were received from the Securities Industry and Financial Markets Association (“SIFMA”).

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However, the MSRB would like to emphasize a point that it made in its filing of the proposed rule change. In one respect, the revised definition of SMMP would be identical to the language of FINRA Rule 2111. Both refer to an institutional customer that “affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the [dealer].” In its filing, the MSRB said, “This [affirmation requirement] would be consistent with the affirmation requirement of FINRA Rule 2111, so receipt by a dealer of the FINRA Rule 2111 affirmation would also satisfy this requirement.”

The other part of the revised definition of SMMP would provide that a broker, dealer, or municipal securities dealer (“dealer”) must have “a reasonable basis to believe [that an institutional customer] is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions in municipal securities.” The revised definition would also provide: “As part of the reasonable basis analysis . . . , the dealer should consider the amount and type of municipal securities owned or under management by the institutional customer.” FINRA Rule 2111 contains a similar, but not identical, requirement: “The member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities.” We emphasize that the language in the filing regarding the use of a FINRA Rule 2111 affirmation was not intended to suggest that a representation from an institutional customer would, by itself, satisfy the dealer’s reasonable basis obligation under the first prong of the revised SMMP definition.

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

Very truly yours,



Ernesto A. Lanza
Deputy Executive Director and Chief
Legal Officer