



November 12, 2013

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

Re: Release No. 34-70593; SR-MSRB-2013-07 (September 17, 2013)
Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on
Time of Trade Disclosure Obligations, Proposed Revisions to MSRB
Rule G-19, on Suitability of Recommendations and Transactions,
Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal
Market Professionals, and the Proposed Deletion of Interpretive
Guidance

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment to the Securities and Exchange Commission (“SEC”) on proposed rule changes consisting of proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the proposed deletion of interpretive guidance.

SIFMA continues to support the efforts by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles.² As the multiple rule proposals are interrelated, SIFMA also supports the packaging of these multiple rules changes into a single filing with the SEC. Additionally, SIFMA

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).

² See letters from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated, March 12, 2013, (regarding time of trade disclosure obligations) available at <http://www.sifma.org/issues/item.aspx?id=8589942417> and dated June 12, 2013, (regarding Sophisticated Municipal Market Participants) available at <http://www.sifma.org/issues/item.aspx?id=8589943988>.

supports the MSRB efforts to harmonize MSRB Rule G-19 with FINRA Rule 2111 – as current Rule G-19 had been harmonized with the predecessor rule to FINRA 2111, NASD 2310.³ However, SIFMA’s members believe that additional adjustments are warranted to these proposed rules and rule amendments to fully capture the current regulatory requirements. Further, additional time to implement certain rule changes is warranted. Additionally, certain aspects warrant further clarification from the MSRB.

I. Executive Summary

As detailed below, SIFMA believes the following topics warrant amendments to the MSRB’s rule proposals:

- Proposed MSRB Rule G-47: This rule should reflect that a substantially different time of trade disclosure obligation exists when a dealer is selling a bond to a customer vs. purchasing a bond from a customer. Customers should know the characteristics of the bonds they own.
- Amendments to MSRB Rule G-19: The proposed six month implementation period is unreasonably and unnecessarily short. A one year implementation period is warranted.
- Cross referencing of Rules G-19, G-47, and G-48: A dealer’s reduced duties to sophisticated municipal market participants (“SMMPS”) should be reflected within the rules governing a dealers obligations to non-SMMP customers.

As detailed below, SIFMA believes the following topics warrant additional clarification from the MSRB:

- Proposed Rule G-47: Clarifying the circumstances when a preliminary official statement (“POS”) can satisfy a dealer’s time of trade disclosure obligations for a new issue.
- Proposed Rule G-47: Clarifying that information barriers are not required to be breached.
- Proposed Rule G-47: Clarifying that time of trade disclosures do not need to be made to customers who hold discretionary accounts.

³ See letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated, May 6, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589943988>.

- Rule G-17 Interpretive Notices: Existing time of trade interpretative guidance, whether or not being codified into Rule G-47, should be archived and remain accessible.

II. Request for Additional Modifications

i. Proposed Rule G-47: Disclosure Obligations for Sales to Customers vs. Purchases from Customers

In MSRB Notice 2013-04⁴, the MSRB made no distinction between the dealer's time of trade disclosure obligation for sales to customers and purchases from customers. In response to SIFMA's comments, the MSRB, in its filing with the SEC has modified that view by stating:

Although recent time of trade disclosure guidance focuses on sales of municipal securities to customers, certain earlier guidance requires dealers to make disclosures in connection with both sales to and purchases from customers, and that guidance remains in effect. The MSRB believes, from a fair dealing perspective, that it is difficult to categorically exclude purchases from customers. Significantly, [sic] SIFMA [sic] have pointed out instances where disclosure to a customer selling a bond would be appropriate. Therefore, the MSRB proposes to retain the disclosure requirement for purchases from customers. However, in response to this comment, *the MSRB proposes to add the following sentence to the rule to clarify that whether the customer is purchasing or selling is a factor that can be considered in making the materiality determination: "Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material."*(emphasis added)

The MSRB's proposed modification is a welcomed first step, yet does not go far enough. SIFMA's members continue to believe that: 1) Proposed Rule G-47 should recognize that a substantially different time of trade obligation and analysis exists in these circumstances – and is more than a “factor” or “may be a consideration”; and 2) Proposed Rule G-47's “Disclosure Obligations in Specific Scenarios” *may not be applicable at all* when a customer seeks to sell its holdings. Accordingly, we request that Proposed Rule G-47 be further modified with the inclusion of supplementary material explaining these differences (as detailed in SIFMA's comment letter to the MSRB⁵). Otherwise enforcement regulators may expect that the same research of all material facts must be conducted by dealers and conveyed to customers on a bond by bond basis when

⁴ MSRB Notice 2013-04, Request for Comment on Codifying Time of Trade Disclosure Obligation (February 11, 2013), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx?n=1>.

⁵ Many disclosures that are relevant when a customer is deciding whether to buy or hold bonds (for example: interest rate risk, economic outlook for an issuer) are simply not relevant for a customer who has already decided to sell a bond. Other considerations may be more relevant (the existence of a call in the near future, which could either benefit or disadvantage the customer) In any event, the facts that are material are clearly **different**.

purchasing municipal securities from customers, or assisting them in selling those securities as agent.

Additionally, since existing, and most recent, MSRB guidance primarily focuses on time of trade disclosure obligations when a dealer is *selling* a municipal bond to a customer⁶ (with very limited guidance issued covering situations when a bond is being purchased from a customer⁷), SIFMA members have enhanced their compliance systems to improve quality of the required disclosures. Most of this system development and training has focused on dealer sales practices. Accordingly, enforcement should be commensurate.

ii. Amendments to Rule G-19: Effective Date

As discussed in our comment letter to the MSRB, FINRA 2111 was the result of a multi-year process – including an implementation period of approximately 19 months⁸. Any regulatory scheme takes time to implement properly. Municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training. Municipal securities dealers that are FINRA members will also need time, albeit less than non-FINRA members, to implement the proposed changes to Rule G-19. Therefore, SIFMA requests an implementation period, which would be no less than one year from approval by the SEC, before the Proposal becomes effective. The six month implementation period proposed by the MSRB is unnecessarily and unrealistically brief given the scope of the necessary training and system changes required.

⁶ See MSRB Notice 2010-37 (September 20, 2010), MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations when *Selling* Municipal Securities in the Secondary Market (emphasis added), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-37.aspx?n=1>. See also MSRB Notice 2011-67, *supra* note 4 (“On September 20, 2010, the MSRB and FINRA issued reminder notices to brokers, dealers and municipal securities dealers (“dealers”) of their sales practice obligations when *selling* municipal securities in the secondary market (the “2010 Notices”). The 2010 Notices reiterate MSRB interpretive guidance issued to dealers in prior years, including MSRB Notices 2002-10 (the “2002 Notice”) and 2009-42 (the “2009 Notice”), which were filed with the Securities and Exchange Commission (“SEC”)” (citations omitted and emphasis added).

⁷ See MSRB Interpretation of February 18, 1993 (Put option bonds: safekeeping, pricing), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=3#_E02C6245-CBC5-4B0C-85E3-EFBCA76963FF. See also MSRB Interpretation of April 30, 1986 (Description provided at or prior to the time of trade), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=3#_9D2E1273-8A20-4E4A-9258-533D9281F890. And see MSRB Interpretation June 12 1995 (Transactions in Municipal Securities with Non-standard Features Affecting Price/Yield Calculations), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_E02C6245-CBC5-4B0C-85E3-EFBCA76963FF.

⁸ In November 2010, the SEC approved FINRA Rule 2111 (Suitability), which became effective on July 9, 2012.

iii. Cross Reference of Rules G-19, G-47, and G-48

One of the MSRB's objectives in codifying certain Rule G-17 interpretive guidance into separate rules is to provide clarity to investors, dealers, and regulators. SIFMA believes that having Rule G-19, and proposed Rules G-47 and G-48 cross reference each other furthers this objective – and accordingly again requests such cross referencing. We note that FINRA's suitability rule, FINRA 2111, has similar provisions with respect to institutional accounts. SIFMA's members would prefer the MSRB to explicitly include the sophisticated municipal market participant ("SMMP") exemption in G-19 as with the institutional account exemption in FINRA 2111(b). Additionally, since a dealer does not have a time of trade disclosure obligation to disclose material information that is reasonably accessible to the market to SMMPs, we believe the omission of this statement within the new rule governing time of trade disclosure obligations risks unnecessary regulatory confusion.

III. Request for Additional Clarifications

i. Proposed Rule G-47: Time of Trade Disclosure Obligations for New Issues

In connection with marketing new issues of municipal securities to customers, dealers have relied upon MSRB guidance that providing a preliminary official statement ("POS"), when available, to a customer "can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-17, depending upon the accuracy and completeness of the POS as of the time of trade."⁹ In practice, under appropriate circumstances, dealers have either delivered or provided "one or two click" customized hyperlink access to a POS to fulfill their time of trade disclosure obligations. In response to SIFMA's comments regarding the access to or delivery of the POS to satisfy a dealer's time of trade obligation, the MSRB, in its filing with the SEC stated:

This comment does not sufficiently differentiate between Rule G-32, on disclosures in connection with primary offerings, and Rule G-17, which are two separate and distinct obligations. The guidance cited by SIFMA states that a POS can serve as a primary vehicle for *providing* the required time-of-trade disclosures but does not state that providing *access* to a POS would be sufficient. The MSRB has not stated that access to a POS, or to all material information regarding a security and transaction, is sufficient to satisfy the Rule G-17 time of trade disclosure obligation. Rather, the MSRB has explained that whether providing access to material information is effective disclosure is determined by the specific facts and circumstances. Supplementary material .01 (b) and (c) does not preclude the disclosure of material information by delivery of a POS to the customer, assuming the POS contains all material information and assuming the means of disclosure are effective.

⁹ MSRB Notice 2009-28 (June 1, 2009) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-28.aspx?n=1>.

A POS contains the most comprehensive description of a bond's characteristics at the time of a new issue, including risk factors. SIFMA believes that providing access to a POS, whether on EMMA or some other electronic platform, through a customized hyperlink, or by physically delivering a POS to a customer, can satisfy a dealer's time of trade obligation for new issues of municipal securities. Providing excerpts or summaries of the information in a POS for time of trade disclosure purposes, rather than the POS itself (or access to it), creates a considerable risk of having dealers misinterpret or inadequately summarize the information available where a POS is made available to investors. SIFMA requests that the MSRB affirm that a POS *can* serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-47, depending upon the accuracy and completeness of the POS as of the time of trade.

ii. Proposed Rule G-47: Disclosure of Material Information

Proposed Rule G-47 defines in Section (b) (ii), material information as "Information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." While the MSRB has declined to modify this definition to explicitly exclude unpublished price sensitive information ("UPSI"), sometimes also referred to as non-public material information, we request that the MSRB affirm that such information barriers do not need to be dismantled in order to provide time of trade disclosures. Often a public finance department may be aware of a yet to be announced ratings change, planned tender offer, or an impending, not yet public, refunding transaction. Broker-dealers routinely impose information barriers between investment bankers and trading personnel to prevent insider trading in advance of a new offering, and we do not believe Proposed Rule G-47 should require those barriers to be dismantled. We believe this affirmation would be consistent with existing time of trade disclosure obligations and securities laws generally.

iii. Proposed Rule G-47: Applicability of Discretionary Account Holders

SIFMA also requests that the MSRB affirm that time of trade disclosures of material information, while required for recommended and non-recommended/self-directed trades, need not be given to customers that hold discretionary accounts. This would be consistent in the way that both customers and dealers expect such accounts to operate.

iv. Rule G-17: Retention of Existing Time of Trade
Disclosure Interpretive Notices

SIFMA requests that existing time of trade disclosure interpretive notices, whether being expressly codified into proposed rule G-47 or not, be archived and preserved. The MSRB indicates it believes this would not advance its goal to streamline the rule book. To the contrary, SIFMA believes that there are nuances contained in these interpretive notices spanning over 30 years of guidance that brokers, dealers, and municipal securities dealers have long relied upon and therefore should be preserved.

For example, the MSRB has proposed to delete interpretive guidance from 2002 that clarifies the provision of electronic access to material information is generally consistent with a dealer's obligation to disclose such information in the context of an electronic trading platform. Based on this guidance, many broker-dealers have made significant investments over time to increase the overall breadth and depth of security specific information made available to customers through their online trading platforms. Deleting this guidance would result in undue uncertainty regarding the delivery of effective disclosure on an electronic trading platform notwithstanding the MSRB's own recognition in its response to comments that use of electronic disclosure is now widely accepted. This ambiguity, in turn, could result in costly changes to existing systems, changes to the online experience for customers, or even changes to the types of offerings made available online.

Additionally, these interpretive notices govern dealers' conduct through the date the SEC approves Rule G-47. Such notices will need to be accessible for regulatory examinations and enforcement actions.

IV. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon these proposals. Subject to the proposed refinements suggested above, SIFMA supports the proposed rules and rule changes to the extent they provide clarity to regulated entities.

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

Sincerely yours,



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