



Municipal Securities
Rulemaking Board

April 29, 2014

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20540-1090

Re: Response to Comments on File No. SR-MSRB-2014-01

Dear Secretary:

On January 29, 2014, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC”) a proposed rule change consisting of proposed revisions to MSRB Rule G-30, on prices and commissions, and the deletion of Rule MSRB G-18, on execution of transactions (the “proposed rule change”).¹ The SEC published the proposed rule change for comment in the Federal Register on February 19, 2014,² and received two comment letters.³ This letter responds to those comment letters.

The proposed rule change would codify the substance of the MSRB’s existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”). It would streamline the MSRB’s Rule Book by making non-substantive changes to consolidate Rules G-18 and G-30 into a single fair-pricing rule and to consolidate and codify existing fair-pricing interpretive guidance under Rules G-17 and G-30 into the same single rule.

SIFMA expresses its general support of the rulemaking initiative. SIFMA states that it “continues to support the MSRB’s efforts to promote regulatory efficiency” through the consolidation of its rules. SIFMA states that it, accordingly, “is generally supportive of this rule consolidation which preserves the substance of existing fair pricing requirements.” At the same time, SIFMA suggests the MSRB modify the proposed rule change in some respects and expresses concerns about the timing of the proposed rule change.

¹ See File No. SR-MSRB-2014-01 (Jan. 29, 2014), Exchange Act Release No. 71536 (Feb. 12, 2014).

² See 79 FR 9558 (Feb. 19, 2014).

³ Comment letters were submitted by the Securities Industry and Financial Markets Association (“SIFMA”) and Seth M. Yarmis.

Additional Fair and Reasonable Pricing Factors

In proposing to codify the substance of existing interpretive guidance into the consolidated fair-pricing rule, Rule G-30, the MSRB has included a non-exhaustive list of relevant factors used in determining the fairness and reasonableness of prices. SIFMA suggests that a sentence of subparagraph .02(b) of the Supplementary Material to proposed Rule G-30 be amended to clarify that this list is non-exhaustive: “Other factors include (but are not limited to)” (proposed additional language underlined). SIFMA also suggests that the MSRB amend this list of factors to include all factors discussed in existing MSRB interpretive guidance, and refers to two factors that are not listed in the proposed rule language identically as they appear in the interpretive guidance: “improved market conditions” and “trading history.” SIFMA believes that inclusion of these factors in the text of the rule is necessary because its “members’ experience with enforcement regulators is that a factor listed in the rule is given more weight than an equally relevant, or arguably more relevant factor that is not contained in the rule.”

As discussed in the rule filing, the MSRB believes that the substance of the interpretive guidance is codified in the proposed amendments to Rule G-30. The MSRB, nevertheless, agrees with SIFMA’s suggestion to amend subparagraph .02(b) of the Supplementary Material, and is filing an amendment concurrently with the submission of this response. The existing rules and interpretive guidance do not purport to exhaustively identify all relevant factors. And, according to the prefatory clause in subparagraph .02(b) – “Other factors include” – the list of factors is (and was intended to be) non-exhaustive. SIFMA’s suggested clarification that the list of factors is not limited is, therefore, consistent with the substance of the existing rules and guidance and the limited scope of this rulemaking initiative to codify existing interpretive guidance. Moreover, as stated in the rule filing, the MSRB will archive the interpretive guidance that would be deleted from the MSRB Rule Book, current as of January 1, 2013, on its website. To the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it would remain potentially applicable, depending on the facts and circumstances of a particular case.⁴ On these grounds, the potential relevance of the “improved market conditions” and “trading history” factors, if the proposed rule change as amended were to be approved, would remain unchanged. We also note that proposed Supplementary Material .02(a) encompasses the concept of “improved market conditions.” Subparagraph .02(a) refers to the “yield on other securities of comparable quality, maturity, coupon rate, and block size *then available in the market*” (emphasis added).

Suggested Substantive Changes to Fair-Pricing Obligations

SIFMA states that the MSRB should use this, and all other rulemaking initiatives, to consider substantive modifications to its rules and interpretive guidance. SIFMA

⁴ See File No. SR-MSRB-2014-01 (Jan. 29, 2014), at p. 4.

suggests several substantive changes in its response to the MSRB's request for comment on the proposed rule change.⁵

The MSRB, however, does not believe that all rulemaking activity requires consideration of substantive changes and the MSRB has discretion to define the scope of its individual rulemaking initiatives. The MSRB determined that the objective of this initiative was to codify -- not substantively change -- the existing fair-pricing requirements. The limited purpose of the proposed rule change is to improve the ability to locate, understand and comply with fair-pricing standards. The MSRB request for comment, accordingly, apprised commenters of the limited scope of the initiative. The request for comment stated that the proposed rule change would "codif[y] interpretive guidance" and "preserves the substance of the existing fair-pricing requirements."⁶ The request for comment further stated that the purpose of the proposed rule change is to consolidate guidance to "ease the burden" on market participants who are seeking to "understand, comply with, and enforce fair-pricing requirements."⁷ In another recent rulemaking initiative within the MSRB's same overall plan to streamline its Rule Book, the SEC afforded the MSRB discretion in narrowly limiting the scope of the initiative to the organization of rules and codification of interpretive guidance.⁸ The SEC acknowledged the MSRB's responses to some commenters' requests for substantive changes that they were outside the scope of the initiative, and the SEC approved the proposed rule change.⁹

We note that the MSRB followed a suggestion by SIFMA in response to the MSRB request for comment to make a non-substantive change to include a description of the relationship between mark-up, current inter-dealer market prices, and compensation in order to avoid confusion. The clarifying language was drawn from existing guidance and advanced the rulemaking initiative's objective to make existing fair-pricing requirements easier to understand.

⁵ See Letter dated September 20, 2013 from David L. Cohen, Managing Director, Associate General Counsel SIFMA, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board.

⁶ Request for Comment on Proposed Fair-Pricing Rule, MSRB Notice 2013-15 (Aug. 6, 2013).

⁷ *Id.*

⁸ See Exchange Act Release No. 71665 (Mar. 7, 2014), 79 FR 14321 (Mar. 13, 2014).

⁹ *Id.*

The MSRB values all comments that may be relevant to its statutory charge to improve its rules and the municipal securities market, and will take all of SIFMA's additional, substantive suggestions under advisement for future rulemaking initiatives.

Draft Best-Execution Rule

In February of 2014, after the filing of the proposed rule change, the MSRB published a request for comment on a draft best-execution rule.¹⁰ SIFMA states that the MSRB's draft rule regarding best-execution for transactions in municipal securities has "interplay" with the MSRB's fair-pricing standards and that the MSRB should submit a single rule filing encompassing both rules so that market participants could comment on a single rule filing. This rulemaking initiative, however, need not be delayed on this basis.

Any potential interplay between a best-execution rule and fair-pricing rules would be unchanged by this non-substantive codification of the MSRB's existing fair-pricing requirements. Concerns about any interplay, therefore, can and should be raised and addressed in the context of any future rulemaking process for the proposed best-execution rule, which would involve substantive changes to dealers' existing obligations. Whether the MSRB's pricing standards are organized in two rules and various interpretative guidance or, instead, in one rule has no impact on the issue of any interplay between order-handling and pricing obligations. A single proposed rule change would, therefore, be unnecessary for interested persons to raise concerns about any potential interplay.

Delaying the review of the proposed rule change would not provide the SEC with any additional information that would aid its review of this proposal of limited scope or serve any other beneficial purpose that cannot be adequately served in any future rulemaking process for a best-execution rule. A delay, however, would prolong the MSRB Rule Book consolidation initiative designed to ease the burden on market participants who are seeking to understand, comply with, and enforce fair-pricing requirements.

Other Comments Received

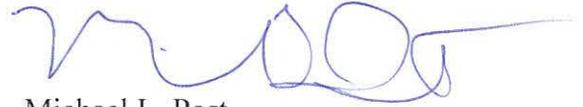
The MSRB received one comment letter from an individual investor who expressed concerns about the mark-ups he has observed in municipal securities transactions and inquired about the possibility of establishing a centralized electronic trading platform for municipal securities. The MSRB greatly appreciates input from individual investors and the commenter's letter touches on areas that the MSRB is monitoring. These comments, however, are outside the scope of the current rulemaking initiative to streamline the Rule Book by non-substantively codifying existing fair-pricing standards, and the MSRB, accordingly, will take these comments under advisement for future rulemaking initiatives.

¹⁰ See MSRB Notice 2014-02 (Feb. 19, 2014).

Secretary
April 29, 2014
Page 5

If you have any questions regarding this matter, please contact Benjamin Tecmire, Counsel, or me at (703) 797-6600.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Post", with a long horizontal line extending to the right.

Michael L. Post
Deputy General Counsel