

## VIA ELECTRONIC MAIL

September 29, 2014

Kevin M. O'Neill  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. SR-MSRB-2014-07, Notice of Filing of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on transactions with Sophisticated Municipal Market Professionals ("SMMP"), and Rule D-15, on the Definition of SMMP

Dear Mr. O'Neill:

On August 20, 2014, the Municipal Securities Rulemaking Board (MSRB) filed a proposed rule change establishing a best execution requirement for retail customer transactions in municipal securities (Proposed Rule Change).<sup>1</sup> The Proposed Rule Change would require brokers, dealers, and municipal securities dealers to use reasonable diligence to ascertain the best market for the subject municipal security and then transact in that market. The Proposed Rule Change applies a best execution standard to the municipal securities market that is similar to FINRA's best execution standard for the equity and corporate debt markets.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI previously responded to MSRB's August 6, 2013 request for comment on whether to adopt a best execution standard for municipal securities transactions.<sup>3</sup> As we previously stated, FSI supports efforts to enhance transparency and improve pricing for retail investors in the municipal securities market. FSI also supports the MSRB developing a best execution standard that is focused on order-handling and transaction-execution. However, FSI members are concerned about how the standard will be enforced and how they will be expected to document compliance with the requirements. We describe these concerns in greater detail below.

### Background on FSI Members

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<sup>1</sup> Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals ("SMMP"), and Rule D-15, on the Definition of SMMP, 79 Fed. Reg. 53,236 (Sept. 8, 2014) (hereinafter "Proposed Rule Change").

<sup>2</sup> The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has more than 100 Broker-Dealer member firms that have approximately 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

<sup>3</sup> See Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, FSI, to Ronald W. Smith, Corporate Secretary, MSRB (October 7, 2013), available at <http://www.msrb.org/RFC/2013-16/FinancialServicesInstitute.pdf>.

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.<sup>4</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>5</sup> Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

### Comments

FSI appreciates the opportunity to comment on the MSRB's Proposed Rule Change. FSI supports MSRB's efforts to improve the transparency, efficiency and structure of the municipal securities market for retail investors. We support a principles-based best execution standard because it will serve to improve confidence in the municipal securities market and help ensure that investors receive fair and reasonable prices. However, FSI members are concerned that the flexibility provided by the Proposed Rule Change in adopting best execution policies and procedures will lead to uncertainty regarding how the requirements will be enforced by regulators. FSI member

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<sup>4</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>5</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

firms are interested in guidance detailing how they should document compliance with the reasonable diligence standard of the best execution rule. Finally, FSI encourages MSRB to undertake a cost-benefit analysis of the Proposed Rule Change pursuant to its Policy for Integrating Economic Analysis in MSRB Rulemaking.<sup>6</sup> These items are discussed in greater detail below.

- **Documenting Compliance** – Many FSI members operate as introducing broker-dealers in the secondary municipal markets. They route customer orders to their clearing firms for handling and execution. These firms perform post-trade oversight of the execution of their customers' orders by the clearing firm. FSI members are concerned that, in light of the relative illiquid nature of the municipal securities market, the factors to be considered do not necessarily allow for a quantitative post-trade review of execution quality. FSI members fear that this uncertainty regarding documentation expectations will establish an enforcement regime that is inconsistent with MSRB's regulatory intent.

Absent clear guidance, introducing broker-dealers will not be able to confidently perform this oversight to ensure compliance with regulatory expectations. FSI members are interested in understanding how examiners will be conducting reviews to determine compliance with the Proposed Rule Change. As examinations for compliance with MSRB rules are conducted by a different self-regulatory organization, our members believe that guidance from MSRB will provide the necessary clarity to both firms and regulators on how trade execution is to be evaluated pursuant to the principles based approach outlined in the rule. This clarity will in turn allow these introducing brokers to conduct post-trade oversight of their clearing firms in accordance with regulatory expectations.

- **Comprehensive Economic Analysis** – FSI and its members were encouraged by MSRB's adoption of its Policy for Integrating Economic Analysis in MSRB Rulemaking. As we have previously stated, we believe the approach to cost-benefit analysis described in the policy represents a significant commitment to additional transparency and more effective rulemaking. As such, FSI believes that prior to approving the Proposed Rule Change, MSRB should publish a cost-benefit analysis to determine whether the changes would have consequences for liquidity in the municipal securities market which would impact retail investors. While the terms of MSRB's economic analysis policy exclude its applicability to this rulemaking, FSI believes that the significance of the Proposed Rule Change merits a detailed analysis of all costs of compliance and investor protection benefits.<sup>7</sup>

### Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the MSRB on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at

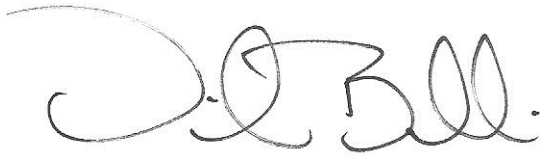
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Respectfully submitted,

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<sup>6</sup> Municipal Securities Rulemaking Board, Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx>.

<sup>7</sup> See Proposed Rule Change, *supra* note 1, at 53,246 fn. 34.

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.  
Executive Vice President & General Counsel