MSRB
Municipal Securities Rulemaking Board

November 21, 2014

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments on SR-MSRB-2014-07

Dear Secretary:

On August 20, 2014, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("SEC") a proposed rule change consisting of proposed Rule G-18, on best execution, and proposed amendments to Rules G-48 and D-15, on sophisticated municipal market professionals ("SMMPs") (the "proposal"). The SEC published the proposal for comment in the Federal Register on September 8, 2014[1] and received six comment letters.[2] This letter responds, as appropriate, to the comments, many of which are substantially similar to previous comments on the related MSRB requests for comment.[3] Previous comments are addressed in the filing discussing the proposal, which filing is fully incorporated by reference.

Most commenters generally continue to support the initiative to establish best execution for the municipal securities market. FSI supports efforts to enhance transparency and improve pricing for retail investors in the municipal securities market, and to develop a best-execution standard that is focused on order handling and transaction execution. Wells Fargo commends the

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1 *See* Exchange Act Release No. 72956 (Sep. 2, 2014), 79 FR 53236 (Sep. 8, 2014) ("SEC Notice").

2 *See* letters from Michael Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated September 29, 2014; BDA, dated October 30, 2014; Chris Melton, Executive Vice President, Coastal Securities ("Coastal"), dated September 29, 2014; David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute ("FSI"), dated September 29, 2014; David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 29, 2014; and Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC ("Wells Fargo"), dated September 29, 2014.

3 BDA, Coastal, FSI, SIFMA, and Wells Fargo submitted comments in response to MSRB Notice 2013-16 (Aug. 6, 2013) (requesting comment on whether to require dealers to adopt a "best execution" standard for municipal securities transactions) ("Concept Proposal"), and all of the commenters, except for FSI, submitted comments in response to MSRB Notice 2014-02 (Feb. 19, 2014) (requesting comment on a draft best-execution rule, including an exemption for transactions with SMMPs) ("Request for Comment").

MSRB's effort to tailor best-execution obligations to the characteristics of the municipal securities market. Similarly, BDA believes the MSRB has taken the correct approach in seeking to craft an execution diligence rule for the municipal securities market that imposes on dealers the same kind of duties they have in the trading of debt securities in the corporate market under Financial Industry Regulatory Authority ("FINRA") Rule 5310. SIFMA also supports developing a higher execution standard for the municipal securities market that is structurally similar to FINRA Rule 5310, and it believes the MSRB has thoughtfully developed and proposed revisions to proposed Rule G-18 that reflect the unique characteristics of the municipal securities market that warrant certain departures from FINRA's rule. Some commenters, however, suggest that the MSRB modify the proposal in certain respects and request additional guidance and/or clarification on aspects of the proposal, as discussed more specifically herein.

Proposed Rule G-18

Use of "Best Execution"

Proposed Rule G-18, on best execution, is an order-handling and transaction-execution standard, under which the goal of the dealer's reasonable diligence is to provide the customer the most favorable price possible under prevailing market conditions. SIFMA, BDA and Wells Fargo do not support the use of the phrase "best execution" in multiple instances in the proposed rule, including the title. Specifically, SIFMA and BDA are concerned that regulatory examiners and enforcement staff will use the phrase to enforce standards that are not applicable to the municipal securities market and contrary to the MSRB's stated intent that "the most favorable price possible" will not necessarily be equated with the term "best execution." Wells Fargo also believes that the most favorable price possible will not necessarily mean "best execution," and that the term correlates with the equity securities market and is inconsistent with the fundamental goal expressed within the proposed rule. Similarly, BDA believes using a term borrowed from standards applicable to other markets that operate very differently from the municipal securities market is inappropriate. SIFMA and BDA suggest removing the word "best" in certain instances and replacing "best execution" with "execution diligence" in proposed Rule G-18, and Wells Fargo suggests replacing it with "reasonable diligence."

Paragraph .01 of the Supplementary Material indicates that proposed Rule G-18 is not intended to create a substantive pricing standard, but rather an order-handling standard for the execution of transactions, and it explains that the principal purpose of the proposed rule is to promote dealers' use of reasonable diligence in ascertaining the best market for the subject security and buying or selling in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Moreover, this paragraph expressly provides that, as characteristic of any reasonableness standard, a failure to have actually obtained the most favorable price possible will not necessarily mean the dealer failed to use reasonable diligence under the circumstances. Finally, "best execution" is an established term for the concept of execution quality in customer securities transactions in other contexts, and the

standard in those contexts is similarly not a most-favorable-price standard.[4] SIFMA's and BDA's concerns that regulatory examiners and enforcement staff will use the phrase to enforce standards that are not applicable to the municipal securities market and are inconsistent with the MSRB's stated intent that "the most favorable price possible" will not necessarily be equated with the term "best execution" are speculative in nature, and the MSRB does not believe they warrant changes to the proposed rule language.

Definition of "Market"

Proposed Rule G-18 is designed to be harmonized generally with FINRA Rule 5310 for purposes of regulatory efficiency but appropriately tailored to the characteristics of the municipal securities market. BDA acknowledges that proposed Rule G-18 uses similar operative language as FINRA Rule 5310, but it believes the proposed rule creates a more expansive and almost unknowable application when compared to the FINRA rule. In particular, BDA highlights that FINRA Rule 5310 states, "the term 'market' or 'markets' is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security," and it believes the key to this definition is the concept of a venue or market center – a forum in which particular securities are traded. BDA further believes proposed Rule G-18 broadens the concept of "market" beyond FINRA Rule 5310 because it does not limit the term to market centers or what FINRA Rule 5310 would consider venues, and any dealer or other counterparty in the country could potentially constitute a market that needs to be considered. Therefore, BDA is concerned that this definition requires dealers to locate the one counterparty that will pay the best price, not the best market center, and that such a duty is greater than that required under FINRA Rule 5310 and too burdensome to impose. Similarly, Coastal believes this definition creates an undue burden, and it suggests revising proposed Rule G-18 to be more consistent with FINRA Rule 5310.

Paragraph .04 of the Supplementary Material to proposed Rule G-18 defines "market" with some differences from the corresponding definition in FINRA Rule 5310, including a specification that the definition could include other dealers. The proposed definition, however, is appropriate, even as compared to FINRA Rule 5310. First, FINRA states that its definition of "market" or "markets" is to be construed *broadly* to encompass a variety of different venues, including, *but not limited to*, market centers.[5] Additionally, FINRA's rule provides that, in the absence of quotations, "members are not relieved from taking reasonable steps and employing

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4 *See* FINRA Rule 5310 (requiring best execution for equity and corporate debt securities); *Staff of the Commission, Study on Investment Advisers and Broker-Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, at 28-29 (Jan. 2011), *available at* **www.sec.gov/news/studies/2011/913studyfinal.pdf** (explaining investment advisers' obligation to seek best execution of clients' securities transactions where they have the responsibility to select broker-dealers to execute client trades, and the factors they should consider to comply with the standard).

5 *See* Paragraph .02 of the Supplementary Material to FINRA Rule 5310.

their market expertise in achieving the best execution of customer orders," and, "[i]n these instances, a member should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (*e.g.*, other firms that the member previously has traded with in the security)."[6] BDA states that, "[i]n the experience of [its] members, when they are trading corporate debt securities that are not frequently traded in any centralized trading exchange, the practical responsibility of the dealer is to maintain reasonable policies and procedures to make sure that they are checking with the right kinds of dealers and counterparties to ensure that they are obtaining the best pricing." Therefore, as the MSRB has observed, although FINRA Rule 5310 includes certain concepts and requirements that are more applicable to transactions in equity securities, particularly those that are a part of the electronically interconnected national market system, the rule also applies to transactions in corporate debt securities and contemplates situations of limited accessibility to quotations in such securities, requiring the more expansive interpretation of the term "market." Proposed Rule G-18, including the definition of "market," is designed to address similar circumstances that arise in the municipal securities market, while accounting for the distinct differences in the structure of that market and the various alternative venues in which transaction execution can be achieved.

Further, the MSRB does not believe the definition of "market" creates a duty for dealers to use reasonable diligence to locate the one counterparty that will pay the best price. As noted above, proposed Rule G-18 is an order-handling and transaction-execution standard, it does not contain any substantive pricing standard, and paragraph .01 of the Supplementary Material expressly provides that a failure to have actually obtained the most favorable price possible will not necessarily mean the dealer failed to use reasonable diligence under the circumstances. The number of counterparties and/or other markets the dealer should consider would depend on the analysis of the factors articulated in proposed Rule G-18(a), and any other facts and circumstances that would contribute to a dealer's identification of the best market.

Number of Markets Checked

Proposed Rule G-18(a) includes a non-exhaustive list of factors that a dealer must consider when exercising reasonable diligence to ascertain the best market to buy or sell a security in a transaction for or with a customer. SIFMA requests that the number of markets checked factor be deleted from proposed Rule G-18. First, SIFMA states that, unlike equity securities markets with a central aggregator of bids and offers, there is no direct continuously-quoted, bid-and-ask trading market between bond dealers in the municipal securities market, so the mere act of contacting other dealers for quotes on fixed income securities does not necessarily result in a more timely or beneficial execution, and could have the effect of moving the market away from the customer. Second, SIFMA believes the number of markets checked is covered by another factor – "the information reviewed to determine the current market for the subject security or similar security." Finally, SIFMA believes the number of markets checked factor is inconsistent with paragraph .04 of the Supplementary Material to proposed Rule G-18,

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6 *See* Paragraphs .03 and .06 of the Supplementary Material to FINRA Rule 5310.

which defines "market" and acknowledges that a dealer itself as principal may be the best market to satisfy best execution for the subject security.

While the structure of the municipal securities market is different than the equity securities market structure of exchanges, that difference does not necessarily reduce the value of a dealer checking multiple markets, as defined by Proposed Rule G-18, to ascertain the best market for executing customer transactions. In the proposed rule, the number of markets checked is only one factor in the non-exhaustive list of factors to be considered, and no single factor is determinative. Depending on the particular facts and circumstances, it could be consistent with the reasonable-diligence standard for a dealer not to contact other dealers. However, it would be important, given the proposed rule's emphasis on complying with sound policies and procedures, for a dealer to have written policies and procedures in place that address such circumstances.

In proposed Rule G-18, the reasonable-diligence factor on the information reviewed to determine the current market for the subject security or similar securities is included to tailor the rule to the municipal securities market. This factor helps guide the use of reasonable diligence when, for example, there are no available quotations for a security. It also takes into account that dealers may use information about similar securities and other reasonably-relevant information. Although SIFMA does not object to this factor, which it believes encompasses the number of markets checked factor, SIFMA opposes the explicit inclusion of the number of markets checked factor in proposed Rule G-18(a). The MSRB believes it is important to explicitly include the number of markets checked factor to further the objective of promoting fair competition among dealers.

The MSRB does not believe that the number of markets checked factor is inconsistent with the definition of "market" in paragraph .04 of the Supplementary Material to proposed Rule G-18. Although paragraph .04 explicitly states that the dealer itself as principal could be the best market, it does not indicate that such a dealer would always be the best market for purposes of best execution, and, depending on the facts and circumstances, the exercise of reasonable diligence to comply with the proposed rule likely would regularly require a dealer to check other markets in addition to its own inventory. For this and the other reasons stated above, the MSRB is not deleting this factor from the non-exhaustive list of factors in proposed Rule G-18(a).

Securities with Limited Quotations or Pricing Information

Coastal believes proposed Rule G-18 erroneously presumes retail customers "turn in market orders to purchase specific municipal bonds in the secondary market" and, consequently, imposes unnecessary regulatory burdens on selling dealers. To support its position, Coastal informally polled a small group of dealers, from which it concludes that there are rarely orders on the sell side of the municipal securities market that would benefit from requiring a dealer to complete a process demonstrating best execution. Coastal, therefore, questions the flexibility of the proposed best-execution standard and believes the additional requirements of paragraph .06 of the Supplementary Material are unnecessary, and it suggests that proposed Rule G-18 be revised to be more consistent with FINRA's best-execution rule.

The application of the proposed best-execution standard does not hinge on whether a customer places a market order or on whether a customer has identified a particular municipal security. While many customer orders in the municipal securities market are placed in response to offerings made by sellers out of their own inventories, there are customer-initiated orders in the market as well, which may not be captured by a small, non-random sampling. The MSRB also notes that a significant benefit of the flexible best-execution standard embodied in proposed Rule G-18 is the ability to apply to an evolving market over time.

Furthermore, paragraph .06 of the Supplementary Material is consistent with FINRA Rule 5310. The paragraph requires written policies and procedures that address how the dealer would make its best-execution determinations in cases of limited quotations or pricing information. The FINRA rule, with which the MSRB has generally harmonized, does not contain further prescriptions than proposed Rule G-18 in this area. Paragraph .03 of the Supplementary Material of the FINRA rule reiterates to FINRA member firms that, in the case of limited quotations, firms are not relieved from taking reasonable steps to achieve best execution of customer orders. Including such reiterative language would not materially add to proposed Rule G-18, which already contains the core requirement that dealers use reasonable diligence and is tailored to the characteristics of the municipal securities market.

Enforcement Concerns

Proposed Rule G-18(a) would require dealers to use reasonable diligence in seeking to obtain for their customer transactions the most favorable terms available, and whether a dealer would be viewed as having used reasonable diligence would depend in part upon the non-exhaustive list of relevant factors. SIFMA and Wells Fargo express several concerns with how the proposed rule would be enforced.

First, SIFMA states that the non-exhaustive list of factors creates a *de facto* enforcement checklist for FINRA. Second, SIFMA questions how compliance with the number of markets checked factor can be proved. Further, SIFMA states that enforcement regulators might challenge a dealer's compliance with best-execution obligations with the benefit of hindsight that other trades for the same CUSIP were at marginally better prices. Finally, SIFMA suggests codifying the MSRB's view, as noted in the SEC Notice, that proposed Rule G-18 is not intended to create a trade-through rule by adding the following provision to paragraph .01 of the Supplementary Material: "A failure to consider a superior price available on another market would not necessarily constitute a violation of the rule."

The mandatory factors listed in proposed Rule G-18(a) would be considered in any examination and/or enforcement activities by regulators, but no single factor would be determinative, and other facts and circumstances could be considered as well in determining whether a dealer has used reasonable diligence. Additionally, at this time, the MSRB is not providing any specific guidance addressing how compliance with the number of markets checked factor could be proven. The MSRB notes that it would be important, given proposed Rule G-18's emphasis on complying with sound policies and procedures, for a dealer to have written policies

and procedures in place that articulate how the dealer would exercise reasonable diligence, which should, at a minimum, include consideration of the number of markets checked factor, as well as the others listed in the proposed rule. Proposed Rule G-18 is designed to allow flexibility for each dealer to adapt its policies and procedures to be reasonably related to the nature of its business, including its level of sales and trading activity and the type of customer transactions at issue. Further, the reasonable diligence standard would be sufficiently flexible to be met by a diverse population of dealers and would allow a dealer to evidence that it had been sufficiently diligent in a manner that could be different from that used by another dealer.

Under the broad standard in proposed Rule G-18, the subsequent discovery of a market that had better prices than the market in which a dealer executed a customer transaction would inform a dealer's development of its policies and procedures and periodic review of them under Paragraph .08 of the Supplementary Material. However, as SIFMA notes, a failure to consider such a market would not necessarily constitute a violation of the proposed rule, and, as provided in proposed Supplementary Material .01, a failure to have actually obtained the most favorable price possible would not necessarily mean that the dealer failed to use reasonable diligence. Therefore, the MSRB does not believe revision of the proposed rule language is necessary at this time.

Wells Fargo is concerned that paragraph .02 of the Supplementary Material, which indicates that the level of resources maintained by a dealer should take into account the nature of the dealer's municipal securities business, including its level of sales and trading activity, could create confusion in the area of enforcement if firms are held to different execution standards. Proposed Rule G-18 establishes only one best-execution standard for all dealers in the municipal securities market – "to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions." Paragraph .02 of the Supplementary Material, similar to FINRA Rule 5310(c), addresses the need for dealers to devote adequate resources towards meeting their best-execution obligations, while acknowledging that a "one-size-fits-all" approach to staffing is not required.

Requests for Guidance/Clarification

Some commenters request guidance and/or clarification regarding proposed Rule G-18. First, BDA, FSI and Wells Fargo all request guidance on how to comply with the proposed rule generally, as well as in more particular circumstances, and how to evidence that compliance to regulators. Additionally, BDA and Wells Fargo request guidance and clarification on certain aspects of the proposed rule, relating to the definition of "similar securities," the execution of customer transactions, and securities with limited quotations or pricing information.

At this time, the MSRB is not revising proposed Rule G-18 to include any more prescriptive provisions, as doing so could negate the benefits of a principles-based rulemaking approach. While the MSRB understands the desire on the part of dealers for concrete steps to follow for their particular business models, such a prescriptive rule might undermine the

flexibility the rule is designed to provide. If proposed Rule G-18 is approved, the MSRB plans to provide practical guidance on complying with the best-execution standard prior to implementation of the proposal, in coordination with FINRA, with the aim to establish consistent guidance on the application of best-execution standards in both the municipal securities and corporate debt markets.

Proposed Amendments to Rules G-48 and D-15

The proposed amendments to Rules G-48 and D-15 to effectuate the exemption from the best-execution obligation for transactions with SMMPs should facilitate transactions in municipal securities and help perfect the mechanism of a free and open market in municipal securities by avoiding the imposition of regulatory burdens where they appear not to be needed. SIFMA supports the exemption from the best-execution obligation for transactions with SMMPs, as it is in alignment with the treatment of SMMPs under existing MSRB rules and is consistent with the focus of the SEC's 2012 Report on the Municipal Securities Market on retail investors and the recommendations to improve market information available to them. SIFMA, BDA and Wells Fargo, however, have concerns with the proposed amendments to Rule D-15, which defines an SMMP and describes the conditions under which a dealer may benefit from modified obligations for such customers under Rule G-48.

Public Comment

SIFMA and Wells Fargo express concerns that the MSRB did not request public comment on the proposed amendments to Rule D-15 prior to filing the proposed rule change. Additionally, both of these commenters believe the SEC should have provided a lengthier comment period, and Wells Fargo believes this aspect of the proposal should be withdrawn until such additional time is provided.

The SEC determines the length of the public comment period following publication of an SEC notice of a proposed self-regulatory organization ("SRO") rulemaking, and it provided 21 days for comment on the proposal, specifically soliciting comment on the proposed amendments to Rules G-48 and D-15.[7] Any additional solicitation of comments, prior to the SEC's publication of a proposed rule change, by an SRO, such as the MSRB, is not required.[8] In recognition of the potential breadth and depth of interest in commenting on the development of the first explicit best-execution rule for the municipal securities market, the MSRB provided two rounds of public comment, focusing first on the concept of applying such a standard to customer transactions in municipal securities and, second, evaluating specific rule language articulating

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7 *See* SEC Notice, *supra* note 1, 79 FR at 53246-47.

8 *See* Item 5 of SEC Form 19b-4, 17 CFR 249.819 (explaining how to complete Form 19b-4 if comments were not or are not to be solicited). Additionally, MSRB Rule A-8, which outlines MSRB rulemaking procedures, does not require the MSRB to solicit comment.

that standard. The issues related to the proposed amendments to Rules G-48 and D-15 are derivative of changes in response to comments and are consistent with well-established requirements applicable to qualification as an SMMP. Therefore, the MSRB does not believe the proposed amendments to those rules warrant the use of a fourth round of comment in this rulemaking matter.

Economic Analysis

If approved, amended Rule G-48 would relieve dealers of their best-execution obligations for transactions with SMMPs, and amended Rule D-15 would revise the elements of the affirmation required by customers to qualify as SMMPs. SIFMA believes the MSRB did not comply with its Policy for Integrating Economic Analysis in MSRB Rulemaking ("Policy") in proposing the amendments to Rule D-15, and FSI encourages the MSRB to undertake a cost-benefit analysis of the proposed amendments pursuant to its Policy.

The proposed amendments to Rule D-15 that arose during the rulemaking process were not included in the Request for Comment and, accordingly, were not addressed in the preliminary economic analysis for proposed Rule G-18 and the proposed amendments to Rule G-48. Further, the MSRB's Policy, announced on September 26, 2013, does not apply to rulemaking initiatives, like this one, that were initially presented to the MSRB Board of Directors before September 26, 2013. Nevertheless, the MSRB has been particularly mindful of potential costs and burdens of the proposal, and indeed the proposed exemption for transactions for or with SMMPs is one such example. Although no economic analysis of the proposed amendments to Rule D-15 is required pursuant to the Policy, the MSRB, as appropriate, has provided additional analysis in response to the commenters' concerns noted herein. The MSRB, however, does not believe that the proposed amendments fundamentally alter the conclusions of its preliminary economic analysis.

By articulating a best-execution obligation for dealers of municipal securities, proposed Rule G-18 would address the need for an execution standard that promotes execution quality in a manner that is consistent with the execution standards applied to customer transactions in other types of securities markets. Some of the costs associated with compliance with proposed Rule G-18 would be reduced in the aggregate due to the exemption for transactions with SMMPs, as compared to an alternative approach in which there was no such exemption. Accordingly, the MSRB believes the costs of the amendments to Rule D-15 must be evaluated in light of the overall cost mitigation that flows from the existence of the SMMP exemption.

SMMP Customer Affirmation

To qualify as an SMMP under the proposed amendments to Rule D-15, the customer would have to affirm that it is exercising independent judgment in relation to several of the modified dealer obligations when dealing with an SMMP, including best execution, under the proposed amendments to Rule G-48. A few commenters have concerns with the new affirmation

requirements and the corresponding costs associated with the proposed amendments to Rules G-48 and D-15.

SIFMA and Wells Fargo have concerns regarding the invalidation of existing SMMP customer affirmations covering current modified dealer obligations after the effective date of the proposal. Additionally, in its October letter, BDA states that its members believe that some institutional investors will be unwilling to provide an affirmation that has the effect of excluding their transactions from the application of a best-execution rule. Accordingly, BDA suggests bifurcating the affirmation into an initial affirmation to qualify a customer as an SMMP for all modified dealer obligations except best execution, and a second affirmation to qualify a customer as an SMMP specifically for the application of best execution. Additionally, BDA and Wells Fargo generally believe the costs of the proposed amendments to Rule D-15 outweigh the benefits.

The MSRB believes it is important for the affirmation to be unified and speak to all of the modified dealer obligations. The MSRB believes that unnecessary inefficiencies and additional burdens on dealers would result from a piecemeal approach, under which dealers would potentially have different customers that are SMMPs only with respect to several different permutations of modified dealer obligations. This belief is supported by SIFMA's statement that, if the SEC approves the proposed amendments to Rule D-15 as is, or even if the affirmation did not need to be unified, some of its members would prefer a unified affirmation, as it would be much easier to implement and administer. Further, the MSRB believes that, if a customer is not prepared to be treated as an SMMP in all respects, then the customer likely should not be treated as an SMMP at all. This would be true for both piecemeal and bifurcated affirmations. Overall, the MSRB believes the unified approach to the affirmation provides greater protection to investors, as it would help ensure that dealer obligations would be modified only for transactions with customers that are knowingly willing to have their dealer subject to the several reduced obligations provided in Rule G-48. Further, the MSRB believes that this added protection, as well as the mitigated costs of compliance with the best-execution obligation provided by the SMMP exemption, would justify the costs of requiring dealers to obtain new affirmations from all SMMP customers, including existing SMMPs.

SIFMA, BDA and Wells Fargo also have concerns regarding the operational impact of deharmonizing the SMMP qualification process from the FINRA Rule 2111 process and precluding dealers from satisfying the SMMP affirmation requirement by receiving a FINRA Rule 2111 affirmation. BDA and Wells Fargo believe this contradicts the MSRB's stated goal to seek harmony with FINRA rules, when it revised the SMMP standards previously. SIFMA believes an SMMP customer affirmation that mirrors FINRA's affirmation process as closely as possible makes the most economic sense, encourages cross-over investors and eases dealer compliance regimes. Further, SIFMA believes the costs of maintaining separate affirmation systems for institutional accounts across product lines will be unduly burdensome. Accordingly, SIFMA proposes an alternative revision to Rule D-15, only adding the requirement that customers affirmatively indicate that they are capable of evaluating "execution quality" in addition to investment risks and market value to qualify as an SMMP.

The MSRB does not believe the proposed amendments to Rule D-15 would inappropriately deharmonize the rule from FINRA's affirmation or contradict the MSRB's established position on customer affirmations. Previously, the MSRB stated that it "considers it desirable from the standpoint of reducing the cost of dealer compliance to maintain consistency with FINRA rules, absent clear reasons for treating transactions in municipal securities differently."[9] Consistent with this goal, the proposed amendments to Rule D-15 are aligned to harmonize with FINRA Rule 2111 but with adjustments associated with the SMMP exemption from the best-execution obligation, as well as the other modified dealer obligations currently covered by Rule G-48. FINRA Rule 2111(b) and paragraph .07 of the Supplementary Material thereto provide an institutional investor exemption to the suitability obligation of member firms under that rule, which is similar to the existing exemption dealers have from the suitability requirement of MSRB Rule G-19 under Rule G-48(c). But neither FINRA Rule 2111 nor any other FINRA rule provides a similar exemption from best execution or any other obligations for its member firms comparable to those included in Rule G-48. Further, no commenter has expressed an objection to the proposed exemption from best execution under Rule G-48, and BDA and SIFMA have explicitly endorsed it in comments in response to the Request for Comment[10] and the SEC Notice. Therefore, the MSRB believes clear reasons exist for the proposed amendments to Rule D-15 to vary from FINRA's affirmation under FINRA Rule 2111, as the amendments would facilitate the exemption supported by commenters and mitigate the burden of compliance with proposed Rule G-18 by reducing the number of customers to which the obligation would apply. Additionally, the MSRB believes the proposed amendments to Rule D-15 would enhance protections to customers by addressing the full scope of modified obligations that dealers would be relieved of performing, providing clear disclosure to SMMPs regarding the modified dealer obligations and obtaining affirmative statements that SMMPs can, for example, exercise independent judgment in performing the evaluations related to best execution, suitability and the other modified dealer obligations. Accordingly, the MSRB believes that any changes to dealer affirmation systems made in an effort to comply with the proposed amendments to Rule D-15 would be justified by the need to tailor the rule to the particular interests and characteristics of the municipal securities market, which are not reflected in FINRA rules.

Finally, SIFMA identifies a negative consent letter to institutional customers as an alternative approach to using a customer affirmation for qualification as an SMMP. BDA and Wells Fargo similarly favor a negative consent approach for SMMPs effectively to opt out of SMMP status. The MSRB believes a negative consent letter to institutional customers would not be an appropriate alternative, as it would be important for customers to take *affirmative* action to be treated as an SMMP.

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9 Exchange Act Release No. 66772 (Apr. 9, 2012), 77 FR 22367 (Apr. 13, 2012).

10 *See* letters from BDA, dated October 7, 2013; BDA, dated March 21, 2014; and SIFMA, dated March 13, 2014.

Implementation Period

The MSRB has requested an implementation date one year after the Commission approval date, which it believes would allow dealers sufficient time to develop or modify their policies and procedures and to acquire or adjust the level of their resources as necessary. It also would allow time for the MSRB to provide additional guidance on complying with the best-execution standard; establish consistent guidance, in coordination with FINRA, on the application of a best-execution standard in the municipal securities and corporate debt markets; create educational materials; and conduct outreach to the dealer community, as appropriate, regarding the new rules, if approved. SIFMA supports the one-year implementation period for proposed Rule G-18 and the proposed amendments to Rule G-48; however, if the SEC approves the proposed amendments to Rule D-15, SIFMA requests an additional six-month implementation period for the changes to Rule D-15.

If the SEC approves the proposal, including the proposed amendments to Rule D-15, the MSRB believes a one-year implementation period would be sufficient for dealers to comply. Specifically, the MSRB believes one year would be adequate for dealers to develop systems, establish policies and procedures, conduct training and obtain the expanded customer affirmations. The MSRB believes the new best-execution obligation would buttress and complement the MSRB's existing substantive pricing standards and foster compliance with those standards, helping to ensure that investors receive fair and reasonable prices and to improve execution quality for investors in municipal securities, while promoting fair competition among dealers and improving market efficiency.

If you have any questions regarding this matter, please contact me or Carl Tugberk, Assistant General Counsel, at (703) 797-6600.

Sincerely,

Michael L. Post

Michael L. Post
Deputy General Counsel