



April 17, 2015

Brent Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE.  
Washington, DC 20549

**Re: File Number SR-MSRB-2015-02: MSRB Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to the MSRB Rule G-14 RTRS Procedures, and the Real-Time Transaction Reporting System and Subscription Service**

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to comment on the Municipal Securities Rulemaking Board’s (the “MSRB”) proposed amendments to the MSRB Rule G-14 RTRS Procedures, the Real-time Transaction Reporting System (“RTRS”) and subscription service as filed with the Securities and Exchange Commission (“SEC”).<sup>2</sup>

**I. Background**

SIFMA would like to commend the MSRB regarding the methodical manner in which the MSRB has proceeded with obtaining input regarding these proposed changes. However, SIFMA and its members continue to have concerns about the costs of certain proposed changes, relative to their assumed benefits, particularly related to the changes to flagging certain dealer compensation arrangements and the ATS indicator.

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<sup>1</sup> The Securities Industry and Financial Markets Association (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). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> 80 Fed. Reg. 16466 (Mar. 27, 2015) (the “Filing”).

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As described in our prior comment letters<sup>3</sup> to the MSRB, SIFMA and its members support the concept of transparency, and have been very supportive of some of the MSRB's past transparency initiatives, such as the MSRB's Electronic Municipal Market Access ("EMMA") website, which launched March 31, 2008. There have been a series of initiatives over the past five years that have brought significant changes in the amount of information municipal securities brokers, dealers and municipal securities dealers ("broker-dealers") are required by the MSRB to report, including reset information on variable rate demand obligations and auction rate securities, variable rate securities documents, and new issue security information. These changes each were monumental increases in transparency in the municipal securities market, particularly when combined with the move to real-time trade reporting on January 31, 2005.<sup>4</sup> SIFMA feels that the SEC should compel the MSRB to provide statistics to show that investors are actually using this vast amount of new information and that investors feel this new information is helpful to their investment decisions. More information just because "more information is better" can actually be harmful by causing investor confusion and obscuring material information.<sup>5</sup>

We continue to have some specific concerns about these proposals. We believe that some of these proposals will be misleading to investors and drive up transaction costs in the industry. We feel the benefits of some of these proposals do not measure up to the costs and burdens they will impose upon the broker-dealers who will be required to send this information to the MSRB. Each significant change in transparency is driven by a change in reporting requirements, which not only costs the reporting broker-dealers time and money to change their systems, but also adds costs related to additional personnel to undertake the new reporting, surveillance, and supervision. One set of changes may take years to completely implement and to reduce any error or late rates to a minimal number. Over the past few years, however, the information required to be reported to the MSRB on new

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<sup>3</sup> See letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 15, 2013 (regarding MSRB Notice 2013-02 (January 17, 2013)), letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated November 1, 2013 (regarding MSRB Notice 2013-14 (July 31, 2013)), and letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated September 25, 2014 (regarding MSRB Notice 2014-14 (August 13, 2014)), (collectively, the "Prior Letters").

<sup>4</sup> The Bond Market Association's website [investinginbonds.com](http://investinginbonds.com) was the first website to offer the MSRB's real-time trade reports. For almost a year it was also the only website on which investors could get municipal securities trade information for free.

<sup>5</sup> See, e.g., SEC Chair Mary Jo White discussing investor information overload here: <http://www.sec.gov/News/Speech/Detail/Speech/1370539878806#.UnM-Xr7D-1t>.

issues and trades has been continually changing. We suggest that the MSRB allow time for the full impact of the recent changes to be absorbed by the market before making further significant changes to the amount of information required to be reported to the MSRB by dealers. The industry deserves a fighting chance to achieve reasonable efficiency in programming mainframes, testing data flow and bandwidth, developing new policies and procedures, and retraining staff.

We also don't know the full impact of the downstream effects of these proposals. For example, changes to the trade reporting and dissemination systems are not simple and isolated tasks. Many times in the past, a change to one system at one firm has had consequences that ripple throughout that firm's other systems and its out-bound and in-bound processes. Also, the initial costs for any systems changes do not include other significant costs associated with additional surveillance, personnel, and system-fixes from the unintended consequences of these changes. These proposed changes collectively would cost each member of the broker-dealer community at least hundreds of thousands of dollars to make, and many millions of dollars industry-wide. And this does not take into account recurring surveillance, supervision and maintenance. While we cannot precisely report what these changes would cost to implement, our members do have some collective experience with other similar changes<sup>6</sup> and have reported to the MSRB our best estimates.

## **II. New Indicator of Customer Trades Involving Non-Transaction-Based Compensation Arrangements**

SIFMA and its members feel that in order to provide the users of trade transparency products information about valid reasons for variations in trade prices, there should be an indicator to indicate trades with non-transaction-based compensation arrangements. SIFMA and its members acknowledge that this information would be helpful for transparency purposes, but feel that there is a more cost efficient alternative than the MSRB's proposal. We feel the most efficient way of implementing a change to achieve this goal would be for the MSRB to disseminate information it already collects: whether a trade is done as agent or as principal, and whether the MSRB has added commission in to "normalize" agency trades. Principal trades typically involve transaction-based compensation. Dealers are already required to report to the MSRB any commissions charged on agency trades, which is incorporated by the MSRB into the trade price to "normalize" it with principal trades. Trades that have non-transaction-based compensation are typically agency trades; those agency trades

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<sup>6</sup> Similar recent changes include adding the reporting of asset-backed securities to Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE") system.

without commission charges could be flagged by the MSRB as not having transaction-based compensation. It is important to point out that some fee arrangements are hybrid in nature, and incorporate a small transaction-based component as well as a non-transaction-based component. Although we have stated in our Prior Letters that we feel it would be sufficient to require dealers to report this indicator as an “M code” and for the MSRB to disseminate this indicator, we do have some concerns about firms’ ability to promptly identify these trades and meet 15-minute trade reporting requirements.

Importantly, these non-transaction-based compensation arrangements are private agreements between the investment manager and its clients, and the information about the account and trade type is typically not resident in the systems that handle trade reporting. This problem is particularly acute for third party agents who handle trade reporting for introducing broker dealers, as the information on the type of account and trade is further remote. Upon further reflection, broker dealers implementing this amendment are having a very challenging time conceptualizing automating this process. Potentially, each account and trade would need to be researched by the reporting entity and a flag manually put on the impacted trades. The infrastructure cost to provide such information would potentially outweigh any potential benefits.

If the SEC and MSRB proceed ahead with these proposed changes, we feel there is a technical issue that should be addressed. As stated in the filing, the relevant definition states “Non-transaction-based compensation arrangement transaction’ means for the purposes of this rule a transaction with a customer that does not include a mark-up, markdown or commission.” Just because there is no mark-up, markdown or commission does not necessarily mean that a non-transaction-based compensation arrangement was involved; another possibility is that the trade is as a result of a movement of securities between affiliated broker dealers. For example, among affiliated dealers, all inventory risk positions may be held at one broker dealer. When a sales representative of one affiliated broker dealer sells a bond out of its customer inventory held in related broker dealer, the bonds can transit through an internal distribution chain from where inventory is held, through the retail broker dealer and then to the customer. In this example, the revenue in the transaction may be captured in the sale of the bonds between affiliates, and the sale from the affiliated retail broker dealer to its customer is done flat. Under the proposed rule change, broker dealers who move securities internally from inventory through affiliates would have to mark the sale from its retail broker dealer to its customer with the proposed new “non-transaction-based compensation arrangement” indicator, even though there is no non-transaction-based compensation arrangement present.

SIFMA suggests there is a better definition for the types of trades we believe the MSRB is trying to capture, so that the trades in the example above don’t inadvertently get included. We suggest language such as the following: “Non-

transaction-based compensation arrangement transaction' means for the purposes of this rule, a transaction with a customer that does not include a mark-up, markdown or commission in a customer account that is subject to an arrangement that does not provide for dealer compensation to be paid on a transaction-based basis.”

Overall, this proposed amendment is the most difficult and costly part of the proposed amendments, as we believe the original alternative we proposed captures the vast majority, if not all, of the trades at issue with minimal costs to the industry.

### **III. Market of Execution**

To reiterate our comments in our Prior Letters, with respect to market of execution, the MSRB proposes that for those ATSs that take a principal position between a buyer and seller, the ATS and the dealers that transact with the ATS would be required to include the ATS indicator on trade reports. SIFMA feels that this is unnecessary and unduly burdensome. As an alternative, as the MSRB already knows what ATS firms take a principal position between a buyer and a seller, the MSRB can flag trades with those entities as ATS trades, just like it currently flags trades between dealers and municipal securities broker's brokers.

The MSRB also proposed that in instances where an ATS connects a buyer and seller but does not take a principal or agency position between those parties and does not have a transaction reporting requirement, the dealers that transact with each other as a result of using the services of the ATS would be required to include the ATS indicator on trade reports and also report information that identifies the ATS used. SIFMA does recognize that the MSRB has a legitimate interest in determining ATS participation in the market, and likely has no other way to get this information on a real-time basis. Although flagging these trades would be a significant operational and administrative burden, we agree the burden is minimized for the broker-dealer community as the change is merely in an “M code”.

Concerns have recently arisen about the expansion of the use of M codes. We note that only one M code is permitted per transaction. Firms are concerned about the relative hierarchy of each potential M code on a trade, as a trade may have multiple applicable M codes. With that in mind, we understand that the MSRB currently has a matrix of M codes, for those instances where multiple M codes are necessary, but only the one field is available. We do ask that if the SEC approves the proposed amendments in the MSRB's Filing, that the MSRB release the new M code matrix and technical specifications for these changes at least nine months prior to the effective date of the proposed changes.

### **IV. Transaction Yields**

In the Filing, the MSRB has submitted amendments to eliminate the requirement for dealers to include yield on customer trade reports. The MSRB has

proposed that it will calculate and disseminate yield on customer trade reports reported through RTRS. As described in its Prior Letters, SIFMA generally supports these proposed changes, as it would harmonize the reporting paradigm with the FINRA's TRACE system and be helpful to the broker-dealer community due to the reduction in questionable trade reports due to a difference in the broker-dealer calculated yield and the MSRB's calculated yield.

The questionable trade reports, however, alerted broker dealers to trades where the dealer calculated yield was outside the acceptable tolerance from the MSRB calculated yield. When broker dealers received these questionable trade errors, they were alerted to a potential issue that was typically related to reference database differences in call features or day count calculation due to questionable holidays or market closes. Broker dealers could then reconcile these differences. It should be recognized that this control mechanism does get eliminated with these amendments.

SIFMA continues to have concerns that these proposed changes may lead to investor confusion, as not all transactions are consummated based on yield to worst<sup>7</sup>. The broker-dealer is that party that has calculated the yield upon which the security has traded, communicated that information to their customer, and put that yield on the customer's G-15 confirm. There are many reasons and scenarios why the dealer calculated yield and the MSRB's calculations of yield might not match. These situations include trading based on yield-to-average life for continuously callable securities,<sup>8</sup> and differences in day counts relating to questionable holidays or market closes, all which cause a significant amount of questionable trades.

#### **V. Expand Application of Existing List Offering Price and RTRS Takedown Indicator**

SIFMA and its members feel the current List Offering Price/RTRS Takedown Transaction indicator is a very useful indicator for users of disseminated pricing information for transactions on the first day of trading in a new issue. As described in the Filing, distribution agreements in the primary space are being used by underwriters with increasing frequency. In these agreements, a distribution participant agrees to assist an underwriter in selling the primary offering to the public at the list offering price, without assuming syndicate liability. Since the distribution participant is not a syndicate or selling group member, the current

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<sup>7</sup> MSRB Rule G-15 and the Interpretation Letters conflict on the issue of continuously callable securities.

<sup>8</sup> Calculating yield-to-worst on continuously callable securities can result in misleading reports of negative yield. SIFMA posits that the MSRB shouldn't display negative yields, or at a minimum, should add explanatory information about the cause of negative yields.

RTRS Procedures require the underwriter's first day sales to the distribution participant and the distribution participant's first day sales to be reported within 15 minutes, even though the distribution participant is performing a similar function to a selling group member and the executions do not provide meaningful information about the price to the market for the securities. For these reasons, SIFMA and its members agree these trades should get the same end-of-day exception as other List Offering Price/Takedown trades.

We also note that an absence of meaningful information also arises when sales are recorded between syndicate members at the list offering price (e.g., group net or net designated orders), since the price to the public will still be the list offering price (unlike sales to a broker dealer who is not involved in the syndicate, selling group, or a distribution agreement). In addressing the aforementioned circumstances and incorporating the substance of MSRB Notice 2007-03, we are pleased that the MSRB is proposing to clarify Rule G-14 RTRS Procedures (d)(vii).

We feel strongly that this clarification should be made, as it will conform the rule to widespread industry practice. We also request that if broker dealers are currently using the List Offering Price/Takedown Transaction indicator for group net or net designated orders or for distribution agreement trades, that they be permitted to continue to do so until this clarification is effective, without risk of an enforcement action. As you can imagine, there will be substantial costs to the syndicate system provider, and each broker dealer that will need to make a change, if they need to change their systems to not use the LOP/TD indicator, then change their systems back when this rule change and clarification become effective.

## **VI. Economic Analysis**

As described in prior comment letters, SIFMA and its members believe that evaluating the costs and burdens of new regulation, and weighing those costs against any benefits derived from such new regulation, is critical to ensure efficient regulation. An essential component of this principle is conducting a true, reality-based, (and if possible dollar-specific) cost-benefit analysis of new rule proposals and other initiatives. It is important to fully consider the costs and burdens to both the MSRB and its funders weighed against potential benefits, which we understand are much more difficult to value, as well as reasonable alternatives. SIFMA is pleased that the MSRB has adopted a formal framework for its approach to integrate economic analysis into its proposed rulemaking.<sup>9</sup>

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<sup>9</sup> Policy on the Use of Economic Analysis in MSRB Rulemaking (September 26, 2013) available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx>.

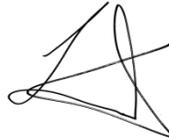
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SIFMA agrees with the MSRB's goal to improve the transparency in the municipal securities market. However, it is critical that the MSRB and SEC strike the appropriate balance between investor protection interests and the efficient operation of the municipal markets. SIFMA would be pleased to work with the MSRB and the SEC to obtain reliable empirical data to assist in quantifying such costs and benefits. A data request could include: the costs components for developing, preparing, and maintaining such systems, including the following: (i) outside developer costs, (ii) information technology vendor costs, (iii) other out-of-pocket costs, and (iv) employee- and staff related costs. Expense categories should include: hardware and software, support and testing/audit; business review, risk review and surveillance.

## VII. Conclusion

SIFMA and its members are supportive of additional transparency insofar as additional costs and burdens are not put upon the industry without commensurate benefits. As discussed above, we continue to have serious concerns that the cost of implementing some of these proposals vastly outweighs any perceived benefits. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at [REDACTED].

Sincerely yours,



Leslie M. Norwood  
Managing Director and  
Associate General Counsel

cc: ***Securities and Exchange Commission, Office of Municipal Securities***  
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