



Municipal Securities Rulemaking Board

November 2, 2015

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

**Re: Response to Comments on SR-MSRB-2015-09**

Dear Secretary:

On September 2, 2015, the Municipal Securities Rulemaking Board (the “MSRB” or the “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change consisting of proposed amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, related proposed amendments to MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretative guidance that would be codified by the proposed amendments to Rule G-20 (the “proposed rule change”). The Commission published the proposed rule change in the Federal Register on September 22, 2015<sup>1</sup> and received three comment letters.<sup>2</sup>

To inform its development of the proposed rule change, the MSRB sought public comment on draft amendments to its rules to address gift giving by municipal advisors and their associated persons.<sup>3</sup> In response to the request for comment, the MSRB received eight letters from a diverse group of commenters. Many commenters expressed support for the draft amendments. However, several commenters expressed concerns or suggested revisions. The MSRB found this input to be highly informative and valuable. After carefully considering all of the comments, the MSRB made targeted revisions to the draft amendments and filed the proposed rule change with the Commission.

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<sup>1</sup> See Exchange Act Release No. 75932 (Sept. 16, 2015), 80 FR 57240 (Sept. 22, 2015) (“Notice of Proposed Rule Change”).

<sup>2</sup> See Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (“ICI”) dated September 25, 2015; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) dated October 13, 2015; and Terri Heaton, President, National Association of Municipal Advisors (“NAMA”) dated October 16, 2015.

<sup>3</sup> Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors, MSRB Notice 2014-18 (Oct. 23, 2014) (the “request for comment”).

This letter responds to the three comment letters received by the Commission in response to the Notice of Proposed Rule Change. The MSRB appreciates the participation of each commenter in the rulemaking process. Each commenter, as each generally acknowledged in its letter, largely made comments that were the same or substantially similar to the comments it made in response to the MSRB's request for comment. Those comments were addressed by the MSRB in the filing of the proposed rule change (the "filing"), and that filing is incorporated here by reference. Each commenter, at the same time, generally expressed support for the proposed rule change and the revisions made by the MSRB since the publication of the draft amendments.

ICI stated that in response to the MSRB's request for comment, it had recommended that the MSRB (i) clarify proposed amended Rule G-20's application to promotional items given by a regulated entity that contain only the brand or logo of a state's college savings plan and not that of the regulated entity and (ii) revise the standard in proposed amended Rule G-20(d) applicable to the value of promotional items because ICI considered it to be vague.<sup>4</sup> With respect to its first point, ICI acknowledged that the MSRB expressly clarified in the proposed rule change the rule's application to promotional items by adding paragraph .03 of the Supplementary Material to proposed amended Rule G-20.

With respect to its second point, ICI noted that the MSRB referenced interpretive guidance in the filing that the MSRB had issued in 2007.<sup>5</sup> That guidance, in turn, referenced interpretive guidance published by the National Association of Securities Dealers, Inc. ("NASD") relating to NASD Rule 3060.<sup>6</sup> In light of the MSRB's explanation in the filing that the MSRB has applied the same standard with respect to the value of promotional items since 2007, ICI did not express ongoing concerns regarding asserted vagueness. ICI, however, recommended that the MSRB expressly include the relevant portions of the NASD guidance in proposed amended Rule G-20. As explained in the filing for the proposed rule change, the MSRB, as had been suggested by NAMA, proposed to codify the few portions of that guidance that had not previously been codified in draft amended Rule G-20.<sup>7</sup> The one matter that ICI specified it believes would be important to address through the express inclusion of the NASD guidance is the statement that "the monetary limits of Rule G-20 do not apply to 'customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction, even when such items have a cost of more than \$100.'" ICI stated that "[t]his issue is not currently addressed in Rule G-20 or its supplementary material." Proposed amended Rule

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<sup>4</sup> Letter from Tamara K. Salmon, Senior Associate Counsel, ICI dated December 5, 2014.

<sup>5</sup> Dealer Payments in Connection with the Municipal Securities Issuance Process, MSRB Notice 2007-06 (Jan. 29, 2007).

<sup>6</sup> See NASD Notice to Members 06-69 (Dec. 2006).

<sup>7</sup> See Notice of Proposed Rule Change at 57241-57243, 57248 (discussion under "Incorporation of Applicable FINRA Interpretive Guidance").



G-20(d)(ii), however, provides that the general \$100 limitation does not apply to “[g]ifts that are solely decorative items commemorating a business transaction, such as a customary plaque or desk ornament (*e.g.*, Lucite tombstone).”<sup>8</sup> This description of excluded transaction-commemorative gifts contains no monetary limit, and this provision accordingly fully addresses the issue that ICI specified.

SIFMA reiterated its prior concern regarding the length of the record retention requirements for dealers and municipal advisors,<sup>9</sup> which is a topic addressed in MSRB Rule G-9. The MSRB sought comment on draft amendments to Rule G-9 as part of the request for comment. As explained in the filing, however, the MSRB omitted those amendments from the proposed rule change because their substance had already been addressed in the interim through a separate rulemaking initiative.<sup>10</sup> Because Rule G-9 is not part of the currently pending proposed rule change, the MSRB believes that no revision to the proposed rule change is necessary in response to this comment.

NAMA restated its prior suggestions that the MSRB (i) increase the general gift limitation from \$100 to \$250; (ii) clarify the limitation’s applicability to staff of municipal entities and obligated persons and to elected officials and governing board members; (iii) include additional supplementary material, as proposed by NAMA, addressing normal business dealings with respect to proposed amended Rule G-20(d)(i); and (iv) require the maintenance of records for any gift or gratuity referred to in proposed amended Rule G-20(c) or Rule G-20(d)(i). The MSRB addressed each of NAMA’s suggestions in the filing and set forth in detail the MSRB’s rationale for the provisions as proposed,<sup>11</sup> and the MSRB believes that no further revision to the proposed rule change is necessary in response to these restated comments.

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The MSRB believes that the proposed rule change, which is designed to address improprieties and conflicts of interest that may arise when municipal advisors or their associated persons give gifts to individuals who may influence the award of municipal advisory business,

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<sup>8</sup> See Notice of Proposed Rule Change at 57242.

<sup>9</sup> Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA dated December 8, 2014.

<sup>10</sup> See Notice of Proposed Rule Change at 57244 n.25 (Sept. 22, 2015) (citing Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records, Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (File No. SR-MSRB-2014-06).

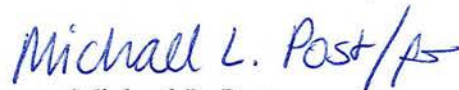
<sup>11</sup> Notice of Proposed Rule Change at 57246-57250.

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represents another important milestone in the development of a comprehensive regulatory framework for municipal advisors. The proposed rule change, by extending the policies embodied in existing Rule G-20 to municipal advisors and their associated persons, will help ensure common standards for all regulated entities that operate in the municipal securities market, and will advance the MSRB's mission to protect municipal entities, obligated persons, investors, and the public interest.

If you have any questions, please feel free to contact me, Pamela Ellis, Associate General Counsel or Benjamin Tecmire, Counsel at [REDACTED].

Sincerely,

A handwritten signature in blue ink that reads "Michael L. Post" followed by a stylized flourish or initial.

Michael L. Post  
General Counsel – Regulatory Affairs