



July 5, 2017

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549-1090

Re: File No. SR-MSRB-2017-03; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-26, on Customer Account Transfers

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to the Municipal Securities Rulemaking Board’s (“MSRB’s”) proposed rule filing SR-MSRB-2017-03 (the “Proposal”),² which would amend MSRB Rule G-26, on customer account transfers. We incorporate by reference our prior comment letter to the MSRB as part of this proceeding, and specifically request that the Securities and Exchange Commission (“SEC” or “Commission”) consider the issues raised in that letter as part of its consideration of the Proposal.³ SIFMA and its members strongly urge you to disapprove the proposed rule change in its current form. Although we support the stated purpose of the draft amendments to modernize and harmonize the rule, we believe the draft amendments are not an efficient way to achieve those goals. SIFMA and its members feel the proposed amendments take an approach that is a

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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 <http://www.sifma.org>.

² 82 Fed. Reg. 27307 (Jun. 14, 2017) (File No. SR-MSRB-2017-03).

³ Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB, regarding MSRB Notice 2017-01 (Feb. 17, 2017, available at <http://www.sifma.org/issues/item.aspx?id=8589965235> (the “Prior SIFMA Letter”));

step backward; instead of supporting rulebook simplification and harmonization, and promoting automation to facilitate faster transactions, the proposed amendments are inapposite.

I. More Efficient and Harmonized Alternatives are Available

As described in detail in our the Prior SIFMA Letter, SIFMA and its members feel strongly that Rule G-26 in its current form is unnecessary. SIFMA believes that if there are any broker, dealer, or municipal securities dealer (collectively, “dealer”) firms not already covered by New York Stock Exchange (“NYSE”) Rule 412 or Financial Industry Regulatory Authority (“FINRA”) Rule 11870 regarding customer account transfers, then it is likely that such a dealer is exempt from participating in ACATS under Rule G-26 as they are not direct clearing participants of the National Securities Clearing Corporation (“NSCC”) eligible to participate in the Automated Customer Account Transfer Service (“ACATS”)⁴. Thus, SIFMA and its members feel that Rule G-26 is redundant and unnecessary.

SIFMA also proposed in the Prior SIFMA Letter a suggestion that if the MSRB feels the need to keep Rule G-26 for “regulatory completeness”, it should amend Rule G-26 to follow the NYSE model and incorporate FINRA Rule 11870 by reference. The MSRB’s response was as follows:

Although amending Rule G-26 to incorporate FINRA Rule 11870 by reference could be a simple and efficient solution to provide a uniform industry standard, the MSRB does not typically incorporate other regulators’ rules by reference. The MSRB believes that, while the incorporation by reference approach suggested by SIFMA may enhance harmonization with FINRA’s rules, that approach would raise significant concerns for the MSRB, given its statutory mandate and mission. For example, if FINRA or its staff were to provide an interpretation of FINRA Rule 11870, the MSRB automatically would be adopting that interpretation without deliberately considering the issues that may be unique to, or the interpretation’s ramifications for, the municipal securities market. Further, there are municipal securities dealers that are not members of FINRA. Those dealers may not have notice of FINRA’s rule interpretations unless the MSRB were to monitor FINRA’s rulemaking and independently notify dealers. Therefore, if the MSRB were to regulate customer account transfers over which it has jurisdiction by simply incorporating a FINRA rule by reference,

⁴ See NSCC Rule 50 (establishing and governing the ACATS process).

the MSRB potentially could be seen as delegating its core mission to protect investors, issuers, and the public interest and to promote a fair and efficient municipal market.

We strongly do not agree with the MSRB's rationale for rejection of this approach. In this instance, the MSRB would not be seen to be delegating its core mission to protect the municipal securities market, as there is nothing particularly unique regarding the transfer of customer accounts with respect to municipal securities. Also, as mentioned in the Prior SIFMA Letter, there is precedent in the MSRB Rulebook for incorporation of other regulator's rules by reference in MSRB Rule G-41 on Anti-Money Laundering Compliance Program. Additionally, MSRB Rule G-35 incorporates by reference the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD"). As with the customer account transfer rule at issue, Rules G-41 and G-35 are rules where there is no bona fide reason to have a different rule for municipal securities. The MSRB's concerns about regulated parties needing to follow another regulator's rule changes and interpretations are unnecessary, and the MSRB itself could aid in any communication to municipal securities dealers, as helpful or deemed necessary.

Yet another alternative to be considered could be formulated as follows: FINRA member firms could elect to follow FINRA 11870 in lieu of MSRB Rule G-26, NYSE member firms can follow NYSE Rule 412 in lieu of MSRB Rule G-26, and firms that are not covered by either, then must follow MSRB Rule G-26.

If the primary purpose of the Notice and the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other self-regulatory organizations ("SROs"). Again, this methodology is the most efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers. Maintaining a separate substantive Rule G-26 does not further the regulatory goals as stated in the Notice.

II. Update and Harmonization of Relevant FINRA Rules is Needed

SIFMA and its members recognize that irrespective of the approach the MSRB takes regarding Rule G-26, FINRA 11870 must be amended as soon as practicable to reflect the recent amendments to Rule G-12 relating to close-outs.⁵ SIFMA has suggested that FINRA delete FINRA 11870(f)(1)(J), and insert a new

⁵ 81 Fed. Reg. 57,960 (Aug. 24, 2016). *See also*, the SEC approval of amendments to MSRB Rule G-12 here: <http://www.msrb.org/~media/Files/SEC-Filings/2016/MSRB-2016-07-SEC-Approval.ashx>.

FINRA 11870(2) as follows, “Any fail contracts in municipal securities resulting from this securities account asset transfer procedure shall be included in a member's fail file and closed-out in accordance with MSRB Rule G-12(h), and any amendments thereto, as if such Rule is part of FINRA’s Rules.”

Additionally, SIFMA suggests the Commission direct FINRA to consolidate its provisions that relate to the transfer of securities into FINRA 11870. To that end, we recommend that FINRA 11650 be deleted, and its operative language inserted as new FINRA 11870 Supplementary Material .04.

III. Economic Costs and Benefits

SIFMA agrees that existing Rule G-26 is not consistent with the securities industry standard. SIFMA also agrees that the existing rule likely results in uncertainties, inefficiencies and unnecessary costs associated with customer account transfers for all market participants. However, SIFMA believes that the most clear and efficient way to resolve these issues is for dealers to apply FINRA 11870, either directly or indirectly. Having different rules for account level transfers could result in: additional compliance burdens, conflicting examiners from different regulators applying different rules to the same customer account transfer, and confusion among customers. We feel these reasons are significant enough to warrant complete rule harmonization governing these procedures.

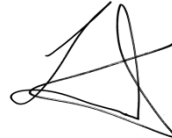
IV. Conclusion

Again, SIFMA and its members ask the Commission to disapprove of the Proposal in its current format. Although we support the stated purpose of the draft amendments, we do not agree that the draft amendments are the most efficient and rational way to achieve that goal. If the primary purpose of the Proposal is to re-establish consistency with ACATS and the rules of other SROs by conforming Rule G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other SROs. If the MSRB is not going to eliminate Rule G-26 or incorporate FINRA 11870 by sole reference, then at a minimum we would appreciate Rule G-26 being amended to permit firms who are NYSE or FINRA members to elect to apply NYSE Rule 412 or FINRA 11870, respectively, in lieu of Rule G-26. This would be the most efficient way to support automation with respect to customer account transfers, reduce confusion and risk to investors, and reduce regulatory risk to dealers. Maintaining a separate substantive Rule G-26 that must be used does not further the regulatory goals as stated in the Proposal. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. Additionally, we would

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
Page 5 of 5

like to meet with MSRB and SEC staff to discuss our comments. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Securities and Exchange Commission***
Jessica Kane, Director, Office of Municipal Securities
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Municipal Securities Rulemaking Board
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