



Municipal Securities Rulemaking Board

July 20, 2017

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

Re: Response to Comments on SR-MSRB-2017-03

Dear Secretary:

On May 26, 2017, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC”) a proposed rule change to amend MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, “dealers”) (“proposed rule change”). The SEC published the proposed rule change for comment in the Federal Register on June 14, 2017¹ and received two comment letters, one that generally supports the proposal and one that opposes the proposal.² This letter is in response to the comments, most of which are substantially similar to previous comments made in response to the related MSRB request for comment.³

SIFMA continues to support the MSRB’s purpose for amending Rule G-26, as it agrees with the MSRB that the current rule is not consistent with the industry standard and “likely results in uncertainties, inefficiencies and unnecessary costs associated with customer account transfers for all market participants.”⁴ However, SIFMA does not support the approach of the proposed rule change and reiterates its position that Rule G-26 is redundant with other self-regulatory organization (“SRO”) rules and, therefore, unnecessary. SIFMA states that, “if there are any [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

¹ See Exchange Act Release No. 80890 (June 7, 2017), 82 FR 27307 (June 14, 2017) (SR-MSRB-2017-03) (“SEC Notice”).

² See letters from Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated July 5, 2017; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated July 5, 2017.

³ MSRB Notice 2017-01 (Jan. 6, 2017) (“Request for Comment”).

⁴ See SIFMA Letter at 4.

(“ACATS”).”⁵ As an alternative to eliminating Rule G-26, SIFMA also reiterates its suggestion that the MSRB not have a detailed rule and instead merely incorporate FINRA Rule 11870 by reference into the MSRB Rule Book. SIFMA believes that “the MSRB would not be seen to be delegating its core mission to protect the municipal securities market, as,” in SIFMA’s view, “there is nothing particularly unique regarding the transfer of customer accounts with respect to municipal securities . . . [and that] there is no bona fide reason to have a different rule for municipal securities.”⁶ Finally, SIFMA provides another alternative that would allow FINRA member firms to elect to follow FINRA Rule 11870 and NYSE member firms to elect to follow NYSE Rule 412, both in lieu of Rule G-26, while firms that are not members of either FINRA or the NYSE would remain subject to Rule G-26.

The MSRB continues to believe that Rule G-26 is necessary and that the proposed rule change is the appropriate approach to achieve the purpose of modernizing the rule and promoting a uniform customer account transfer standard for all dealers.⁷ Although the MSRB believes SIFMA is correct that any firms that are not members of FINRA or the NYSE are likely not direct clearing participants of the NSCC and, therefore, ineligible to participate in ACATS, this does not obviate the need for Rule G-26. On the contrary, this is a key reason why Rule G-26 is not redundant and is necessary to ensure that all dealers are subject to a customer account transfer rule, and the proposed rule change is necessary and appropriate to ensure that the standard in Rule G-26 is consistent with the industry standard. ACATS, which is established and governed by NSCC Rule 50, is an automated process utilized by NSCC members to perform customer account transfers. Not only does NSCC Rule 50 not apply to dealers that are not direct clearing participants and members of NSCC, it does not apply to manual processes, which are used by certain dealers with municipal security-only customer accounts, particularly bank dealers that are not members of FINRA or the NYSE. As such, the MSRB believes that there remains a need for Rule G-26, which applies, currently and as proposed, to both automated and manual processes, including provisions to facilitate the use of ACATS,⁸ to address the customer account transfers of these dealers.

⁵ See SIFMA Letter at 3. Current NYSE Rule 412 cross-references NASD/FINRA Rule 11870 for the purpose of incorporating it into the NYSE rulebook. In 2007, FINRA was created through the consolidation of the National Association of Securities Dealers (“NASD”) and the member regulation, enforcement and arbitration operations of the NYSE.

⁶ See SIFMA Letter at 3.

⁷ As noted above, SIFMA’s comments are substantially similar to previous comments it submitted in response to the Request for Comment, and the MSRB has addressed them in detail in the filing discussing the proposed rule change, which is fully incorporated herein by reference. However, to the extent additional clarity is needed, the MSRB is responding further herein.

⁸ See current MSRB Rule G-26(h); proposed MSRB Rule G-26(k)(i) (providing that, when both parties to a customer account transfer are direct participants in a clearing agency registered with the SEC that offers automated customer account transfer capabilities, the

The MSRB also continues to believe that amending Rule G-26 to incorporate FINRA Rule 11870 by reference would not be an appropriate approach to the proposed rule change, as well as being inconsistent with the MSRB's statutory mandate and mission, as most relevant here, to protect investors, issuers, and the public interest, and to promote a fair and efficient municipal market. Putting aside whether there are unique aspects of the transfer of municipal security-only customer accounts, bank dealers clearly are unique, as they would not be subject to a customer account transfer rule but for the existence of Rule G-26. As a result, the MSRB believes it is important that, at a minimum, it retain the full ability to deliberately consider issues that may be unique to these dealers, but also to the municipal securities market more broadly, in the consideration of future amendments to Rule G-26, which ability could be hindered if the MSRB were merely to incorporate FINRA Rule 11870 by reference.

The MSRB believes that SIFMA's last suggested alternative, which effectively allows FINRA and NYSE members to follow FINRA Rule 11870 in lieu of Rule G-26, while dealers that are not members of those SROs would remain subject to Rule G-26, captures how Rule G-26 already operates (and would continue to operate as proposed to be amended). In the Request for Comment and the proposed rule change, the MSRB explained that, at the time Rule G-26 was adopted, NYSE Rule 412 and FINRA Rule 11870 (NASD Rule 11870 at the time) were not applicable to certain dealers, particularly those with municipal security-only accounts and bank dealers.⁹ This jurisdictional divide remains true today, such that Rule G-26 is not applicable to FINRA or NYSE members. However, as noted above, there are dealers, which are not members of those other SROs, particularly bank dealers, necessitating the existence of Rule G-26. Therefore, the main effect of the proposed rule change is to increase harmonization with FINRA Rule 11870, promoting a uniform customer account transfer standard that will make the transfer of customer securities accounts more flexible, less burdensome and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

BDA generally supports the proposed rule change, but it requests that the effective date be adjusted from three months from the date of approval to 180 days from the effective date of a Department of Labor Rule on January 1, 2018, to benefit smaller dealers with fewer compliance staff and resources. Assuming the proposed rule change were approved in July 2017, BDA's suggested effective date would be eight months after the MSRB's currently planned effective date (*i.e.*, June 2018 instead of October 2017). The MSRB agrees that a more lengthy implementation period would be appropriate, but does not believe a period of nearly a year would be necessary, as the proposed rule change is designed primarily to create efficiencies in

account transfer procedure must be accomplished pursuant to the rules of and through such registered clearing agency).

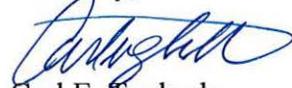
⁹ See Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) ("Currently certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry.").

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the customer account transfer process and the MSRB does not anticipate that the limited number of dealers subject to the amended rule would need to make significant changes to systems and/or policies and procedures. To ease the extent of the burden created by the proposed rule change, the MSRB believes doubling the implementation period from three to six months from the date of approval is a sufficient amount of time for dealers to effect any changes necessary to achieve compliance, and the MSRB is filing a partial amendment to the proposed rule change to propose a lengthier period accordingly.

If you have any questions regarding this matter, please contact me at (202) 838-1500.

Sincerely,



Carl E. Tugberk
Assistant General Counsel