



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS.

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June 2, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Proposed Rule Change to Align Certain MSRB Rules to Securities and Exchange Act Rule 15l-1, Regulation Best Interest (File Number SR-MSRB-2020-02)

Dear Secretary Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") proposal ("Proposal")¹ to align various MSRB rules to Regulation Best Interest ("Reg BI").

CCMC strongly supports the Security and Exchange Commission's ("SEC") Reg BI, adopted on June 5, 2019. Reg BI sets a strong, consistent national standard that prohibits broker-dealers from placing their own interests ahead of their clients' interests.² CCMC believes that Reg BI strikes an appropriate balance between consumer protection and investor choice. As we previously commented to the SEC, we believe that Reg BI preserves investor access to various types of advice and investment products, improves investors' understanding of their choices, and protects investors from bad actors.³

¹ Notice of Filing of a Proposed Rule Change To Align Certain MSRB Rules to Securities Exchange Act Rule 15l-1, Regulation Best Interest, 85 FR 28082 (May 12, 2020) (hereinafter, "Proposal").

² Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 FR 33318 (July 12, 2019).

³ See Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, May 16, 2019, available at <https://www.sec.gov/comments/s7-07-18/s70718-5528937-185232.pdf>.

Similar to Reg BI, the MSRB's suitability rules are intended to set a high standard of professional conduct and ethical sales practices as broker-dealers and municipal securities dealers (collectively "dealers") make recommendations regarding transactions or investment strategies involving municipal securities. Under MSRB Rule G-19, dealers must "have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer" based on a customer's investment profile.⁴

However, Reg BI enhances the "standard of conduct beyond existing suitability obligations."⁵ We commend the MSRB for addressing, in advance of the full implementation of Reg BI on June 30, 2020, inconsistencies, conflicts, and duplicative regulations between its suitability rules and the higher standard of care in Reg BI. CCMC agrees with the MSRB's assessment that the proposed amendments will "protect investors by ensuring dealers comply with the heightened regulatory requirements of the Commission's Regulation Best Interest, while maintaining the existing regulatory scheme under MSRB Rule G-19 for transactions not subject to Regulation Best Interest."⁶

This Proposal successfully addresses the following concerns:

(1) MSRB Rule G-19

Without conforming its rules to Reg BI, a dealer would be required to comply with both the SEC's Reg BI and the MSRB's suitability rules. The Proposal includes two proposed amendments to MSRB Rule G-19: (1) clarifying that dealers subject to Reg BI would not be required to also comply with the MSRB's suitability rules; and (2) removing the control element of the MSRB's quantitative suitability obligation. CCMC commends the MSRB for acting to harmonize SEC and MSRB rules and "reduce the potential for duplicative regulation and unnecessary complexity."⁷

⁴ MSRB Rule G-19 Suitability of Recommendations and Transactions, *available at* <http://msrb.org/pdf.aspx?url=http%3A%2F%2Fmsrb.org%2FRules-and-Interpretations%2FMSRB-Rules%2FGeneral%2FRule-G-19.aspx>.

⁵ SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals (June 5, 2019), *available at* <https://www.sec.gov/news/press-release/2019-89>.

⁶ Proposal, *supra* note 1 at 28086.

⁷ Proposal, *supra* note 1 at 28084.

(2) MSRB Rule G-48

Currently, under MSRB Rule G-48, a dealer who makes a recommendation to a sophisticated municipal market professional is not required to perform a customer-specific suitability analysis. Reg BI contains no such exception when broker-dealers make recommendations to retail investors. CCMC supports harmonizing SEC and MSRB rules by clarifying that any exception to the customer-specific suitability analysis may only be taken when a recommendation is subject to MSRB Rule G-19 and not Reg BI.

(3) MSRB Rule G-20

The MSRB's current rules allow certain non-cash compensation arrangements limited to gifts, business entertainment, training and education meetings, and sales contests based on total production of associated persons with respect to all securities within the rule's product category.⁸ CCMC agrees with the MSRB's goal of making its non-cash compensation rules consistent with Reg BI's Conflicts of Interest Obligation, which the MSRB observes "requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time."⁹

We also agree with the MSRB's decision to delete interpretative guidance regarding sales contests offered by an underwriter to participating members of a syndicate. Given that the current guidance recognizes that such contests constitute compensation for services, those contests may be inconsistent with Reg BI for dealers making recommendations to retail customers.

(4) MSRB Rules G-8 and G-9

CCMC supports the MSRB's recommendations to align Rule G-8 and Rule G-9 with Exchange Act Rule 17a-3 and Rule 17a-4 (both amended under Reg BI) to ensure that dealers who must comply with Reg BI maintain appropriate records and retain a copy of each Form CRS (requiring broker-dealers and investment advisers to provide retail clients with a relationship summary) for six years.

⁸ Proposal, *supra* note 1 at 28085.

⁹ Proposal, *supra* note 1 at 28085.

Conclusion

We commend the MSRB for proposing changes to its rules to align them with Reg BI. We encourage the SEC to approve this Proposal because it brings important clarity and consistency to the standards governing dealer relationships with customers.

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "K. Malinconico". The signature is written in a cursive, flowing style.

Kristen Malinconico

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee