MSRB
Municipal Securities Rulemaking Board

June 14, 2024

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

Re: Response to Comments on File No. SR-MSRB-2024-03

Dear Ms. Countryman,

On April 9, 2024, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, File No. SR-MSRB-2024-03, to amend MSRB Rule G-47, on time of trade disclosure, codifying certain existing interpretive guidance, retiring certain other existing interpretive guidance, adding three new time of trade disclosure scenarios, and making technical clarifications (the "proposed rule change").[1]

The proposed rule change was published for comment in the Federal Register on April 18, 2024.[2] One letter was filed with the Commission in response to the proposed rule change.[3] The MSRB appreciates the participation of this commenter in the rulemaking process. Below, the MSRB responds to the responsive aspects of comments received.[4]

---

1 The proposed rule change, File No. SR-MSRB-2024-03 (April 9, 2024), is available at https://www.msrb.org/sites/default/files/2024-04/SR-MSRB-2024-03.pdf.

2 See Exchange Act Release No. 99949 (April 12, 2024), 89 FR 27809 (April 18, 2024) (File No. SR-MSRB-2024-03).

3 See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") (May 9, 2024) ("SIFMA Letter"), available at https://www.sec.gov/comments/sr-msrb-2024-03/srmsrb202403.htm.

4 In addition to the comments in the SIFMA Letter discussed in this response, SIFMA commented on topics such as time of trade disclosures for 529 savings plans, extraordinary redemption provisions, and affirmations related to sophisticated municipal market professionals. The MSRB notes that these topics will be addressed through separate initiatives and are therefore not addressed in this response letter.

Factor Information

SIFMA stated that the MSRB should "make clear that a dealer should only be responsible for providing factor information pursuant to the rule if there is an event filing on EMMA which specifies that the factor concept applies, or the dealer otherwise has specific knowledge of factor payments."[5] MSRB Rule G-47(a) requires brokers, dealers and municipal securities dealers ("dealers") to disclose to customers, at or prior to the time of trade, "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market." As a result, dealers are only expected to disclose information that they know or is available through established industry sources, such as the MSRB's Electronic Municipal Market Access ("EMMA®")[6] system, and not information that is unknown or unavailable through established industry sources. Thus, if factor information that may be material is not known by the dealer or is not reasonably accessible to the market through established industry sources, such factor information would not be required to be disclosed pursuant to the proposed amendment to Supplementary Material .03(i).

Market Discount

SIFMA stated that "it should be made clear that broker dealers neither give tax advice nor should they be perceived to be giving tax advice" and that the original guidance[7] should be preserved due to the fact that it "merely requires notification of the existence of a discount" and dealers are concerned that discount disclosures "may force dealers to move closer to the line of giving tax advice."[8] The proposed rule change would only require dealers to disclose the fact that the security bears a market discount and that an impact may exist (that is, that all or a portion of the investor's investment return represented by accretion of the market discount might be taxable as ordinary income). As the MSRB noted in the proposed rule change, proposed new Supplementary Material .03(p) would not require dealers to provide customers with more detailed or personalized information, or to provide any information that could constitute tax advice, with respect to market discount.[9] Thus, the proposed rule change would not require dealers to calculate the impact or give tax advice, and the original guidance would be retired as

---

5 See SIFMA Letter at 2.

6 EMMA® is a registered trademark of the MSRB.

7 MSRB Interpretive Guidance, Time of Trade Disclosure—Disclosure of Market Discount (November 22, 2016), available at https://www.msrb.org/Time-Trade-Disclosure-Disclosure-Market-Discount. The proposed rule change would retire this interpretive guidance.

8 See SIFMA Letter at 2-3.

9 See 89 FR at 27810.

the material aspects of such guidance would be incorporated into new Supplementary Material .03(p).

Zero Coupon or Stepped Coupon Bonds

SIFMA stated that "[d]ealers should be only required to disclose whether bonds are zero coupon bonds or stepped coupon bonds, but not the details of the special characteristics of these features, such as the details of the increases to the interest rates" due to the fact that information is limited on the MSRB's primary market feed.[10] The MSRB reminds dealers that time of trade disclosures, including those related to zero or stepped coupon bonds, are limited to information that dealers know or that is reasonably accessible to the market, as described above. Therefore, if the information available via established industry sources (including but not limited to the MSRB's primary market feed) is limited or not present, a dealer would not be required to seek out additional information that is not known to the dealer or not reasonably accessible to the market at the time of trade.

Yield to Worst

SIFMA stated that it is concerned that describing a disclosure as "Yield to Worst" could be misleading or confusing and "regulatory examiners and/or customers alike may believe that this is the computation which accounts for all potential scenarios and represents the absolute worst possible yield a customer may experience when purchasing a municipal security."[11] In addition, "SIFMA requests that if the MSRB moves forward with requiring this time of trade disclosure, that the MSRB make clear that the time of trade disclosure it is articulating in the proposed rule change is the same 'Computed Yield' calculation that is required under Rule G-15's confirmation requirements and that dealers are not expected to provide any additional or different disclosures in this regard."[12]

The time of trade disclosure in proposed MSRB Rule G-47 Supplementary Material .03(r), titled "Yield to Worst," lists the required information to be disclosed as the computed yield required by MSRB Rule G-15(a)(i)(A)(5)(c), if different than the yield at which the transaction was effected, and does not contemplate dealers providing any additional or different disclosures in this regard. Dealers are not required to refer to such computed yield as "yield to worst" to their customers and may appropriately refer to it is a computed yield consistent with the proposed rule change.[13]

---

10 See SIFMA Letter at 3.

11 Id.

12 Id.

13 The MSRB notes that the term "yield to worst" is included solely in the heading of proposed new Supplementary Material .03(r) to reflect common industry terminology but

Unavailability of the Official Statements

SIFMA requested that the MSRB remove the time of trade disclosure requirements related to whether an official statement is unavailable pursuant to proposed new Supplementary Material .03(s) or provide further guidance.[14] SIFMA stated that "the proposed rule change as drafted would provide little to no actionable information for investors in a public offering."[15] The MSRB believes that the fact that an official statement is unavailable is material information that could impact investors' investment decisions, especially retail customers, for whom MSRB Rule G-47 is primarily oriented.

SIFMA also requested that the MSRB clarify the application and disclosure requirements in the following scenarios: "(1) public offerings where it is anticipated that the issuer will produce a Final Official Statement by settlement but a Final Official Statement is not available at the Time of Trade; (2) Rule 15c2-12 exempt offerings where an issuer has drafted and disseminated an offering document that does not technically meet the Final Official Statement requirements of Rule 15c2-12 but would meet the official statement definition of Rule G-32(c)(vii); (3) Rule 15c2-12 exempt offerings where the issuer declines to draft an offering document for the offering; and (4) remarketings of municipal securities that may be deemed to be a primary offering of municipal securities under Rule 15c2-12 and Rule G-32."[16] Furthermore, SIFMA stated that it "supports the MSRB proposals that any such time of trade disclosure should be limited to underwriters in new issue trades."[17]

As an initial matter, proposed new Supplementary Material .03(s) would apply only to sales of a new issue security constituting an offered municipal security within the meaning of Rule G-32(c)(vi), with an offered municipal security constituting a municipal security sold by a dealer during the securities' primary offering disclosure period.[18] Primary offering disclosure

---

that the required yield disclosure is described in the operative language as "computed yield." This "computed yield" terminology is consistent with the terminology used in MSRB Rule G-15(a)(i)(A)(5)(c). The MSRB is confident that regulatory examiners will understand the extent of the required disclosure consistent with the proposed rule change and as described herein.

14 See SIFMA Letter at 4-5.

15 See SIFMA Letter at 4.

16 See SIFMA Letter at 5.

17 Id.

18 See 89 FR at 27811, n. 10. Offered municipal securities include, but are not limited to, municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered.

period is defined in MSRB Rule G–32(c)(ix) as the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter. Proposed new Supplementary Material .03(s) would not apply to any sales occurring after the end of the primary offering disclosure period.

However, contrary to SIFMA's assertion, the application of proposed new Supplementary Material .03(s) would not be limited to sales by underwriters of such securities but would apply to any sale by any dealer of such securities during the primary offering disclosure period, although dealers other than underwriters would be entitled to certain reliance on information posted on EMMA in regard to such requirement, as described in the proposed rule change and further described below.

The MSRB responds to SIFMA's request for clarification below corresponding to the four scenarios listed in the SIFMA Letter:

1. If an underwriter is expected to produce a final official statement, but it is not yet available at the time of trade or it is still in production, a dealer selling a new issue security constituting an offered municipal security within the meaning of Rule G-32 would not be required to disclose that there is no official statement available for the municipal security in question. The disclosure requirement only attaches when the underwriter is not expected to produce an official statement at all, which would be evidenced by the required notification by the underwriter, pursuant to MSRB Rule G–32(b)(i)(C), that no official statement will be prepared, which notification is displayed on EMMA. As the MSRB noted in the proposed rule change, dealers (other than the underwriter of a new issue of municipal securities) generally would be able to rely on information posted on EMMA as of the time of trade of such new issue municipal security with regard to whether an official statement is or will be unavailable, while the underwriter for such new issue would be deemed to know whether or not an official statement will be posted for such offering.[19]

---

[19] See 89 FR at 27811. Thus, if the underwriter has not indicated pursuant to MSRB Rule G-32(b)(i)(C) that no official statement will be prepared, and therefore EMMA does not display that indicator, proposed new Supplementary Material .03(s) would not obligate a dealer (other than the underwriter) to make this new time-of-trade disclosure to its customer even if the underwriter erroneously failed to indicate that no official statement will be prepared. However, in the case where the underwriter should have, but failed to, indicate on EMMA that no official statement will be prepared, the underwriter would be obligated to make such disclosure to its own customers at the time of trade pursuant to proposed new Supplementary Material .03(s) and could not rely on the fact that EMMA does not display that no official statement will be prepared.

2. The proposed rule change uses the term "official statement" for purposes of proposed new Supplementary Material .03(s) with the same meaning as in Rule G-32(c)(vii). Underwriters have become familiar over many years with the use of the term "official statement" as defined under MSRB Rule G-32, including any distinctions that exist between that term in Rule G-32 and the term "final official statement" as used in Exchange Act Rule 15c2-12.
3. Where no official statement is anticipated, a dealer selling a new issue security constituting an offered municipal security within the meaning of Rule G-32 would be required to disclose to the customer that there is no official statement. This disclosure requirement would attach, and dealers other than the underwriter would be entitled to rely on information posted to EMMA, as described in item 2 above.
4. In sales of new issue securities constituting offered municipal securities within the meaning of Rule G-32 in a remarketing that is deemed to be a primary offering, dealers are required to make a time of trade disclosure if no official statement is available, with such disclosure requirement attaching, and dealers other than the underwriter being entitled to rely on information posted to EMMA, as described in item 2 above.

Unavailability of Continuing Disclosures

SIFMA stated that "disclosing the issuer or obligated person has not agreed to make continuing disclosures with respect to the municipal securities, as contemplated under Securities Exchange Act Rule 15c2-12, that will be available on EMMA should be limited to new issue trades" and that "[s]ecurities exempt from 15c2-12 would typically have such a disclosure in an investor letter" and "[i]nvestors making secondary market trades can see offering documents, or the lack thereof, on EMMA."[20]

The MSRB believes that the fact that continuing disclosures may not be available is material information that may impact an investor's investment decision and is relevant beyond the primary offering disclosure period. In addition, while it may be obvious to dealers or sophisticated investors how to determine if continuing disclosures are not available, it may not be so obvious to retail customers for whom MSRB Rule G-47 is primarily oriented.

*****

The MSRB continues to believe that the proposed rule change is reasonable and is necessary to protect investors and the public interest by ensuring that retail and other customers receive material information at or prior to the time of trade that would allow them to make an informed investment decision.

---

20 See SIFMA Letter at 5-6.

If you have any questions, please feel free to contact me or Justin Kramer, Assistant Director, Market Regulation, at 202-838-1500.

Sincerely,

Ernesto A. Lanza
Chief Regulatory and Policy Officer