EXHIBIT 2a

MSRB Municipal Securities Rulemaking Board

MSRB Notice

2021-06

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Stakeholders
Municipal Securities Dealers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
June 2, 2021

Category
Fair Practice

Affected Rules
Rule G-19

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Request for Comment on Application of Regulation Best Interest to Bank-Dealers

Overview

The Municipal Securities Rulemaking Board ("MSRB" or "Board") seeks comment on a draft amendment to MSRB Rule G-19, on suitability of recommendations and transactions, that would require bank dealers[1] to comply with Rule 15*l*-1 ("Regulation Best Interest")[2] of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act") when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers (the "request for comment").[3] In response to the recent adoption of Regulation Best Interest by the Securities and Exchange Commission (the "SEC" or the "Commission"), the draft amendment[4] is intended to promote regulatory parity in the municipal market by extending the investor protections afforded by Regulation Best Interest to retail customers that

[1] Consistent with MSRB Rule D-8, the term "bank dealer" as used herein means "a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G-1 of the Board."

[2] Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019) (adopting Rule 15*l*-1 under the Exchange Act) ("Regulation Best Interest Adopting Release"), available at https://www.sec.gov/rules/final/2019/34-86031.pdf. Regulation Best Interest is codified at 17 CFR 240. 15*l*-1.

[3] Consistent with the definition in Regulation Best Interest, the term "retail customer" as used herein means "a natural person, or the legal representative of such natural person, who: (i) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (ii) Uses the recommendation primarily for personal, family, or household purposes." *See* Rule 15*l*-1(b)(1). As further discussed below, the draft amendment would make a bank dealer subject to this definition to the same extent as a broker-dealer (as hereinafter defined).

[4] Text of the draft amendment is provided at the end of this request for comment.

receive a recommendation from a bank dealer regarding a municipal security.[5]

Comments should be submitted no later than June 2, 2021 and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[6]

Questions about this notice should be directed to David Hodapp, Director, Market Regulation, Justin Kramer, Assistant Director, Market Regulation, or Prairie Douglas, Attorney II, at 202-838-1500.

I. Background

Regulation Best Interest applies to broker-dealers, and natural persons who are associated persons of such broker-dealer firms (collectively, "broker-dealers" and, individually, each a "broker-dealer"). Specific to the municipal securities market, the new standards of conduct established by the Commission's Regulation Best Interest are triggered when such a broker-dealer makes a recommendation of securities transactions or investment strategies involving a municipal security to any person meeting the applicable definition of a retail customer.[7] These standards of conduct had a

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[5] To lawfully effect transactions in municipal securities, brokers, dealers, and municipal securities dealers (collectively, "dealers" and, individually, each a "dealer") must be registered with the Commission as either a "broker-dealer" under Section 15(b)(1) of the Exchange Act or a "municipal securities dealer" under Section 15B(a)(2) of the Exchange Act. The MSRB understands that firms effecting retail customer transactions in municipal securities registered as broker-dealers are presently subject to Regulation Best Interest, while bank dealers registered as municipal securities dealers are not.

[6] Comments generally are posted on the MSRB's website without change. Personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[7] When it adopted Regulation Best Interest, the Commission stated:

> the determination of whether a broker-dealer has made a recommendation that triggers application of Regulation Best Interest should turn on the facts and circumstances of the particular situation and therefore, whether a recommendation has taken place is not susceptible to a bright line definition. Factors considered in determining whether a recommendation has taken place include whether the communication "reasonably could be viewed as a 'call to action'" and "reasonably would influence an investor to trade a particular security or group of securities.'"

compliance date of June 30, 2020.[8]

A. Broker-Dealer MSRB Rule Alignment

The Commission's adoption of Regulation Best Interest created the potential for circumstances in which a broker-dealer firm making recommendations with respect to municipal securities would be subject to both Regulation Best Interest and also existing MSRB rules, like certain suitability obligations under MSRB Rule G-19. The MSRB believed that this overlap created the potential for competing regulatory schemes, with possibilities for conflict or duplication. In an effort to harmonize its rules, the MSRB filed a proposed rule change with the Commission on May 1, 2020 (the "MSRB Broker-Dealer Filing").[9] As more fully described in the text of the proposed rule change, the MSRB Broker-Dealer Filing amended:

- MSRB Rule G-8, on books and records to be made by brokers, dealers, and municipal securities dealers, and MSRB Rule G-9, on preservation of records, to require a broker-dealer to maintain books and records required by Regulation Best Interest and the Related SEC Form CRS requirement;[10]

See Regulation Best Interest Adopting Release, 84 FR at 33335, *quoting* Exchange Act Release No. 83062 (April 18, 2018), at 83 FR 21574, 21593 (May 9, 2018); *see also* Frequently Asked Questions on Regulation Best Interest, Recommendation, available at https://www.sec.gov/tm/faq-regulation-best-interest#recommendation (Aug. 4, 2020).

[8] *See* Regulation Best Interest Adopting Release, 84 FR at 33400 (setting June 30, 2020 as the compliance date for Regulation Best Interest).

[9] *See* File No. SR-MSRB-2020-02 (May 1, 2020), available at http://msrb.org/~/media/Files/SEC-Filings/2020/MSRB-2020-02.ashx?; *see also* Exchange Act Release No. 89154 (June 25, 2020), 85 FR 39613 (July 1, 2020), (hereinafter referred to as the "Approval Order for the MSRB Broker-Dealer Filing"). In developing the MSRB Broker-Dealer Filing, the MSRB also coordinated with the Financial Industry Regulatory Authority, Inc. ("FINRA") in order to harmonize with FINRA's proposed amendments to its rules in response to the Commission's adoption of Regulation Best Interest. *See* Exchange Act Release No. 89091 (June 18, 2020), 85 FR 37970 (June 23, 2020) (File No. SR-FINRA-2020-07).

[10] *See* File No. SR-MSRB-2020-02. When the Commission adopted Regulation Best Interest, it amended Exchange Act Rules 17a-3 and 17a-4 to require broker-dealers to make and maintain records with respect to certain information collected from or provided to retail customers in connection with Regulation Best Interest. Because dealers may comply with these rules for purposes of transactions in municipal securities by their compliance with MSRB Rules G-8 and G-9, the Board amended MSRB Rules G-8 and G-9 to include the record making and recordkeeping requirements associated with Regulation Best Interest to ensure

- MSRB Rule G-19 to make clear that the rule's suitability obligations apply to a broker-dealer in circumstances only when Regulation Best Interest does not apply;

- MSRB Rule G-20, on gifts, gratuities, non-cash compensation, and expenses of issuance, to require any permissible non-cash compensation of a broker-dealer to align with the applicable requirements of Regulation Best Interest; and

- MSRB Rule G-48, on transactions with sophisticated municipal market professionals, to make clear that the exception from the requirement to perform a customer-specific suitability analysis when making a recommendation to a sophisticated municipal market professional (*i.e.*, an "SMMP"), as defined in MSRB Rule D-15, is available only for recommendations that are subject to MSRB Rule G-19.

The Commission approved the amendment described in the MSRB Broker-Dealer Filing on June 25, 2020.[11]

B. Bank Dealer MSRB Rule Alignment

Since the approval of the MSRB Broker-Dealer Filing, the MSRB has remained focused on how the Commission's Regulation Best Interest affects the municipal securities market and interacts with the MSRB's rule book. As stated in the MSRB Broker-Dealer Filing, the MSRB understands that the terms of Regulation Best Interest do not apply to bank dealers.[12] The MSRB preliminarily believes that the inapplicability of Regulation Best Interest to bank dealers has created the potential for certain recommendations made by a bank dealer to a retail customer to be subject to a lesser standard of conduct relative to Regulation Best Interest than if the same recommendation were made by a broker-dealer. Consequently, certain retail customers in municipal securities might be afforded different regulatory protections based solely on whether they are a customer of a bank dealer or

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dealers are required to make and maintain the records regardless of which books and records rule they comply with.

[11] Approval Order for the MSRB Broker-Dealer Filing (citation at note 8 *supra*).

[12] Approval Order for the MSRB Broker-Dealer Filing, at 39614, fn. 15 ("To effect transactions in municipal securities, a person must be a Broker-Dealer subject to registration with the Commission under Section 15(b)(1) or a municipal securities dealer subject to registration with the Commission under Section 15B(a)(2) of the Exchange Act. . . . Bank Dealers are registered with the Commission under Exchange Section 15B(a)(2), and thus are not subject to Regulation Best Interest." (internal citations omitted)).

broker-dealer. The MSRB is concerned that this difference could cause unintentional harms and confusion to retail investors in the municipal securities market and is issuing this request for comment for further input from market participants.[13]

II. Request for Comment

The MSRB seeks public comment on the following questions, as well as on any other topic relevant to this request for comment. The MSRB encourages statistical, empirical, and other data from commenters that may support their views and/or may otherwise support or refute the views, assumptions, or issues raised in this request for comment.

A. Application of Regulation Best Interest to Bank Dealers

The Commission stated in the Regulation Best Interest Adopting Release that the SEC rule "enhances the existing standards of conduct for broker-dealers beyond existing suitability obligations and aligns" the standard of conduct with a retail customer's reasonable expectations, including by, among other things, requiring a broker-dealer to "act in the best interest of a retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer[.]"[14] Currently, bank dealers are not subject to Regulation Best Interest and remain subject to the existing obligations of suitability for recommendations to retail customers under MSRB Rule G-19.[15]

Questions:

1. What are the potential benefits or harms of the MSRB harmonizing the standard of conduct applicable to a bank dealer's recommendation of transaction or investment strategy, including account recommendations, with respect to a municipal security to a retail customer with the Commission's Regulation Best Interest?

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[13] *Id* ("[B]ecause Bank Dealers can make recommendations of municipal securities transactions or investment strategies involving municipal securities to retail customers, the Board stated it plans to issue a separate Request for Comment on whether the Board will apply the requirements of Regulation Best Interest, through further amendments to MSRB rules, to Bank Dealers.").

[14] Regulation Best Interest Adopting Release, 84 FR at 33318.

[15] *See* note 12 *supra* for citation to the Approval Order for the MSRB Broker-Dealer Filing discussing the applicable registration requirements under the Exchange Act.

2. Are the municipal securities activities of bank dealers significantly distinct from those of broker-dealers to warrant a different standard of conduct? If so, can you provide a more detailed explanation about how or why bank dealers' municipal securities activities are so dissimilar? If not, can you provide a more detailed explanation about how or why bank dealers' municipal securities activities are similar or the same?

3. Does this potential for differing regulatory obligations pose any specific harms or benefits to the municipal market? For example, would not amending the existing regulatory scheme incentivize retail customers to invest in municipal securities solely through a broker-dealer? Would not amending the existing regulatory scheme incentivize firms to move municipal securities business to a bank dealer affiliate or another type of municipal securities dealer entity?

B. Definitions of "Retail Customer" and "Recommendation"

Regulation Best Interest defines a "retail customer" as a "a natural person, or the legal representative of such natural person, who: (i) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (ii) Uses the recommendation primarily for personal, family, or household purposes."[16] The Commission also stated that the determination of whether a broker-dealer has made a "recommendation" that triggers application of Regulation Best Interest turns on the facts and circumstances of the particular situation and, therefore, is not susceptible to a bright line definition.[17]

Questions:

4. If bank dealers are subject to the requirements associated with Regulation Best Interest, to better assess the compliance costs, what portion of a bank dealer's municipal securities business would be impacted?[18] In general, how much of a bank dealer's municipal

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[16] *See* Exchange Act Rule 15*l*-1(b)(1).

[17] Regulation Best Interest Adopting Release, 84 FR at 33335.

[18] While the MSRB believes that a par value of $100,000 or less is a reasonable proxy for retail customer trades, the MSRB also understands that a bank dealer could engage in a large volume of transactions at such par amounts but, nevertheless, may not have any "retail customers," nor make any "recommendations," as such terms are defined in Regulation Best Interest.

securities business relates to retail customers? How much of a bank dealer's retail customer business involves a recommendation?

5. Would amending the existing regulatory scheme to extend the application of the requirements associated with Regulation Best Interest to bank dealers incentivize bank dealers to eliminate certain municipal securities activities with retail customers? Please provide any specifics available in support of your answer.

C. Regulation Best Interest's "General Obligation" and Component Obligations

Regulation Best Interest imposes a "General Obligation" that requires a broker-dealer, ". . . when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer[.]"[19] The Commission further states the General Obligation is satisfied only if a broker-dealer complies with four component obligations: (i) an obligation to make certain prescribed disclosures to the customer, before or at the time of the recommendation about the recommendation and the relationship between the retail customer and the broker-dealer (the "Disclosure Obligation");[20] (ii) an obligation to exercise reasonable diligence, care, and skill in making a recommendation (the "Care Obligation");[21] (iii) an

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[19] 17 CFR 240.15l-1(a)(1).

[20] 17 CFR 240.15l-1(a)(2)(i). Staff of the Commission have summarized the Disclosure Obligation as requiring that a broker-dealer, ". . . prior to or at the time of the recommendation, provide the retail customer, in writing, full and fair disclosure of: all material facts relating to the scope and terms of the relationship with the retail customer; and all material facts relating to conflicts of interest that are associated with the recommendation." *See Regulation Best Interest: A Small Entity Compliance Guide*, available at https://www.sec.gov/info/smallbus/secg/regulation-best-interest#_edn1 (last accessed March 4, 2021) (the "SEC Staff Compliance Guide"). As further described therein, the SEC Staff Compliance Guide was prepared by the staff of the Commission to summarize and explain Regulation Best Interest, but is not a substitute for the rule itself. The publication states, "Only the rule itself can provide complete and definitive information regarding its requirements."

[21] 17 CFR 240.15*l*-1(a)(2)(ii). Staff of the Commission have summarized the Care Obligation as requiring that a broker-dealer, ". . . exercise reasonable diligence, care, and skill when making a recommendation to a retail customer to: [i] understand potential risks, rewards, and costs associated with recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; [ii] have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards,

obligation to establish, maintain, and enforce reasonably designed written policies and procedures related to conflicts of interest (the "Conflict of Interest Obligation");[22] and (iv) an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest (the "Compliance Obligation" and, together with the Disclosure Obligation, Care Obligation, and Conflict of Interest Obligation, the "Component Obligations").[23]

Questions:

6. If Regulation Best Interest's General Obligation and its Component Obligations were made applicable to bank dealers, should the MSRB omit, supplement, or otherwise modify any of the requirements associated with Regulation Best Interest to account for the municipal securities activities of bank dealers? Why or why not? If so, specifically how should the obligations be omitted, supplemented, or modified?

7. As one example of the need for such modifications, the Disclosure Obligation requires a broker-dealer to disclose that it is acting in a broker-dealer capacity. How might the MSRB further amend the text of the Disclosure Obligation if Regulation Best Interest's references to

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and costs associated with the recommendation and does not place the interest of the broker-dealer ahead of the interest of the retail customer; and [iii] have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile." *See* SEC Staff Compliance Guide, available at https://www.sec.gov/info/smallbus/secg/regulation-best-interest#Care_Obligation (last accessed March 4, 2021).

[22] 17 CFR 240.15/-1(a)(2)(iii). Under the Conflict of Interest Obligation, a broker-dealer entity "must establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest associated with its recommendations to retail customers." *See* SEC Staff Compliance Guide, available at https://www.sec.gov/info/smallbus/secg/regulation-best-interest#Conflict_of_Interest_Obligation (last accessed March 4, 2021).

[23] 17 CFR 240.15/-1(a)(2)(iv). Staff of the Commission have summarized the Compliance Obligation as requiring that a broker-dealer entity "establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest," which is "an affirmative obligation with respect to the rule as a whole, and provides flexibility to allow [broker-dealer entities] to establish compliance policies and procedures that accommodate [each entity's] business model." *See* SEC Staff Compliance Guide, available at https://www.sec.gov/info/smallbus/secg/regulation-best-interest#Compliance_Obligation (last accessed March 4, 2021).

broker-dealers were effectively replaced with references to bank dealers?

D. Text of the Draft Amendment

The MSRB Broker-Dealer Filing that aligned the MSRB's rules to the Commission's Regulation Best Interest, among other changes, amended MSRB Rule G-19 to state that, "[t]his rule shall not apply to recommendations subject to Regulation Best Interest, Rule 15/-1 under the Act." The text of the draft amendment is provided at the end of this request for comment. The MSRB is considering various alternatives for how MSRB Rule G-19 might be amended to effectively require that, when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers, a bank dealer must comply with Regulation Best Interest to the same extent as a broker-dealer. The MSRB is also considering, in the interest of harmonization, whether bank dealers should strictly look to the Commission's interpretations and guidance regarding the obligations of Regulation Best Interest, as well as the role of the MSRB in tailoring such interpretations and guidance to the activities of bank dealers.

Questions:

8. Are there specific suggestions for how the text of the MSRB rule book should be amended to make the requirements associated with Regulation Best Interest applicable to bank dealers? Are there reasonable regulatory alternatives to the draft amendment?

9. What are the benefits and costs of the MSRB relying on the Commission to provide adequate written interpretation and guidance to bank dealers on the application of Regulation Best Interest?

10. If bank dealers are not required to comply with Regulation Best Interest, are there other enhancements that could be made to MSRB Rule G-19 or other MSRB rules to provide additional or analogous investor protections with respect to engaging in a municipal securities transaction with a bank dealer?

III. Economic Analysis

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate

in furtherance of the purposes of the Exchange Act.[24] The MSRB seeks comment on the economic effects of amending MSRB Rule G-19 to apply Regulation Best Interest to bank dealers.

A. Need for the Amendment

As previously mentioned, the Commission's Regulation Best Interest is not applicable to bank dealers,[25] and the municipal securities activities of bank dealers continue to be subject to the existing investor protection obligations of MSRB rules, including MSRB Rule G-19. The draft amendment proposed by this request for comment would require each bank dealer to comply with the requirements of Regulation Best Interest to the same extent as a broker-dealer must, by adding supplementary text to MSRB Rule G-19. Among other potential benefits and costs, the draft amendment would eliminate a potential regulatory imbalance in the market between the municipal securities activities of bank dealers and those of broker-dealers, each of whom may provide recommendations and effect transactions of municipal securities to retail customers. The MSRB believes another benefit of the draft amendment is that it would reduce agency costs[26] and information asymmetry between bank dealers and retail customers.

B. Baseline for Evaluation

When assessing the impact of an amendment, the MSRB establishes a baseline as a point of reference to evaluate the draft amendment's potential economic impact. This baseline enables the MSRB to compare the expected state of the municipal securities market with the draft amendment in effect. The MSRB views the economic impact of a draft amendment as the difference between the baseline state and the as-modified expected state.

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[24] 15 U.S.C. 78o-4(b)(2)(C). An explanation of the MSRB's Policy on the Use of Economic Analysis in MSRB's Rulemaking can be found here: http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx

[25] By its terms, Regulation Best Interest applies to "a broker, dealer or a natural person who is an associated person of a broker or dealer," which does not include the municipal securities activities of a bank dealer. 17 CFR 240.15l-1(a)(1).

[26] The SEC describes this reduction in agency cost, in the Regulation Best Interest Adopting Release, as "the difference between the net benefit to the retail customer from accepting a less than efficient recommendation about a securities transaction or investment strategy, where the associated person or broker-dealer puts its interests ahead of the interests of the retail customer, and the net benefit the retail customer might expect from a similar securities transaction or investment strategy that is efficient for him or her." *See* Regulation Best Interest Adopting Release, at 84 FR at 33403.

The *baseline state* for assessing the impact of the draft amendment is the current market and regulatory structure in which a bank dealer's municipal securities activities are not subject to the requirements of Regulation Best Interest and a retail customer of a bank dealer does not receive any of the possible enhanced protections afforded by Regulation Best Interest. The *expected state* for assessing the impact of the draft amendment is the predicted market and regulatory structure in which a bank dealer's securities activities are subject to Regulation Best Interest to the same extent as a broker-dealer.

C. Alternative Approaches

In considering the costs, benefits, and impacts of an amendment, the MSRB also addresses reasonable alternatives where applicable. Specific to the draft amendment proposed by this request for comment, the MSRB believes the only reasonable alternative for evaluation is the option of leaving in place the current regulatory state in which a bank dealer's municipal securities activities are not subject to the requirements of Regulation Best Interest, while a broker-dealer's municipal securities activities are subject to the full requirements of Regulation Best Interest. As shown below, the MSRB preliminarily believes that maintaining the status quo would preserve a regulatory imbalance in this regard between bank dealers and broker-dealers engaged in the same activity and also potentially deprive certain retail customers of the investor protections afforded by Regulation Best Interest.

D. Benefits, Costs and Effect on Competition

Pursuant to the MSRB's policy on economic analysis in rulemaking, the MSRB's economic analysis should address the likely costs and benefits of an amendment. The economic analysis assesses an amendment as if it were fully implemented against the context of the economic baselines, as discussed above. The MSRB is seeking, as part of this request for comment, additional data, or studies relevant to the costs and benefits of the draft amendment.

The draft amendment proposed by this request for comment would, for the first time, obligate a bank dealer to abide by the requirements of Regulation Best Interest when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers. In this regard, the MSRB believes that the effects of the draft amendment would be similar and comparable to the effects resulting from when broker-dealers were first required to comply with Regulation Best Interest, though

at a much smaller scale concerning only municipal securities.[27] Therefore, the MSRB believes that the SEC's estimates of costs and benefits of applying Regulation Best Interest to broker-dealers is a reasonable reference point for analyzing the costs and benefits of applying Regulation Best Interest to the municipal securities activities of bank dealers. The MSRB intends to build upon the findings of the SEC's multiyear in-depth analysis for this draft amendment.

Notably, in the Regulation Best Interest Adopting Release, the SEC emphasized that it is "difficult to quantify such benefits and costs with meaningful precision" for broker-dealers and, particularly over long time periods, the quantification may be insufficiently precise and inherently speculative,[28] mainly due to the following factors, among others:

- "A lack of data on the extent to which broker-dealers with different business practices engage in disclosure and conflict mitigation activities to comply with existing requirements, and therefore how costly it would be to comply with the proposed requirements;"

- "Regulation Best Interest provides broker-dealers flexibility in how to comply with the obligations and, as a result, there could be multiple ways in which broker-dealers will satisfy their obligations;" and

- "Regulation Best Interest may affect broker-dealers differently depending on their business model (e.g., full service broker-dealer, broker-dealer that uses independent contractors, insurance-affiliated broker-dealer) and size."[29]

The SEC further cautioned that the associated costs for each individual broker-dealer firm could not be anticipated "because of the wide variation in size and scope of business practices across firms as well as the many unknown factors associated with the principles-based nature of the Regulation Best Interest."[30] The MSRB believes that the same difficulties and complexities experienced by the SEC in attempting to analyze the economic effects of applying Regulation Best Interest to broker-dealers also applies to

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[27] *See* Regulation Best Interest Adopting Release, 84 FR at 33403

[28] *Id*.

[29] *See* Regulation Best Interest Adopting Release, 84 FR at 33434.

[30] *Id.*

the MSRB's attempt to provide a meaningful quantitative estimate of the impact of the draft amendment on bank dealers.

While acknowledging these challenges, the MSRB attempted to determine the scope of activity that would be subject to the draft amendment, which is summarized in **Table 1** below. The summary table provides an estimate of the number of bank dealers likely to be affected by the draft amendment. The bank dealers were included in that table based on their market share of retail-sized dealer-to-customer trades in calendar year 2019 (*i.e.*, dealer-to-customer trades with a par value of $100,000 or less).[31] Among the over 1,200 dealers registered with the MSRB, only 21 firms are registered as bank dealers. Those 21 bank dealers conducted only 1.5% of all retail-sized dealer-to-customer trades in municipal securities in 2019.[32] Even among the 21 bank dealers, nearly all of this activity was concentrated in a small number of firms, with the top seven most-active bank dealers conducting the vast majority of all retail-sized customer trades last year (about 99.5%). The remaining number of registered bank dealers were significantly less active in executing retail-sized trades with customers during that same period, with four bank dealers not executing any retail-sized customer trades over the course of the entire year and the remaining 10 bank dealers altogether averaging about one retail-sized customer trade per day.

[31] The MSRB does not have access to reliable data to determine the precise number of bank dealers who provide (or may provide) recommendations to investors who meet the definition of a retail customer. To develop a reasonable proxy, the MSRB analyzed market data to determine the number of retail-sized trades (par value at $100,000 or less in this case). In the absence of more specific data about a trade, total par size of $100,000 or less is commonly used in the municipal market as an indicator of a retail activity.

[32] These figures are provided by an MSRB analysis with data obtained from MSRB's Real-Time Transaction Reporting System (RTRS) combined with existing registration data.

Table 1:
Market Share of Municipal Securities
Retail-Sized Customer Trades by Dealers

January 2019 – December 2019

Type of Dealers	Number of Retail-Sized Customer Trades	Market Share of Retail-Sized Customer Trades
Non-Bank Dealers	3,989,811	98.5%
Top Seven Bank Dealers	61,909	1.5%
All Fourteen Other Bank Dealers	288	0.0%

Source: MSRB analysis with data obtained from the MSRB's Real-Time Transaction Reporting System (RTRS) and the MSRB's registration data.

In developing these numbers, the MSRB believes that they are likely overly inclusive of trading activity, because the numbers likely capture more trades than would be subject to the requirements of the draft amendment, but nevertheless the numbers are a reasonable estimate for purpose of this economic analysis. In terms of the potential limitations of this data, dealer-to-customer trades with a par value of $100,000 or less are not always conducted with investors who would meet the definition of a retail customer under Regulation Best Interest,[33] as representatives acting on behalf of non-retail, institutional customers may also execute trades with a par value of $100,000 or less (*i.e.*, small institutional trades). Conversely, retail investors may execute trades above $100,000 par value (*i.e.*, large retail trades). On the whole, the MSRB believes that such large retail trades occur much less frequently and, thus, do not fully offset the more frequent occurrences of sub-$100,000 par value institutional trades.

Additionally, the MSRB also acknowledges that the number of trades is not a reasonable proxy for the number of recommendations. That is, the fact that a bank dealer executes a trade with an investor who meets the definition of a retail customer under Regulation Best Interest does not necessarily mean that the bank dealer has made a "recommendation" to such retail customer for purposes of Regulation Best Interest. The bank dealer may have, for example, executed an unsolicited trade at the customer's request. Hence, the MSRB believes that a number of these trades would not be subject to Regulation Best Interest.

[33] It is the MSRB's understanding that, as a class of registered entities, bank dealers do not have a substantial retail presence.

i. Benefits

The MSRB preliminary believes that extending the requirements of Regulation Best Interest to bank dealers would reduce or eliminate a regulatory imbalance between bank dealers, on the one hand, and broker-dealers, on the other hand, as Regulation Best Interest does not by its terms apply to bank dealers. The draft amendment would both close a regulatory gap and also mitigate certain market risks associated with a potentially lower compliance standard.[34] To the extent that bank dealers make recommendations to retail customers, the draft amendment would also promote investor protection for retail customers seeking investment recommendations and transacting in municipal securities, regardless of whether they are customers of a broker-dealer or a bank dealer.

As to the overall merit of the proposed new requirements, they are intended to reduce bank dealer-retail customer agency costs by lessening conflicts of interest that currently exist between bank dealers and retail customers and reduce information asymmetries that would limit the ability of retail customers to assess the efficiency of recommendations from bank dealers. For a detailed discussion of the economic theory behind agency costs, please refer to the SEC Regulation Best Interest Adopting Release.

ii. Costs

If the draft amendment were enacted, the MSRB preliminarily believes that bank dealers would experience initial costs associated with establishing the revised policies and procedures to comply with the requirements of Regulation Best Interest, as well as costs of ongoing compliance. The initial setup costs likely would be proportionately higher for smaller and less active bank dealers than for the larger and more active bank dealers, while the ongoing costs would likely be proportionate with each bank dealer's retail business activities.

The MSRB preliminarily believes the average per-firm total costs (initial and ongoing) would be substantially lower for a bank dealer that provides recommendations *only* related to municipal securities as compared to the costs associated with a broker-dealer that provides recommendations to retail customers related to many different types of securities. On average, there are many more retail-sized trades in other types of securities (for

[34] As one potential example, where a bank dealer and a broker-dealer are both subsidiary entities of a common parent holding company, the MSRB is concerned that the parent holding company may take advantage of any regulatory imbalance by utilizing a regulatory arbitraging strategy to move retail customer accounts to the subsidiary with the lowest compliance standard, and, thus, broker-dealers may relocate retail customers accounts to affiliated bank dealers to avoid compliance with Regulation Best Interest.

example, equities, corporate bonds, treasury and agency securities, options, convertible bonds, mutual funds, and exchange-traded funds, *etc.*) than in municipal securities alone. A broker-dealer subject to Regulation Best Interest incurs cost any time it provides a recommendation to its retail customers on any security, while a bank dealer would only incur cost when it provides a recommendation to its retail customers on municipal securities under the draft amendment.

iii. Effect on Competition, Efficiency, and Capital Formation[35]

The MSRB preliminarily believes that, if the draft amendment were adopted, some bank dealers that rarely execute retail-sized customer trades, assuming those trades represent recommendations to retail customers, may choose to forgo retail business entirely to avoid the costs of compliance with Regulation Best Interest or more narrowly stop providing recommendations to retail customers to limit the costs of compliance. Since bank dealers have a relatively minor presence in executing retail-sized trades for municipal securities, the MSRB preliminarily does not expect a significant alteration to the competitive landscape if the draft amendment were adopted. In other words, a regulated entity in competition with other regulated entities is not expected to be disadvantaged by the draft amendment.

The MSRB preliminarily believes that requiring bank dealers to comply with the requirements of Regulation Best Interest, when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers, would improve market efficiency by imposing equivalent requirements on bank dealers when making such recommendations as on broker-dealers under Regulation Best Interest, and thus reduce confusion for firms and investors via harmonization of MSRB rule requirements with SEC requirements. It also may encourage competition for retail customers among bank dealers and broker-dealers to the extent that the disclosure of fees and conflicts of interest would increase transparency and facilitate comparability across bank dealers and broker-dealers. The MSRB preliminarily believes investors should benefit from receiving the same type of information from bank dealers and broker-dealers in relation to an investment recommendation. Therefore, the draft amendment would facilitate capital formation.

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[35] Capital formation is defined by the SEC on their website "What we do," available at https://www.sec.gov/about/what-we-do#section2. It refers to companies and entrepreneurs accessing America's capital markets to help them create jobs, develop innovations and technology, and provide financial opportunities for those who invest in them.

Questions:

11. What are the potential costs of requiring bank dealers to comply with Regulation Best Interest? Can commenters provide specific data to quantify the potential costs of requiring bank dealers to comply with Regulation Best Interest?

12. Do you believe that the SEC's estimates of initial and ongoing costs to comply with Regulation Best Interest for broker-dealers with similar size and similar scale of activities in municipal securities can be applied to bank dealers?

13. If bank dealers become subject to Regulation Best Interest, what impact would that have on the municipal securities market? How would it affect capital formation? How would it affect competition?

March 4, 2021

* * * * *

Text of the Draft Amendment*

Rule G-19: Suitability of Recommendations and Transactions

A broker, dealer or municipal securities dealer 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 the information obtained through the reasonable diligence of the broker, dealer or municipal securities dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation.

This rule shall not apply to recommendations subject to Regulation Best Interest, Rule 15*l*-1 under the Act ("Regulation Best Interest"). When making recommendations of securities transactions or investment strategies involving municipal securities, a bank dealer shall comply with Regulation Best Interest to the same extent as a broker or dealer.

Supplementary Material

No Change.

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* Underlining indicates new language; strikethrough denotes deletions.

EXHIBIT 2b

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2021-06 (MARCH 4, 2021)

1. American Bankers Association: Letter from Justin M. Underwood, Executive Director, dated June 2, 2021

2. American Securities Association: Letter from Christopher A. Iacovella, Chief Executive Officer, dated May 27, 2021

3. Capital Markets Group of Commerce Bank: Letter from Erik Swanson, Managing Director, and Joseph Reece, Chief Compliance Officer, not dated

4. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 2, 2021 (the "SIFMA Bank Dealer Letter")

5. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 2, 2021(the "SIFMA SMMP Letter")

EXHIBIT 2c

American Bankers Association
Building Success. Together.

Justin M. Underwood
Executive Director - ABASA
Vice President, Banking Policy
202-663-5273
junderwood@aba.com

SUBMITTED ELECTRONICALLY

June 2, 2021

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, D.C. 20005

RE: Municipal Securities Rulemaking Board Requests for Comment on Application of Regulation Best Interest to Bank-Dealers (Notice 2021-06)

The American Bankers Association[1] (ABA) appreciates the opportunity to provide comments to the Municipal Securities Rulemaking Board (MSRB or Board) on the draft amendment to MSRB Rule G-19, on the suitability of recommendation on transactions that would require bank dealers to comply with Rule 15/-1 of the Securities Exchange Act of 1934 when making recommendations on securities transactions or investment strategies involving municipal securities to retail customers.[2] Specifically, the Board is requesting input from stakeholders to harmonize the municipal market regulations to include bank dealers in the SEC's Regulation Best Interest.

The draft amendment would impose a standard of conduct on bank dealers when recommending to retail customers in the municipal securities market. Many ABA members provide services as regulated municipal securities dealers through separately identifiable

[1] The American Bankers Association is the voice of the nation's $22.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $18 trillion in deposits, and extend nearly $11 trillion in loans. Learn more at www.aba.com.
[2] See MSRB Notice 2021-06.

departments in commercial banks or through broker-dealer affiliates of commercial banks. These services and products are frequently offered under various regulatory and legal regimes, which are governed by state and federals laws, and supervised by multiple regulatory agencies. The Request for Comment, while directed at bank dealers, is also of interest to our broker-dealer and bank members. Our comments herein will be focused on these various perspectives.

General Comments

While ABA has long supported the notion that financial professionals offering investment advice to retail customers should be subject to a best interest standard, we urge the Board to consider the compliance costs imposed by such a rule on bank dealers in relation to their limited amount of retail customer activity. Board data has shown that the overwhelming amount of retail-sized (< $100K par value) bank dealer-to-customer trades were concentrated among seven (7) of the 21 existing bank dealers and four (4) of the 21 bank dealers did not execute any retail-sized trades.[3] Ultimately, bank dealers in municipal securities do not have a significant retail customer base to warrant a new regulatory compliance regime in this manner.

Specific Comments on the Proposed Amendment

Costs

Among the chief concerns of ABA members are the expected costs associated with establishing the revised policies and procedures to comply with Regulation Best Interest's requirements and the expected ongoing compliance costs. The Board believes these costs would be proportionate to each bank dealer's limited retail activity. Most dealer banks do not engage in trades with retail customers nor typically in amounts less than $100,000 par value. Nonetheless, these institutions may find themselves potentially in a transaction with a retail customer through no effort on the part of the bank. The Request for Comment acknowledges that because a trade is

[3] See MSRB Notice 2021-06 pg. 13

less than $100K, it does not imply that these trades are conducted with only retail customers and could be executed for institutional trades.[4] Per the example above, we would encourage the MSRB to consider a thoughtful and tailored approach to this rulemaking so the bank dealer would not incur any additional cost or require additional documentation if the trades were not subject to Regulation Best Interest.

Further, if a bank dealer has to track or report this type of activity, there would be a cost to doing so only to prove the bank is complying with Regulation Best Interest even though the bank dealer does not offer any sales to retail clients. The MSRB should consider the burden on the bank dealer to establish revised policies and procedures related to the compliance of Regulation Best Interest and allow for those bank dealers who do not participate in retail transactions or recommendations to "opt-out" of Regulation Best Interest.

Disclosure of Fees

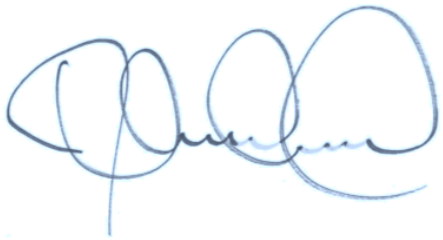
The disclosure of fees and conflicts of interest required for broker-dealer activity with retail customers is another concern for ABA's bank dealer members. There is a possibility that if bank dealers are required to comply with Regulation Best Interest with retail transactions, it could open up similar compliance related to their institutional businesses. In light of the higher costs associated with the implementation of the proposed requirements and in all likelihood, the ongoing costs, the Board should take this into consideration given the small number of bank dealers practicing in the market today.

Conclusion

[4] See MSRB Notice 2021-06 pg. 14

ABA appreciates this opportunity to provide the perspective of our bank dealers and banks. We offer our suggestions intending to improve the effectiveness of the proposed amendment and ensure compliance costs and burden are proportional to their activities.

Sincerely,



Justin M. Underwood
Executive Director – ABASA
Vice President, Banking Policy
American Bankers Association

american securities association
America's Voice for Main Street's Investors

May 27, 2021

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Request for Comment on Application of Regulation Best Interest to Bank-Dealers (2021-06)

Dear Mr. Smith:

The American Securities Association (ASA)[1] appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to amend MSRB rules to harmonize standards of conduct for bank dealers with the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI), which went into effect on June 30, 2020 (Proposal).

The ASA has strongly supported Reg BI, which was finalized by the Securities and Exchange Commission in June 2019. Reg BI is a strong national standard that includes significant investor protections and establishes clear rules for broker-dealers, without crippling business models that have served investors well for years. Having a national standard has become increasingly important given efforts by certain states to undermine Reg BI by adopting their own conflicting standards which confuse investors, increase costs, and reduce access to advice.

Reg BI requires broker-dealers to consider several factors when providing advice and making recommendations to retail investors. This includes considering the potential risks, rewards, and costs associated with recommendations, and a prohibition against a broker putting their own interest ahead of their clients. Reg BI raises the bar for the entire broker-dealer industry and will prevent bad actors from taking advantage of vulnerable investors.

The adoption of Reg BI requires MSRB to align its rules with the new national standard. In 2020, the SEC approved a number of MSRB proposals to align rules G-8, G-19, G-20, and G-48 for broker-dealers when interacting with retail customers.[2] The Proposal would further amend MSRB Rule G-19 regarding suitability to align Reg BI with standards that apply to bank dealers (defined as a municipal dealer that is a bank or a separate department or division of a bank). While technical in nature, the Proposal will reduce regulatory confusion for municipal dealers and further establish Reg BI as the national standard for broker-dealers and bank dealers.

[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.
[2] Approval Order for the MSRB Broker-Dealer Filing (June 25, 2020)

The ASA appreciates the work by the MSRB in the Proposal to align their rules with the SEC and Financial Industry Regulatory Authority's (FINRA) when possible so that broker-dealers are not subject to multiple standards. We thank the MSRB for advancing this Proposal and look forward to working with the Board to ensure that Reg BI meets its intended goals.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association

Commerce Bank
Member FDIC
1000 Walnut St.
Kansas City, MO 64106

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Notice 2021- 06, Request for Comment on Application of Regulation Best Interest to Bank-Dealers

Dear Mr. Smith,

The Capital Markets Group of Commerce Bank ("CMG") respectfully submits these comments in response to MSRB Notice 2021-06. The Capital Markets Group is a department of Commerce Bank ("Commerce") and is a registered bank-dealer. Commerce Bank, a subsidiary of Commerce Bancshares, Inc., is a Federal Reserve Member, Missouri Trust Company operating full service banking facilities across the Midwest including the St. Louis and Kansas City metropolitan areas, Springfield, Central Missouri, Central Illinois, Wichita, Tulsa, Oklahoma City, and Denver. We appreciate the opportunity to share our observations and comments in regard to the potential impact and effect of the proposed application of Regulation Best Interest on bank-dealers.

The Request for Comment invites market participants to provide comments in response to several questions and topics posed in regard to Regulation Best Interest. As noted by the MSRB, the terms of Regulation Best Interest ("Regulation BI") do not currently apply to bank dealers. Specifically, the MSRB is seeking comment on a draft amendment to MSRB Rule G-19, requiring bank dealers to comply with Regulation Best Interest when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers.

Our comments with the corresponding Item Number from the Notice are as follows:

2. Are the municipal securities activities of bank dealers significantly distinct from those of broker-dealers to warrant a different standard of conduct? If so, can you provide a more detailed explanation about how or why bank dealers' municipal securities activities are so dissimilar?

Although we cannot speak with direct knowledge of other bank dealers, we can provide applicable details about the activities of CMG. The majority of CMG's customers and related activity are institutional in nature, comprising over 91% of open accounts, and with many of the institutional customers designated as SMMPs. CMG does not actively market or seek to obtain new retail customer accounts. Many of our retail clients are related parties to the institutions we serve. For example, many CMG retail customers are typically more sophisticated and are familiar with fixed income products and securities markets. Also, as a bank dealer, CMG is generally only permitted to offer fixed income type products. Our retail customers are aware of this product constraint and utilize CMG services for only a portion of their overall personal portfolios.

Commerce Bank
Member FDIC
1000 Walnut St.
Kansas City, MO 64106

4. If bank dealers are subject to the requirements associated with Regulation Best Interest, to better assess the compliance costs, what portion of a bank dealer's municipal securities business would be impacted? In general, how much of a bank dealer's municipal securities business relates to retail customers? How much of a bank dealer's retail customer business involves a recommendation?

For CMG, retail customers comprise approximately 9% of CMG's total open account customer base. Further, only a portion of these retail accounts actually executed transactions in the last 12 months, comprising approximately 3% of CMG's total customers. As discussed above, the majority of CMG's customers are institutional in nature. In general, most CMG customers may currently be provided recommendations. Given the potential applicability of Regulation BI, internal consideration and assessments will now need to be performed to determine whether recommendations would continue for any CMG retail customers.

5. Would amending the existing regulatory scheme to extend the application of the requirements associated with Regulation Best Interest to bank dealers incentivize bank dealers to eliminate certain municipal securities activities with retail customers? Please provide any specifics available in support of your answer.

Given the significant existing suitability and documentation requirements applicable to CMG's current retail customers, the additional increased requirements, risks, and costs associated with Regulation BI will continue to be assessed. As a result of this review, consideration will most likely be given to the potential removal of retail customers from the CMG platform. In addition, CMG may also consider the elimination of providing recommendations for securities or strategies to retail customers.

6. If Regulation Best Interest's General Obligation and its Component Obligations were made applicable to bank dealers, should the MSRB omit, supplement, or otherwise modify any of the requirements associated with Regulation Best Interest to account for the municipal securities activities of bank dealers? Why or why not? If so, specifically how should the obligations be omitted, supplemented, or modified?

As previously outlined in our response to Question 2, important distinctions exist for retail customers of CMG when compared to a general securities broker-dealer model. For example, the sophistication level of the customers, as well as the regulatory limitations that govern the products permitted to be provided by bank dealers. Given these distinctions and the costs associated with developing a robust program to comply with Regulation BI, we propose the MSRB consider the possibility of omitting or modifying the requirements applicable to bank dealers. As previously stated, the number of retail accounts that comprise CMG's customer base is relatively small, when compared to the number of institutional customers. As currently proposed, the full requirements of Regulation BI would apply to a bank dealer in the absence of any consideration for the number of retail accounts. We propose the MSRB consider a threshold for applicability of Regulation BI, such as the percentage of retail customers that comprise a bank dealers customer base.

Commerce Bank
Member FDIC
1000 Walnut St.
Kansas City, MO 64106

13. If bank dealers become subject to Regulation Best Interest, what impact would that have on the municipal securities market? How would it affect capital formation? How would it affect competition?

> Assuming the amendments are approved as adopted and bank dealers begin to move away from providing services to retail customers, bank dealers that underwrite municipal bonds would need controls in place to ensure underwritings or related commitments are appropriate for any retail order periods required by an issuer. The potential impact may be a smaller number of underwriting firms available or willing to work with smaller issuers and public entities in the market, limiting the number of competitors available for either competitive or negotiated deals. This may negatively impact a municipality's cost to borrow.

Thank you for the consideration of perspectives and information from the industry. We are certainly available to provide further details or aspects of this proposal for bank dealers.

Respectfully submitted,

Erik Swanson
Managing Director
Capital Markets Group of Commerce Bank

Joseph Reece
Chief Compliance Officer - CMG
Capital Markets Group of Commerce Bank

June 2, 2021

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-06 – Application of Regulation Best Interest to Bank Dealers

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Notice 2021-06 (the "Notice"),[2] which proposes an amendment to MSRB Rule G-19 that would require bank dealers to comply with Securities Exchange Act Rule 15/-1 ("Regulation Best Interest") when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers.[3] SIFMA supports the proposed amendment to extend

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2021-06 (March 4, 2021).

[3] SIFMA notes that per SEC No-Action relief, "Institutional Family Offices" are not subject to Reg BI. The no-action relief defines "Institutional Family Office" as:

1) one or more experienced securities or financial service professionals;
2) total assets of $50 million or more;
3) independent of the BD; and
4) supervision, i.e., policies and procedures/records to comply/demonstrate compliance with the relief.

See: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/sifma-122320-regbi.pdf

SIFMA subsequently released two related forms: 1) an affirmative confirmation of status, and 2) a negative consent confirmation of status of Institutional Family Office. Both forms are available at https://www.sifma.org/resources/general/cross-product/#isc.

Regulation Best Interest to bank dealers, as defined in the Notice. Although our members do not normally conduct retail activity through their affiliated banks that would implicate this rule, we believe that regulatory parity among regulated entities, which this amendment achieves, is a worthwhile goal.

If any questions regarding the foregoing, please contact me at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

Leslie M. Norwood
Managing Director
and Associate General Counsel

sifma

June 2, 2021

VIA ELECTRONIC SUBMISSION

Jake Lesser
General Counsel
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: SIFMA Concerns Regarding Amendments to Rules G-19 and G-48

Dear Mr. Lesser,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to address an issue regarding recent amendments to Rules G-19 and G-48 with the Municipal Securities Rulemaking Board ("MSRB"). As the MSRB continues its retrospective review of its rulebook, we appreciate the MSRB's willingness to listen to industry members regarding their thoughts on the rulebook. We welcome this opportunity for a constructive conversation on this issue with the MSRB.

On June 25, 2020, the Municipal Securities Rulemaking Board (MSRB) received approval[2] from the U.S. Securities and Exchange Commission ("Commission") for amendments to MSRB rules that aligned MSRB rules to the Commission's then recently adopted Rule 15l-1 under the Exchange Act[3] ("Regulation Best Interest"). In MSRB Notice 2020-13 (the "Notice"), the MSRB announced the approval of harmonization of the MSRB rules with Regulation Best Interest. The Notice stated, "Regulation Best Interest was adopted to establish a new standard of conduct for broker-dealers and the natural person associated persons of a broker-dealer (collectively, "broker-dealers") when they make a recommendation to a ***retail*** customer, defined generally as a natural person or the legal representative of such person, who receives and uses a

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Exchange Act Release No. 89154 (June 25, 2020) (File No. SR-MSRB-2020-02.

[3] 17 CFR 240.15l-1.

recommendation from a broker-dealer primarily for personal, family, or household purposes, of any securities transaction or investment strategy involving securities (emphasis added)."[4] There was no stated intent in Regulation Best Interest to change standards related to recommendations to institutional or clients other than retail customers who are natural persons.

The amendment to Rule G-19 eliminated the language stricken below (the "Control Requirement") from clause (c) of Supplemental Material .05 (the "Quantitative Suitability Requirement"). There are also corresponding amendments to Rules G-8, 9, 20 and 48. The suitability exemption afforded to sophisticated municipal market professionals ("SMMPs") as provided by Rule G-48(c) does not apply to clause (c) of the Supplemental Material .05. Some SIFMA members believe that as a result of removal of the language stricken below in the Supplemental material, the Quantitative Suitability Requirement may now be applicable to SMMPs with non-discretionary accounts, as Rule G-48 only exempts the customer specific suitability requirement. Section (c) of Supplemental Material .05 was amended to read:

> (c) Quantitative suitability requires a broker, dealer or municipal securities dealer ~~who has actual or de facto control over a customer account~~ to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule G-19. No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a broker, dealer or municipal securities dealer has violated the quantitative suitability obligation.

Our concern relates specifically to this elimination of the Control Requirement language in Rule G-19 from clause (c) of Supplemental Material .05 relating to the Quantitative Suitability Requirement exemption for SMMPs. We note that on page 6 of MSRB Notice 2020-13, there is a reference to natural person SMMPs, and feel this reference is consistent with the notion that the intended amendments were only to change the standard for SMMPs who are natural person. SIFMA members feel strongly that the Quantitative Suitability Requirement in Rule G-19 should be clarified, and interpreted as applicable only to natural person SMMPs, but not to institutional SMMPs. Extending the Quantitative Suitability Requirement to all SMMPs would be unduly costly and burdensome and would does not harmonize the MSRB rules with Regulation Best Interest. Regulation Best Interest has changed many aspects of the relationship between broker dealers and their retail customers. Extending Regulation Best Interest to also include institutional and other non-natural persons SMMPs would necessarily alter those relationships as well, in costly and fundamental ways, and exceed the intended scope of the rule changes. SIFMA and its members urge the MSRB to clarify that the Quantitative Suitability Requirement in Rule G-19 does not apply to SMMPs who are not natural persons.

[4] MSRB Notice 2020-13.

Although SIFMA recognizes that the MSRB's goal was harmonization between FINRA and MSRB with the Reg BI and quantitative suitability amendments, SIFMA believes that it is important to analyze the differences between how MSRB treats SMMPs in Rule G-30 versus how FINRA treats exempt institutional investors ("EII") in FINRA 2111 Supplementary Material: .07.

There are a number of areas where MSRB currently treats SMMPs differently than FINRA treats EIIs. SIFMA acknowledges that MSRB exempts SMMPs from G-19 customer-specific suitability, and FINRA also exempts EIIs from FINRA 2111 customer-specific suitability. However, this is where the similarities end. MSRB also exempts SMMPs from the application of its "best execution" rule standards; while FINRA does not exempt EIIs from application of its "best execution" rule standards. MSRB also exempts SMMPs from the application of its fair and reasonable pricing standards in G-30 in certain circumstances, while FINRA does not exempt EIIs from application of its similar fair prices and commissions rule in FINRA 2121.

Further, the MSRB has recently proposed to treat SMMPs differently from non-SMMPs in the mailing of the G-10 annual notice. This is yet another difference in treatment that SIFMA supports.

The MSRB has a long history of treating SMMPs differently from non-SMMPs, based on a reasoned recognition of the differences between these two investor classes and the relative protections that should be afforded to both. SIFMA is requesting MSRB to make another reasoned departure in how it treats SMMPs from how FINRA treats EIIs with respect to the Quantitative Suitability Requirement; and how it treats SMMPs vs how it treats non-SMMPs. Just as MSRB has determined that SMMPs do not need the protections of its "best execution" standards despite the fact that FINRA has not taken the same position for EIIs, we are asking MSRB to also determine that SMMPs do not need the protections of the quantitative suitability standards that became effective with the recent amendments to Rule G-19, even though FINRA may not take the same position. There is already precedent for MSRB to do so, and for the same reason that MSRB has determined to treat SMMPs differently from how it treats non-SMMPs as noted above, it should do so for quantitative suitability as well.

***

Thank you for considering SIFMA's comments. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130.

Sincerely,

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Gail Marshall, Chief Regulatory Officer
David Hodapp, Director, Market Regulation