EXHIBIT 2a

MSRB Municipal Securities Rulemaking Board

MSRB Notice

2023-02

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February 16, 2023

Stakeholders
Municipal Securities Dealers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
April 17, 2023

Category
Fair Practice

Affected Rules
Rule G-47, Rule D-15

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Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Overview

The Municipal Securities Rulemaking Board ("MSRB" or "Board") seeks comment on draft amendments to MSRB Rules G-47, on time of trade disclosure, and D-15, on sophisticated municipal market professionals. The draft amendments to Rule G-47 would: codify certain existing guidance into the text of Rule G-47; add new supplementary material to specify certain disclosures that may be material in specific scenarios; and make certain technical and clarifying amendments to the rule text. Additionally, the MSRB proposes to retire six pieces of related guidance and consolidate certain existing guidance regarding a broker, dealer or securities dealer's (individually and collectively, "dealers") disclosure obligations in connection with an inter-dealer transaction into one piece of guidance. Draft amendments to Rule D-15 would exempt investment advisers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission") from having to make certain affirmations in order to qualify for status as a sophisticated municipal market professional ("SMMP") under MSRB rules.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB. Comments should be submitted no later than April 17, 2023 and may be submitted by clicking here or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, MSRB 1300 I Street, NW, Washington, DC

20005. All comments will be made available for public inspection on the MSRB's website.[1]

Background and Regulatory Justification

Consistent with the MSRB's strategic plan and as part of the constant care and keeping of the MSRB's rulebook, the MSRB strives to ensure that, among other things, the MSRB's rules and related guidance are effectively protecting investors, issuers and the public interest, reflective of current market practices, have not become overly burdensome, are harmonized with the rules of other regulators, as appropriate, and that there is no unconscious bias in the operation of the rule. To facilitate these goals, the MSRB engages in periodic retrospective reviews of particular rules. Additionally, the MSRB has initiated a long-term initiative to review the MSRB's catalogue of interpretive guidance and clarify, codify, amend and/or retire guidance that no longer achieves its intended purposes. The retrospective review of Rule G-47 and limited retrospective review of Rule D-15 stem from the MSRB's undertaking to review its body of interpretive guidance.

Rule G-47, which requires dealers to disclose to customers, at or prior to the time of trade, all material information known or available publicly through established industry sources, and Rule D-15, which defines the term SMMP, were approved by the SEC in March 2014.[2] The obligations now encompassed in Rule G-47 originally stemmed from guidance issued under Rule G-17, on fair dealing. While, at the time of the adoption of Rule G-47, the MSRB retired certain guidance that was codified into the Rule G-47 rule text, the MSRB believes that there may be additional related guidance that could benefit from being codified, consolidated or retired and that it would be prudent to conduct a retrospective review of the text of Rule G-47 at the same time. The MSRB is also seeking comment on draft amendments to Rule D-15 to address various stakeholder comments over the years. We believe that a retrospective rule review would allow for modernization of the rules, while simultaneously ensuring that they appropriately achieve their issuer and investor protection goals without placing undue compliance burdens on regulated entities.

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[1] Comments are generally 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.

[2] *See* Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014), (File No. SR-MSRB-2013-07).

Summary of Rule G-47 Draft Amendments

I. General Disclosure Duty

Rule G-47(a) sets forth the basic obligation for a dealer to disclose to customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market.[3] This basic obligation was drawn originally from a dealer's fair dealing obligation under Rule G-17 and importantly, encompasses two distinct disclosure obligations. First, it imposes on dealers an obligation to disclose all material information *known about the transaction*. Second, it imposes an obligation to disclose material information *about the security that is reasonably accessible to the market*. For example, in July 14, 2009 guidance, the MSRB reminded dealers that:

> [t]he scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.[4]

Draft amendments to Rule G-47(a) would retain these standards but would clarify that the time of trade disclosure obligation does not require dealers to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding

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[3] Rule G-48(a), on transactions with sophisticated municipal market professionals, exempts dealers from time of trade disclosure obligations under Rule G-47 when the customer is a sophisticated municipal market professional.

[4] *See* Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009). For example, the MSRB has previously indicated that information that may be material to a transaction includes conversion costs for converting registered securities to bearer form. *See* Confirmation, Delivery and Reclamation of Interchangeable Securities (Aug. 10, 1988). *See* below discussion at Section III.c. regarding the MSRB's proposal to retire this 1988 guidance.

insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer. In the past, commenters have sought clarification regarding this point and the MSRB believes that it is reasonable to include such clarification in the rule text given that it is not the MSRB's intent to require dealers to violate dealer processes that may have been established to facilitate compliance with one obligation (*e.g.,* prohibitions on insider trading) in order to comply with Rule G-47.

Additionally, draft amendments to Supplementary Material .01(d) would codify certain language from existing interpretive guidance reminding dealers that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities that is not otherwise readily available in the market so that the dealer can accurately describe the securities when the dealer reintroduces them into the market. Codification of this language would permit the MSRB to retire the source guidance, discussed below.[5]

II. Definitions

Rule G-47(b)(ii) defines the term "material information" and explains that information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. A minor edit to this definition would delete the language "or significant" in order to streamline the definition. The MSRB does not believe that deletion of this language would materially alter the definition.

III. Codification and/or Retirement of Select Existing Interpretive Guidance

The MSRB proposes to codify certain substantive principles found in interpretive guidance in the MSRB rule book and/or retire certain guidance. In section a below, the MSRB proposes to retire one piece of guidance related to market discount, after codifying its substance

[5] *See* Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade, discussed below under the section titled Related Initiatives, Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions.

into Rule G-47. In section b below, the MSRB proposes to codify, but not retire at this time, guidance pertaining to zero coupon bonds and stepped coupon bonds. In section c below, the MSRB proposes to retire, without codification, guidance pertaining to conversion costs and secondary market insurance. Finally, in section d below, the MSRB proposes to make one technical addition to an existing time of trade disclosure obligation already embodied in current Rule G-47.

a. Guidance to be Codified and Retired

The MSRB proposes to codify into Rule G-47 the key time of trade disclosure principles set forth in the below interpretive guidance. The MSRB would then retire the guidance and move it to the MSRB "Archived Guidance" webpage where it can continue to be accessed for historical reference. However, such guidance would no longer appear in the MSRB rulebook. The MSRB invites comment as to the appropriateness of retiring this guidance and/or as to whether any other aspects of the below guidance offer substantive guidance to dealers that is not immediately apparent from the face of the discussed rules.

Market Discount

In November 2016 Rule G-47 guidance, the MSRB stated that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47 because absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income. The MSRB now proposes to codify this substantive principle into Rule G-47 as new Supplementary Material .03(q).

b. Guidance to be Codified and Retained

Zero Coupon Bonds and Stepped Coupon Bonds

The MSRB proposes to codify time of trade disclosure guidance from the below guidance while retaining the original guidance in its rulebook.

In August 1982 Rule G-15 guidance pertaining to municipal securities with zero coupons or stripped coupons, the MSRB noted in regard to stripped or zero coupon municipal securities that "the

Board is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities so as to comply with the Board's fair practice rules. For example, although the details of the increases to the interest rates on 'stepped coupon' securities need not be provided on confirmations, such information is, of course, material information regarding the securities, and municipal securities dealers would be obliged to inform customers about this feature of the securities at or before the time of trade." The MSRB proposes to add the substance of this guidance to Rule G-47 as new supplementary material .03(t). This new provision would provide that a dealer should disclose any special characteristics of the securities and, with respect to stepped coupon securities, the details of the increases to the interest rates. The MSRB would retain the source guidance at this time as it also pertains to Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and Rule G-12, on uniform practice.[6]

c. Guidance to be Retired at this Time

The MSRB proposes to retire the below guidance and archive them on the msrb.org website.

Conversion Costs

In August 1988 Rule G-15 guidance, the MSRB noted that transfer agents for some interchangeable securities charge fees for conversion of registered certificates to bearer form, which can be substantial and, in some cases, prohibitively expensive. The MSRB went on to state that dealers therefore should ascertain the amount of the fee prior to agreeing to deliver bearer certificates and that, if a dealer passes on the costs of converting registered securities to bearer form to its customer, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade. Additionally, the customer must agree to pay such fee. The MSRB does not believe that interchangeable securities are a common occurrence in the marketplace anymore. As a result, we believe that there is limited utility to this guidance and propose to retire it.

[6] However, the MSRB may revisit this guidance in the future in connection with a separate retrospective rule review of section (c) of Rule G-12.

Secondary Market Insurance

In March 1984 Rule G-17 guidance related to secondary market insurance, the MSRB reminded the industry that the fact that a security has been insured or arrangements for insurance have been initiated will affect the market price of the security and is material and must be disclosed to a customer at or before execution of a transaction in the security. In addition, the Board explained that it believes that a dealer should advise a customer if evidence of insurance or other credit enhancement features must be attached to the security for effective transference of the insurance or device. While the first component of this guidance is already reflected in current Rule G-47 Supplementary Material .03(e), the latter portion pertaining to evidence of insurance was not codified into that same supplementary material because the MSRB believes that it is not common practice to require such evidence of insurance for effective transference. As a result, the MSRB proposes to retire the March 1984 Rule G-17 guidance at this time. The MSRB notes that this piece of guidance also speaks to the application of Rule G-13, on quotations, and Rule G-30, on fair pricing, to securities that are insured or otherwise have a credit enhancement feature. However, those statements simply restate the self-evident fact that those rules apply to such securities. As a result, the MSRB believes that the entirety of such guidance should be retired at this time but seeks comment below as to whether stakeholders believe that any portion of this guidance should be retained and/or codified.

d. Technical Addition(s)

Rule G-47 Supplementary Material .03(i) currently requires disclosure of the fact that a security prepays principal and the amount of unpaid principal that will be delivered on the transaction. The MSRB proposes a minor amendment to this section to offer “factor bonds” as an example of a type of bond that prepays principal, and therefore, could trigger the time of trade disclosure obligation. Factor bonds are bonds for which partial redemptions are processed by a proportional return of principal to each bondholder. Subsequent to the redemption, the factor must be applied to the face value in order to determine interest payments as well as the principal amount for each future transaction.

IV. Draft Amendments Regarding Specified Time of Trade Disclosure Obligations

The MSRB proposes to specify in Rule G-47 that the following information may be material and require time of trade disclosure to a customer.

a. Unavailability of Official Statement or Availability Only from the Underwriter

Securities that are exempt from the requirements of SEC Rule 15c2-12, such as those issued pursuant to the limited offering exemption set forth in SEC Rule 15c2-12(d)(1), are exempt from the obligation under that rule for the issuer or obligated person to review and provide to investors a copy of the official statement. The MSRB proposes to add new supplementary material to Rule G-47 providing that the fact that no official statement is available for a customer's security or is available only from the underwriter (as may be the case for securities that are exempt from the requirements of SEC Rule 15c2-12) may require disclosure under Rule G-47.[7]

b. Continuing Disclosures

The MSRB proposes to amend Rule G-47 to provide that whether an issuer is required to make continuing disclosures with respect to a customer's security that will be available to the customer may require disclosure under the rule. The MSRB believes that such information about the security may be material and is reasonably accessible to the market.[8]

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[7] Dealers may access the Electronic Municipal Market Access ("EMMA®") website to determine whether an official statement is available to investors or only available from the underwriter during a primary offering. The "Issue Details" page for a security issued pursuant to the limited offering exemption will indicate that an official statement is not available on EMMA and will indicate that this is pursuant to the "15c2-12 Exempt Limited Offering."

[8] For example, a review of the official statement or other information available on EMMA typically would indicate whether the issuer or obligated person has undertaken to provide continuing disclosures on the bonds. As another example, EMMA could be used to identify whether an offering was issued pursuant to the limited offering exemption under SEC Rule 15c2-12(d)(1)(i). Below, the MSRB seeks comment as to whether there may be circumstances under which the fact that continuing disclosures will or will not be available to a customer may not be reasonably accessible to the market.

c. Yield to Worst

Pursuant to Rule G-15(a)(i)(A)(5), for transactions that are effected on the basis of a yield to maturity, yield to a call date, or yield to a put date, the yield at which the transaction was effected must be disclosed on a customer's confirmation. In addition, if the computed yield required by Rule G-15 (generally, subject to exceptions, the lower of call or nominal maturity date) is different than the yield at which the transaction was effected, the computed yield also must be shown on the confirmation in addition to the yield at which the transaction was effected. While the MSRB appreciates that this information is disclosed on the customer confirmation on a typically after-the-fact basis, the MSRB proposes to specify that such information—sometimes referred to as the yield to worst—may be material and therefore also may require disclosure under Rule G-47.

Related Initiatives

1. Retagging of Time of Trade Disclosure Interpretive Guidance

The Board explained when adopting Rule G-47 that all interpretive guidance under Rule G-17 that speaks to time of trade disclosure obligations should be read to refer to Rule G-47 instead.[9] In order to better facilitate compliance with Rule G-47, the MSRB conducted an audit of all Rule G-17 guidance and, in enhancing the msrb.org website, has "retagged" all such guidance to ensure that all guidance that interprets a dealer's time of trade disclosure obligation is now tagged to Rule G-47.[10] As a result, dealers no longer have to consult the interpretive guidance behind both Rules G-17 and G-47 when looking for guidance related to their time of trade disclosure obligations.

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[9] *See* MSRB Notice 2014-07, SEC Approves MSRB Rules G-47 on Time-of-Trade Disclosure Obligations, MSRB Rules D-15 and G-48 on Sophisticated Municipal Market Professionals, and Revisions to MSRB Rule G-19 on Suitability of Recommendations and Transactions (March 12, 2014).

[10] Interpretive guidance tagged to Rule G-47 can be found here: https://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-47. To the extent the guidance relates to a dealer's time of trade disclosure obligations and other fair dealing obligations, such guidance is "tagged" to both Rule G-17 and Rule G-47.

2. Time of Trade Disclosure Obligations with Respect to 529 Savings Plans

Currently, the interpretive guidance under Rule G-17 outlines dealers' time of trade disclosure obligations, including the out-of-state disclosure obligations and suitability obligations with respect to 529 savings plans.[11] At the time of adoption of Rule G-47, the MSRB elected not to codify the interpretive guidance under Rule G-17 that pertains to time of trade disclosure obligations in connection with 529 savings plans into Rule G-47. Instead, the MSRB noted that it may create a separate rule regarding time of trade disclosure obligations for 529 savings plans or a rule consolidating dealers' obligations related to 529 savings plans.[12] Specifically, the MSRB stated that until the MSRB adopts a rule specific to 529 savings plans, Rule G-47 and such interpretive guidance continues to apply to 529 savings plans.[13] Similarly, in the interest of addressing dealers' suitability obligations for 529 savings plans at a later time, the MSRB did not incorporate the suitability guidance[14] noted under Rule G-17 into revised Rule G-19, on suitability of recommendations and transactions. The MSRB is considering whether to propose a standalone time of trade disclosure rule for 529 savings plans, which would consolidate the prior interpretive guidance. Additionally, the MSRB is considering a restatement of the existing interpretive guidance regarding dealers' suitability obligations and other sales practice-related activities with respect to 529 savings plans. Below, the MSRB seeks comment relevant to potentially establishing a standalone time of trade disclosure rule that would codify the interpretive guidance under Rule G-17.[15]

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[11] *See* Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans (Aug. 7, 2006).

[12] *See supra* note 2.

[13] The MSRB previously stated, "[a]ll statements in the remaining MSRB interpretative guidance that refer to Rule G-17 in connection with the time-of-trade disclosure obligations should be read instead to refer to new Rule G-47." *See supra* note 9.

[14] The MSRB previously said, "[u]ntil the MSRB adopts a rule specific to 529 plans, MSRB Rule G-19 and the related interpretive guidance will continue to apply to 529 plans." *See supra* note 9.

[15] Since the adoption of Rule G-47, similar to 529 savings plans, interests in Achieving a Better Life Experience (ABLE) programs are also considered municipal securities under federal securities laws and are deemed municipal fund securities under MSRB rules. Consequently, similar to 529 savings plans, a new standalone rule would have general application to ABLE programs and dealers who sell interests in ABLE programs.

3. Consolidated Fair Dealing Guidance on Time of Trade Disclosure Obligations in Connection with Inter-Dealer Transactions

   Rule G-47 applies only in connection with customer transactions, not inter-dealer transactions. However, certain MSRB guidance discusses a dealer's fair dealing disclosure obligations in connection with inter-dealer transactions. The MSRB proposes to consolidate the substance of these pieces of guidance into a short standalone piece of guidance. This would permit the MSRB to retire any guidance that pertains to both customer disclosure obligations and inter-dealer disclosure obligations as the customer disclosure standards would be incorporated into Rule G-47 and the inter-dealer disclosure standards would be consolidated into the standalone piece. Specifically, after incorporating the relevant inter-dealer disclosure content into a consolidated piece of guidance, the MSRB proposes to retire:

   - Rule G-17 interpretive guidance, dated March 19, 1991, pertaining to securities that prepay principal;
   - Rule G-15 interpretive guidance, dated May 15, 1986, pertaining to the disclosure of pricing (calculating the dollar price of partially pre-refunded bonds);[16] and
   - Rule G-17 interpretive guidance, dated April 30, 1986, pertaining to the description provided at or prior to the time of trade.

The draft consolidated guidance is set forth further below.

If, informed in part by the comments received in response to this Request for Comment, the MSRB determines that a standalone time of trade disclosure rule for 529 savings plans may be appropriate, the MSRB would expect to publish a separate Request for Comment on such a draft rule.

[16] The MSRB notes that this Rule G-15 guidance also pertains to the application of Rule G-12(c), Rule G-15(a) and Rule G-30 to the fact pattern described in the guidance. However, the MSRB does not believe that the substantive principles espoused in those portions of the guidance state any principles that are not also expressed elsewhere in the rule book. For example, the Rule G-12(c) and G-15(a) related substance of this guidance is noted in MSRB Rule G-12 guidance, dated August 15, 1989, pertaining to confirmation requirements for partially refunded securities, while the Rule G-30 related principles are currently codified into the text of Rule G-30, Supplementary Material .02(b)(vii)(B).

Summary Of Rule D-15 Draft Amendments

I. Rule D-15 Generally

Rule D-15 defines the term SMMP which is used in Rule G-48, on transactions with sophisticated municipal market professionals. Rule G-48 generally provides for modified dealer regulatory obligations under certain MSRB rules when dealing with SMMPs. Per Rule D-15, an SMMP is defined by three essential requirements: the nature of the customer; a determination of sophistication by the dealer; and an affirmation by the customer, as specified in the rule. Currently, Rule D-15 provides that the three categories of customers that may qualify as an SMMP pursuant to the "nature of the customer" requirement are: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person or entity with total assets of at least $50 million.

II. Attestation Exception for SEC-Registered Investment Advisers

As noted above, in order to qualify as an SMMP under Rule D-15, an SMMP must, among other things, meet the affirmation requirement set forth in the rule. Specifically, the customer must affirmatively indicate that it: (1) is exercising independent judgment in evaluating: (A) the recommendations of the dealer; (B) the quality of execution of the customer's transactions by the dealer; and (C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and (2) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

The MSRB proposes to exempt investment advisers registered with the Commission from having to make such affirmations in order to qualify for SMMP status under Rule D-15. These investment advisers generally maintain over $100 million in regulatory assets under management and owe a fiduciary duty to their clients. The MSRB understands that these investment advisers are typically very sophisticated and, as a result, some market participants have

questioned whether the burdens associated with obtaining an attestation from these professionals is sufficiently outweighed by the protections afforded to them. The MSRB is sensitive to the cost-benefit analysis associated with the application of its rules and seeks comment below as to whether the MSRB should remove the attestation requirement for Commission-registered investment advisers to qualify as SMMPs.

Economic Analysis

Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (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. The Board carefully considers the costs and benefits of new and amended rules. Accordingly, the Board's policy on economic analysis in rulemaking states that, prior to proceeding with rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted would, in its judgement, meet that need.[17] The MSRB does not believe that the proposed changes to MSRB Rule G-47, on time of trade disclosure and definitional Rule D-15, on sophisticated municipal market professionals, would result in any burden on competition in accordance with the purposes of the Exchange Act. The MSRB seeks comment on the economic effects of amending MSRB Rules G-47 and D-15.

A. The Need for Amended Rules G-47 and D-15

The purpose of this Request for Comment is to address the MSRB's ongoing retrospective rule review. As part of the MSRB's ongoing retrospective rule review initiatives, the MSRB has also been examining published interpretive guidance.

The draft amendments to Rule G-47 and Rule D-15 are intended to improve the municipal securities market's operational efficiency and promote regulatory certainty by streamlining requirements and providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text from the current interpretive guidance. In addition, the draft amendments to Rule G-47 and Rule D-15 are intended to benefit dealers by reducing a burden through clarification of the existing rule requirements and

[17] *See* 15 U.S.C. 78o-4(b)(2)(C). *See* also an explanation of the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking. Available at: Policy on the Use of Economic Analysis in MSRB Rulemaking | MSRB.

eliminating unnecessary compliance time and paperwork.

There are twelve specific proposals with regard to Rules G-47 and D-15:

1. Clarifying the time of trade disclosure obligation that dealers, based on a dealer's policies and procedures regarding insider trading, do not need to disclose material information that is intentionally withheld from registered representatives who are engaged in sales with customers.

2. Revising Supplementary Material .01(d) to specify that, while customers do not have a Rule G-47 obligation to dealers, purchasing dealers should obtain from a selling customer sufficient information about the securities so that the dealer can accurately describe the securities when the dealer reintroduces them into the market.

3. Streamlining the description of the term "material information."

4. Codifying guidance on market discount, and zero coupon bonds and stepped coupon bonds into the substance of Rule G-47 and retiring the market discount guidance.

5. Retiring Rule G-15 guidance on costs associated with converting registered certificates to bearer form and Rule G-17 guidance related to the attachment of evidence of insurance to securities as such practices are no longer common in the marketplace.

6. Amending Rule G-47 Supplementary Material .03 to offer "factor bonds" as an example of a type of bond that prepays principal.

7. Adding new draft supplementary material regarding continuing disclosures.

8. Adding new draft supplementary material regarding official statements.

9. Adding new draft supplementary material regarding yield to worst disclosure.

10. Retagging all time of trade disclosure interpretive guidance under Rule G-17 to Rule G-47.

11. Consolidating certain fair dealing statements applicable to a dealer's time of trade disclosure obligations with respect to inter-dealer transactions and retiring the source guidance.

12. Exempting investment advisers registered with the Commission from the affirmation requirement set forth in Rule D-15.

B. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of draft amendments to Rules G-47 and D-15, a baseline or baselines must be established as a point of reference to compare the expected state with the draft amendments. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state. For the purposes of this Request for Comment, the baseline is current Rule G-47 and Rule D-15.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB's policy on economic analysis in rulemaking addresses the need to consider reasonable potential alternative regulatory approaches, when applicable. Under this policy, only reasonable regulatory alternatives should be considered and evaluated.

One alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission. The MSRB considered both state-registered and Commission-registered investment advisers in the interest of providing equal regulatory burdens. However, the MSRB deemed this alternative to be inferior to the one proposed in this Request for Comment. It is the MSRB's understanding that investment advisers registered with the Commission are typically much larger than state-registered advisers.[18]

Another alternative the MSRB considered was for Rule G-47 to pivot to an entirely principles-based approach when determining what information is considered material and therefore must be disclosed to customers at or before the time of trade. An entirely principles-based

[18] *See* SEC Office of Investor Education and Advocacy, "Investor Bulletin: Transition of Mid-Sized Investment Advisers from Federal to State Registration," December 2011.

approach would provide an overarching objective for the dealer to use in determining whether specific information should be provided at the time of trade. The MSRB determined this alternative to be inferior as dealers currently rely on the list of fifteen specific scenarios contained in Rule G-47 Supplementary Material .03 to assist them in their compliance efforts. While the draft amendments to Rule G-47 would still provide dealers with the latitude to make a judgement on what is material while offering specific examples, the alternative would defeat the original purpose of creating Rule G-47 in 2014 to consolidate the previously issued guidance into rule language without substantively changing the existing obligations.

D. Assessing the benefits and costs of the proposed changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change when the rule change proposal is fully implemented against the context of the economic baselines. The MSRB is currently unable to quantify the economic effects of the draft amendments to Rule G-47 and Rule D-15 in totality because not all of the information necessary to provide a reasonable estimate is available. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with the draft amendments to Rules G-47 and D-15, the MSRB has considered these costs and benefits primarily in qualitative terms and believes the aggregate costs to dealers are relatively minor and benefits should accrue to dealers and investors over time and therefore exceed costs. The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the draft amendments.

Benefits

The draft amendments to Rule G-47 and Rule D-15 would provide several benefits for dealers. First, the MSRB believes that the draft rule changes would streamline the process for dealers to understand what disclosures must be disclosed to an investor at the time of trade, and thus would reduce the burden on regulated entities. Additionally, the MSRB believes the proposed codification of the disclosures specified in the three newly specified supplementary material paragraphs (continuing disclosures by an issuer, unavailability of an official statement and the yield to worst) as part of Rule G-47 would benefit investors by helping to ensure that such information that is easily and readily accessible to dealers is disclosed to investors. Furthermore, consolidating certain pieces of interpretive guidance and

retiring six pieces of interpretive guidance will streamline the rulebook by consolidating existing guidance into the text of the rulebook and facilitate compliance by reducing the number of sources a dealer must review when complying with the rule. Finally, the draft amendments to Rule G-47 and Rule D-15 would benefit dealers by reducing a burden through clarification of the existing rule and eliminating unnecessary compliance time and paperwork. These include a clarification that the time of trade disclosure obligation in Rule G-47 does not require dealers, based on a dealer's policies and procedures regarding insider trading, to disclose material information to their customers that is intentionally withheld, as well as an attestation exception for SEC-registered investment advisers to qualify as an SMMP under Rule D-15.

Costs

The MSRB acknowledges that dealers could incur costs as a result of the proposed actions, relative to the baseline state (current state). These costs include the one-time upfront costs related to setting up and/or revising related policies and procedures and ongoing costs such as compliance costs associated with maintaining and updating relevant disclosures. This could especially be true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47. However, because the MSRB is not modifying the obligation to disclose material information, only specifying certain information and circumstances that could be material, dealers may already have these specific disclosures built into their existing time-of-trade disclosure processes. The MSRB believes that dealers would not incur any costs from changes such as codifying existing interpretive guidance into Rule G-47, since dealers are presumably already in compliance with the existing interpretive guidance and MSRB rules. The MSRB believes that dealers may also have additional costs associated with recordkeeping in relation to the disclosure requirements. Overall, the MSRB believes the aggregate upfront and ongoing costs relative to the baseline would be minor, and the expected aggregate benefits to investors and dealers accumulated over time should exceed the total costs.

Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the draft amendments to Rule G-47 and Rule D-15 would neither impose a burden on competition nor hinder capital formation. The draft amendments would improve the municipal securities market's operational efficiency and promote regulatory certainty by providing dealers with a clearer understanding of regulatory obligations that are incorporated into rule text. Although the benefits to investors discussed above would require dealers to incur some additional costs, at present, the MSRB is

unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the overall benefits accumulated over time for all market participants would outweigh the upfront costs of revising policies and procedures as well as the ongoing compliance costs by dealers. The MSRB does not expect that the draft amendments to Rule G-47 and Rule D-15 would impose a burden on competition for dealers, as the upfront costs are expected to be relatively minor for all dealers while the ongoing costs are expected to be proportionate to the size and trading activities of each dealer.

Questions

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (*e.g.,* through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

9. Are any of these burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-47? Please offer suggestions.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

2. Explain how the current business practices (*i.e.,* check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, *etc.*).

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state-registered investment advisers? Why or why not?

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP.[19] This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in

[19] *See* Release No. 34-67064 (May 25, 2012) (*2, FN 7 and *7, FN 12), 77 FR 32704 (June 1, 2012) (File No. SR-MSRB-2012-05); *see also* MSRB Notice 2012-27: Securities and Exchange Commission Approves Revised MSRB Definition of Sophisticated Municipal Market Professional (May 29, 2012).

assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (*e.g.,* $50 million specifically invested in municipal securities)?

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (*e.g.,* FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's

modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

Questions about this notice should be directed to Saliha Olgun, Interim Chief Regulatory Officer, or Justin Kramer, Assistant Director, Market Regulation, at 202-838-1500.

February 16, 2023

* * * * *

Text of Proposed Amendments*

Rule G-47: Time of Trade Disclosure

(a)(i) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, 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

(ii) Notwithstanding section (a)(i) above, material information is not required to be disclosed to the customer if, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, such information is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer.

(b) Definitions.

(i) No change.

(ii) "Material information": Information is considered to be material if there is a substantial likelihood that the information would be considered important ~~or significant~~ by a reasonable investor in making an investment decision.

(iii) No change.

* Underlining indicates new language; strikethrough denotes deletions.

Supplementary Material

.01 **Manner and Scope of Disclosure.**

a. - c. No change.

d. Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material. Customers do not owe any obligations under Rule G-47 to purchasing dealers. However, a municipal securities professional buying securities from a customer should obtain sufficient information about the securities that is not otherwise readily available to the market so that it can accurately describe the securities when the dealer reintroduces them into the market.

.02. No change.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

a. - h. No change.

i. **Bonds that prepay principal.** The fact that the security prepays principal (e.g., factor bonds) and the amount of unpaid principal that will be delivered on the transaction.

j. - o. No change.

p. **Whether the Issuer is Required to Make Continuing Disclosures.** Whether the issuer is required to make continuing disclosures with respect to the security that will be available to the customer.

q. **Market Discount.** The fact that a municipal security bears market discount and that all or a portion of the investor's investment return represented by accretion of the market discount might be taxable as ordinary income.

r. **Unavailability of an Official Statement.** The fact that no official statement is available or only available from the underwriter.

s. **Yield to Worst.** The computed yield required by Rule G-15(a)(i)(A)(5)(c) if different than the yield at which the transaction was effected.

t. **Zero coupon bonds or stepped coupon bonds.** The special characteristics of zero coupon bonds or stepped coupon bonds and, with respect to stepped coupon securities, the details of the increases to the interest rates.

Rule D-15: "Sophisticated Municipal Market Professional"

The term "sophisticated municipal market professional" or "SMMP" is defined by three essential requirements: the nature of the customer; a determination of sophistication by the broker, dealer or municipal securities dealer ("dealer"); and an affirmation by the customer; as specified below.

(a) - (b) No change.

(c) Customer Affirmation. ~~The customer must affirmatively indicate that it:~~

(1) The customer must affirmatively indicate that it:

~~(1)~~(A) is exercising independent judgment in evaluating:

~~(A)~~(i) the recommendations of the dealer;

~~(B)~~(ii) the quality of execution of the customer's transactions by the dealer; and

~~(C)~~(iii) the transaction price for non-recommended secondary market agency transactions as to which ~~(i)~~(1) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and ~~(ii)~~(2) the dealer does not exercise discretion as to how or when the transactions are executed; and

~~(2)~~(B) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

(2) Exception for Commission-registered investment advisers. The affirmation described in this section (c) is not required for investment advisers registered with the Commission under Section 203 of the Investment Advisers Act of 1940.

Consolidated Interpretive Guidance

Time of Trade Disclosures in Inter-Dealer Transactions

For inter-dealer transactions, there is no specific requirement for brokers, dealers or municipal securities dealers (individually and collectively, "dealers") to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy their need for information prior to entering into a contract for the securities.

The items of information that professionals in an inter-dealer transaction must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary

adequately to describe the security that is the subject of the contract. As a general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the security from other similar issues. The Board has interpreted Rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry. The rule also prohibits dealers from knowingly misdescribing securities to another dealer. As a result, it is possible that non-disclosure of an unusual feature might constitute an unfair practice and thus become a violation of Rule G-17 even in an inter-dealer transaction.

For example, with respect to bonds that prepay principal, non-disclosure of the fact that a bond prepays principal could be a violation of Rule G-17. This would be especially true if the information about the prepayment feature is not accessible to the market and is intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.

EXHIBIT 2b

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2023-02 (FEBRUARY 16, 2023)

1. AKF Consulting: Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, dated April 20, 2023
2. Bond Dealers of America: Letter from Michael Decker, Senior Vice President, dated April 17, 2023
3. College Savings Plans Network: Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, Chairman, College Savings Plans Network, dated April 17, 2023
4. Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated July 21, 2023
5. McLane, Curtis: Email dated April 19, 2023
6. my529: Letter from Richard K. Ellis, Executive Director, dated April 17, 2023
7. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Head of Municipal Securities, dated April 17, 2023

AKF CONSULTING

VIA ELECTRONIC DELIVERY

April 20, 2023

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

Re: Comments Concerning MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals*

Dear Mr. Smith:

Thank you for the opportunity to submit comments pursuant to the above-referenced MSRB Notice 2023-02 (the "Notice"). AKF Consulting LLC dba AKF Consulting Group is a registered Municipal Advisor that works solely with State issuers of municipal fund securities including 529 Savings Plans and 529A ABLE Plans. We also advise State Administrators of Auto-IRA Programs, which, as currently structured, fit within the definition of municipal fund securities under MSRB Rule D-12.[1] Since our formation in 2002, we have had the privilege of working with 49 State Administrators across 37 States. We recognize and value the important role that the MSRB plays in regulating brokers, dealers, and municipal advisors in the municipal fund securities market, and recommend best industry practices reflected in the MSRB rules to our State issuer clients that are otherwise outside of the MSRB's jurisdiction.

With this in mind, our comments solely address Question 1 under Time of Trade Disclosure Obligations with Respect to 529 Savings Plans (page 19 of the Notice). While AKF professionals collectively understand the dealer obligations and business practices addressed in Questions 2 through 4, we base our comments on our service as a fiduciary to the State issuers of municipal fund securities.

> **1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?**

AKF Consulting appreciates that when Rule G-47 was adopted, it specifically did not codify the August 7, 2006 *Interpretive Guidance on Consumer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (the "Guidance"). In our view, codification was likely unnecessary since college savings

[1] State-run Auto-IRA Programs are subject to the rules and regulations applicable to Roth IRAs

market participants understood and even embraced the Guidance's directives regarding matters such as out-of-state disclosures from the start. To that end, specific points have been included in the Voluntary Disclosure Principles adopted by the College Savings Plans Network, which have been amended over time to reflect regulatory developments and evolving best practices.

Notwithstanding the clarity of the Guidance and the universal implementation of the disclosures it includes, we would support a new, standalone rule that expressly applies to 529 College Savings and ABLE Plans as municipal fund securities. In taking this position, we recognize that 529 College Savings and ABLE Plans (and by analogy, State-run Auto IRAs) are more like mutual funds than traditional municipal debt obligations. To that point, the time of trade disclosures should incorporate the concepts that apply to continuously offered securities as opposed to securities that are offered at one time, with set terms and durations. Having such a rule would acknowledge the magnitude of the market overall for State-run Investment Plans, which in our view, include 529, ABLE and Auto-IRA Plans. Importantly, a dedicated rule would eliminate any uncertainties about the consumer protections that must be in place for investors in any of these important programs.

In our role as fiduciaries to State issuers of 529, ABLE and Auto-IRA Plans, we work with our clients to ensure that each one understands its obligations and responsibilities under applicable federal securities laws. A clear, concise rule that addresses material time of trade disclosures in connection with the municipal securities issued by these Plans would, in our view, assist State issuers and consumers by clarifying dealers' obligations and promote consistent application of the Guidance within the industry.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. Please contact us if you have any questions or if would like additional information.

Sincerely,

Andrea Feirstein

Andrea Feirstein
Managing Director
andrea@akfconsulting.com

Mark Chapleau/akf

Mark Chapleau
Senior Consultant
mark@akfconsulting.com

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BDA Bond Dealers of America

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Washington, DC 20006
202.204.7900
www.bdamerica.org

April 17, 2023

Ronald W. Smith, Corporate Secretary
MSRB
1300 I Street NW
Washington DC 20005

Dear Mr. Smith,

The Bond Dealers of America ("BDA") is pleased to provide comments on MSRB Notice 2023-02, "Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals" (the "Proposal"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal describes contemplated changes to MSRB Rules G-47 and D-15 and related guidance as part of the Board's retrospective rule review. Many of the amendments in the Proposal are consolidations or reorganizations of existing policy documents, including incorporating guidance into rule text and consolidating and retiring some guidance. The Proposal would also add three data items that "may be material and require time of trade disclosure to a customer." These are whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. The Proposal would also specify that dealers do not need "to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer."

Proposed amendments to Rule D-15 would remove the requirement with respect to a SEC-Registered Investment Advisor ("RIA") for a dealer to obtain an attestation from the customer as a condition of that investor having the status of Sophisticated Municipal Market Professional ("SMMP").

BDA is generally not opposed to the Proposal as it relates to Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens[1]. The exceptions to this are the three additional data items not currently referenced as "information that may be material in specific scenarios and require time of trade disclosures to a customer" in Supplementary Material .03 of Rule G-47—whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. While some dealers likely incorporate these disclosures currently, not all do. For those who do not, these amendments

[1] To ensure the descriptions and explanations contained in the soon-to-be-archived guidance remain easily accessible, we recommend adding a link to "Archived Interpretive Guidance" (www.msrb.org/MSRB-Archived-Interpretive-Guidance) to the MSRB's "Regulatory Documents for the Municipal Market" landing page (msrb.org/Regulatory-Documents).

would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information, likely from vendors.

As the Proposal recognizes, "dealers could incur costs as a result of the proposed actions." As the Proposal also recognizes, this is especially "true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47." Compliance costs are not borne equally across the industry. Smaller dealers tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue. While the marginal compliance costs associated with the Proposal may be relatively small, they would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule. Together, these initiatives would impose significant new compliance costs on MSRB-regulated dealers. We urge the MSRB to be mindful of the combined effects of the Board's initiatives as well as regulations promulgated by the SEC, especially the effects on small and mid-size dealers.

BDA supports the proposed changes to MSRB Rule D-15. We agree with the Proposal that SEC-registered RIAs "are typically very sophisticated" and "the burdens associated with obtaining an attestation from these professionals" are not supported "by the protections afforded to them."

The Proposal states "one alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission." Apparently the Board rejected this provision because "investment advisers registered with the Commission are typically much larger than state-registered advisers." We do not believe the size of the RIA is a driving factor in the RIA's sophistication or their ability to otherwise meet the requirements of SMMPs. State-registered RIAs generally bear a fiduciary duty to their customers comparable to the fiduciary duty imposed by SEC RIA rules. We urge the Board to reconsider the D-15 proposal and include state-registered RIAs in the proposed exemption from the requirement to obtain a SMMP attestation.

BDA is again pleased to provide comments on the Proposal. We are generally not opposed to the proposed changes to Rule G-47, and we fully support the proposed changes to Rule D-15. Please call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

By Electronic Delivery

April 17, 2023

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

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice"). CSPN is an affiliate of the National Association of State Treasurers ("NAST") and membership includes elected officials and senior staff in state government with responsibilities with regard to 529 College Savings Plans ("529 Plans"). These state members of CSPN are not brokers, dealers and municipal securities dealers (collectively, "Dealers") under the rules of the Municipal Securities Rulemaking Board (the "MSRB") and so do not have direct insight into some aspects of this request for comment. CSPN also has corporate affiliate members who may be Dealers. However, this response is not made on their behalf as we assume they will provide their own responses to the Notice.

We appreciate the MSRB's continuing commitment to assisting consumers seeking to invest in 529 College Savings Plans ("529 Plans") and its interest in ensuring that State administrators of 529 Plans receive sound, balanced support from their advisors. CSPN appreciates the opportunity to provide comment on time of trade disclosure obligations regarding 529 Plans and is pleased to offer the following responses to Questions 1 and 2.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify

existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

CSPN is appreciative of the guidance received in 2006, *Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* ("Guidance") to date on the time of trade obligations of brokers, dealers and municipal securities dealers (collectively, "Dealers"). We believe the Guidance is clear and are unaware of member difficulties in applying the Guidance. The Guidance is also memorialized in the CSPN Disclosure Principles Statement No. 7, which was adopted October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

In light of the consistent application of the Guidance within the industry, we do not believe codification of the Guidance is required at this time.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

In general, for 529 Plans sold directly to the public, the Plan's disclosure documents are provided at the time the participant opens an account. Generally, 529 Plans require participants to acknowledge that they have received, read and understand the applicable disclosure documents. This happens during the online enrollment process or on the paper application if the participant is not enrolling online.

In general, for 529 Plans sold through financial professionals, the Plan's disclosure documents are provided to the financial professional by the 529 Plan so that the financial professional can satisfy any time of trade obligations.

In addition, 529 Plans generally have significant disclosures included in marketing and outreach materials. These materials include printed, electronic and website disclosures advising the reader of important considerations including:

- Investment returns are not guaranteed, and you could lose money by investing in the 529 Plan
- Read and consider carefully the 529 Plan's disclosure documents before investing. These documents include investment objectives, risks, charges, expenses, and other important information.
- Before you invest, consider whether your or the beneficiary's home state offers any state tax or other benefits that are only available for investments in that state's 529 Plan. Other state benefits may include financial aid, scholarship funds, and protection from creditors.

We are unaware of difficulties caused by current business practices in meeting applicable time of trade obligations, regardless of the method of enrollment in the 529 Plan.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach CSPN by contacting Chris Hunter at (202) 630-0064 or chris@statetreasurers.org.

Sincerely,

Rachel Biar
Nebraska Assistant State Treasurer
NEST 529 College Savings Program Director
Chairman, College Savings Plans Network

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D. C. 20001
(202) 393-8467

July 21, 2023

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

RE: MSRB Notice 2023–02 Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Participants

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) appreciates the opportunity to provide comments regarding the request for information that was included in MSRB Notice 2023-02. Specifically, we would like to address the definition of Sophisticated Municipal Market Professionals (SMMP) as part of MSRB Rule D-15.

Question #4 in the Notice asks ……. "*Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?"*

As you are aware, municipal entities are not only issuers of municipal securities, but also may be investors of municipal securities.

The current definition of SMMP in Rule D-15 (and corresponding FINRA rules) states that one of the criteria that needs to be met for SMMP status is for the investor (or institutional account as noted in Rule D-15), to have $50 million in assets. This is different than the language that was part of Rule G-47 and the definition of SMMP held prior to changes in 2012, where the threshold for one of the SMMP criteria was $100 million in municipal securities investments.

The GFOA believes that the definition and SMMP criteria should be reinstated to the threshold prior to 2012: $100 million in municipal securities investments. Many governments – including small governments - have a great deal of infrastructure and assets in place; however, that is not an indication of whether those entities are sophisticated investors.

We believe that this definition as it currently stands (governments with $50M or more in assets) captures a vast audience of governments who should not be labeled SMMP and therefore a broader audience forfeits several layers of protections. Rule D-15 should be changed to better reflect whether an entity is likely a sophisticated investor based on criteria that directly corresponds to investing.

One of the MSRB's greatest roles is to protect issuers and investors. Keeping one of the criteria for the SMMP definition at $50 million in assets, jeopardizes rather than enhances investor protections for municipal entities. By changing the definition to investible assets, the MSRB (and FINRA in corresponding rules) can avoid capturing a vast audience of governments that should not go without vital disclaimers, best execution standards, suitability standards and time of trade disclosures about their investments.

We would also like to mention that in this Notice, other concepts raised related to disclosures in limited private offerings. While disclosures are not required nor are they the responsibility of issuers in these transactions, we understand the concerns the MSRB has that these bonds could be sold in the secondary market to investors who are unaware of the agreement with the initial purchaser at the time of initial sale. GFOA supports efforts to ensure investors understand when disclosures may not be available.

Sincerely,

Emily S. Brock

Emily Brock
Director, Federal Liaison Center

cc: Ms. Saliha Olgun, Interim Chief Regulatory Officer - MSRB
Dave Sanchez, Director – Office of Municipal Securities, Securities and Exchange Commission

Comment on Notice 2023-02

From: Curtis McLane,

On: April 19, 2023

Comment:

It Would be more conservative on a time basis in all honesty I do greatly appreciate MSRB and SEC they honestly do try to do what's fair and true even if it burdens them. And they do it with ease I hope one day I can learn to be as effective as you all are and as helpful. we all should be grateful for the time and effort you spend everyday trying to make things fair and equal for everyone.

my529®

By Electronic Delivery

April 17, 2023

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

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The Utah Educational Savings Plan dba my529 ("my529") was established by the State of Utah as a qualified tuition program under 26 U.S.C. § 529 (529 Plan(s)). my529 is the official and only 529 plan sponsored by the State of Utah. Since its founding, my529 has become the third largest direct-sold 529 Plan in the country. my529 is pleased to have the opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice").

my529 appreciates the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 Plans. my529 is uniquely situated in the industry in that it does not have an advisor-sold 529 plan, nor does it contract with any firm as an underwriter to distribute the Plan's securities. Nevertheless, my529 strives to align its practices with applicable MSRB rules and thus feels compelled to provide comments.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

Although 529 Plans are issuing a municipal security, the municipal fund security issued by 529 Plans is fundamentally different from the bulk of municipal securities overseen by the MSRB.

Because of the fundamental differences between a contribution to a 529 Plan and the purchase of a municipal bond, my529 believes that there may be utility in codifying a standalone rule regarding time of trade disclosure obligations for 529 Savings Plans. A standalone rule for 529 Plans would have two benefits: (1) it would allow the MSRB to better see and understand the unique nature of municipal fund securities issued by 529 Plans; and (2) it would provide greater certainty, as well as a potential safe harbor to 529 Plans.

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When an account owner contributes to a 529 Plan, the account owner is investing in a municipal fund security. That contribution looks and acts, however, far more like an investment in a mutual fund[1] than a purchase of a municipal bond which has a set maturity date and coupon rate. In contrast, the municipal security issued by a 529 Plan is a continuous offering.

Contributions to 529 Plans typically fit into one of the following areas, each requiring different time of trade disclosures.

1. **Initial account opening**. An account owner opening a new account should receive offering materials prior to opening the account. As a continuous offering, disclosure materials are readily available. Generally, hardcopies are made available to any account owner who has not requested electronic delivery. Clear guidance on electronic delivery or availability of the disclosure materials is needed.

2. **Automatic or one-time contributions**. Account owners may contribute automatically with scheduled contributions, or may choose to contribute sporadically when they have funds to invest. Clear guidance is needed in these circumstances. Providing disclosure documents for every transaction after the account is opened is impractical and expensive. Like mutual funds, supplemental materials should be provided when plan changes material to the investment decision are made.

3. **Third-party contributions**. Anyone is allowed to contribute to a beneficiary's 529 Plan account (e.g., gifting platform, grandparent, friend, aunt, etc.). Clarity is needed around any disclosure requirements in this circumstance. my529 believes no disclosure requirement is needed because these are gifts to an account over which the giver has no control.

If the MSRB were to propose a new standalone rule, existing Rule G-17 interpretative guidance addressing out-of-state disclosure obligations should be codified because it would provide greater certainty to 529 Plans. The current guidance has been voluntarily adopted by the College Savings Plans Network ("CSPN") in recommended disclosure principles for 529 Plans. The current version of these disclosure principles is CSPN Disclosure Principles Statement No. 7, which was adopted on October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

[1] In fact, my529 has observed that some account owners may get confused that they do not own the underlying mutual funds when they make a contribution to their account (i.e., invest in a municipal fund security). Accordingly, my529 has taken steps to better communicate to its account owners and prospective account owners about the fundamental nature of the municipal fund security that they are purchasing when they contribute to their accounts.

my529's current business practice is to provide its program disclosure document (i.e., the my529 Program Description) to all new account owners prior to opening an account. Whether opening an account online or using a paper form, my529 makes the my529 Program Description available in hard copy or electronic format (depending on the stated preference of the individual account owner) as part of the account signup process. New account owners must specifically agree and certify to the following:

> "I have received, read, understand, and agree to all the terms and conditions in the Program Description and this Account Agreement and will retain a copy of the Account Agreement for my records."

The my529 Program Description is also available on my529's web site and is posted publicly as a voluntary disclosure on EMMA.

When the my529 Program Description is updated via supplement, copies of the supplement are sent to all account owners either in hard copy or electronic format. The Supplements are also posted to my529's website and are posted to EMMA as a matter of best practices.

my529's advertisements (except for those that meet an exception to MSRB Rule G-21(e)(i)(B)) also contain disclosure urging the reader to "[c]arefully read the Program Description in its entirety for more information and consider all investment objectives, risk, charges and expenses before investing." This disclosure would be present on all advertising that presents a "call to action" on the part of the viewer—whether the viewer is an existing account owner or merely a prospective one.

Time of trade disclosures are generally not a hindrance to current account-opening business practices. However, a requirement to provide disclosure materials for every contribution after the initial account opening would be expensive and impracticable. As an example, my529 processed more than 3.1 million contributions in 2022.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

my529 is not a municipal dealer and does not work with any dealers on distribution. As a result, my529 does not have direct knowledge of municipal dealers' current business practices. my529 is, however, mindful of the burden and cost imposed on dealers who are required to provide time of trade disclosures either orally or in writing. As noted previously, the municipal fund securities sold by 529 Plans are fundamentally different than a municipal bond. my529 believes that dealers, and self-operated plans like my529, may satisfy their time of trade disclosure obligations by electronic notice and reference to program disclosure documents that are publicly available, whether that be on the website of a 529 Plan or on EMMA.

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4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

It is common for my529 account owners to set up automatic contributions that happen on a monthly or other regularly-scheduled basis. This complicates time of trade disclosures because the investment decision is not made when each contribution is made—rather the investment decision is made when the account owner sets the automatic, recurring contribution schedule.

The account owner's motivation in setting such a schedule is so that he or she does not have to make further investing decisions, unless he or she wants to cancel or modify that automatic, recurring contribution. To require a 529 Plan to provide ongoing, mandatory time of trade disclosures under such circumstances is expensive and impracticable. For example, the printing and mailing costs for my529's most recent Program Description was approximately $2.30 per account. Program Descriptions were mailed to more than 34,000 account owners. This does not include personnel expenses for drafting, editing and review by compliance and disclosure employees or consultants. For the 15 percent of account owners that request printed documents, the cost would exceed $1.0 million annually, or an increase to my529's annual budget of seven percent. Such disclosures, if mandated, would only needlessly increase cost and damage the goodwill that exists between a 529 Plan and its account owners because the account owners would receive such disclosures long after the investing decision had already been made.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach my529 by calling Greg Dyer at (801) 366-8441.

Sincerely,

Richard K. Ellis
Executive Director
my529
60 South 400 West
Salt Lake City, UT 84101
Tel: 801.321.7134

sifma

April 17, 2023

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2023-02 – Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input on the Municipal Securities Rulemaking Board's ("MSRB's") Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (the "Notice").[2] SIFMA applauds the MSRB's goal to modernize the rules while continuing to provide appropriate issuer and investor protections without placing undue compliance burdens on regulated entities. In furtherance of this goal:

- MSRB rules should be harmonized with the Investment Advisers Act rules.
- All RIAs should be exempt from attestation requirement.
- Supplemental Material .01 (d) is outdated and should be retired, as security information is now readily available.
- The scope of time of trade disclosures should be clear and not increase; MSRB should clarify that rules should not be construed to require broker dealers to give tax advice.

[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 2023-02 (February 16, 2023).

- Time of trade disclosures for 529 savings plans should be covered in a separate rule.

I. MSRB Rules Should be Harmonized with the Investment Advisers Act Rules,

It is important that the rules be consistent with rules adopted under the Investment Advisers Act of 1940 (the "Advisers Act"). RIAs registered with the SEC are subject to the requirements of the Advisers Act and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act obviate the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48. If the RIA does not comply with such obligations, they are arguably not fulfilling their fiduciary duties, so the MSRB should not need to layer on additional investor protections for municipals.

The MSRB should codify the guidance related to transactions in managed accounts as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). The MSRB has appropriately recognized that, a dealer trading with an RIA is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15, on transactions with SMMPs, if the RIA is itself an SMMP.[3] In other words, for purposes of Rule D-15 the RIA is the customer. The logic that led to this interpretation applies equally with respect to time-of-trade disclosure, so for the purposes of MSRB Rule G-47, the MSRB should consider the RIA, and not the underlying investors, to be the dealer's customer. For example, when an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

II. All RIAs Should be Exempt from Attestation Requirement

SIFMA strongly agrees that all SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. This exemption should also be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management. RIAs typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade

[3] *See,* Application of MSRB Rules to Transactions in Managed Accounts (December 1, 2016), https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts.

or may be forbidden from knowing the details of trades in their account.[4] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

III. Supplemental Material .01 (d) Is Outdated and Should Be Retired, as Security Information is Now Readily Available

The draft amendments to Supplementary Material .01(d) attempt to codify certain language from existing interpretive guidance reminding purchasing dealers to obtain information about limited information bonds. The original 1986 guidance states:

> Customers are not subject to the Board's rules, and no specific disclosure rules would apply to customers beyond the application of the anti-fraud provisions of the federal securities laws. I note, however, that a municipal securities professional buying securities from a customer should obtain sufficient information about the securities so that it can accurately describe these securities when the dealer reintroduces them into the market.[5]

The original guidance does not state that the dealer is to obtain information from the customer, however, merely that the dealer must obtain the information prior to reintroducing the security to the market. Regardless, this guidance is outdated and should be retired instead of codified. The information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.

Furthermore, the language in the Notice codifying this 1986 guidance is unclear and misleading. This provision should have been a mere reminder that a dealer must understand the securities they are selling, and that one source of the information could be to obtain information from the selling customer. However, the language in the Notice sets a new standard beyond what is required by Rule G-47. It is important to make clear that a dealer does not have a duty to obtain information about a security from a customer in all cases, and security information need not be obtained from the selling customer. For these reasons, this guidance should be retired, as codifying the language as proposed in the Notice will merely create confusion and potentially the perception that an information inquiry must be made of all customers.

IV. The Scope of Time of Trade Disclosures Should Be Clear and Not Increase; MSRB Should Clarify that Rules Should Not Be Construed to Require Broker Dealers to Give Tax Advice

SIFMA is concerned about the proposed increase in scope of time of trade disclosures. Requiring time of trade disclosures about factor bonds, zero coupon bonds, stepped coupon bonds, the availability of an official statement, and yield to worst calculations adds compliance

[4] Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

[5] *See,* Rule G-17 interpretive guidance (April 30, 1986), https://msrb.org/Description-Provided-or-Prior-Time-Trade.

risks and burdens. Further, SIFMA is concerned that information that is widely available and obvious will be required to be disclosed (as well as documented and subject to supervisory policies and procedures). Time of trade disclosure of obvious information, on the contrary, obfuscates material information.

Currently firms likely do have access to non-public information, including information in data rooms, that should not be required to be disclosed. SIFMA appreciates the MSRB retaining the clarification that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with Rule G-47.

SIFMA is further concerned about the discount disclosures and feels strongly that it should be made clear that broker dealers neither give tax advice nor should they be perceived to be giving tax advice. We believe that the original guidance should be preserved,[6] which merely requires notification of the existence of a discount. Dealers have a growing concern about examination inquiries into discount disclosures to clients that may force dealers to move closer to the line of giving tax advice, as some FINRA examiners have been requiring dealers to disclose the de minimis cutoff price. SIFMA requests that the MSRB clarifies that dealers are merely obligated to indicate where there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

In conclusion, the list of time of trade disclosures has become over-broad and unnecessarily increases risks to broker dealers without providing material benefit to issuers and investors. SIFMA urges the MSRB to reconsider the changes that add these additional time of trade disclosures.

V. Time of Trade Disclosures for 529 Savings Plans Should be Covered in a Separate Rule.

529 savings plans are more similar to mutual fund investments than state and local government bond debt, and SIFMA has long felt that there were areas in the MSRB ruleset that should be amended to more effectively regulate these plans. Like mutual funds, 529 savings plans have offering documents or circulars that are updated as necessary. The rules governing 529 savings plans should be more closely harmonized with those governing mutual funds, and an exemption from the dealer time of trade disclosure obligations is appropriate for transactions in 529 savings plans. A new standalone rule covering obligations for sales of 529 savings plans is warranted. As part of that effort, the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified. As stated above, SIFMA members would like the MSRB to clarify that dealers are merely obligated to indicate where there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

* * *

[6] The archived guidance is still helpful. SIFMA requests that archived guidance be easier to find on the MSRB's website.

Thank you for considering SIFMA's comments. SIFMA greatly appreciates the MSRB's review of the rules regarding time of trade disclosures and the SMMP affirmation requirements. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

Leslie M. Norwood
Managing Director and Associate General Counsel
Head of Municipal Securities

cc: ***Municipal Securities Rulemaking Board***
Saliha Olgun, Interim Chief Regulatory Officer
Gail Marshall, Senior Advisor to Chief Executive Officer
Justin Kramer, Assistant Director, Market Regulation

APPENDIX A

QUESTIONS

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

SIFMA members feel that the MSRB should codify the guidance related to transactions in managed accounts, as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). Also, a dealer trading with an RIA is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15, on transactions with SMMPs, if the RIA is itself an SMMP.[7] For the purposes of MSRB Rule G-47, the MSRB must legally consider the RIA, and not the underlying investors, to be the dealer's customer. When an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

RIAs registered with the SEC are subject to the Investment Advisers Act of 1940 and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act reduce the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48.

Other than as noted above, there are no other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified. There are no other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03. On the contrary, SIFMA members feel the list of disclosures has grown to be unnecessarily long.

[7] *See*, Application of MSRB Rules to Transactions in Managed Accounts (December 1, 2016), https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts.

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

There is no other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic.

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

There are no situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of.

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

The technical clarifications set forth above are largely helpful and do alleviate potential sources of confusion. Additionally, we do suggest retirement of Supplemental Material .01(d).

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

The information required to be disclosed pursuant to the draft amendments regarding specified time of trade disclosure obligations is reasonably accessible to the market.

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

SIFMA agrees that evidence of insurance generally is not required to be attached to a security for effective transfer.

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

There are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form).

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

The obligations specified in the newly proposed draft supplementary material do not result in a disproportionate and/or undue burden for small dealers but impose an equal burden on all dealers.

9. Are any of these burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

These burdens are not unique to MWBE, VBE, or other special designation firms.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 do not result in an undue impact to access to business opportunities specifically for small dealers, but instead impact all dealers similarly.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 are unlikely to result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, a new standalone rule would be more appropriate. As part of that effort, SIFMA believes that the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified.[8] SIFMA members would like the MSRB to clarify that dealers are merely obligated to indicate where

[8] *See,* MSRB Rule G-17 Interpretive Guidance, "Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans," dated August 07, 2006, available at: https://www.msrb.org/Customer-Protection-Obligations-Relating-Marketing-529-College-Savings-Plans.

there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

Other than at account opening, investors may engage in self-directed activity (contributions, withdrawal, rollover, etc.) regarding 529 savings plans, some or all of which may be automated to occur once or on a recurring basis. These types of transactions hinder dealers in meeting their time of trade compliance obligations related to 529 savings plans. Again, SIFMA members propose that regulation of 529 savings plans be harmonized with those governing mutual fund investment vehicles.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

SIFMA member firms have a variety of supervisory systems and tools in place to support their supervisory review of time of trade disclosures that are made orally or in writing during the various points of the lifecycle of a trade related to 529 savings plans.

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, they have offering documents or circulars that are updated as necessary. SIFMA members do believe that an exemption from the dealer time of trade disclosure obligations would be appropriate for transactions in 529 savings plans, as these instruments are more similar to mutual fund investments than state and local government bond debt, and the rules governing 529 savings plans should be more closely harmonized with those governing mutual funds.

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state registered investment advisers? Why or why not?

SIFMA strongly agrees that SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. SIFMA members believe this exemption should also be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management. Registered

investment advisers typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade or may be forbidden from knowing the details of trades in their account.[9] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

Exempting SEC-registered investment advisers from the Rule D-15 attestation requirement removes unnecessary burdens for dealers, while still providing appropriate protection for issuers and investors. SIFMA members feel that all registered investment advisers should be exempt from the attestation requirement.

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

The proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement does not result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms. On the contrary, such an exemption would alleviate an unnecessary burden on all dealers.

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP. This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?

SIFMA believes that the current threshold of $50 million in assets is appropriate as a baseline requirement for any customer to be treated as an SMMP. Customers are not required to opt-in to be treated as SMMPs, and there is no requirement that customers provide the attestations to be treated as an SMMP. The vast majority of customers with $50 million in assets will be sophisticated enough to evaluate bonds in which they invest. To the extent a customer does not

[9] Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

have this level of sophistication, it could simply decline to provide the affirmation. The customer affirmation requirement is designed to ensure that SMMPs have affirmatively and knowingly agreed to forgo certain protections under MSRB rules.

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

SIFMA feels that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets.

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

SIFMA believes that there would be value in an educational resource for market participants regarding secondary market insurance, and the potential impact on continuing disclosure if and when a new CUSIP is obtained on bonds insured in the secondary market.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

Currently on EMMA, when a bond issuance has a maturity that is secondarily insured, a new CUSIP number may be assigned to that maturity. Investors would need to know, or need to know how to find, the original uninsured CUSIP for that bond to access the continuing disclosure information for the issue. Some investors may not know how to find the original uninsured CUSIP, when necessary. If an investor researches the new CUSIP number for that bond on EMMA, the continuing disclosure information for the issue may not be linked. To assist an investor in finding the continuing disclosure information on the entire issuance with only the CUSIP number for the secondarily insured bond, the MSRB itself should link the secondarily insured CUSIP directly to the issuer's EMMA page for the original issuance of bonds, or, link the new secondarily insured CUSIP directly to the uninsured CUSIP in EMMA.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

SIFMA does not believe it is necessary for a dealer's modified obligations under Rule G-48 to specifically identify the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. SMMPs are knowledgeable regarding potential adverse effects on liquidity of securities sold below the minimum denomination.