

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75039; File No. SR-MSRB-2015-02)

May 22, 2015

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed Amendments to the MSRB Rule G-14 RTRS Procedures, and the Real-Time Transaction Reporting System and Subscription Service

I. Introduction

On March 19, 2015, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of proposed amendments to the MSRB Rule G-14 RTRS procedures, and the Real-Time Transaction Reporting System and subscription service (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on March 27, 2015.³

The Commission received three comment letters on the proposed rule change.⁴ On May

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ Securities Exchange Act Release No. 74564 (March 23, 2015), 80 FR 16466 (March 27, 2015) (the “Proposing Release”).

⁴ See Letters from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated April 17, 2015 (“SIFMA Letter”); Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated April 17, 2015 (“BDA Letter”); and David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute (“FSI”), dated April 17, 2015 (“FSI Letter”).

20, 2015, the MSRB submitted a response to these comments.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Rule G-14 on reports of sales or purchases requires brokers, dealers and municipal securities dealers (collectively “dealers”) to report all executed transactions in municipal securities to the MSRB’s Real-Time Transaction Reporting System (“RTRS”) within 15 minutes of the time of trade, with limited exceptions.⁶ The MSRB makes certain transaction data reported to RTRS available to the general public through the Electronic Municipal Market Access (“EMMA”) website at no cost, and disseminates such data through paid subscription services to market data vendors, institutional market participants and others that subscribe to the data feed.⁷ The MSRB believes that RTRS serves the dual objectives of price transparency and market surveillance.⁸ According to the MSRB, the proposed rule change would enhance the post-trade price transparency information provided through RTRS.⁹ A full description of the proposed rule change is contained in the Proposing Release.

1. Expanding the Application of Existing List Offering Price and Takedown Transaction Indicator

The MSRB stated that the proposed rule change would expand the application of the List Offering Price and Takedown Transaction indicators to sale transactions by distribution

⁵ See Letter from Justin R. Pica, Director of Product Management - Market Transparency, MSRB, dated May 20, 2015 (“MSRB Response Letter”).

⁶ See supra note 3.

⁷ Id.

⁸ Id.

⁹ Id.

participant dealers to customers at the list offering price and sale transactions by a sole underwriter or syndicate manager to distribution participant dealers.¹⁰ The MSRB stated that since the introduction of the List Offering Price indicator in 2005 and Takedown Transaction indicator in 2007, certain market practices in this area have evolved and the proposed rule change would expand the application of the indicators to require reporting of such market practices to RTRS.¹¹

2. Eliminating the Requirement for Dealers to Report Yield on Customer Trade Reports

The MSRB stated that the proposed rule change would eliminate the requirement for dealers to include yield on customer trade reports.¹² The MSRB represented that it would calculate and disseminate yield on customer trade reports, consistent with the manner in which it calculates and includes in disseminated RTRS information yield on inter-dealer trades.¹³ The MSRB believes that this would remove one aspect of a dealer's burden in reporting customer transactions to the MSRB in compliance with MSRB Rule G-14 and ensure that the calculation and dissemination of yields for both inter-dealer and customer transactions are consistent.¹⁴

3. Establishing a New Indicator for Customer Trades Involving Non-Transaction-Based Compensation Arrangements

The MSRB stated that the proposed rule change would require dealers to include a new indicator on their trade reports that would be disseminated publicly to distinguish customer

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

transactions that do not include a dealer compensation component and those that include a mark-up, mark-down, or a commission.¹⁵ The MSRB believes the proposed rule change would improve the usefulness of the transaction information disseminated publicly.¹⁶

4. Establishing a New Indicator for ATS Transactions

The MSRB stated that the proposed rule change would establish an additional new indicator to better ascertain the extent to which alternative trading systems (“ATSs”) are used in the municipal market and to indicate to market participants on disseminated transaction information that an ATS was used.¹⁷ The MSRB believes that identifying in disseminated transaction information that an ATS was employed should facilitate higher quality research and analysis of market structure by providing information about the extent to which ATSs are used and should complement the existing indicator disseminated for transactions involving a broker’s broker.¹⁸

5. Effective Date of the Proposed Rule Change/Testing Period

The MSRB proposed that an effective date for the proposed rule change would be announced by the MSRB in a notice published on the MSRB’s website.¹⁹ The MSRB stated that the date would be no later than May 23, 2016, and announced no later than sixty (60) days prior to the effective date.²⁰ The MSRB believed that such effective date would provide time for the

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

MSRB to undertake the programming changes to implement the proposed rule change, as well as provide an adequate testing period for dealers and subscribers that interface with RTRS.²¹ Also, the MSRB plans to provide a six month testing period in advance of the effective date.²²

III. Summary of Comments Received and the MSRB's Response

As noted previously, the Commission received three comment letters on the proposed rule change.²³ FSI generally supports the proposed rule change.²⁴ BDA generally supports the proposed rule change but suggested an extension of the testing period.²⁵ SIFMA expresses concerns and provides suggestions about certain aspects of the proposed rule change.²⁶ A full description of the comments and response by the MSRB are contained in the comments letters and MSRB Response Letter, respectively.²⁷

1. Expanding the Application of Existing List Offering Price and Takedown Transaction Indicator

SIFMA generally supports this aspect of the proposed rule change.²⁸ However, SIFMA requests that if dealers are currently using the List Offering Price and Takedown Transaction

²¹ Id.

²² Id.

²³ See supra notes 4 and 5.

²⁴ See FSI Letter.

²⁵ See BDA Letter.

²⁶ See SIFMA Letter.

²⁷ See supra notes 4 and 5.

²⁸ See SIFMA Letter.

indicator for group net or net designated orders, or for distribution agreement trades, that they be permitted to continue to do so until the proposed rule change is effective, without risk of an enforcement action.²⁹ The MSRB responded by stating that it does not believe it would be fair to those dealers that have not programmed systems to use the existing List Offering Price and Takedown Transaction indicator in the expanded manner contemplated in the proposed rule change to advance the timing of the effective date of this component of the proposed rule change.³⁰ Also, the MSRB does not believe such a request is relevant to a determination of whether to approve the proposed rule change.³¹

2. Eliminating the Requirement for Dealers to Report Yield on Customer Trade Reports

SIFMA generally supports this aspect of the proposed rule change.³² However, SIFMA notes that reporting yield on trade reports alerts dealers to trades where the dealer calculated yield is outside the acceptable tolerance from the MSRB calculated yield.³³ SIFMA notes that such alert mechanism would be eliminated if the proposed rule change is approved.³⁴ The MSRB responded by noting that while such alert mechanism does provide benefit in identifying security master and day count discrepancies, the MSRB does not believe that this benefit outweighs the burden on dealers associated with researching and reconciling all questionable errors.³⁵ Also, the

²⁹ Id.

³⁰ See MSRB Response Letter.

³¹ Id.

³² See SIFMA Letter.

³³ Id.

³⁴ Id.

³⁵ See MSRB Response Letter.

MSRB notes that dealers would continue to be able to compare dealer calculated yields with MSRB calculated yields by viewing MSRB calculated yields on the EMMA website.³⁶

In addition, SIFMA continues to have concerns that the proposed rule change may lead to investor confusion because not all transactions are consummated based on yield to worst.³⁷

SIFMA believes that there are many reasons and scenarios why the dealer calculated yield and the MSRB's calculations of yield might not match, such as trading based on yield-to-average life for continuously callable securities, and differences in day counts relating to questionable holidays or market closes.³⁸ The MSRB responded by stating that the MSRB yield calculations under the proposed rule change would be done in a manner consistent with the requirements of MSRB Rule G-15(a) on customer confirmations.³⁹ Accordingly, the MSRB believes irrespective of the basis on which the transaction was executed, the yield calculation performed by RTRS under the proposed rule change would match the calculation as required to be performed by dealers when generating customer confirmations.⁴⁰ Also, the MSRB states that with regard to the potential for differing MSRB and dealer call information resulting in differing MSRB and dealer calculated yields, the MSRB plans to display the call price and date to which yield was

³⁶ Id.

³⁷ See SIFMA Letter.

³⁸ Id.

³⁹ See MSRB Response Letter.

⁴⁰ Id.

calculated, which should provide sufficient transparency to the inputs used in MSRB yield calculations to explain any calculation differences that arise.⁴¹

3. Establishing a New Indicator for Customer Trades Involving Non-Transaction-Based Compensation Arrangements

SIFMA acknowledges that the establishment of a new indicator to indicate trades with non-transaction-based compensation would be helpful for transparency purposes.⁴² However, SIFMA suggest that a more cost efficient alternative would be for the MSRB to disseminate information it already collects: whether a trade is done as agent or as principal, and whether the MSRB has added commission in to “normalize” agency trades.⁴³ The MSRB responded by stating it believes that to ensure that this new indicator applies to all transactions involving non-transaction-based compensation, it is critical that the indicator apply to principal trades that do not include a mark-up or mark-down.⁴⁴ The MSRB also believes that it is important for dealers to affirmatively indicate on agency transactions that no commission was charged using the new indicator.⁴⁵ The MSRB believes this would provide for an additional data quality measure as well as enable dealers to program systems to include the indicator for all transactions involving non-transaction-based compensation as opposed to only a subset of such transactions.⁴⁶

⁴¹ Id.

⁴² See SIFMA Letter.

⁴³ Id.

⁴⁴ See MSRB Response Letter.

⁴⁵ Id.

⁴⁶ Id.

In addition, SIFMA suggests modifying the proposed definition of “non-transaction-based compensation arrangement transaction.”⁴⁷ Specifically, SIFMA requests that the definition be limited to transactions involving non-transaction-based compensation “in a customer account that is subject to an arrangement that does not provide for dealer compensation to be paid on a transaction-based basis.”⁴⁸ The MSRB responded by stating that it is not proposing to limit the application of the indicator in this manner because this indicator is intended to distinguish in price transparency data all customer transactions that do not include a dealer compensation component from those that include a mark-up, mark-down or commission and is not intended to distinguish such transactions based on the type of compensation arrangement associated with a customer account.⁴⁹

4. Establishing a New Indicator for ATS Transactions

SIFMA suggests an alternative where the MSRB is responsible for flagging ATS trades when an ATS firm takes a principal position between a buyer and a seller, similar to how it currently flags trades between dealers and municipal securities broker’s brokers.⁵⁰ SIFMA believes this would eliminate the unnecessary and burdensome requirements of the proposed rule change.⁵¹ The MSRB responded by stating that it believes a consistent approach should be taken for all transactions executed using the services of an ATS by requiring dealers to include the

⁴⁷ See SIFMA Letter.

⁴⁸ Id.

⁴⁹ See MSRB Response Letter.

⁵⁰ See SIFMA Letter.

⁵¹ Id.

ATS indicator on trade reports, regardless of whether the ATS takes a principal position.⁵² Also, the MSRB believes that this approach would reduce the potential for dealer confusion surrounding the requirement to include the ATS indicator and would help ensure that a dealer currently using the services of an ATS that takes a principal position is prepared to include an ATS indicator on trade reports if that ATS determines in the future to change its business practice and not take a principal position between the buyer and seller.⁵³

5. Economic Considerations

SIFMA expresses concern about the costs and burdens associated with the proposed rule change.⁵⁴ SIFMA believes that evaluating the costs and burdens of new regulation and weighing those costs against any benefits derived from such new regulation, is critical to ensure efficient regulation.⁵⁵ SIFMA states that the proposed rule change will drive up transaction costs and certain aspects of the proposed rule change do not measure up to the costs and burdens that will be imposed upon dealers.⁵⁶ The MSRB responded by noting that in each of the three solicitations for public comment the MSRB requested input on the operational costs and burdens of each proposed change as well as the benefits that could be achieved.⁵⁷ According to the MSRB, the responses from commenters, to the extent they addressed those issues, well informed the MSRB's determination to seek those changes that would balance the improvements to post-trade

⁵² See MSRB Response Letter.

⁵³ Id.

⁵⁴ See SIFMA Letter.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ See MSRB Response Letter.

price transparency with the regulatory burdens that would be imposed on dealers.⁵⁸ Also, the comments received through the public comment process enabled the MSRB to refine a broad set of potential changes that could be made to the limited set of changes in the proposed rule change.⁵⁹ The MSRB believes that the proposed rule change best balances the improvements to post-trade price transparency that would be gained with the regulatory burdens that would be imposed on dealers.⁶⁰

6. Effective Date of the Proposed Rule Change/Testing Period

SIFMA requests that the MSRB publish technical specifications related to the proposed rule change at least nine months prior to the effective date of the proposed rule change.⁶¹ BDA notes that smaller dealers with fewer IT resources may need more than six months to make changes necessary to comply with the proposal.⁶² Specifically, BDA requests a testing period of at least nine months prior to implementation.⁶³ The MSRB anticipates publishing updated technical specifications in early September 2015.⁶⁴ In response to comments from SIFMA and BDA, the MSRB now intends to set a specific effective date of May 23, 2016, which is the latest effective date contemplated by the proposed rule change. The MSRB believes this effective date

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ See SIFMA Letter.

⁶² See BDA Letter.

⁶³ Id.

⁶⁴ See MSRB Response Letter.

would likely provide dealers and subscribers with nearly nine months to make necessary system changes after publication by the MSRB of technical specifications.⁶⁵

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comments received, and the MSRB's response to such comments. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,⁶⁶ which requires, among other things, that the rules of the MSRB be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposed rule change is reasonably designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities by increasing the quality and usefulness of the post-trade price transparency information provided through RTRS. As noted by the MSRB, the (i) expansion of the application of the existing List Offering Price and Takedown Transaction indicator to cases involving

⁶⁵ Id.

⁶⁶ 15 U.S.C. 78o-4(b)(2)(C).

distribution participant dealers and takedown transactions that are not at a discount from the list offering price, (ii) establishment of a new indicator for customer trades involving non-transaction-based compensation arrangements, and (iii) establishment of a new indicator for ATS transactions would enable users of the post-trade price transparency information provided through RTRS to better understand the pricing of certain transactions as well as how such transactions were executed.⁶⁷ As further noted by the MSRB, identifying in disseminated transaction information that an ATS was employed should facilitate higher quality research and analysis of market structure by providing information about the extent to which ATSs are used and should complement the existing indicator disseminated for transactions involving a broker's broker.⁶⁸ Accordingly, the Commission believes that the proposed rule change would contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.⁶⁹ The Commission recognizes that the proposed rule change would impose a burden on dealers and subscribers that interface with RTRS to comply with the reporting and dissemination of the new indicators that would be required by the proposed rule change. However, the Commission believes that the potential burden created by the proposed rule change is likely outweighed by the benefits, such as increasing the quality and usefulness of post-trade price transparency information. Also, the Commission believes that the proposed rule change includes accommodations that help promote

⁶⁷ See supra note 4.

⁶⁸ Id.

⁶⁹ 15 U.S.C. 78c(f).

efficiency. Specifically, the proposed rule change would eliminate the requirement for dealers to include yield on customer trade reports. The Commission believes that this would remove one aspect of a dealer's burden in reporting customer transactions to the MSRB in compliance with MSRB Rule G-14. Furthermore, the MSRB has revised its implementation schedule in response to comments from BDA and SIFMA, which would likely provide dealers and subscribers with nearly nine months to make necessary system changes after publication by the MSRB of the technical specifications. This accommodation would likely provide dealers and subscribers with sufficient time to make any required changes in due course without causing adverse disruptions. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the requirements of the proposed rule change would apply equally to all dealers who report trade information to RTRS.

As noted above, the Commission received three comment letters on the filing. The Commission believes that the MSRB considered carefully and responded adequately to comments and concerns regarding the proposed rule change. Although one commenter suggested changes and opposed certain aspects of the proposed rule change, the Commission notes that no commenters argued that the proposed rule change was inconsistent with the applicable provisions of the Act.

For the reasons noted above, including those discussed in the MSRB Response Letter, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷⁰ that the proposed rule change (SR-MSRB-2015-02) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁷¹

Brent J. Fields
Secretary

⁷⁰ 15 U.S.C. 78s(b)(2).

⁷¹ 17 CFR 200.30-3(a)(12).