



Municipal Securities Rulemaking Board

March 1, 2021

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

Re: **File Number S7-12-20**

Dear Ms. Countryman,

The Municipal Securities Rulemaking Board (“MSRB” or “Board”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) in response to a Commission concept proposal seeking comment on the regulatory framework for electronic platforms that trade corporate debt and municipal securities. The Commission published the concept proposal and request for comment in Exchange Act Release No. 34-90019 (the “Proposal”).<sup>1</sup>

### **Background**

The MSRB is a self-regulatory organization created by Congress with the statutory mandate under Section 15B of the Securities Exchange Act of 1934 (the “Exchange Act”) to promulgate rules for the municipal securities market that protect investors, state and local governments and other municipal entities, obligated persons and the public interest.<sup>2</sup> The MSRB fulfills its mission to safeguard the nearly \$4 trillion municipal securities market by, among other activities, establishing rules for brokers, dealers, municipal securities dealers (collectively, “dealers”) and municipal advisors that engage in municipal securities and advisory activities. MSRB rules are designed to prevent fraud and manipulation and promote fair dealing and a fair and efficient market. To further promote a fair and efficient market, the MSRB operates the Electronic Municipal Market Access (EMMA<sup>®</sup>) website, which increases the transparency of the municipal securities market by providing free public access to municipal securities disclosures and transaction data. The EMMA website provides investors, state and local governments and other market participants with key information and tools to effectively use that information.

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<sup>1</sup> See Release No. 34-90019 (Sept. 28, 2020).

<sup>2</sup> Pursuant to Section 15B(b)(2)(C) of the Exchange Act, such rules must not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. 15 U.S.C. 78o-4(b)(2)(C).

## **Introduction**

The SEC Fixed Income Market Structure Advisory Committee (“FIMSAC”), formed by the Commission in 2017, was established to provide the Commission “with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure.”<sup>3</sup> The Commission noted in the Proposal that its concept proposal regarding the regulatory framework for electronic platforms that trade corporate debt and municipal securities arises from FIMSAC’s work. In July 2018, FIMSAC recommended that the Commission review the framework for the oversight of electronic trading platforms for corporate and municipal bonds.<sup>4</sup> Specifically, FIMSAC noted its concern with the lack of regulatory harmonization among fixed income electronic trading platforms recognizing that some firms are regulated as alternative trading systems, while some are regulated as broker-dealers or not at all based on differences in trading protocols or business models. FIMSAC concluded that these distinctions in regulatory oversight complicate efforts to improve the efficiency and resiliency of the fixed income electronic trading markets and that without a unifying regulatory framework for all fixed income electronic trading platforms, market structures will likely fragment further as regulators adopt new regulations that apply to only one type of platform.

## **Response to the Proposal**

Recognizing its mandate to promote a fair and efficient municipal securities market, the MSRB felt compelled to provide input in response to the question directly related to the MSRB and its mission that the Commission posed in the Proposal. Accordingly, this letter does not provide exhaustive comment to each itemized question as presented in the Proposal, but is more targeted.

It is important to note that Alternative Trading Systems (ATSs) have become a significant component of liquidity in the market, especially for individual investors. For example, in 2020, there were more than 1.7 million trades reported to the MSRB as being executed on an ATS and

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<sup>3</sup> FIMSAC Charter art. 3 (November 15, 2017), available at <https://www.sec.gov/files/fimsac-charter.pdf>

<sup>4</sup> See FIMSAC Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds, July 16, 2018. <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-electronic-trading-platforms-recommendation.pdf>. See also, FIMSAC Recommendation Regarding Defining “Electronic Trading” for Regulatory Purposes, October 5, 2020. <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendation-definition-of-electronic-trading.pdf>.

1.55 million of those trades were for \$100,000 or less.<sup>5</sup> ATs aggregate liquidity for customer purchases and sales from many dealers. ATs also provide tools to help dealers and investors, including individual investors, to efficiently search and find offerings based upon a variety of pertinent attributes, including state, coupon, maturity, tax status, etc. Since May 23, 2016, dealers reporting trades to the MSRB have been required to use a special indicator to identify when trades are executed on an AT. MSRB trade data shows how significant ATs have become in the inter-dealer market. MSRB trade data for 2020 also shows that ATs were involved 21% of all trades and 55% of all inter-dealer trades.<sup>6</sup> For trades of \$100,000 or less, ATs accounted for 24% of all trades and 59% of all inter-dealer trades. The median trade size in 2020, for all trades reported as occurring on an AT was \$25,000. The significant number of trades, especially smaller-sized trades that are associated with ATs indicates the importance of AT to individual investors and the entire municipal bond market.

Consistent with the FIMSAC recommendation, the MSRB looks forward to working collaboratively with the SEC and the Financial Industry Regulatory Authority (“FINRA”) to review the regulatory framework for oversight of the fixed income electronic trading platforms.<sup>7</sup>

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<sup>5</sup> Trades of \$100,000 or less are often used as a proxy or associated with trades for individual investors.

<sup>6</sup> According to data reported to the MSRB’s RTRS system. Trade data excludes variable-rate municipal securities.

<sup>7</sup> Specifically, the FIMSAC recommended that the SEC, FINRA, and MSRB form a joint working group to conduct a review of the regulatory framework for oversight of electronic trading platforms used in the corporate and municipal bond markets: (i) to ensure that the regulatory framework best promotes the growth of fair and effective fixed income electronic trading markets; (ii) to ensure that no regulatory gaps or inconsistencies in the application of such regulation exist that increase the potential for investor harm, systemic risk or unfair competition; (iii) to ensure that no regulatory gaps or inconsistencies in the application of such regulation exist that increase the potential for investor harm, systemic risk or unfair competition; (iii) to consider whether Regulation ATS (and any other applicable rules) should be amended to account for differences in protocols and market structures commonly used to trade fixed income as compared to equities; (iv) to ensure that regulation is not unfairly promoting or impeding specific trading protocols and business models over others; and (v) to consider whether any existing regulation impacting the fixed income electronic trading markets is unnecessary from a cost-benefit perspective. See FIMSAC, Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds (July 16, 2018).

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**Conclusion**

The Board appreciates the opportunity to provide comment to the Commission on the Proposal. The MSRB supports the Commission seeking comment on the concerns FIMSAC raised and looks forward to working jointly with the SEC and FINRA on this initiative. If we can provide additional information, please do not hesitate to contact me or the Board staff, John Bagley, Chief Market Structure Officer, or Gail Marshall, Chief Regulatory Officer, at [REDACTED].

Sincerely,

A handwritten signature in black ink, consisting of a long horizontal line that loops back up and over itself to form a stylized 'S' or 'E' shape.

Edward J. Sisk  
Chair

cc: Rebecca Olsen, Director, Office of Municipal Securities