



July 18, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-MSRB-2013-05, Notice of Filing of a Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC”) request for comment on the proposed rule changes filed by the Municipal Securities Rulemaking Board (“MSRB”) to MSRB Rules G-8, G-11 and G-32 to include provisions specifically tailored for retail order periods.

In prior comments to the MSRB on this issue², SIFMA suggested that concerns raised about retail order periods could be addressed through the enforcement of existing MSRB guidance³. Now the MSRB has decided to reorganize some of its interpretive guidance associated with MSRB Rule G-17 into new or revised rules⁴. Consequently, SIFMA supports the proposed rule changes to the extent they would protect dealers that follow issuers’ instructions and require timely notice of retail order period terms and

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² See Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated November 2, 2012 (response to MSRB Notice 2012-50) available at <http://www.sifma.org/issues/item.aspx?id=17179869219>. See also, Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated April 13, 2012 (response to MSRB Notice 2012-13) available at <http://www.sifma.org/issues/item.aspx?id=8589938319>.

³ See SEC Release No. 34-66927 (May 4, 2012); 77 FR 27509 (May 10, 2012). See also [MSRB Notice 2012-25 \(May 7, 2012\)](#) (“The Notice reminds underwriters not to disregard issuers’ rules for retail order periods by, among other things, accepting or placing orders that do not satisfy issuers’ definitions of “retail.”).

⁴ See MSRB Notice 2013-04 (February 11, 2013) Request for Comment on Codifying Time of Trade Disclosure Obligation, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx?n=1>

conditions to all syndicate and selling group members, as well to investors through the MSRB's Electronic Municipal Market System (EMMA).

However, the MSRB has not put forth the least burdensome way to achieve certain regulatory ends contained in its proposal – ends that SIFMA supports. We believe several of the concepts contained in the MSRB's proposal could be implemented in a less costly and burdensome way – and urge the SEC to adopt the less burdensome approach put forth by SIFMA. Additionally, there are a number of changes put forth by the MSRB in its filing with the SEC for which public comment was not previously solicited.

I. Proposed Rule G-11 (K): Representations and Disclosures

Proposed Rule G-11(k) *Retail Order Period Representations and Required Disclosures*, would require each dealer that submits an order to provide in writing to the syndicate manager the following information *separately* for each order:

- (i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period;
- (ii) whether the order is a going away order;
- (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned;
- (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and
- (v) the par amount of the order.

We suggest a less prescriptive and burdensome alternative construct for this part of the proposed Rule regarding representations to be made (i), (ii), and (iii); and disclosures (iv) and (v). As for representations, we believe that the Rule should be constructed in a way so that by virtue of submitting an order during the retail order period, the submitting dealer could make a *single* representation that: 1) each order meets the issuer's eligibility criteria of "retail"; 2) each order is a *bona fide*⁵ customer order; and 3) such order is not

⁵ SIFMA's members continue to believe that what qualifies as a "going away order", however defined, is confusing and that the policy goal of this requirement is to make clear that only the submission of *bona fide* customer orders are permissible. Accordingly, we suggest deleting proposed Rule G-11 (a)(xii). Instead Rule G-11 (a) (vii) should define "retail order period" as "an order period during which *bona fide* orders will be solicited solely from customers that meet the issuer's designated eligibility criteria for retail orders."

duplicative. These representations could be made in either the Master Agreement Among Underwriters (“MAAU” or “AAU”)⁶ or the Selling Group Agreement (“SGA”)⁷ and therefore is not necessary for these representations to be made separately for each order submitted during a retail order period⁸. Additionally, the approach suggested by the MSRB is reliant on third party vendors⁹, through which order information is conveyed, to accommodate these proposed changes, or dealers will have to design an alternative method. We also note that this requirement fails to take into consideration the time constraints and pressure to enter each order’s unique requirements – every additional second adds up.

Again, SIFMA is advocating for a flexible approach resulting in a prescriptive outcome: orders submitted during a retail order period must honor the issuer’s intentions. The MSRB’s comments¹⁰, in response to SIFMA’s less burdensome approach, miss the mark: SIFMA is suggesting a less burdensome *manner* in which dealers could comply with the proposed representations – we are not advocating the *making* of such representations to be potentially altered through private agreements: simply the representations could be made *collectively*. In the alternative, dealers should only be required to separately inform the syndicate manager in writing if any order *does not* comply with Proposed Rule G-11(k)(i), (ii), or (iii).

II. Issuer to “Approve” Terms and Conditions

In the MSRB’s filing with the SEC, the MSRB has proposed qualifying the following sentence in Rule G-11(f) *Communications Relating to Issuer [Syndicate] Requirements, Priority Provisions and Order Period*: “If the senior syndicate manager, rather than the issuer, prepares the written statement of all terms and conditions required by the issuer, such statement shall be provided to the issuer for its approval.” (new language underlined). Our members believe that the existing language is more than sufficient to ensure that an issuer is aware of and agrees with any requirements imposed on the syndicate and selling group members in its name. In fact, this new language will likely result in some of the same unintended consequences along the lines experienced by underwriters in seeking to obtain issuer acknowledgement of receipt of the MSRB Rule

⁶ See SIFMA’s Master Agreement Among Underwriters (2002), available at

<http://www.sifma.org/services/standard-forms-and-documentation/municipal-securities-markets/>

⁷ See SIFMA’s Model Selling Group Agreement available at <http://www.sifma.org/services/standard-forms-and-documentation/municipal-securities-markets/>.

⁸ Similarly, when the terms and conditions of the retail period are communicated to syndicate members by “wires” or similar communications, they could prescribe that by submitting an order to the syndicate, each firm is representing to the issuer that each order complies with the issuer’s eligibility criteria, is *bona fide*, and is not duplicative.

⁹ Most, if not all dealers, use a third party “book running system” into which each syndicate member enters individual orders. Orders flow real-time to the syndicate manager.

¹⁰ SR-MSRB-2013-05 at page 17 of 153 (“SIFMA may wish to revise its standard form AAU or SGA in support of the proposed rule change and the MSRB would be supportive of any agreement which seeks to bind members of the syndicate or selling group to honor the issuer’s intentions. However, compliance with MSRB rules should stand independent of private agreements between parties.”).

G-17 underwriter disclosure to issuers: which issuer representative can provide such approval, the preference of certain issuer officials to simply acknowledge (rather than approve) the G-17 disclosures; what if the issuer is unwilling to provide such approval. Again, our members believe the current language is sufficient and is not aware of enforcement actions taken against syndicate managers for not honoring terms and conditions required by the issuer.

III. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the proposal. Subject to the proposed refinements suggested above, SIFMA supports the proposed rule changes to the extent they would protect dealer that follow issuer instructions, clarify issuer terms and conditions, and require timely notice of retail order period terms and conditions.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,



David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
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