MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2016-13

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Stakeholders
Municipal Securities Dealers, Issuers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
May 25, 2016

Category
Uniform Practice

Affected Rules
Rule G-15

Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on proposed draft amendments to MSRB Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. Specifically, the MSRB is seeking comment on whether Rule G-15(f), which generally prohibits brokers, dealers and municipal securities dealers (collectively "dealers") from effecting transactions with customers below the minimum denominations specified in bond documents, should be amended. The proposed draft amendments are designed to support the practical implementation of Rule G-15(f) by recognizing exceptions that are consistent with the rule's original intent to protect investors that own municipal securities in amounts below the minimum denomination without creating an additional number of below-denomination positions where there once was one.[1]

Comments should be submitted no later than May 25, 2016, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.[2]

[1] Securities Exchange Act Release No. 45174 *Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations* (December 19, 2001), 66 FR 67342 (December 28, 2001).

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

Questions about this notice should be directed to Gail Marshall, Associate General Counsel – Enforcement Coordination; David Saltiel, Chief Economist; or Michael Cowart, Associate General Counsel, at 202-838-1500.

Summary of the Draft Amendments

The MSRB is charged by Congress to promote a fair and efficient municipal securities market and to protect investors and the public interest.[3] Under this mandate, the MSRB has developed and adopted a detailed set of regulatory requirements regarding customer transactions. In 2002, Rule G-15 was amended to prohibit dealers in most cases from effecting transactions with customers in amounts below the minimum denomination.[4] An issuer may state a "minimum denomination" larger than the typical $5,000 par value (typically $100,000) in official documents for a bond issue.[5]

The 2002 amendment establishing Rule G-15(f) provided two exceptions to the prohibition in order to help preserve liquidity for customers' below-minimum denomination positions (Rule G-15(f)(ii) and (iii)).[6] Rule G-15(f)(ii) permits a dealer to purchase from a customer in an amount below the minimum denomination if the dealer determines, either by relying upon customer account information in its possession or upon a written statement by the customer as to its position in the issue, that the customer is selling its entire position. Rule G-15(f)(iii) permits a dealer to sell to a customer an amount below the minimum denomination if the dealer determines that the

[3] *E.g.*, Securities Exchange Act of 1934 § 15B(b)(2)(C), 15 U.S.C. 78o-4(b)(2)(C).

[4] Securities Exchange Act Release No. 45338 *Order Granting Approval of Proposed Rule Change Relating to Minimum Denominations* (January 25, 2002), 67 FR 6960 (February 14, 2002); Securities Exchange Act Release No. 45174 *Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations* (December 19, 2001), 66 FR 67342 (December 28, 2001).

[5] For example, an issuer may opt to establish a high minimum denomination to qualify for one of several exemptions from Securities Exchange Act Rule 15c2-12 or due to the bond being non-investment grade, credit risk, or other reasons, often suggesting that the securities may not be appropriate for those retail investors likely to purchase securities in relatively small amounts. The proscriptions of Rule G-15(f) apply to all transactions with customers regardless of whether the securities are suitable for the customer.

[6] Customers may have positions below the minimum denomination due to, for example, as a result of a death or divorce, a call provision that allows calls in amounts less than the minimum denomination, investment advisors who may split positions they purchase among several clients, or knowingly or unknowingly purchasing an amount below the minimum denomination.

position being sold is the result of a customer liquidating an entire position below the minimum denomination, provided that the dealer provides written disclosure to the customer that the quantity of securities being sold is below the minimum denomination for the issue, which may, unless the customer has other securities from the issue that can be combined to reach the minimum denomination, adversely affect the liquidity of the position.

The MSRB believes that certain other transactions that are not currently contemplated under the rule would be consistent with the intent of the exceptions provided under Rule G-15(f)(iii). The MSRB is seeking comment on whether the following two additional trading scenarios should be excluded from the prohibition on sales to customers below the minimum denomination.

1. If the dealer determines that the below-minimum position being sold is the result of a customer liquidating an entire position below the minimum denomination, the dealer would be permitted to effect a sale below the minimum denomination with one or more customers that currently own the issue so long as the increment(s) being sold to the customer(s) is consistent with any restrictions in the issuer's authorizing documents even if the transaction does not result in a customer increasing its position to an amount at or above the minimum denomination. Under this scenario, a dealer would still be permitted to sell a portion of the below-minimum position to a maximum of one customer that currently does not own a position in the issue.[7] For example, if a customer sells their entire 75,000 position, a dealer could sell 25,000 of that to a customer that does not currently have a position; sell 35,000 to a customer that owns an existing 10,000 position; and sell 15,000 to a customer that owns an existing 85,000 position. A dealer could not, however, sell portions of the 75,000 position to more than one customer that does not currently have a position in the issue.

[7] Consistent with the current rule, this proposed exemption would require a dealer effecting a sale to a customer of an amount below the minimum denomination to provide, at or before the completion of the transaction, a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. This disclosure would be required with respect to each sale to a customer of a position below the minimum denomination, even if the customer maintains a position in the issue that is above the minimum denomination.

2. If a dealer has a position (whether below, at or above the minimum denomination amount) the dealer would be permitted to effect a sale below the minimum denomination with a customer that currently owns a below-minimum position provided that effecting such transaction results in the customer owning a position at or above the minimum denomination amount; the dealer could then sell any remaining below-minimum position to one or more customers that currently own the issue so long as the increments sold were consistent with any restrictions in the issuer's authorizing documents regarding incremental amounts.[8] A dealer could not, however, sell any portion to a customer that does not currently have a position in the issue because the transaction would create a below-minimum position where there once was none. For example, a dealer could sell 25,000 of a 100,000 position to a customer that has a position of 75,000 because that transaction would result in the customer owning a position at the minimum denomination of 100,000. Thereafter, the dealer could sell the remaining 75,000 to one or more customers that had a position in the issue.

Consistent with the current rule, a dealer would be able to rely upon customer account records in its possession or upon a written statement provided by the customer to whom the securities are purchased or sold that the customer owns a position in the issue in an amount at or below the minimum denomination. In addition, at or before the completion of any sale in an amount below the minimum denomination, a dealer would be required to provide the customer, even if the customer already owns a position in the securities, a statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination.[9]

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[8] Consistent with the current rule, this proposed exemption would also require a dealer effecting a sale to a customer of an amount below the minimum denomination to provide, at or before the completion of the transaction, a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Likewise, this disclosure would be required with respect to each sale to a customer of a position below the minimum denomination, even if the customer maintains a position in the issue that is above the minimum denomination.

[9] If the MSRB were to proceed with draft amendments to Rule G-15(f), a housekeeping amendment to MSRB Rule G-8(a)(ix), on books and records to be made by brokers, dealers

The MSRB believes the above trading scenarios strike the appropriate balance of enhancing liquidity for investors that hold positions in below-denomination amounts while preventing the creation of an additional number of below-denomination positions. The MSRB reminds dealers that Rule G-18, on best execution; Rule G-19, on suitability of recommendations and transactions; and Rule G-47, on time of trade disclosure, impose regulatory requirements on dealers regarding customer transactions that supplement the protections afforded by Rule G-15(f) with respect to minimum denominations.[10] For example, while selling a customer a position below the minimum denomination of an issue may be permitted under Rule G-15(f)(iii) or (iv), a dealer would have an obligation to have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer, bearing in mind that, among other things, the issue has a minimum denomination and the customer's liquidity needs and risk tolerance. Moreover, whether unsolicited or recommended, a dealer has an obligation under Rule G-47 to disclose to a 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, including the fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination.

Economic Analysis

1. The need for the draft amendments to Rule G-15(f) and how the draft amendments to Rule G-15(f) will meet that need.

As noted above, the need for the draft amendments arises primarily from a recognition that there are trading scenarios prohibited by the existing rule that, if allowed, would likely not result in a net increase in the number of below-denomination positions and may reduce the number of below-denomination positions, increase the ability of investors currently holding below-denomination positions to exit those positions and/or reduce the burden on dealers associated with implementing Rule G-15(f).

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and municipal securities dealers, would be required to correspond to the revised numbering under Rule G-15(f).

[10] The obligations of a dealer may differ if the dealer reasonably concludes the customer is a Sophisticated Municipal Market Professional. *See* MSRB Rule G-48.

While the existing rule does provide a mechanism for an investor with a below-denomination position to either exit their position entirely or purchase a portion of an issue below the minimum denomination so that they own a position at or above the minimum denomination, in practice those options may be unattractive to dealers that might, as a result of such trades, be left with a below-denomination position themselves for which a willing customer may be difficult to identify. As a result, investors with below-denomination positions, including those that acquired those positions as a result of divorce or inheritance, may find accessing liquidity difficult.

The draft amendments may provide additional exceptions that may make it easier for these investors to access liquidity.

2. **Relevant baselines against which the likely economic impact of elements of the draft amendments should be considered.**

The relevant baseline against which the likely economic impact of the draft amendments should be considered is existing Rule G-15(f), which generally prohibits dealers from effecting transactions with customers below the minimum denominations specified in bond documents. In addition, as noted above, MSRB Rules G-18, G-19 and G-47 impose regulatory requirements on dealers regarding customer transactions that supplement the protections afforded by Rule G-15(f) with respect to minimum denominations.

3. **Identifying and evaluating reasonable alternative regulatory approaches.**

The MSRB recognizes that there are alternatives to the approach taken in the draft amendments. For example, the MSRB could propose additional exceptions and/or liberalize the existing exceptions. While the MSRB recognizes that such alternatives might reduce the burden on dealers and increase the liquidity of below-denomination positions, the MSRB believes that they would also be likely to increase the number of below-denomination positions that potentially put investors at risk.

4. **Assessing the benefits and costs of the draft amendments.**

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the rule with the draft amendments fully implemented against the context of the economic baseline discussed above. The MSRB is seeking, as part of this request for comment, data or studies relevant to the determination of the number of existing below-denomination positions, the relative difficulty of exiting or adding to these positions, the

impact of these positions on investors, and the costs the existing rule imposes on dealers.

Preliminarily, the MSRB has evaluated the benefits and costs associated with the draft amendments as follows:

Benefits

The MSRB believes that the draft amendments may reduce the number of below-denomination positions, increase the ability of investors currently holding below-denomination positions to exit those positions and/or reduce the burden on dealers associated with implementing Rule G-15(f).

Costs

Our analysis of the potential costs does not consider all of the costs associated with the proposal, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the draft amendments to isolate the costs attributable to the incremental requirements of the draft amendments.

The MSRB recognizes that some dealers may incur costs should they utilize either the two additional proposed exceptions, but as the choice of whether and when to exercise these exceptions is wholly within a dealer's volition, the MSRB does not believe that the creation of the exemptions *per se* would result in any new costs for dealers.

The MSRB does not believe that the draft amendments are likely to result in a net increase in the number of below-denomination positions. The MSRB also has no reason to believe that any new below-denomination positions associated with the draft amendments would be held by a significantly different or less sophisticated group of investors than the group currently holding below-denomination positions. Therefore, the MSRB does not believe that there are any additional costs for investors and may, as discussed above, actually reduce costs by increasing liquidity.

The MSRB is not aware of any available data that would support a quantitative estimate of the overall impact of the draft amendments. The MSRB specifically seeks comments that would inform a quantitative estimate of the benefits and costs associated with the draft amendments.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the draft amendments may improve capital formation and efficiency to the extent they result in improved access to liquidity for those investors holding below-denomination positions.

The MSRB believes that larger dealers with larger inventories and larger numbers of customers may be better positioned to exercise these exceptions, but does not believe this significantly improves their competitive position or significantly burdens those dealers less able to exercise the exceptions.

Questions

The MSRB seeks public comment on all aspects of the proposal and specifically requests comment concerning the following questions, as well as any other comments on the subject of transactions in amounts below the minimum denomination. The MSRB welcomes information regarding the potential to quantify the likely benefits and costs of the draft amendments. The MSRB requests comment on any competitive or anticompetitive effects, as well as efficiency and capital formation effects of the draft amendments on any market participants. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views or assumptions or issues raised in this request for comment.

1. As designed, do the draft amendments serve to improve liquidity for investors without increasing the number of customers maintaining positions in municipal securities below the minimum denomination?

2. Would any or all exceptions continue to appropriately balance the interests of issuers, investors, dealers and the market as a whole?

3. Are there other trading scenarios that would likewise enhance liquidity for investors without increasing the number of customers maintaining a position below the minimum denomination?

4. Should the exception permitting a dealer to purchase from a customer a position below the minimum denomination apply when that customer's below-minimum position is a result of an allocation in a managed account from a position purchased in an amount equal to or above the minimum denomination?

5. Are there other scenarios not already identified that cause a customer's position to fall below the minimum denomination?

6. Should dealers have to provide the written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely

affect the liquidity of the position if the dealer has already determined that the sale to the customer below the minimum denomination results in the customer being at or above the minimum denomination?

7. Under what circumstances do customers seek positions below the minimum denomination?

8. Do the alternatives identified above represent a comprehensive set of reasonable regulatory alternatives or are there alternative methods the MSRB should consider regarding permissible transactions below the minimum denomination of an issue that would be more effective and/or less burdensome?

9. To what extent have MSRB registrants found it difficult or costly to comply with the existing rule? If possible, please quantify the impact of these challenges.

10. What is the, per firm, annual cost of compliance with existing Rule G-15(f)?

11. Are there other relevant baselines the MSRB should consider when evaluating the economic impact of the proposal?

12. Are commenters aware of any studies assessing the impact of investors holding below-denomination positions?

April 7, 2016

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Text of Draft Amendments*

Rule G-15: Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers

(a) - (e) No change.

(f) Minimum Denominations.

* Underlining indicates new language; strikethrough denotes deletions.

(i) Except as provided in this section (f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.

(ii) The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. ~~In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.~~

(iii) The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. ~~In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be provided on a document separate from the confirmation.~~ In effecting a sale with a customer in an amount below the minimum denomination, the broker, dealer or municipal securities dealer may:

(A) Sell the entire below-minimum position to one customer; or

(B) Sell a portion of the below-minimum position to one or more customers that have a position in the issue and the remainder of the below-minimum position to a maximum of one customer that does not have a position in the issue, even if the transaction(s) do not result in a customer increasing its position to an amount at or above the minimum denomination, provided that the increment(s) being sold to the customer(s) is consistent with any restrictions in the issuer's authorizing documents regarding incremental amounts.

(iv) The prohibition in subsection (f)(i) of this rule shall not prohibit a broker, dealer or municipal securities dealer from effecting a sale to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer is effecting a sale with a customer that has a position in the issue below the minimum denomination and the sale will result in that customer owning a position at or above the minimum denomination. Provided that no portion is sold to a customer that does not currently have a position in the issue, the broker, dealer or municipal securities dealer could then sell the remaining below-minimum position to one or more customers so long as the amount sold is consistent with any other restrictions in the issuer's authorizing documents regarding incremental amounts.

(v) A broker, dealer or municipal securities dealer effecting a purchase from or sale to a customer under subsection (ii), (iii) or (iv) shall determine a customer's position in the subject security based upon account records in the broker's, dealer's or municipal securities dealer's possession or upon a written statement provided by the party from which the securities are purchased or party to whom the securities are sold and, with respect to any sale in an amount below the minimum denomination, shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be provided on a document separate from the confirmation.

(g) No change.

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2016-13 (APRIL 7, 2016)

1. American Municipal Securities, Inc.: Letter from Michael Petagna, President, dated May 25, 2016

2. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated May 25, 2016

3. Breena LLC: E-mail from G. Letti dated April 19, 2016

4. Center for Municipal Finance: Letter from Marc D. Joffe, President, dated April 7, 2016

5. Neighborly.com: E-mail from Jase Wilson dated May 25, 2016

6. Regional Brokers, Inc.: Letter from H. Deane Armstrong, CCO

7. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated May 25, 2016

8. Thomas Kiernan: E-mail dated April 7, 2016

9. Vista Securities: E-mail from Rick DeLong dated May 9, 2016

10. Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated May 25, 2016

AMERICAN MUNICIPAL SECURITIES, INC.

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May 25, 2016

BY ELECTRONIC MAIL

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

Re: MSRB Rule G-15(f)

Mr. Smith:

The following is submitted in response to Regulatory Notice 2016-13 which requests comment on draft amendments to Rule G-15(f). Founded in 1980, American Municipal Securities, Inc. ("AMS") is a full service broker-dealer specializing in the sale of individual fixed income securities. AMS supports the MSRB's goal of enhancing market liquidity for investors holding municipal securities in amounts below the stated minimums while limiting the creation of new below minimum positions in customer accounts. Our firm agrees that the limited liquidity of below minimum denomination securities positions, although unintentionally created, is real and is a cause for concern.

It is important for all investors to have liquidity for their securities. AMS has found that due to regulatory uncertainty, the liquidity of existing below minimum denomination positions has been dramatically reduced in the secondary municipal marketplace. The aforementioned regulatory uncertainty among dealers has created a situation in which dealers are not willing to actively bid securities in amounts below the minimum denomination or increment. Due to this uncertainty and the lack of a viable marketplace, dealers are reluctant to provide liquidity to even legitimately created, nonconforming positions. Currently, customers that find high credit quality nonconforming positions in their accounts do not have the ability to liquidate at a reasonable bid and the lack of liquidity in the secondary market is artificially devaluing these securities.

AMS believes that the proposed rule changes found in MSRB Regulatory Notice 2016-13 will not dramatically increase liquidity or clear the regulatory confusion involved in these transactions. AMS believes that the MSRB could enhance liquidity in the secondary market for legitimately created positions while limiting the creation of new below minimum denomination positions by clarifying the existing regulatory burden placed upon each side of the customer transactions. The MSRB would be better served by focusing on how and why these nonconforming positions are legitimately created while clarifying and then enforcing the existing rule. Advances in technology have allowed both the clearing houses and the dealer community to trade in the "below minimum denomination" sizes and AMS believes that these advances should be embraced by the MSRB and dealers to increase market liquidity.

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As long as the holdings of our customers are legitimately split, we feel that we have an obligation to provide unencumbered liquidity to the market. It should be noted that the vast majority of these positions found in the secondary market concern high quality, investment grade holdings of retail investors that have been legitimately created to facilitate bond restructurings, trust liquidations, divorce settlements and others.

In order to enhance liquidity in the market, it is important to differentiate between below minimum denomination positions that were created due to external factors such as those previously mentioned and illegitimately or inadvertently created positions that do not meet the exceptions found in the existing MSRB Rule G-15. Currently, the secondary market treats an investment grade rated 2.5m bond position legitimately created from a trust liquidation in the same light as a 75m position illegitimately derived from a once conforming holding of a speculatively rated issuer whose bond documents specify customer purchases in increments greater than 100m. There is no bid in the secondary market for either of these situations even though one customer is being unjustly penalized for a situation that is beyond their control.

To increase liquidity while limiting the creation of nonconforming positions, it is recommended that the rule be amended to specifically permit bidding dealers to rely upon a bid-wanted as "written proof" from the selling dealer that they have abided by the exceptions granted in MSRB Rule G-15. Furthermore, it is proposed that the MSRB exempt from the "written notification" provisions found in MSRB Rule G-15(f) any position found in less than 5m. It is our assertion that these positions will most likely have been created for legitimate reasons while their size will make active trading and/or further size degradation cost-prohibitive and nonsensical. These suggestions will allow small "mom and pop" investors holding nonconforming positions the enhanced liquidity necessary to get them the best bid for their bonds. In turn, this will allow dealers to better understand their regulatory obligations concerning MSRB G-15 thus encouraging more active bid-side participation in the marketplace. We firmly believe that the onus should be on all market participants and regulatory agencies to create a liquid marketplace where all of our customers' investments are valued appropriately.

Yours truly,

Michael Petagna
President
American Municipal Securities, Inc.

BDA Bond Dealers of America

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May 25, 2016

VIA ELECTRONIC MAIL

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

RE: Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Notice: 2016-13)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit these comments regarding MSRB Regulatory Notice 2016-13, draft amendments to MSRB Rule G-15(f) on minimum denominations ("draft amendments"). The BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed-income markets and we welcome this opportunity to present our comments.

The BDA appreciates MSRB's intention to strike a balance between restrictions on buying and selling positions in bonds lower than the minimum denomination, against modifications meant to assist managing these positions generally. We believe that the industry needs a fair rule that protects investors, while also providing dealers with solutions when dealing with customers who own positions in below the minimum denominations. We believe the amendments proposed by the MSRB may result in improved liquidity and could help to alleviate some of the regulatory burdens dealers face in managing compliance with purchases and sales of certain securities below the minimum denomination. Below, we outline our general support for the draft amendments and request additional modifications to clarify some complexities in the market to further mitigate dealer struggles with minimum denominations.

The MSRB Should Permit Dealer Flexibility in Certain Instances

Below minimum-denomination bond positions are often created in the marketplace and the rule needs to provide dealers with flexibility to manage these situations since a below minimum-denomination quantity of bonds is a hard-to-sell position with limited liquidity. Often, money managers will buy a block of bonds above the minimum denomination level and then subsequently allocate below minimum-denomination quantities to separately managed accounts. These separately managed accounts may be transferred to a broker-dealer who may be called upon by the customer to liquidate a below-minimum denomination quantity of bonds. Similar instances arise when estate planners split up a block of bonds into two accounts leaving a position that is extremely difficult for the dealer to liquidate. Often those divisions result in customers holding below-minimum denomination quantities of bonds, which realize few, if any, bids for the position. While there may have been multiple bids for the original position, that is not the case for the remaining smaller-position, resulting in a depreciated value if a dealer is able to find a buyer for that below minimum-denomination position. The BDA would therefore

ask the MSRB to consider including language providing flexibility for certain circumstances, beyond the dealer's control, which created the below-minimum position.

The MSRB should not force liquidation of certain positions, given appropriate disclosures. BDA dealer firms sometimes are forced to sell amounts of bonds below the minimum-denomination for a variety of reasons including the need to liquidate and divide estates. Often those divisions result in customers holding below-minimum positions resulting in few, if any, bids for the position. While there may have been multiple bids for the original position, that is not the case for the remaining smaller-position, resulting in a depreciated value if a dealer is able to find a buyer for that below minimum-denomination position. For example, if a customer holds $9,000 par value of a 5 bond x 5-bond piece in their account, they should be able to sell 5 bonds (the minimum denomination value) and continue to hold 4 bonds. As things stand, firms would be required to sell the entire position, likely resulting in insufficient demand or no bids at all in these situations. The BDA would therefore request that the MSRB consider including language in the draft amendments to avoid the full liquidation of a bond position if that sale would result in a customer's account holding a below-minimum increment as long as appropriate disclosures are made.

The MSRB Should Permit Sales to Customers of a Below-Minimum Increment if the Customer Already Owns a Full Position in the Security

The BDA would like to request that the MSRB permit sales to customers of any below-minimum position as long as that customer already owns a position at or above the minimum denomination amount in that same security. For example, if a customer owns $5,000 par value of a 5-bond minimum-denomination position and the customer would like to continue building on that position it should be permissible for the customer to buy bonds in below minimum-denomination increments. The customer should be allowed to buy an additional 2 bonds to add to the 5-bond minimum-denomination position. BDA believes customers should be permitted to buy the 2 as an add-on to the full position already held by the customer since that customer already owns a position at the minimum-denomination level. We believe the MSRB should permit this activity to occur as long as the customer is building on its position, which already meets the original minimum denomination value.

The MSRB Should Consider Permitting Additions to Below Minimum Positions to Any Customer as long as that Customer Continues to Build in its Below-Minimum Position

The BDA would like to request the MSRB further modify the amendments by eliminating the requirement in (f)(iv) which prohibits a dealer from effecting a sale to a customer in an amount below the minimum denomination, unless that dealer brings at least one customer's position at or above the minimum denomination. While the BDA recognizes it is the MSRB's desire to reduce as many below minimum positions as possible in the market, we believe that it should not be a requirement of a dealer to have to "top-off" any one customer first. Instead, the BDA would ask that the MSRB consider permitting a sale to any customer who has any below-minimum position of any amount in the same position, even if that sale does not result in bringing that customer to a position at or above the minimum denomination. From a customer-relations standpoint, it could be a challenge for firms who would have to choose one customer over another, especially if both customers could be interested in the same below minimum position. In addition, a customer may choose to add to their below-minimum position in hopes of someday reaching the minimum through multiple purchases. Thus we believe the draft amendments should be adjusted to permit add-on sales to any customer in any amount as long as they already own a position in the security.

Interdealer Trades Should be Addressed Under the Draft Amendments

Below minimum-denomination bond positions are often offered in the market and the bidding dealer does not immediately know the end customer. This could result in traders being reluctant to bid on the below-minimum amounts since they may ultimately be penalized if they cannot prove that a counterparty is liquidating its entire below-minimum denomination quantity. Thus, when a firm is bidding on a below-minimum denomination position, it should be the burden of the selling dealer to ensure its responsibilities to liquidate an entire position under the rule is met, avoiding punishing the bidding dealer purchasing the below-minimum position into inventory.

Furthermore, interdealer trades can sometimes prevent a dealer from knowing who the end customer of its counterparty is. Thus, BDA believes that for interdealer transactions, dealers should be relieved from the requirement to send a disclosure letter to its counterparty. BDA believes that dealers should only have to send a disclosure letter to a customer in instances when the customer is "known". The rule should not require dealers to "look through" to ascertain the account-level information and identity of the customer of its counterparty.

SMMPs Should be Exempt from the Rule

As the BDA has stated in recent letters to the MSRB, we believe that sophisticated municipal market participants (SMMPs) should be excluded from the protections of this rule. MSRB guidance provides that for a customer to be an SMMP, the dealer must have a reasonable basis to believe it is capable of evaluating market risks and market value independently in evaluating the recommendations of the dealer. We believe that for this rule, it is fair to say that those market participants who are truly retail customers should be notified of the potential for illiquidity should they buy a below minimum position into their account. However, SMMPs who have met the requirements to be given such SMMP status have demonstrated that they are able to independently evaluate investment risk and market value and thus should not require the protections this rule is aiming to provide, and should therefore be exempt.

The MSRB Should Permit Firms to Rescind Sales in Certain Instances

The BDA acknowledges that the MSRB is working to make amendments to the minimum denomination rules as a result of activities that they and other regulators have seen in the marketplace which result in limitations that occur naturally from things like division of estate holdings, often creating below-minimum amounts in various customer accounts. While acknowledging that BDA firms will update and follow their policies and procedures to meet the new standards of the draft amendments when finalized, we would still request a safe harbor for firms to be able to rescind and correct the transaction as long as the firm makes an effort within a reasonable timeframe.

BDA members would welcome the opportunity to continue to productively engage with the MSRB to ensure that the compliance expectations of regulators and market participants are as clear as possible. We would also be pleased to discuss the unique role of the middle-market dealer in the U.S. fixed income market and the potential unintended consequences that a broad interpretation of this rule could have. Please do not hesitate to contact us to solicit the views and feedback of middle-market dealers.

Sincerely,

Mike Nicholas
Chief Executive Officer

Comment on Notice 2016-13

from G. Letti, Breena Llc

on Tuesday, April 19, 2016

Comment:

We believe that the official minimum denomination should be the traditional 1000.

It is imperative to increase dealer and financial institution liquidity, so as to avoid the nail biting scenario of trying to sell a lot of 1,000,000 to multiple dealers in odd lots, with say 47 leftover. Of course, the 47 should be sold, but the amazingly small lot sizes of 5 or 10 or 47 etc. should be a rare occurrence.

CENTER FOR MUNICIPAL FINANCE

1655 N. California Blvd. Suite 223 Walnut Creek, CA 94596 • http://www.munifinance.org

April 7, 2016

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Comments on Rule G-15

Dear Sir or Madam:

Thank you for providing the opportunity to comment on MSRB's proposed rule change regarding Minimum Authorized Denominations. I believe minimums should be eliminated and have presented my case for this view in a blog post at https://learn.neighborly.com/featured/the-end-of-big-in-municipal-bonds/.

The following is excerpted from that post:

In the years since the financial crisis, people saving small amounts of money have not received much love from their banks. Interest rates on money market accounts and certificates of deposits at major banks remain near record lows. For example, a recent rate sheet from JP Morgan Chase shows no alternative yielding more than 0.9% annual interest for deposits below $10,000. Unfortunately, the situation is not much different at Bank of America, Citibank and Wells Fargo.

Small savers wishing to get better returns should look towards municipal bonds. Ten year munis are yielding more than 2% and interest is generally exempt from federal, state and local income taxes. But today, small savers rarely buy municipal bonds. One reason is that most municipal bond offerings have a high minimum denomination (of usually at least $5000).

What are Minimum Denominations?

The Municipal Securities Rulemaking Board (MSRB), which writes the rules for regulators of the US municipal bond market in conjunction with the Securities and Exchange Commission (SEC), defines the minimum denomination as the smallest amount of a bond issue that may be purchased at any one time.

Industry regulations forbid brokers from buying or selling smaller amounts. For example, it would be illegal for a broker to split a $5000 bond in half, so that you and a friend could each invest $2500. In some cases, the minimum denomination is even higher than $5000. In 2014, the Commonwealth of Puerto Rico sold bonds with a $100,000 minimum and the SEC disciplined several brokers for accepting smaller orders.

It is possible to access the municipal bond market with a smaller investment by purchasing a mutual fund or exchange traded fund that holds these securities, but these alternatives have management fees that reduce your returns.

Why are Minimums So High at the Moment?

High minimum denominations unnecessarily exclude small investors from the opportunity to finance community facilities and earn higher rates of interest. High minimums appear to have two justifications: minimizing paperwork and protecting small investors from supposedly complicated and dangerous securities. Both reasons seem dubious.

Minimizing Paperwork

In the old days, bonds were sold in paper form. Each time an interest payment was due, investors clipped a coupon from their bond certificates and presented it for payment. The more investors holding bond certificates, the more payments that needed to be made. This could become a real headache for the municipal finance department or its paying agent. But now, all records are kept in electronic form and payments are made automatically – thus the processing hassle is no longer much of an issue.

Protecting Small Investors

More serious is the perception that municipal bonds are too complex and too risky for "average" people. A major problem with this justification is that small investors are not protected from other types of risky investments. While municipal bonds have aggressively enforced minimum denominations, no such restrictions exist for penny stocks – shares in small companies that are often not listed on an exchange and trade for less than $5 each. The SEC warns investors about the risk of these securities and imposes various requirements on brokers selling them, but there are no minimum denominations. Thus, a small saver can easily buy $500 of stock in an obscure Nevada gold mining company, but can't buy the same amount of Nevada State General Obligation bonds (general obligation bonds typically represent a first claim on a government's tax revenue).

Another very risky investment available to small savers is stock options, which give the owner the right to buy or sell stocks at a certain price on or before the expiration date. Options are highly leveraged, so they can provide enormous returns, but, research shows that over three quarters of option contracts expire worthless. Yet, according to NerdWallet, several brokerage firms allow investors to open option trading accounts with initial balances of $2000 or less.

While penny stocks and stock options are very risky, many types of municipal bonds have strong track records, suggesting a high degree of safety. For example, no state has defaulted on general obligation bonds since 1933 – during the height of the Depression. Further, the two states that defaulted in 1933 ultimately paid back all the overdue principal. You have to go back to the 19th Century to find cases in which states completely failed to redeem their bonds in full.

Bonds issued by cities and counties have had a less perfect track record, but the number of defaults is very low compared to the number of local governments that issue bonds. We have seen a lot of news about the Detroit, Stockton, San Bernardino and Jefferson County bankruptcies but the vast majority of cities and counties make their payments on time, in full and without fanfare. Municipal Market Analytics estimates the annual default rate on general obligation bonds is 0.03%. Also, since Detroit's bankruptcy filing in July 2013, no US city or county has initiated a Chapter 9 bankruptcy process.

Returning to Nevada for a moment, it seems especially strange that any adult can walk into a Las Vegas gambling casino and wager as little as $5 on a game of blackjack or roulette while the option to buy small quantities of municipal bonds is restricted.

Risk vs. Regulation

Regulations that prevent small investors from taking certain risks are hard to justify, but small investors may need protection from discriminatory financial practices. Research has shown that investors buying or selling relatively small amounts of municipal bonds incur proportionately higher brokerage costs than those making bigger trades. But rather than bar small investors from the market, regulators can address this concern by limiting transaction costs (which typically take the form of bid/ask spreads) or by encouraging more competition among brokers.

High Minimums Prevent People from Investing in Their Community

Amidst widespread warnings of a national infrastructure crisis, many Americans would undoubtedly welcome the option to invest in their communities by purchasing municipal bonds. While residents may wish to invest in better parks, playgrounds, bridges, roads and mass transit in their communities, they may have less than $5000 to support neighborhood facilities. High minimum authorized denominations provide little meaningful protection, while excluding a large group of investors from the socially important municipal bond market. For example, Denver has shown an innovative way forward by offering "mini bonds" – with $500 minimum denominations.

Sincerely,

Marc D. Joffe
President

Comment on Notice 2016-13

from Jase Wilson, Neighborly.com

on Wednesday, May 25, 2016

Comment:

Hello friends at MSRB,

Thank you for taking a look at minimum denomination.

We appreciate your willingness to look at ways regulation can bring new investors, better pricing and greater liquidity to the market.

While this amendment draft only contemplates the two trading scenarios outlined in the regulatory notice, in which dealers transact below an already-defined minimum denomination, we ask that you please also consider this amendment an opportunity to include further definition that might make lower minimum denominations a tool to bring greater fairness, efficiency, pricing and liquidity to the market.

In our research, involving conversations with hundreds of market participants ranging from issuers to bond counsel to underwriters to municipal advisors, one common observation we're struck by is how little is collectively known about who determines the minimum denomination, and how. Many issuers, even many of their advisors, believe that $5,000 is the default denomination because of a regulatory requirement. Since a minimum-minimum denomination doesn't seem to be explicitly defined anywhere, it might help to clarify who is in charge of this aspect of an issuance, and how it can be set at any value.

For years, Vermont has found buy & hold investors local to the borrowing community, through its $1,000-denominated Citizen Bonds program. The City of Denver enjoyed great success issuing $500 "mini-bonds" in 2013. We learned of several other examples of low-denomination issuances bringing great value to borrowing communities and investors alike. But such examples are extreme outliers in the current era of the market. We believe this is in part due to lack of clarity around how minimum denomination can be set, and by whom.

We wrote a blog post about it with additional thinking and examples if you are interested. In either case, thank you for making the market better for all and for considering this amendment a chance to bring greater fairness, efficiency, pricing and liquidity to the market.

https://medium.com/@jase/minimum-denomination-5ede12d0c934#.c486czkrk

To: MSRB

From: H. Deane Armstrong

CCO, Regional Brokers, Inc.

Re: Minimum Denomination Bonds

Currently, MSRB rules require that if Dealer A acquires a bond of below minimum denomination from Dealer B, that the Dealer B must receive a letter from Dealer A asserting that the position was a “takeout” position from their customer.

Regional Brokers, Inc., as a Municipal Securities Broker’s Broker (MSBB) is asking for guidance as to its responsibilities regarding trades of this type that may occur with RBI acting as the intermediary party.

While RBI has been willing to write a letter to Dealer B, upon receipt of a letter from Dealer A, it is difficult for RBI to depend on the compliance of the selling firm, as it may be difficult for the buying firm to depend on the compliance of RBI.

Would the MSRB be willing to extend a waiver of the letter requirement for MSBBs, as this seems to be where most of the small pieces are ending up; as Bid Wanted items.

sifma
Invested in America

May 25, 2016

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

Re: MSRB Notice 2016-13: Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2016-013[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on draft amendments to MSRB Rule G-15(f) on minimum denominations. The rules governing minimum denominations have not been updated in 15 years, and SIFMA and its members are pleased that the MSRB is undertaking this review. As rounds lots are more liquid than odd lots, SIFMA supports the intent of the original rule, which is stated in the Notice as seeking to protect investors that own municipal securities in amounts below the minimum denomination. SIFMA and its members believe that the draft amendments as set forth in the Notice are largely reasonable, however, we would appreciate the MSRB's consideration of the three suggestions and alternatives we have detailed below.

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] MSRB Notice 2016-13 (April 7, 2016).

I. Minimum Denominations Rules Generally

SIFMA and its municipal securities broker, dealer and municipal securities dealer ("dealer") members agree that, as designed, the draft amendments largely serve to improve liquidity for investors without increasing the number of customers maintaining positions in municipal securities below the minimum denomination. We also agree that, in the aggregate, the exceptions generally continue to appropriately balance the interests of issuers, investors, dealers and the market as a whole. There are no other trading scenarios that we believe would enhance liquidity for investors without increasing the number of customers maintaining a position below the minimum denomination.

SIFMA and it members are not in agreement with the MSRB's characterization of current law. We believe that this change narrows the current second exception to the rule. For example, if the seller is liquidating the entire position, it is believed by dealers that under current law the dealer could break up the position even further, regardless of whether those buyers currently owned any position in the securities. It is important for the MSRB to recognize that this draft change alters current law in order to guide dealer examination and enforcement efforts. With respect to the first scenario proposed, despite being a change in current law, SIFMA and its members believe that this would be a positive change to the rule going forward.

The exception permitting a dealer to purchase from a customer a position below the minimum denomination, should apply when that customer's below minimum position is a result of an allocation in a managed account, from a position purchased in an amount equal to or above the minimum denomination. There are many reasons the dealer should not be prevented from using this exception. The dealer should not be held responsible for other market participants' allocation decisions. Investment advisors are not governed by the MSRB rules, and making rules to attempt to influence their behavior by penalizing dealers will be unfair and fruitless. Also, prohibiting use of this exception potentially leaves the customer in an untenable position – with a position in securities they cannot liquidate. For example, if a client has a $5,000 position in a security where the minimum denomination is $100,000 per the indenture, the customer needs to be permitted to liquidate the entire $5,000 position, regardless of how that position was created. Prohibiting the dealer from using this exception would essentially make the position untradeable (without adding to it, which may not be economically feasible) and would be unfair to the customer.

There are many scenarios that cause a customer's position to fall below the minimum denomination. As noted in the notice of filing on the prior rule change, a below-minimum denomination position may be created, for example, by call provisions that allow calls in amounts less than the minimum denomination,

investment advisors who may split positions they purchase among several clients, the division of an estate as a result of a death or divorce, or as a result of a gift.[3] These are some of the reasons positions exist below the minimum denomination.

There are a number of circumstances whereby customers seek positions below the minimum denomination. These include customers adding to an existing position, at that firm or another firm, and opportunistic buyers.

Dealers should not have to provide the written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issuer, and that this may adversely affect the liquidity of the position, if the dealer has already determined that the sale to the customer below the minimum denomination results in the customer being at or above the minimum denomination. In this scenario, there are no adverse consequences, as after the trade is completed, the customer has a position in their account that is at or above the minimum denomination.

SIFMA and its members would like to note that MSRB registrants have found that sometimes it can be difficult or costly to identify existing holders of securities to which to sell below minimum denomination positions.

II. Alternatives and Suggestions

The alternatives identified in the Notice largely represent a reasonable set of regulatory alternatives regarding permissible transactions below the minimum denomination of an issue. SIFMA and its members, however, have three suggestions and alternatives for consideration by the MSRB.

a. Eliminating Barriers to Trading on ATS Platforms

SIFMA and its members believe that Rule G-15(f) should be limited to customer trades, and not apply to inter-dealer transactions between sophisticated parties. At a time when dealers believe that the SEC and other regulators are trying to encourage the use of alternative trading system ("ATS") platforms, this rule creates significant compliance challenges for those dealers using an ATS platform that anonymizes the counterparties. We understand that FINRA examiners are looking through interdealer trades to the end customer. In the draft changes to Rule G-15(f)(ii), the language permitting the dealer to rely on customer account

[3] Securities Exchange Act Release No. 45174 Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations (December 19, 2001), 66 FR 67342 (December 28, 2001), at fn 3.

information has been deleted and moved to section Rule G-15(f)(v). To that end, particularly in the case of a dealer trading on an ATS, it would be helpful for the MSRB to waive the requirement that a dealer must determine if their dealer counterparty's selling customer is selling their entire position that is below the minimum denomination, based on their account records or a written statement. Requiring this documentation is an unnecessary impediment to trading on an ATS platform.

b. Improve Information on EMMA

Another issue that has become evident is that some private placement memorandum ("PPM") documents are not on the MSRB's Electronic Municipal Market Access ("EMMA") website, so there is no way for the dealer to check for the minimum denomination and increment information on that particular transaction. To remedy this issue, we suggest that MSRB Rule G-32 be amended to require the filing of minimum denomination and increment information on EMMA.

Additionally, many information service providers have blank or incorrect information in the minimum denomination and increment fields. Underwriting dealers are already required to send to the Depository Trust and Clearing Corporation ("DTCC") minimum denomination and increment information though the New Issue Information Dissemination System ("NIIDS") by mandate of Rule G-34. MSRB could take this information from the DTCC's NIIDS feed and display the information on EMMA. If a security is not NIIDS eligible, then the dealer should be able to send the information directly to the MSRB for transparency purposes on EMMA.

c. Increments

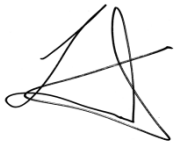
It is important to note that heretofore, the prohibitions and disclosures in Rule G-15(f) were limited to positions below the minimum denomination, with no reference to increments. Increment amounts are not uniform in bond documents across the industry. As described above, information from the commonly used information service providers regarding permissible increments is not always available or reliable. All the other changes as detailed in the Notice can be implemented without delay; the inclusion of the verbiage pertaining to incremental amounts, however, would potentially require additional implementation time. If permissible increments are to be incorporated into Rule G-15 and subject to regulatory review and enforcement, dealers would want to reconfirm the presence and validity of the data available through the information service providers. This process may include additional systems development and connectivity testing of these systems between vendors and dealers. As a result, SIFMA and its members believe that if the language referencing incremental amounts remains in the proposed change to Rule G-15(f), additional implementation time would be

required. Prohibiting trading in amounts that do not conform to the stated increments also potentially leaves the customer in an untenable position – with a position in securities they cannot liquidate. For example, if a client has $22,000 position in a security where the minimum denomination and increment requirements are both $5,000 per the indenture, the customer needs to be permitted to liquidate the entire $22,000 position, either in whole or in part, regardless of how that position was created. Any limitation on trading that would make the entire $22,000 position or the $2,000 tail piece untradeable would be unfair to the customer.

III. Conclusion

Again, SIFMA and its members largely support the proposal as stated in the notice. SIFMA would appreciate, however, if the MSRB would clarify that the changes in the Notice narrow a current exception to the rule. Also, SIFMA and its members would appreciate the MSRB's consideration of our alternatives and suggestions, as detailed above. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Robert Fippinger, Chief Legal Officer
David Saltiel, Chief Economist
Gail Marshall, Associate General Counsel – Enforcement Coordination
Michael B. Cowart, Assistant General Counsel
Barbara Vouté, Municipal Operations Advisor

Comment on Notice 2016-13

from Thomas Kiernan,

on Thursday, April 7, 2016

Comment:

I would like to see an exception provided to a bond that has been refunded with securities that would mitigate risk (such as Treasuries or Agencies). A bond that is pre-refunded or escrowed to maturity no longer carries the characteristics that brought them under the minimum denomination rule.

Comment on Notice 2016-13

from Rick DeLong, Vista Securities

on Monday, May 9, 2016

Comment:

As market makers in odd-lot municipal securities, we are often asked to bid on amounts of bonds that were initially issued in five thousand minimum denominations (5m), but through some actions, for example, those necessary to divide and liquidate estates, the amounts to be bid upon include a “tail”. For example, an owner of 25m bonds has an estate divided between two heirs, with each heir entitled to half of the position, or 12.5m bonds. While there might be 10 or more bids for a 25m bond piece, there are typically few if any bids for 12.5m. The resulting difference in the price received by each heir versus the value of the original position could be hundreds or even thousands of dollars.

To protect investors, either the ability to split denominations below 5m should be prohibited or the trading restrictions should be removed. We believe there should be no restrictions on trading in these situations, except an acknowledgement by the customer who ends up with the “tail” that the market for amounts below the issue’s minimum denomination may be illiquid. This could be accomplished by a letter or e-mail but should not require a change to the confirmation.

These odd amounts are often liquidated through brokers-brokers or automated trading platforms. The existing requirements to satisfy the current exemptions discourage many traders from bidding on the bonds, since they would be relying on the selling dealer and the brokers-broker/platform to provide verification from the selling client that the sale is a take-out of their entire position. While this has merit in $100m denominated securities put in place to protect unsophisticated investors, it is unnecessary for unrestricted securities. Existing suitability rules are sufficient to protect retail investors in these situations. No other notification or verification of liquidating positions should apply. We believe this would significantly increase the demand for these odd amounts and reduce the regulatory burden on the dealer community and possibly introduce municipal bonds to small savers.

Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson Avenue
St. Louis, MO 63103
HO004-095
314-242-3193 (t)
314-875-7805 (f)

Member FINRA/SIPC

May 25, 2016

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314
Via online at http://www.msrb.org/CommentForm.aspx

RE: Regulatory Notice 2016-13: Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations

Dear Mr. Smith:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board ("MSRB" or the "Board") Regulatory Notice 2016-13: Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations ("Proposed Rule").[1] We are generally supportive of the Proposed Rule, however, we believe that the efficacy of the proposed provisions hinge largely on the definition of "entire position."

WFA is a dually registered broker-dealer and investment adviser that administers approximately $1.4 trillion in client assets. We employ approximately 14,988 full-service financial advisors in branch offices in all 50 states and 3,838 licensed financial specialists in retail bank branches across the country.[2] WFA and its affiliates help millions of customers of

[1] MSRB Regulatory Notice 2016-013: Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations, *available at:* http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-13.ashx?n=1.

[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's retail brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 73

varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

DISCUSSION

MSRB Rule G-15 generally requires brokers, dealers and municipal securities dealers from effecting transactions with customers below the minimum denominations specified in bond documents, with exceptions consistent with the rule's original intent to protect investors that own municipal securities in amounts below the minimum denomination without creating an additional number of below-denominations positions. In support of the protections afforded by Rule G-15, broker-dealers are obligated to seek best execution pursuant to Rule G-18, ensure suitability of recommendations and transactions under Rule G-19 and provide time of trade disclosures imposed by Rule G-47. Pursuant to such obligations, a dealer must disclose to a customer at or prior to the time of trade all material information known about the transaction and/or security. This includes a circumstance where a transaction or position owned by the customer is below the minimum denomination.

WFA believes the existing exceptions to Rule G-15 generally provide necessary protections to clients without adversely affecting the liquidity of the positions. The proposed exceptions align with the intent of Rule G-15 and are beneficial to both clients and dealers. Under the Rule G-15(f)(ii) exception, dealers are permitted to buy an amount below the minimum denomination from a customer if the dealer determines that the customer's position in the issue is already below the minimum denomination and that the entire position would be liquidated by the transaction. Under Rule G-15(f)(iii) dealers are also permitted to sell an amount below the minimum denomination to a customer if the dealer determines that the position being sold is the result of a customer liquidating an entire position below the minimum denomination, as described in subsection (f)(ii), provided the necessary disclosures are made.

WFA suggests that additional guidance be provided in defining "entire position." We look to the following example to illustrate the implications: A client owns $23,000 par amount of a municipal bond that has a minimum denomination and minimum increment of $5,000. Under the proposed language, the "entire position" must be liquidated. Is the entire position the total client holding ($23,000), or is the entire position the amount above the minimum denomination multiple ($3,000)?

The primary benefit in establishing the "entire position" as the amount above the minimum denomination multiple is increased liquidity for the client. The client would be able to liquidate the portion of their holding that does not conform to the rule without selling the entire bond position. In addition to re-selling the below denomination to one client, WFA believes firms should have the ability to sell any amount to holders that result in clients

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correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

holding a position that conforms to both minimum denominations and minimum increments. Thus, using the example above, if a client sold the $3,000 bond position, those bonds could be sold to three different holders that each held a $9,000 position resulting in three separate positons that now meet the proper minimum and multiple denomination.

Firms also need guidance related to minimum increments. Using the example above, if the client wanted to sell $13,000 of their $23,000 bond holding, the firm should have the same flexibility to re-sell the $3,000 position which represents the amount below the minimum increment of $5,000.

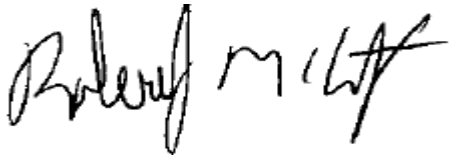
In many cases, clients that hold positions that do not meet either the minimum denomination or minimum increment are the result of an operational limitation such as an estate or family settlement. We believe that increased flexibility related to how these positions are traded will result in increased liquidity and pricing for clients.

CONCLUSION

WFA prides itself in our continued efforts in providing exceptional service to our clients, including situations affected by Rule G-15 where liquidity may become a concern. Accordingly, we would appreciate additional clarification from the Board in regards to the definition of “entire position” to enhance our clients access to market liquidity.

WFA appreciates the opportunity to respond to the Proposed Rule and commends the Board in its continuing efforts to recognize exceptions that help clients overcome some potential and unnecessary negative implications of the rule. We also request the above noted clarification. If you would like to further discuss this issue, please contact me at (314)242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2016-23

Publication Date
September 27, 2016

Stakeholders
Municipal Securities Dealers, Issuers, Investors, General Public

Notice Type
Request for Comment

Comment Deadline
October 18, 2016

Category
Uniform Practice

Affected Rules
Rule G-15

Second Request for Comment on Draft Provisions on Minimum Denominations

Overview

The minimum denomination of an issue of municipal securities is the minimum principal amount of the municipal security that may be sold or otherwise transferred and is a restriction that is set forth in the bond offering documents. The Municipal Securities Rulemaking Board (MSRB) is making a second request for comment on draft provisions on minimum denominations. The MSRB first sought comment on draft amendments regarding below-minimum denomination customer transactions to be included in existing MSRB Rule G-15(f), which were intended to provide additional exceptions relating to such customer transactions.[1] The MSRB now seeks comment on new MSRB Rule G-49, regarding transactions below the minimum denomination of an issue of municipal securities. Draft Rule G-49 would apply to below-minimum denomination customer and inter-dealer transactions.

Draft Rule G-49 incorporates the prohibition against trading with a customer below the minimum denomination of an issue of municipal securities and two exceptions thereto from existing Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. Draft Rule G-49 also includes additional exceptions to the prohibition, revisions to eliminate, in existing and draft exceptions, the requirement that a dealer obtain a written "liquidation" statement confirming that a customer of another dealer fully liquidated the customer's position, other changes that liberalize certain conditions in existing and draft exceptions, and a provision that limits below-minimum denomination transactions in municipal securities among dealers. Draft Rule G-49, with the additional exceptions and provisions, effectuates the current MSRB policy to support the practical application of the below-minimum

[1] *Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations*, MSRB Notice 2016-13, dated April 7, 2016 ("First Request for Comment").

denomination prohibition against trading by providing exceptions that are consistent with the rule's original intent to protect investors that own below-minimum denomination positions without creating additional below-minimum denomination positions where there once was one.[2]

Comments should be submitted no later than October 18, 2016, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.[3]

Questions about this notice should be directed to Sharon Zackula, Associate General Counsel, at 202-838-1500.

Summary of Draft Rule G-49

The minimum denomination of an issue of municipal securities is determined by the issuer at issuance.[4] Rule G-15(f), renumbered, with additional draft provisions and revisions, as draft Rule G-49, prohibits a dealer from effecting a customer transaction in a municipal security in an amount lower than the minimum denomination of the issue, provides exceptions to the prohibition, and also limits inter-dealer below-minimum denomination transactions. The draft minimum denomination provisions are set forth as new draft Rule G-49 because the MSRB believes that the regulatory framework applicable to below-minimum denomination transactions will be easier to locate and

[2] Securities Exchange Act Release No. 45174, Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations (December 19, 2001), 66 FR 67342 (December 28, 2001).

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

[4] An issuer may require that its municipal securities be issued in denominations greater than $1,000 or the customary $5,000 (*e.g.*, an issuer may seek to restrict sales of its bonds to sophisticated institutional investors due to concerns regarding the risks of the issuer's project, and establish a high minimum denomination, such as $100,000). There may be other reasons an issuer establishes a high minimum denomination (*e.g.*, for the convenience of dealing with a limited number of investors or, with respect to the specific issue of municipal securities, to be exempted from certain provisions of SEC Rule 15c2-12 under section (d) of the rule).

better understood if the provisions applicable to customer and inter-dealer transactions are combined in a stand-alone rule.

Background

In 2002, the MSRB amended Rule G-15, adding paragraph (f), to prohibit dealers from effecting a transaction with a customer in an amount below the minimum denomination of the municipal security, and included two exceptions to the prohibition. The exceptions were provided in order to help preserve liquidity for below-minimum denomination positions in municipal securities held by customers.

Existing Rule G-15(f) Exceptions

The first exception, in existing Rule G-15(f)(ii), permits a dealer to *purchase* from a customer in an amount below the minimum denomination if the dealer determines, either by relying upon customer account information in its possession or upon a written statement by the customer as to its position in the issue, that the customer is selling its entire position. Rule G-15(f)(iii), the second existing exception, permits a dealer to *sell* to a customer an amount below the minimum denomination if the dealer determines that the position being sold is the result of a customer liquidating an entire position below the minimum denomination. The dealer must determine, based on account records in the dealer's possession or upon a written statement provided by the party from which the securities were purchased (*i.e.*, the liquidating customer or another dealer) that the below-minimum denomination position is from a customer that fully and completely liquidated its below-minimum denomination position. When the dealer's determination is made based upon a written statement provided by a party other than the dealer's own customer, from which the securities were purchased, commenters and the MSRB have referred to the determination as the "liquidation statement" requirement. The purpose of this determination (that the prior customer transaction constituted a complete liquidation) is to prevent the creation of additional below-minimum denomination positions held by customers, by preventing multiple dealers, in inter-dealer transactions, from creating additional below-minimum denomination positions that are then placed with customers. In addition, under this existing exception, the dealer must provide written disclosure to the customer that the quantity of securities being sold is below the minimum denomination for the issue, which may, unless the customer has other securities from the issue that can be combined to reach the minimum denomination, adversely affect the liquidity of the position.

Additional Exceptions Proposed in First Request for Comment

In April 2016, the MSRB requested comment on two additional exceptions for dealer sales to customers, explained in greater detail in the First Request for Comment. Both exceptions were intended to strike an appropriate balance between the policy objectives of allowing dealers additional flexibility in customer transactions involving below-minimum denomination positions to enhance liquidity for customers holding such positions, and not creating any additional outstanding below-minimum denomination positions in such securities.

Under the first previously published additional exception, draft Rule G-15(f)(iii)(B), if a dealer determines that a below-minimum denomination position being sold is the result of a customer liquidating an entire position below the minimum denomination (whether the liquidating customer is a customer of the dealer or of another dealer from whom the dealer obtains such securities), the dealer would be permitted to effect a sale below the minimum denomination with one or more customers that currently own the issue so long as the increment(s) being sold to the customer(s) is consistent with any restrictions in the issuer's authorizing documents, even if the transaction does not result in a customer increasing its position to an amount at or above the minimum denomination. Under this draft exception, a dealer would still be permitted to sell a portion of the below-minimum denomination position to a maximum of one customer that currently does not own a position in the issue, consistent with the exception currently available to dealers in existing Rule G-15(f)(iii).[5]

Under the second previously published additional exception, draft Rule G-15(f)(iv), if a dealer has a position, whether received from a customer or otherwise, that is below, at or above the minimum denomination, the dealer would be permitted to effect a sale below the minimum denomination to a customer that currently owns a below-minimum denomination position, provided that effecting such transaction results in the customer owning a position at or above the minimum denomination; and the dealer could then sell any remaining below-minimum denomination position to one or more

[5] Consistent with existing Rule G-15(f), this draft exemption would require a dealer effecting a sale to a customer of an amount below the minimum denomination to provide, at or before the completion of the transaction, a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. This disclosure would be required with respect to each sale to a customer of a position below the minimum denomination, even if the customer maintains a position in the issue that is above the minimum denomination.

customers that currently own positions in the issue, so long as the increments sold are consistent with any restrictions in the issuer's authorizing documents regarding incremental amounts. A dealer could not, however, sell any portion to a customer that does not currently have a position in the issue because the transaction would create a below-minimum position where there previously was none.

Draft Rule G-49

Minimum Increments. Both draft additional exceptions described above and published in the First Request for Comment include a condition that a dealer's sale to a customer(s) must be consistent with any restrictions in the issuer's authorizing documents regarding increment amounts ("minimum increment condition"). Several commenters were opposed to the inclusion of the minimum increment condition in the two draft exceptions,[6] raising concerns that the condition would unnecessarily limit the transfer of positions held by customers rather than provide additional flexibility for such customers, the condition would potentially reduce liquidity, and the industry would need additional time to determine the availability and accuracy of minimum increment data, if the minimum increment condition were incorporated in the exceptions. The MSRB originally adopted the prohibition in Rule G-15(f) against trading with a customer in a below-minimum denomination position in part to respond to issuer concerns regarding below-minimum denomination positions being sold to retail customers. In some cases, issuers explicitly stated that higher minimum denominations had been established in light of the risks the issuers attributed to a particular issue, and given their views, such issuers intended that the issuances so identified and subject to a high minimum denomination be placed with institutional investors. Upon considering the concerns raised by commenters in response to the First Request for Comment and the policy originally underlying the prohibition in Rule G-15(f), the MSRB proposes that the minimum increment conditions be removed. To focus on the concerns previously raised by issuers, the MSRB seeks comment on the elimination of the minimum increment conditions in the draft exceptions described above, renumbered as draft Rule G-49(b)(ii)(B) and (b)(iii).

Liquidation Statement. The MSRB also is proposing to revise two exceptions, an existing exception and a draft exception previously published, regarding dealer sales to customers of below-minimum denomination positions. The revision would eliminate the requirement that a dealer, prior to effecting a

[6] The minimum increment condition was included in the First Request for Comment as part of the draft exceptions under Rule G-15(f)(iii)(B) and (f)(iv). Both exceptions are modified and included in draft Rule G-49 as draft Rule G-49(b)(ii)(B) and (b)(iii).

sale to a customer in a below-minimum denomination position, confirm by obtaining a liquidation statement from a person other than the dealer's customer, such as another dealer, from which the below-minimum denomination position was purchased, that the position is from a customer that fully and completely liquidated its below-minimum denomination position. The MSRB is proposing to eliminate the liquidation statement requirement in response to numerous concerns raised by commenters. Commenters noted that dealers may desire to sell below-minimum denomination positions using alternative trading systems ("ATSs"), or, in some cases, broker's brokers, and requiring the liquidation statement becomes an unnecessary impediment to using such trading venues for the transfer of below-minimum denomination positions. Commenters also noted the compliance issues that may arise when a dealer seeking to sell a customer a below-minimum denomination position in securities under either the existing exception or the draft exception, must rely upon another dealer, or an ATS or a broker's broker, to provide a liquidation statement to verify that the position the dealer intends to sell represents the complete liquidation of a below-minimum denomination position by a prior selling customer. Commenters stated that a dealer may be subject to disciplinary action, including penalties for non-compliance, if a dealer cannot prove the liquidation occurred. Given these concerns, commenters believed that the requirement to verify the prior customer's complete liquidation of its position discourages many traders from bidding on below-minimum denomination positions. In light of the views that the liquidation statement requirement, which was incorporated in two of the three existing or draft exceptions providing for sales to customers, reduces the utility of any such exception, and does not enhance liquidity and trading options for dealers and their customers, the MSRB is proposing in draft Rule G-49 to revise the existing exception and the draft exception to delete the liquidation statement requirement. The MSRB believes, however, that the requirement that a dealer confirm that a selling customer fully liquidated its position should continue to apply to a dealer that buys from its customer and then sells to another of its customers. In such cases, the dealer is in a position to know or make inquiry of its customer to determine that its customer has fully liquidated its position. Specifically, the MSRB seeks comment on the elimination of the liquidation statement requirement in draft Rule G-49(b)(ii)(A)[7] and draft Rule G-49(b)(ii)(B), and also seeks comment on the retention in the same provisions of the requirement that a dealer confirm, before selling a below-minimum denomination position to its customer, that

[7] The exception in draft Rule G-49(b)(ii)(A) is the exception set forth in existing Rule G-15(f)(iii).

the selling customer has fully liquidated its position when the dealer buys from its customer and then sells to another of its customers.

Limitations Applicable to Inter-Dealer Transactions. The MSRB believes that if the liquidation statement requirement is eliminated as proposed, a new safeguard would be needed to substitute for the liquidation statement in order to avoid, in inter-dealer transactions, the creation of additional below-minimum denomination positions that subsequently may be placed with customers. To address this issue, the MSRB also seeks comment on draft Rule G-49(c), a provision which prohibits a dealer, in an inter-dealer trade, from selling less than all of a below-minimum denomination position that such dealer acquired either from a customer that fully liquidated its below-minimum denomination position or from another dealer.

Customer Account Records; Disclosure. Draft Rule G-49(b)(iv) provides that a dealer effecting a purchase from or a sale to a customer under section (b) of the draft rule must determine its customer's position in the subject security based upon the account records in the dealer's possession or upon a written statement provided to the dealer by its customer. In addition, in sales to customers in compliance with the exceptions set forth in draft subsection (b)(ii) or (b)(iii), the dealer is required to give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and this may adversely affect the liquidity of the customer's position unless the customer has other securities from the issue that can be combined to reach the minimum denomination of the issue. The draft rule also provides that the written statement may be included in the customer's confirmation or provided on a separate document.

Draft Rule G-49(b)(iv) differs from existing Rule G-15(f) and the draft rule text previously proposed in two material respects. Draft Rule G-49(b)(iv) omits the requirement regarding the provision or receipt of a liquidation statement among dealers. Instead, the dealer is required to determine the position only of the dealer's own customer in a subject security. Like the existing provision and the draft rule text previously proposed, the dealer's determination would be made based upon the account records in the dealer's possession or upon a written statement provided to the dealer by its customer. In addition, in connection with the disclosure requirements incorporated in draft Rule G-49(b)(iv), commenters noted that if a customer is brought up to or over the minimum denomination of an issue under the draft exception in Rule G-49(b)(iii), the disclosures designed to inform a customer holding a below-minimum denomination position that liquidity may be adversely impacted may not be necessary. The MSRB agrees at this juncture and requests comment on omitting this disclosure requirement as to a specific customer

brought up to or over the minimum denomination pursuant to a dealer sale to such customer under draft Rule G-49(b)(iii).

The MSRB believes that draft Rule G-49, which addresses additional trading scenarios and eliminates the liquidation statement requirement, which commenters believe inhibited trading by dealers in below-minimum denomination positions to the detriment of customers, strikes an appropriate balance. The draft rule is intended to provide enhanced liquidity for customers that hold below-minimum denomination positions in municipal securities, while restricting the creation of additional below-minimum positions.

The MSRB also again reminds dealers that other rules apply to below-minimum denomination transactions with customers, including (but not limited to) MSRB Rule G-18, on best execution; MSRB Rule G-19, on suitability of recommendations and transactions; and MSRB Rule G-47, on time of trade disclosure, supplementing the protections afforded by existing Rule G-15(f).[8] Readers should refer to the First Request for Comment, and the applicable MSRB rules, for additional information regarding dealer's obligations to customers under these rules.

Economic Analysis

1. **The need for draft Rule G-49 and how it will meet that need.**

As noted previously, the need for draft Rule G-49 (previously, draft amendments to existing Rule G-15(f)) arises primarily from a recognition that there are trading scenarios prohibited by the existing rule that, if allowed, would likely increase the ability of investors currently holding below-minimum denomination positions to exit those positions and/or reduce the burden on dealers associated with implementing existing Rule G-15(f) while not increasing the net number of below-minimum denomination positions.

While existing Rule G-15(f) provides a mechanism for a customer with a below-minimum denomination position to either exit his or her position entirely or purchase a portion of a municipal securities issue below the minimum denomination so that the customer may own, as a result of the purchase, a position at or above the minimum denomination of the issue, in practice the existing options may be unattractive to dealers under some scenarios.

[8] The obligations of a dealer differ if the conditions are met for treating the customer as a Sophisticated Municipal Market Professional (SMMP). *See* MSRB Rule G-48.

Dealers may be dissuaded from utilizing the existing exceptions in Rule G-15(f) to effect a transaction in a security subject to a minimum denomination given the likely difficulty of identifying a buyer willing and able to purchase a below-minimum denomination position. As a result, customers with below-minimum denomination positions, including those that acquired the positions as a result of divorce or inheritance, may find it more difficult to access liquidity.

Dealers may also be dissuaded from utilizing the existing or the previously proposed exceptions to Rule G-15(f) if they plan to utilize an alternative trading system or brokers-broker to trade bonds acquired under the exceptions given the view that other dealers are less willing to bid on below-minimum denomination positions given the requirement of the bidding dealer to obtain a liquidation statement from the selling dealer. This impediment to the use of inter-dealer trading platforms may further impair liquidity and harm investors.

Draft Rule G-49 seeks to provide additional exceptions and to reduce burdens on dealers that may make it easier for investors with below-minimum denomination positions to access liquidity.

2. Relevant baselines against which the likely economic impact of elements of draft Rule G-49 should be considered.

The relevant baseline against which the likely economic impact of draft Rule G-49 should be considered is existing Rule G-15(f), which generally prohibits a dealer from effecting a transaction with a customer below the minimum denomination specified in an issuer's bond documents and requires dealers purchasing below-minimum denomination positions from other dealers to obtain a liquidation statement. In addition, as noted above, Rules G-18, G-19 and G-47 impose regulatory requirements on dealers regarding customer transactions that supplement the protections afforded by Rule G-15(f) with respect to minimum denominations.

3. Identifying and evaluating reasonable alternative regulatory approaches.

The MSRB recognizes that there are alternatives to the approach taken in draft Rule G-49. The MSRB could propose additional exceptions and/or further liberalize one or more of the existing exceptions. While the MSRB recognizes that such alternatives might reduce the burden on dealers and increase the liquidity of below-minimum denomination positions, the MSRB believes that they would also be likely to increase the number of below-

minimum denomination positions that potentially put customers at risk. The MSRB could also eliminate all exceptions. While the MSRB believes that, given the current market, below-minimum denomination positions are generally unfavorable, the MSRB recognizes that completely eliminating the ability of investors to exit these positions would likely result in greater harm.

4. Assessing the benefits and costs of draft Rule G-49.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of draft Rule G-49 fully implemented against the context of the economic baseline discussed above. The MSRB is seeking, as part of this request for comment, data or studies relevant to the determination of the number of existing below-minimum denomination positions, the relative difficulty of exiting or adding to these positions, the impact of these positions on customers, and the costs the existing rule imposes on dealers.

Preliminarily, the MSRB has evaluated the benefits and costs associated with draft Rule G-49 as follows:

Benefits

The MSRB believes that draft Rule G-49 may reduce the number of below-minimum denomination positions, increase the ability of customers currently holding below-denomination positions to exit those positions and/or reduce the burden on dealers associated with implementing the applicable MSRB below-minimum denomination regulations.

Costs

The MSRB's analysis of the potential costs does not consider all of the costs associated with the proposal, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with draft Rule G-49 to isolate the costs attributable to the incremental requirements of the draft rule.

The MSRB recognizes that some dealers may incur costs should they utilize either of the two additional proposed exceptions, but as the choice of whether and when to exercise these exceptions is wholly within a dealer's discretion, the MSRB does not believe that the creation of the exceptions *per se* would result in any new costs for dealers.

The MSRB also recognizes that some dealers may incur costs associated with the proposed new requirement in draft Rule G-49 regarding inter-dealer transactions, but based on prior comments, the MSRB believes that the

benefit of eliminating the liquidation statement, which is facilitated by the proposed addition of the provision regarding inter-dealer transactions, will outweigh any costs.

The MSRB does not believe that draft Rule G-49 is likely to result in a net increase in the number of below-minimum denomination positions. The MSRB also has no reason to believe that any new below-minimum denomination positions associated with draft Rule G-49 would be held by a significantly different or less sophisticated group of customers than the group currently holding below-minimum denomination positions. Therefore, the MSRB does not believe that there are any additional costs for customers and the draft rule may, as discussed above, actually reduce costs by increasing liquidity.

The MSRB is not aware of any available data that would support a quantitative estimate of the overall impact of draft Rule G-49. The MSRB specifically seeks comments that would inform a quantitative estimate of the benefits and costs associated with the draft rule.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that draft Rule G-49 may improve capital formation and efficiency to the extent it results in improved access to liquidity for those customers holding below-minimum denomination positions.

The MSRB believes that larger dealers with larger inventories and larger numbers of customers may be better positioned to make use of these exceptions, but does not believe this significantly improves their competitive position or significantly burdens dealers that may be less able to effect transactions pursuant to the exceptions.

Questions

The MSRB seeks public comment on all aspects of the proposal and specifically requests comment concerning the following questions, as well as any other comments on the subject of transactions in amounts below the minimum denomination. The MSRB welcomes information regarding the potential to quantify the likely benefits and costs of draft Rule G-49. The MSRB requests comment on any competitive or anticompetitive effects, as well as efficiency and capital formation effects of draft Rule G-49 on any market participants. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views or assumptions in this request for comment.

1. As designed, does draft Rule G-49 serve to improve liquidity for investors without increasing the number of customers maintaining positions in municipal securities below the minimum denomination?

2. Is there quantitative or qualitative data available that would allow the MSRB to estimate the number of investors holding below-minimum denomination positions?

3. Would any or all exceptions continue to appropriately balance the interests of issuers, customers, dealers and the market as a whole?

4. Are there other trading scenarios that would likewise enhance liquidity for customers without increasing the number of customers holding a position below the minimum denomination?

5. Should the exception permitting a dealer to purchase from a customer a position below the minimum denomination apply when that customer's below-minimum denomination position is a result of an allocation in a managed account from a position purchased in an amount equal to or above the minimum denomination?

6. Are there other scenarios not already identified that cause a customer position to be below the minimum denomination?

7. Should dealers have to provide the written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position if the dealer has already determined that the sale to the customer below the minimum denomination results in the customer being at or above the minimum denomination?

8. Is there quantitative or qualitative information available that would allow the MSRB to estimate the economic impact of the limited liquidity of below-minimum denomination positions and/or the potential effect of the draft amendments?

9. Do the alternatives identified above represent a comprehensive set of reasonable regulatory alternatives or are there alternative methods the MSRB should consider regarding permissible transactions below the minimum denomination of an issue that would be more effective and/or less burdensome?

10. To what extent have MSRB registrants found it difficult or costly to comply with the existing rule? If possible, please quantify the impact of these challenges.

11. What is, per firm, the annual cost of compliance with existing Rule G-15(f)?

12. Is there a reasonable basis or framework upon which the MSRB might evaluate the extent to which draft Rule G-49 would impact the burden of compliance on dealers?

13. Are there other relevant baselines that the MSRB should consider when evaluating the economic impact of the proposal?

14. Are commenters aware of any studies assessing the impact of investors holding below-minimum denomination positions?

September 27, 2016

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Text of Draft Amendments*

Rule G-15: Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers

(a) – (e) No change.

(f) Reserved. ~~Minimum Denominations.~~

~~(i) Except as provided in this section (f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.~~

~~(ii) The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.~~

~~(iii) The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities~~

* Underlining indicates new language; strikethrough denotes deletions.

~~dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be provided on a document separate from the confirmation.~~

(g) No change.

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Rule G-49: Transactions Below the Minimum Denomination of an Issue

(a) Prohibition Applicable to a Customer Transaction

Except as provided in section (b), a broker, dealer or municipal securities dealer ("dealer") shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.

(b) Exceptions to Prohibition Applicable to a Customer Transaction

(i) The prohibition in section (a) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the dealer determines that the customer's position in the issue already is below the minimum denomination and the entire position of the customer would be liquidated by the transaction.

(ii) The prohibition in section (a) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination, provided that the below-minimum denomination position being sold is the same amount as the below-minimum denomination position that the dealer acquired from a customer in a transaction where such customer fully liquidated its position in the security, as described in section (b)(i) of this rule; or, the below-minimum denomination position being sold was acquired by the dealer in an inter-dealer transaction and the amount being sold under paragraph (A) or, in the aggregate, under paragraph (B), of this subsection is the same amount as the below-minimum denomination position that the dealer acquired in the inter-dealer transaction. In effecting such a sale to a customer in an amount below the minimum denomination, the dealer may:

(A) Sell the entire below-minimum denomination position to one customer; or

(B) Sell the entire, or a portion of, the below-minimum denomination position to one or more customers that have a position in the issue and any remainder to a maximum of one customer that does not have a position in the issue, even if the transaction(s) do not result in a customer increasing its position to an amount at or above the minimum denomination.

(iii) The prohibition in section (a) of this rule shall not apply to a sale of securities to a customer in an amount below the minimum denomination if the customer already has a position in the issue below the minimum denomination and the sale will result in the customer having a position at or above the minimum denomination. The dealer may then sell any remaining portion of the below-minimum denomination position to one or more customers that already have a position in the issue.

(iv) A dealer effecting a purchase from or sale to a customer under this section (b) shall determine its customer's position in the subject security based upon the account records in the dealer's possession or upon a written statement provided to the dealer by its customer. A dealer effecting a sale to a customer under subsection (ii) or (iii), shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination of the issue. A dealer shall not be required to give or send a customer such written statement if, pursuant to subsection (b)(iii) of this rule, the dealer effects the sale of securities to the customer and the sale results in the customer having a position at or above the minimum denomination. Such written statement may be included on the customer's confirmation or may be provided on a document separate from the confirmation.

(c) Limitations Applicable to a Transaction Between Dealers

A dealer shall not sell municipal securities issued after June 1, 2002 to another dealer in an amount below the minimum denomination of the issue, unless the dealer acquired the below-minimum denomination position from a customer in compliance with section (b)(i) of this rule or acquired the below-minimum denomination position from another dealer, and sells such securities to a dealer in a transaction at an amount that is equal to or greater than the amount of the below-minimum denomination position acquired.

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2016-23 (SEPTEMBER 27, 2016)

1. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated October 18, 2016

2. Darcy Versions I and II: E-mail from G. Letti dated September 27, 2016

3. Financial Services Institute: Letter from David T. Bellaire, Executive Vice President & General Counsel, dated October 11, 2016

4. James J. Angel: Letter dated October 22, 2016

5. National Association of Bond Lawyers: Letter from Clifford M. Gerber, President, dated December 23, 2016

6. Romano Brothers & Co.: Letter from Eric Bederman, Chief Operating and Compliance Officer, dated October 18, 2016

7. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated October 18, 2016

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October 18, 2016

Submitted Electronically

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

RE: Second Request for Comment on Draft Provisions on Minimum Denominations (MSRB 2016-23)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's second request for comment, which includes the newly proposed MSRB Rule G-49. BDA members appreciate the efforts that the MSRB has taken to propose a rule that allows for greater flexibility for investors and dealers when transacting in municipal security issuances below the minimum denomination. As drafted, the proposed rule is extraordinarily complex and dealers have serious concerns with confusion arising regarding different interpretations of what is a permissible transaction under the rule. From a practical standpoint, the result of this complexity is that customers will be left with positions in municipal securities that they will not be able to trade or will only be able to trade at inferior prices. This is especially frustrating for municipal securities issuances without heightened suitability concerns that were issued with the standard market convention of a $5,000 minimum denomination. BDA members believe that the proposed Rule G-49 should recognize the fundamental difference between a minimum denomination established by an issuer in order to restrict sales to sophisticated institutional investors and the standard minimum increments that are the long-time, and frankly antiquated, convention in the municipal securities market. BDA believes that the proposed rule should be more narrowly focused on the issuances for which issuers have intentionally established higher minimum denominations in order to restrict the sales of bonds to only sophisticated investors.

BDA believes that proposed MSRB Rule G-49 should be focused on issuances with 'minimum authorized denominations' of $100,000 and above.

BDA believes that draft MSRB Rule G-49 should apply to issuances with 'minimum authorized denominations' of $100,000 or greater. BDA shares the MSRB's concerns related to investor suitability associated with issuances for which the issuer has intentionally established a 'minimum authorized denomination' in order to ensure the securities are sold to sophisticated investors. However, the proposed rule does not differentiate between intentional issuer-driven decisions to limit the sale of the securities to sophisticated investors (suitability concerns) with the practical reality that municipal securities are sold with 'minimum authorized denominations' (market convention).

BDA believes G-15 and proposed G-49 derive their complexity from the lack of clear delineation between minimum denominations set due to suitability concerns and minimum denominations established due to long-time market convention—unrelated to heightened investor protection concerns. For example, the rule would apply the same complex set rules for transacting in $4,000 of AAA-rated General Obligation bonds issued by Anne Arundel County, Maryland ($5,000 minimum increment) to a transaction in a bond issued with a minimum denomination of $100,000 sold to no more than 35 sophisticated investors under an exemption from SEC Rule 15c2-12.

The practical impact of approaching the $5,000 minimum increment in the Anne Arundel County GOs as a suitability issue is that liquidity in the investment is harmed by the complexity of existing Rule G-15 or proposed rule G-49 with no tangible benefit to investor protection. An investor that holds $14,000 Anne Arundel GOs (or 14 par-value bonds) is harmed by G-15 because if they were to sell $10,000 in par-value bonds the value of their $4,000 bond position is priced to reflect the inherent illiquidity that is a consequence of the rule. Therefore, the rule impacts the pricing and liquidity of that $4,000 bond position. Therefore, BDA believes the structure to allow for the permissible trade in the Anne Arundel GOs, which is predicated on an investor protection concern, actually harms the investor. That is, the rule would protect investors from the problem that these positions may lack liquidity, but that liquidity problem itself was only artificially created by the rule.

BDA urges the MSRB to re-focus the proposed rule on issuances with higher minimum denominations, such as $25,000, $50,000, or $100,000 that have been set due to explicit suitability concerns. BDA recommends a rule focused on minimum authorized dominations of $100,000 or more to harmonize with the exemption from 15c2-12 so that the marketplace has one understanding of what the issues with heightened investor protection concerns are.

BDA believes that dealers should be granted greater flexibility to sell positions acquired in a transaction with a customer to another dealer.

Under proposed Rule G-49 the following transaction scenario is not permissible:

Consider an issuance with a minimum denomination of 100 bonds. Customer A owns 75 bonds and liquidates that entire position in a transaction with a dealer. The dealer owns 75 bonds and subsequently sells 50 bonds out of the 75 bond position to Customer B in a transaction that brings Customer B's holdings to 100 bonds or greater—above the minimum denomination. Under the proposed rule, the dealer would only be allowed to sell the remaining 25 bonds to one or more customers that have an existing position in the issue. It would be impermissible to sell the remaining position to another dealer under both section (b)(ii)(B) and section (c). BDA members believe that, in this instance, inter-dealer sales should be given the same treatment as customer sales. The practical result of denying dealers with this flexibility is that dealers will be left with positions that will not trade and, therefore, dealers will not provide liquidity in certain situations.

* *

In conclusion, BDA agrees with the MSRB that there needs to be a structure that allows for greater flexibility to execute permissible transactions in below minimum denomination quantities. However, BDA urges MSRB to acknowledge that most minimum authorized denominations are not established with suitability concerns in mind. Therefore, BDA urges the MSRB to focus the rule on the issuances that have higher minimum denominations for the express purpose of restricting the sale of bonds to sophisticated investors. This change will allow bonds with minimum denominations set due to normal market convention to freely trade without a detrimental impact on liquidity, pricing, or investor protection.

Sincerely,

Mike Nicholas
Chief Executive Officer

Comment on Notice 2016-23

from G. Letti, DARCY VERSIONS I and II

on Tuesday, September 27, 2016

Comment:

We believe the Rule is exceptionally well-written , covers all exceptions beautifully, is simple and easy to understand by any experienced broker, dealer, trader and investor.

FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

October 11, 2016

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

Re: Second Request for Comment on Draft Provisions on Minimum Denominations

Dear Mr. Smith:

On September 27, 2016, the Municipal Securities Rulemaking Board (MSRB) published its second request for public comment on draft provisions on minimum denominations (Draft Provisions).[1] The Draft Provisions would create new MSRB Rule G-49, expanding exceptions to the prohibition on below-minimum denomination transactions in a stand-alone rule to make them easier to locate and understand.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members support the MSRB's efforts to create more flexibility in how firms and customers may reconcile below-minimum denomination transactions. FSI believes the Draft Provisions remove requirements that unnecessarily inhibit trading by dealers in such positions in municipal securities, often to the detriment of customers. We also believe the Draft Provisions strike an appropriate balance between enhancing liquidity and restricting the creation of additional below-minimum positions.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives[3]. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

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[1] *Second Request for Comment on Draft Provisions on Minimum Denominations*, MSRB Notice 2016-23, September 27, 2016.

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

[3] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the Draft Provisions. FSI applauds the MSRB's efforts to reduce the regulatory burden on dealers while facilitating access to liquidity for those investors with below-minimum denomination positions. We also applaud the MSRB's efforts to make the exceptions and guidance into a stand-alone rule so it is easily accessible and the requirements more clearly outlined for firms. We offer additional supportive comments below.

Existing Rule G-15(f) prohibits dealers from trading in amounts below the minimum denomination of a municipal security, but contains two exceptions in order to preserve liquidity for such positions already held by customers. FSI agrees with the MSRB that there are trading scenarios currently prohibited that, if allowed, would likely increase the ability of customers holding below-minimum denomination positions to exit those positions. As a result, the Draft Provisions will reduce the burden on dealers of implementing the existing prohibitions and benefit customers.

In April 2016, the MSRB requested comment on two additional proposed exceptions[4], which would not allow sales that would create a below-minimum position where there previously was none (Minimum Increment Condition). At that time, several commenters expressed concern that this Minimum Increment Condition would unnecessarily limit the transfer of positions, resulting in reduced liquidity.[5] FSI agrees that eliminating the Minimum Increment Condition from draft Rule G-49 will allow dealers additional flexibility in transactions involving below-minimum denomination positions, and will enhance liquidity for customers holding such positions without creating additional outstanding positions.

The Draft Provisions would eliminate the requirement that a dealer obtain a written statement from someone other than the customer that the customer's position was fully liquidated prior to making a sale. Previous commenters observed that this requirement would prevent dealers from using alternative trading systems or broker's brokers.[6] FSI supports eliminating the liquidation statement requirement from the Draft Provisions as including it would result in less flexibility for

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dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

[4] *Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations,* MSRB Notice 2016-13, April 7, 2016.

[5] MSRB Notice 2016-23 *supra.* at 5.

[6] *Id.* at 6.

dealers and would not enhance liquidity for customers holding below-minimum denomination positions.

For the above reasons FSI's members encourage the adoption of the Draft Positions as modified from the original proposal. The Draft Provisions will result in enhanced liquidity for customers and the new rule G-49 would provide important clarification for firms in complying with the requirements. We applaud the MSRB for making these changes.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the MSRB on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

David T. Bellaire, Esq.
Executive Vice President & General Counsel

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

Re: Draft Rule G-49

October 22, 2016

Dear Mr. Smith:

I am a finance professor at Georgetown University and an individual investor. The courses I teach include Fixed Income Securities to both undergraduates and MBAs. Here are my comments on the proposed Rule G-49, which refines the no longer needed prohibition on transactions in less than the minimum denomination of a municipal security.

Background

In the bad old days of paper certificates, bonds were physical items, each with a particular par value. It was impractical to issue or trade a bond in anything other than a round lot. Typical physical bonds had a face or par value of $1,000. Rule 15(f) was passed in 2002 that prohibited dealers from selling bonds in less than the minimum denomination or trading them in less than the minimum increment. The purported

[1] All opinions are strictly my own and do not necessarily represent those of Georgetown University or anyone else for that matter

purpose of the prohibition was to prevent retail investors from investing in bonds that were too complex or too risky. The proposed changes add two minor exceptions to the prohibition. The proposal, however, fails to consider an alternative much better than merely adding two minor exceptions. The board should seriously consider the alternative of scrapping this obsolete rule entirely.

The Board has requested comment on "all aspects of the proposal." This is a good time to re-examine whether the prohibition has met its objectives and whether it is still needed given the changes that have occurred in our financial markets since the rule was first adopted in 2002.

The prohibition is no longer needed since other advances help achieve the objective of consumer protection. The prohibition should be scrapped.

Our financial markets have changed significantly since 2002. Our markets are now more automated, and investors now have much more information available than they did many years ago. MSRB's EMMA was launched in 2008 and provides much needed access to information about municipal securities to investors. Investors now have much better access to important documents, trade prices, and continuing disclosure. Indeed, the average retail investor now has instant free access to more information than even a professional could obtain at any price only a few short years ago. The MSRB is to be commended for the improvements it has fostered in the municipal markets.

The prohibition on trading in smaller increments was a crude attempt to protect investors in an era when information about municipal issues and municipal issuers was much harder to obtain. As information is much more easily available now, this limitation has outlived its usefulness. Indeed, the prohibition has serious adverse consequences that would be eliminated if this obsolete rule were scrapped.

The DOL's new fiduciary rule increases protections for retail investors.

Not only do investors now have much better information than a few years ago, but there has been a general upward shift in the standards of care applicable to retail investors. The Department of Labor's new rules applicable to retirement accounts generally requires brokers to act in the best interest of their retirement account customers. The SEC is allegedly working on similar rules for other brokerage and advisory accounts. These new rules provide additional protections for investors from the risk that careless or unscrupulous brokers will stuff unsuitable risky municipal bonds into the portfolios of unsophisticated investors.

Brokers still have a suitability obligation.

Whether the SEC ever exercises its Dodd-Frank authority to promulgate a version of the "fiduciary rule" remains to be seen. In the meantime, brokers still have an obligation to recommend only suitable securities to investors. If an issuer believes that a particular issue is too complex or risky for retail investors, it can put a "black box" suitability warning on the term sheet or the cover page of the official

statement. Any broker who recommends such a black-boxed security to an investor would be a sitting duck in a FINRA arbitration if anything went wrong.

The prohibition increases, not decreases, risks to some investors.

One of the tenets of modern finance is diversification. Investors should diversify their investments to spread the risk around. Thus, even risk-averse investors may suitably desire to invest in a small part of a risky investment if the expected return were high enough.

Although the prohibition was designed to protect investors, the prohibition can actually increase the harm to investors by forcing them to hold more of the bond than they would otherwise hold. Suppose that a particular bond has a minimum denomination of $5,000 and the investor would ordinarily wish to purchase $4,000 worth. However, because of the minimum the investor is induced to purchase $5,000 and now holds a less diversified portfolio that is more exposed to a particular security.

The prohibition forestalls the use of technology to diversify municipal portfolios.

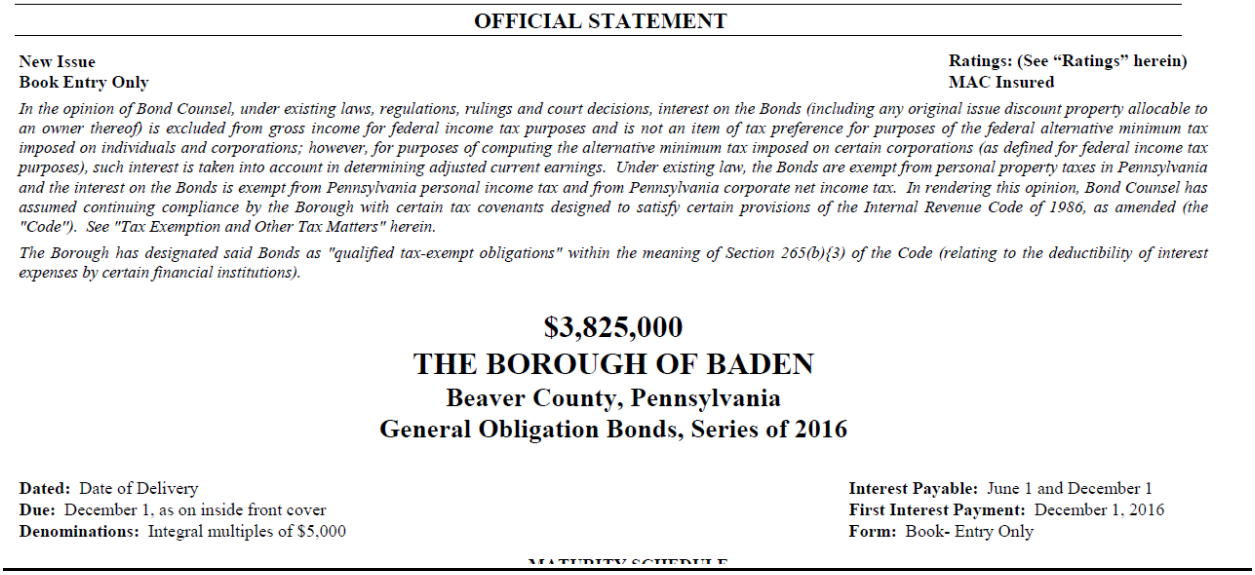
Technology has dramatically reduced transactions costs in our financial markets. Technology will continue to evolve in ways that make new financial products possible at ever lower cost. While it may be impractical at the present for a small retail investor to hold very large number of different municipal securities, it could easily become practical in the not-so-distant future.

As an example of financial technology, note how firms like Folio Investing have made it very easy and inexpensive for individual investors to hold portfolios of large numbers of equity securities. Alas, the prohibition at issue here prevents firms like Folio Investing from offering similar innovative products in municipal securities. This will make it harder for individual retail investors to hold well diversified portfolios of municipal securities.

Currently used denominations are unrealistically high for many municipal issues.

Although Treasuries trade with a minimum denomination of $100, many plain vanilla municipal obligations have much higher minimum denominations. For example, the following shows part of the official statement for a recent offering of general obligation bonds by the Borough of Baden, a small municipal issuer in Beaver County, Pennsylvania that happens to be my hometown. There is nothing excessively risky or complex about the offered bonds, and indeed the bonds are insured by Municipal Assurance Corporation and carry a AA rating. The offering consists of a series of bonds maturing from 2016 through 2032. There is no particular reason why retail investors should not consider these bonds. Indeed, the bonds might be particularly attractive for a Pennsylvania investor who desired a ladder of bonds maturing in different years. Yet the denomination is set at $5,000.00 for each bond.

There is no logical reason for punishing a broker who would facilitate a $1,000 investment in such bonds. While one could argue that it is inefficient to trade bonds in smaller quantities, if investors are willing to pay the price to trade in smaller lots they should be permitted to.



OFFICIAL STATEMENT

New Issue
Book Entry Only

Ratings: (See "Ratings" herein)
MAC Insured

In the opinion of Bond Counsel, under existing laws, regulations, rulings and court decisions, interest on the Bonds (including any original issue discount property allocable to an owner thereof) is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, for purposes of computing the alternative minimum tax imposed on certain corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Under existing law, the Bonds are exempt from personal property taxes in Pennsylvania and the interest on the Bonds is exempt from Pennsylvania personal income tax and from Pennsylvania corporate net income tax. In rendering this opinion, Bond Counsel has assumed continuing compliance by the Borough with certain tax covenants designed to satisfy certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"). See "Tax Exemption and Other Tax Matters" herein.

The Borough has designated said Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code (relating to the deductibility of interest expenses by certain financial institutions).

$3,825,000
THE BOROUGH OF BADEN
Beaver County, Pennsylvania
General Obligation Bonds, Series of 2016

Dated: Date of Delivery
Due: December 1, as on inside front cover
Denominations: Integral multiples of $5,000

Interest Payable: June 1 and December 1
First Interest Payment: December 1, 2016
Form: Book- Entry Only

MATURITY SCHEDULE

Past enforcement actions have punished reasonable behavior.

I note that Interactive Brokers was recently fined for permitting trades in some Puerto Rico bonds in increments below their minimums.[2] Interactive Brokers is a self-service firm that does not recommend securities to clients. Indeed, their clients are generally highly sophisticated investors who engage in a plethora of trading strategies. Their customers can and do trade highly risky common stocks (including OTC and foreign securities), options, and futures in addition to bonds. It is highly likely that the Interactive Broker customers who traded in the Puerto Rico bonds were short-term speculators rather than long-term buy-and-hold investors. The risk level that Interactive Brokers' customers willingly assumed from their speculations in Puerto Rico bonds was far lower than they could have undertaken in other licit investment products also available through Interactive Brokers. Furthermore, the investors' losses, if any, on those positions is far less than they would have been had they been forced to trade in larger amounts.

The prohibition is a crude form of merit regulation.

The fundamental theme of U.S. securities regulation is based on disclosure, not merit. The overall thrust of U.S. regulatory policy has been to make sure that there is appropriate disclosure so that investors can know what they are buying. Investors generally have the freedom to invest in any securities for which

[2] https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543350368

there is appropriate disclosure. Banning the trading of some instruments in small sizes is a crude and clumsy way of imposing merit regulation on investors. The only securities that should be off limits to smaller investors are those that lack disclosures that appropriate communicate their risks.

The prohibition makes it more difficult to strip coupons.

Security holders generally have the right to do whatever they want with their securities. A bondholder, for example, can strip coupons from a bond and trade them separately from the corpus of the bond. This can create more demand for strippable bonds and lower issuance costs. Alas, as some coupons may be smaller than the minimum denomination, this prohibition would prevent coupon stripping on many municipal bonds. Although such stripping might not be practical at the present, further technological innovation could make it practical and useful in the future as raw material for municipal structured or other products.

The prohibition wastes inspection, enforcement, and compliance resources.

Having a useless rule on the books is not without costs to society. Companies need to have policies and procedures in place to comply with the rule. Personnel need to be trained. Compliance officers need to monitor and document that training and compliance. Regulators need to inspect firms to monitor compliance, and commence investigations when they suspect a lack of compliance. The regulatory resources wasted on maintaining and enforcing a useless rule should be spent on other more productive regulatory activities.

The prohibition is inconsistent with standard safe practices in the equity market.

Even though the round lot for trading equity shares in the U.S. is generally 100 shares, investors can trade odd-lots if they so desire. Indeed, firms such as Folio Investing and Charles Schwab make it possible for investors to hold fractional shares. In a world where paper certificates have almost entirely disappeared, minimum denominations no longer make sense.

For all of these reasons, the prohibition on selling municipal securities in amounts less than their minimum denomination or increment should be scrapped. If regulators are so inclined as to keep this useless and obsolete rule, then it should apply only to securities that are lacking in suitable disclosures.

Respectfully submitted,

James J. Angel, Ph.D., CFA
Georgetown University

National Association
of Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

December 23, 2016

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

RE: NABL Comments on Draft Rule G-49 in MSRB Regulatory Notice 2016-23 Regarding Minimum Denominations in Municipal Securities

Dear Mr. Smith:

The National Association of Bond Lawyers appreciates the opportunity to comment on Draft Rule G-49 concerning transactions below the minimum denomination of an issue of municipal securities.

Existing Municipal Security Rulemaking Board ("MSRB") Rule G-15(f) generally prohibits dealers from purchasing or selling municipal securities in amounts less than the minimum denomination. Rule G-15(f) includes two exceptions designed to provide liquidity for below-minimum denomination positions that arise from time to time.[1] The MSRB has proposed a new Rule G-49 as a stand-alone rule for below-minimum denomination transactions. New Rule G-49 would liberalize, in some aspects, the existing exceptions, including allowing dealers to sell a below-minimum denomination security in certain circumstances "to a customer that does not have a position in the issue, even if the transaction does not result in a customer increasing its position to an amount at or above the minimum denomination."

As noted in Regulatory Notice 2016-23, authorized denominations, including minimum denominations, are determined by the issuer at issuance. They are part of the bond contract and are typically contained in a bond indenture or bond ordinance or resolution. These are contracts that can only be modified in accordance with such contracts' specific terms governing modifications. As the MSRB is not a party to the contract, whether the MSRB permits sales of municipal securities in less than the minimum denomination, or in anything other than an authorized denomination, is ineffective to determine whether such transfers are legal or contractually binding under the bond documents.

The MSRB recognizes the contractual nature of bond denominations in its online glossary. "Authorized Denomination" is defined by the MSRB as the "par value at which a municipal security can be purchased *as authorized by the bond contract*." (emphasis added) Similarly, "Minimum Denomination" is defined by the MSRB as the "lowest denomination of an issue that can be purchased *as authorized by the bond documents*." (emphasis added) Authorized and minimum denominations of an issue of municipal securities are

[1] One exception permits a dealer to purchase from a customer an amount below the minimum denomination if the dealer determines that the customer is liquidating its entire position. The other exception permits a dealer to sell to a customer an amount below the minimum denomination if the dealer determines that the position being sold is the result of a customer liquidating an entire position below the minimum denomination.

established for a variety of reasons, including, among others, (1) state law requirements, (2) an issuer's desire to limit distribution of its securities for suitability or other reasons, or (3) an issuer's intention to meet the exemption requirements for SEC Rule 15c2-12. Authorized and minimum denominations are set forth in the bond documents with the intent that sales and transfers of bonds will be made only in compliance with minimum denomination requirements, including transfers effected through book entries of participants in The Depository Trust Company.

While we acknowledge that the book-entry system of registration has greatly facilitated securities transfers, it has also removed the bond trustee and issuer's paying agent from the transfer process, thereby removing the entities that could police the denomination requirements on the issuer's behalf. As bond lawyers, we are concerned about reports of improper sales of municipal securities below minimum denominations that do not appear to comply with the bond documents. For this reason, we express caution regarding adopting a rule that would expand or liberalize the exceptions beyond transactions to liquidate existing positions that are below the minimum denomination.

Although we appreciate the desire to improve liquidity for investors, any such efforts should be consistent with issuer requirements set forth in bond documents. The fact that the MSRB promulgated existing Rule G-15(f) and is considering new Rule G-49 is an indication that the current system fails to effectively implement the authorized and minimum denomination provisions of the bond documents. In its deliberations concerning Rule G-49, we specifically suggest the MSRB consider the following:

- Whether the MSRB Rule should strive to decrease rather than hold steady (or increase) the number of below minimum denomination positions;

- Whether the MSRB Rule should actively discourage or prevent the sale of below-minimum denomination securities to investors that do not have an existing position in the security, such sale being in contravention of bond documents;

- Whether more can be done (through improvements to trading platforms, transaction mechanics, including minimum denominations in the data reported under Rule G-32, or otherwise) to facilitate compliance with bond documents, and to ensure that investors are not purchasing or disposing of an amount below minimum denominations.

The National Association of Bond Lawyers exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the laws affecting public finance. We offer these comments in furtherance of that mission.

As it has in the past, NABL welcomes the opportunity to participate in any of these MSRB efforts. If NABL can provide further assistance, please do not hesitate to contact Bill Daly in our Washington, D.C., office at (202) 503-3300.

Thank you in advance for your consideration of these comments.

Sincerely,

Clifford M. Gerber

cc: Lynnette Kelly, Executive Director, MSRB
Robert Fippinger, Chief Legal Officer, MSRB

ROMANO
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WEALTH MANAGEMENT

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Submitted Electronically

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

October 18, 2016

Re: Regulatory Notice 2016-23

Dear Mr. Smith:

Romano Brothers & Co. is a 54 year old Broker-Dealer and Registered Investment Advisor located in Evanston, Illinois. We specialize in comprehensive portfolio management and financial planning. When consistent with a client's investment needs, we often recommend municipal bonds for tax efficient fixed-income exposure.

We have reviewed the above reference regulatory notice and feel that the provisions of draft Rule G-49 will assist in providing liquidity for customers who hold positions in municipal bonds that were issued with a minimum denomination. For a variety of reasons, a customer may hold a position below the minimum denomination and may also wish to sell the position. The proposed rules will make this transaction easier based upon the two new exceptions.

We have an additional recommendation for the MSRB's consideration. While we strive to ensure that we follow the issuer's minimum denomination for investment, human error can occur in the allocation of bond purchases. Currently FINRA provides a monthly recap of all purchases below the minimum denomination. It is our understanding that FINRA receives this information from the MSRB's Real Time Reporting System (RTRS).

The RTRS system does not flag a trade that is executed below the minimum denomination. These trades are marked as "satisfactory." It would be very helpful if these trades could be marked as "questionable" or flagged in some other way. This would allow us to know of them much sooner than the FINRA report. On a T+1 basis dealers can more easily cancel and correct any trades potentially below a minimum denomination.

Romano Brothers & Co. appreciates the opportunity to provide comments on the above referenced draft rule. We look forward to providing additional feedback that can help the MSRB and the greater municipal bond marketplace.

Sincerely yours,

Eric Bederman
Chief Operating & Compliance Officer

sifma
Invested in America

October 18, 2016

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

Re: MSRB Notice 2016-23: Second Request for Comment on Draft Provisions on Minimum Denominations

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2016-23 [2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is making a second request for comment to draft provisions on minimum denominations. In the MSRB's first request for comment on draft amendments on minimum denominations in Notice 2016-13[3] (the "Prior Notice"), the MSRB requested comment on draft amendments to MSRB Rule G-15(f).

As stated in our response to the Prior Notice,[4] SIFMA and its members are pleased that the MSRB is undertaking this review as the rules governing minimum denominations have not been updated in 15 years. Again, as round lots are more liquid than odd lots, SIFMA supports the intent of the original rule, which is stated

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1 SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

2 MSRB Notice 2016-23 (September 27, 2016).

3 MSRB Notice 2016-13 (April 7, 2016).

4 *See* Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB (May 25, 2016), available at http://www.sifma.org/issues/item.aspx?id=8589960617 (the "Prior Letter").

in the Notice as seeking to protect ***investors*** that own municipal securities in amounts below the minimum denomination. SIFMA and its members believe that some of the proposed changes in the Notice are improvements over the Prior Notice, such as the elimination of the reference to increments and the elimination of the liquidation statement in the case of securities purchased from other dealers. However, some of the changes in the Notice result in less liquidity for customers and create additional and unnecessary challenges for dealers. We have concerns that the new exceptions do not appropriately balance the interests of issuers, customers, dealers and the market as a whole. Therefore, we would appreciate the MSRB's consideration of the suggestions we have detailed below.

I. A Dealer's Ability to Sell Securities Under the Exemption Should Not Vary According to Source of Bonds

SIFMA and its members feel strongly that the exceptions in new Rule G-49 (b)(ii) should apply regardless of whether the dealer acquired the bonds from a customer or in an inter-dealer transaction. We note that the exception for sales of securities in amounts below the minimum denomination has been narrowed from the Prior Notice. It seems inappropriate that a dealer is able to sell a below-minimum denomination position to a customer that does not have a position in the issue (even if the transaction(s) do not result in a customer increasing its position to an amount at or above the minimum denomination) where a dealer acquires the below-minimum denomination position in an inter-dealer transaction but may not sell under this exception where a dealer acquires the position from a customer.

By limiting this exception to positions acquired from dealers, the MSRB is effectively limiting liquidity for customers that have below-minimum denomination positions. SIFMA and its members see no reason why there should be a prohibition on dealers selling the below-minimum denomination position to more than one customer if the position is acquired from a customer. We believe that Rule G-49(b)(ii)(A) and (B) should both be available to dealers, regardless of whether the bonds were purchased from a customer or a dealer. Again, the source of the bonds should not matter in this instance, as that fact has no impact on whether additional below-minimum denomination pieces are being created.

Further, we feel that if Rule G-49(b)(ii) is amended, pursuant to our request above, Rule G-49(b)(iii) should be removed as it would be redundant. In Rule G-49(b)(ii)(B), a dealer can sell to a customer who owns some of the security without having to bring that customer's position up to the minimum denomination. In Rule G-49(b)(iii), a dealer must bring the customer's position up to the minimum denomination. SIFMA and its members feel the rule would be more clear if Rule G-49(b)(iii) was deleted and Rule G-49(b)(ii)(B) was applied without regard to the source of the securities.

II. Timing of Sales

The exceptions in Rules G-49 (b)(ii)(B) and (b)(iii) create timing concerns. Under both exceptions a dealer is permitted to break up a below-minimum denomination block to sell to a customer that already has a below-minimum denomination block. The dealer may then sell any remaining portion of the below-minimum denomination position to one or more customers that already have a position in the issue. But what if the dealer doesn't have any other customers at the time that are interested and valid purchasers of such below-minimum denomination positions? If the dealer doesn't sell the remaining position to one or more customers at the time of the sale to the first customer, the dealer then is prohibited from selling the bonds to another dealer pursuant to Rule G-49(c). SIFMA members feel that this prohibition unnecessarily hampers the liquidity as it will not increase below-minimum denomination positions.

III. Interdealer Exception

SIFMA and its members feel that Rule G-49(c), which limits interdealer transactions, should be deleted. SIFMA and its members agree that [retail] customer transactions should be subject to the exceptions. Again, the purpose of the rule is to prohibit dealers from effecting transactions with ***customers*** in amounts below the minimum denomination – with certain exceptions without creating an additional number of below-denomination positions. With that in mind, Rule G-49(c) which limits interdealer transactions is unwarranted, harms liquidity and is inconsistent with the original purpose of the rule of customer protection. Dealers should be permitted to accumulate below-minimum denomination positions and sell such a position to a customer to add to a customer's existing below-minimum denomination position. Although we welcome the elimination of the liquidation statement, particularly in the case of alternative trading system transactions, limiting interdealer transactions is unrelated and unwarranted.

IV. Compliance Costs

It is in the best interest of the regulators and regulated parties alike to ensure the rule is clear, workable, and doesn't negatively impact liquidity. The annual cost of compliance for existing Rule G-15(f) cannot be accurately quantified across the industry. Anecdotally, dealer firms do report spending significant resources on compliance with the Rule. Some firms report spending well into six figures per annum on compliance relating to the Rule. Enforcement regulators have been focused on this issue for some time, and the increased regulatory scrutiny has increased liquidity issues for these positions due to their heightened regulatory risk, and made compliance relatively costly.

V. Causes of Below-Minimum Denomination Positions

As stated in our Prior Letter, there are many scenarios that cause a customer's position to fall below the minimum denomination. As noted in the notice of filing on the prior rule change, a below-minimum denomination position may be created, for example, by redemption provisions that allow calls in amounts less than the minimum denomination, investment advisors who may split positions they purchase among several clients, the division of an estate as a result of a death or divorce, by court order or as a result of a gift.[5] These are some of the reasons positions exist below the minimum denomination, and the investor should not be penalized for the creation of a below-minimum denomination position that is out of their control. SIFMA is concerned about the liquidity impacts of the proposal because when the liquidity of below-minimum denomination positions is hampered, the end investor is the one penalized.

VI. Access to Accurate Information

The accuracy and validity of minimum denomination data available continues to be a significant compliance issue. Many information service providers have blank or incorrect information in the minimum denomination field. Additionally, some private placement memorandum ("PPM") documents are not on the MSRB's Electronic Municipal Market Access ("EMMA") website, so there is no way for the dealer to check for the minimum denomination information on that particular transaction. To remedy this issue, we reiterate our request for MSRB Rule G-32 be amended to require the filing of minimum denomination information on EMMA on all transactions.

Further, expecting traders to look up minimum denomination information in an Official Statement or PPM prior to making a trade is not efficient or realistic. Underwriting dealers are already required to send to the Depository Trust and Clearing Corporation ("DTCC") minimum denomination and increment information though the New Issue Information Dissemination System ("NIIDS") by mandate of Rule G-34. However, information service providers are not necessarily picking up this information from NIIDS. The MSRB could take the minimum denomination information from the DTCC's NIIDS feed and display the information on EMMA. If a security is not NIIDS eligible, then the dealer should be able to send the information directly to the MSRB for transparency purposes on EMMA. These modest improvements to EMMA to increase the transparency of

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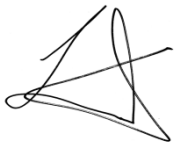
[5] Securities Exchange Act Release No. 45174 Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations (December 19, 2001), 66 FR 67342 (December 28, 2001), at fn 3.

minimum denomination information would greatly assist investors and regulated dealers alike.

VII. Conclusion

Again, SIFMA and its members largely support updating the rules regarding minimum denominations, but have some concerns regarding certain provisions in new Rule G-49. SIFMA and its members would appreciate the MSRB's consideration of our suggestions, as detailed above. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



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