EXHIBIT 2

MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

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Stakeholders
Municipal Securities Dealers, Investors

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Request for Comment

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February 17, 2017

Category
Uniform Practice

Affected Rules
Rule G-26

Request for Comment on Draft Amendments to MSRB Rule G-26 on Customer Account Transfers

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Rule G-26, on customer account transfers. The draft amendments are primarily designed to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, "dealers").

Comments should be submitted no later than February 17, 2017, 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. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Carl E. Tugberk, Assistant General Counsel, or Barbara Vouté, Director, Market Practices, at 202-838-1500.

Background

Rule G-26 requires dealers to cooperate in the transfer of customer accounts and specifies procedures for carrying out the transfer process. Such transfers occur when a customer decides to transfer an account from one dealer, the carrying party (*i.e.*, the dealer from which the customer is requesting the account be transferred) to another, the receiving party (*i.e.*, the dealer to

[1] Comments generally are posted on the MSRB's 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.

Receive emails about MSRB regulatory notices.

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which the customer is requesting the account be transferred). The rule establishes specific time frames within which the carrying party is required to transfer a customer account; limits the reasons for which a receiving party may take exception to an account transfer instruction; provides for the establishment of fail-to-receive and fail-to-deliver contracts;[2] and requires that fail contracts be resolved in accordance with MSRB close-out procedures, outlined in MSRB Rule G-12(h). In addition, the rule requires the use of the automated customer account transfer service in place at a registered clearing agency registered with the Securities and Exchange Commission (SEC), when both dealers are direct participants in the same clearing agency. Finally, the rule contains a provision for enhancing compliance by requiring submission of transfer instructions to the enforcement agency with jurisdiction over the dealer carrying the account, if the enforcement agency requests such submission.

The MSRB designed Rule G-26 in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard by applying a customer account transfer procedure to all dealers that are engaged in municipal securities activities.[3] The uniform standard is that of the National Securities Clearing Corporation's (NSCC) Automated Customer Account Transfer Service (ACATS).[4] The MSRB adopted Rule G-26 in conjunction with the adoption of similar rules by other self-regulatory organizations ("SROs")—New York Stock Exchange (NYSE) Rule 412 and the National Association of Securities Dealers (NASD) Rule 11870.[5] Those rules are not applicable to certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers.[6] The MSRB has, from time to time, modified the requirements of Rule G-26 to conform to enhancements made to ACATS that had relevance to municipal securities, as well as to certain provisions of the parallel FINRA and NYSE customer account transfer rules. However, these amendments have been limited and there

[2] Fail-to-receive and fail-to-deliver contracts are records maintained by the receiving party and the carrying party, respectively, when a customer account transfer fails.

[3] *See* Securities Exchange Act of 1934 ("Exchange Act") Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) (establishing Rule G-26).

[4] *See* NSCC Rule 50 (establishing ACATS and describing the customer account transfer process).

[5] In 2007, NASD and the member regulation, enforcement and arbitration operations of the NYSE consolidated to create the Financial Industry Regulatory Authority (FINRA). For ease of reference, the MSRB will hereinafter refer to NASD and NASD Rule 11870 as FINRA and FINRA Rule 11870, respectively. Current NYSE Rule 412 cross-references FINRA Rule 11870 for the purpose of incorporating it into the NYSE rulebook.

[6] *See supra* note 3.

have been none to Rule G-26 since 2001. The NYSE and FINRA each has made additional amendments to its rule to maintain consistency with updates to NSCC Rule 50 and ACATS. Therefore, the MSRB is considering updates to Rule G-26 to better maintain consistency with NSSC Rule 50 and ACATS, and with the NYSE and FINRA rules to promote a uniform customer account transfer standard for all dealers.

Draft Amendments to Rule G-26

The primary purpose of the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities. The MSRB believes that including certain provisions from the other rules in the draft amendments, as outlined below, would make the transfer of customer securities account assets more flexible, easier, faster and more efficient, while reducing confusion and risk to investors and allowing them to better move their securities to their dealer of choice.

Residual Credit Positions

In 1989, the NSCC expanded ACATS to include the transfer of customer account residual credit positions. These are assets in the form of cash or securities that can result from dividends, interest payments or other types of assets received by the carrying party after the transfer process is completed, or which were restricted from being included in the original transfer.[7] The NYSE and FINRA made corresponding changes to their rules that require dealers that participate in a registered clearing agency with automated residual credit processing capabilities to utilize those facilities to transfer residual credit positions that accrue to an account after a transfer.[8] Prior to allowing for these transfers, a check frequently would have to be produced, or a delivery bill or report, which then required a check to be issued or securities to be transferred. This process could result in lost or improperly routed checks and securities, as well as the expenses of postage and processing. Updating Rule G-26 to be consistent with this change should benefit both customers and dealers by substantially decreasing the paperwork, risks, inefficiencies and costs associated with the practice of check issuance and initiation of securities deliveries to resolve residual credit positions.

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[7] *See* Exchange Act Release No. 26659 (Mar. 22, 1989), 54 FR 12984 (Mar. 29, 1989) (SR-NSCC-89-3).

[8] *See* Exchange Act Release Nos. 34633 (Sept. 2, 1994), 59 FR 46872 (Sept. 12, 1994) (SR-NYSE-94-21); 35031 (Nov. 30, 1994), 59 FR 62761 (Dec. 6, 1994) (SR-NASD-94-56).

Partial Account Transfers

In 1994, the NYSE and FINRA amended their rules to permit partial or non-standard customer account transfers (*i.e.*, the transfer of specifically designated assets from an account held at one dealer to an account held at another dealer) to be accomplished through ACATS.[9] Subsequently, in 2004, the NYSE and FINRA further amended their rules generally to apply the same procedural standards and time frames that are applicable to the transfer of entire accounts to partial transfers as well.[10] Additionally, FINRA amended its rule to permit a customer to authorize the carrying party to transfer specifically designated account assets outside of ACATS.[11] Because customer and dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the carrying party, the amendments to the rules distinguish between the transfer of security account assets in whole or in specifically designated part. For example, it would not be necessary for a customer to instruct the carrying party as to the disposition of his or her assets that are nontransferable if the customer is not transferring the entire account.

Updating Rule G-26 to permit partial account transfers to be accomplished through ACATS under the same time frames applicable to transfers of entire accounts, as well as to permit account transfers, in whole or in specifically designated part, outside of ACATS,[12] should provide dealers with the ability to facilitate more efficient and expeditious transfers, as well as increase accountability for dealers and reduce difficulties encountered by customers related to transfers. This change should also further competition among dealers by more easily allowing investors to transfer their municipal securities assets to the dealer of their choice.

Transfer of Third-Party and/or Proprietary Products

In 1998, the NSCC modified ACATS to better facilitate and expedite the transfer of a customer account containing third-party and/or proprietary

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[9] *Id*.

[10] *See* Exchange Act Release Nos. 49415 (Mar. 12, 2004), 69 FR 13608 (Mar. 23, 2004) (SR-NYSE-2003-29); 50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (SR-NASD-2004-058).

[11] *See* Exchange Act Release No. 50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (SR-NASD-2004-058).

[12] The draft amendments would require that dealers expedite all authorized municipal securities account asset transfers, whether through ACATS or via other means permissible, and coordinate their activities with respect thereto.

products that the receiving party is unable to receive or carry.[13] The NYSE and FINRA made conforming changes in 2001.[14] Prior to the NSCC's modernization of ACATS in 1998, a receiving party was not permitted to reject an individual account asset and only could reject an account in its entirety. Today, however, the receiving party has the capability to either accept all assets in the account being transferred or, to the extent permitted by the receiving party's designated examining authority, accept only some of the assets in the account.

Although most securities can be transferred through ACATS, dealers vary in their ability to accept and support certain third-party investment products. Under the NSCC's prior customer account transfer procedures, and the current procedures outlined in Rule G-26, a customer that wishes to transfer its entire account to another dealer would submit a signed transfer instruction to the receiving party. The receiving party would immediately submit the instruction to the carrying party, and the carrying party would have three days to either validate and return the transfer instruction or take exception to the instruction. Prior to or at the time of validation of the transfer instruction, the carrying party would be required to notify the customer with respect to the disposition of any assets it identified as nontransferable[15] and request instructions from the customer with respect to their disposition.

The account could also contain assets that are nontransferable but have not yet been identified as nontransferable (*e.g.*, a municipal fund security that the receiving party is unable to carry—unbeknownst to the carrying party). The carrying party would have to include such nontransferable assets in the transfer of the account, and, if the receiving party was unable to receive/carry the nontransferable asset, the receiving party would have to send the asset back to the carrying party. While the instances when dealers would need to rely upon Rule G-26 and the special procedures for transfer of nontransferable assets may be rare, these fails require substantial processing

[13] *See* Exchange Act Release No. 40657 (Nov. 10, 1998), 63 FR 63952 (Nov. 17, 1998) (SR-NSCC-98-06).

[14] *See* Exchange Act Release Nos. 44596 (July 26, 2001), 66 FR 40306 (Aug. 2, 2001) (SR-NYSE-00-61); 44787 (Sept. 12, 2001), 66 FR 48301 (Sept. 19, 2001) (SR-NASD-2001-53).

[15] The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because (A) it is an issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities, or (B) it is a municipal fund security which the issuer requires to be held in an account carried by one or more specified dealers that does not include the receiving party. *See* Rule G-26(a)(iii).

time for both the carrying and receiving parties, and require carrying parties to credit the receiving party's funds equivalent to the value of the assets they are unable to deliver. These fails can also cause customers confusion in that customers receive multiple account statements from the carrying and receiving parties as the dealers initiate and then reverse transfers.

The NSCC's modifications allow the receiving party to review the asset validation report, designate those nontransferable assets it is unable to receive/carry, provide the customer with a list of those assets, and require instructions from the customer regarding their disposition. The draft amendments would make Rule G-26 consistent with this change by requiring the receiving party to designate any third-party products it is unable to receive. Accordingly, the draft amendments should eliminate the present need for reversing the transfer of nontransferable assets, reduce the overall time frame for transferring third-party products, and generally reduce delay in and the cost of customer account transfers.

Electronic Signature for Customer Authorization of Account Transfer

Under current Rule G-26, a customer can initiate a transfer of a municipal securities account from one dealer to another by giving written notice to the receiving party.[16] NYSE Rule 412 and FINRA Rule 11870 previously had the same requirement; however, in 2004, the NYSE and FINRA established that a customer also can initiate an account transfer, in whole or in part, using either the customer's actual signature or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.[17] The MSRB believes that updating the written notice requirement in Rule G-26 to include electronic signatures would expedite the transfer of customer assets between dealers and more easily allow investors to transfer their assets to the dealer of their choice. Accordingly, the draft amendments change the written notice requirement to an authorized instruction requirement, which can be a customer's actual written or electronic signature.

[16] Under Rule G-26(c)(i), customers and dealers may use Form G-26 (the transfer instruction prescribed by the MSRB), the transfer instructions required by a clearing agency registered with the SEC in connection with its automated customer account transfer system or transfer instructions that are substantially similar to those required by such clearing agency to accomplish a customer account transfer.

[17] *See* Exchange Act Release Nos. 49415 (Mar. 12, 2004), 69 FR 13608 (Mar. 23, 2004) (SR-NYSE-2003-29); 50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (SR-NASD-2004-058).

Shortened ACATS Cycle

ACATS has been modified over time to provide a more seamless and timely customer account transfer process. Specifically, in 1994, the NSCC accelerated the time in which accounts are transferred by reducing the time a receiving party has after receipt of the transfer instruction to determine whether to accept, reject or request adjustments to the account from two days to one.[18] The NYSE and FINRA have made multiple conforming changes in their rules to remain consistent with the time frames included in ACATS, while the MSRB has not done the same. In 1998 and 2000, the NYSE and FINRA, respectively, shortened the time frame for the asset review portion of the transfer period from two days to one day, and the time frame the carrying party has to complete the transfer of customer securities account assets to the receiving party from four days following the validation of a transfer instruction to three.[19] Further, in 2007, FINRA more generally provided that the time frame(s) in its Rule 11870 will change, as determined from time to time in any publication, relating to the ACATS facility, by the NSCC.[20] Rule G-26 continues to specify three days as the time to validate or take exception to the transfer instructions and four days as the time frame for completion of a customer account transfer, so reducing those time frames to one and three day(s), respectively, as well as incorporating any future changes to the ACATS time frames by reference, would ensure consistency with the industry standard set by the NSCC and harmonization with other SROs, while providing greater efficiency and improving the customer experience in the customer account transfer process.[21]

ACATS and Close-Out Procedures

Current Rule G-26 requires that any fail contracts resulting from this account transfer procedure must be closed out in accordance with MSRB Rule G-12(h). This cross-reference may create uncertainty, however, because the close-out time frames in Rule G-12(h) are based on a settlement date for a transaction, whereas customer account transfers under Rule G-26 are based on validation dates.

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[18] *See* Exchange Act Release No. 34879 (Oct. 21, 1994), 59 FR 54229 (Oct. 28, 1994) (SR-NSCC-94-13).

[19] *See* Exchange Act Release Nos. 40712 (Nov. 25, 1998), 63 FR 67163 (Dec. 4, 1998) (SR-NYSE-98-30); 43635 (Nov. 29, 2000), 65 FR 75990 (Dec. 5, 2000) (SR-NASD-00-68).

[20] *See* Exchange Act Release No. 56677 (Oct. 19, 2007), 72 FR 60699 (Oct. 25, 2007) (SR-FINRA-2007-005).

[21] If these draft amendments were adopted, the MSRB would announce any changes in the time frames based on NSCC modifications of those requirements in a regulatory notice and other appropriate communications.

The MSRB believes FINRA Rule 11870 may be a useful model to resolve the issue. Specifically, FINRA Rule 11870(f)(1) generally requires that any fail contracts resulting from an account transfer be included in a dealer's fail file and that, not later than 10 business days following the date delivery was due, the dealer shall take steps to obtain physical possession or control of securities so failed to receive by initiating a buy-in procedure or otherwise. The rule extends this time frame to 30 business days following the date delivery was due for certain types of securities or instruments, including municipal securities. Including a provision in Rule G-26 to allow a certain amount of days following the date delivery was due for the dealer to take steps to obtain physical possession or control of municipal securities so failed to receive by initiating a buy-in procedure or otherwise would provide dealers with clarity regarding how to close out fails in the context of customer account transfers and would provide further harmonization with FINRA Rule 11870. In order to achieve consistency with Rule G-12(h), the MSRB would need to set that time frame to 10 calendar days with the option for a one-time extension of 10 calendar days, totaling up to 20 calendar days following the date delivery was due. However, this would be inconsistent with FINRA's time frame for failed transfers of municipal securities—which can range from 10 to 30 business days as noted above.

An additional layer of inconsistency and complexity arises due to the system used to process most failed customer account transfers of municipal securities. Specifically, an inter-dealer transaction of municipal securities is processed in the NSCC's Continuous Net Settlement (CNS) system to be paired up with potentially another counterparty and settled.[22] Any CNS-eligible municipal security in a customer account transfer that fails to be delivered also enters CNS. Once in CNS, it is difficult to determine which fails resulted from inter-dealer transactions or customer account transfers, and the counterparties that are paired up may not be the same counterparties to the original transaction/transfer. As a result, it may be unclear with which rule firms should comply—Rule G-12(h) or FINRA Rule 11870.

To avoid these inconsistencies and uncertainties, the MSRB is proposing to amend the definition of "nontransferable asset" to include any customer long position in a municipal security that allocates to a short position, which resulted from either the carrying party's trading activity or failure to receive the securities it purchased to fill a customer's municipal securities order (*i.e.*,

[22] As a key part of the CNS system, NSCC acts as the central counterparty for clearance and settlement for virtually all broker-to-broker equity, corporate and municipal bond and unit investment trust trading in the United States. CNS processes include an automated book-entry accounting system that centralizes settlement and maintains an orderly flow of security and money balances.

an inter-dealer transaction fail). As such, and if FINRA were to similarly amend Rule 11870 to make these short positions nontransferable, then customer account transfers of municipal securities would be significantly less likely to fail and there may no longer be a need to establish fail contracts and provide a process by which those fails could be closed out, eliminating the timing inconsistencies and ambiguity. Further, dealers may not be subject to the costs associated with these transfer fails, as well as the complication and confusion that may arise on coupon payment dates from the need to provide substitute interest for tax-exempt municipal securities. The MSRB believes this draft amendment would also have the additional benefits of reducing counterparty risk and increasing investor confidence. The MSRB solicits comment on this potential solution, and seeks commenters' identification of any effective alternatives. The MSRB and FINRA have been, and will continue to be, coordinating on a resolution to these issues, whether by pursuing an amendment to the definition of "nontransferable assets," a modification of the time frames for close-out procedures applicable to failed customer account transfers or another alternative.

Transfer Instructions

Disposition of Nontransferable Assets

Under current Rule G-26, if there are nontransferable assets included in a transfer instruction, there are multiple options available to the customer for their disposition, and the carrying party must request further instructions from the customer with respect to which option he or she would like to exercise.[23] Depending on the type of nontransferable asset at issue, FINRA Rule 11870(c) requires either the carrying party or the receiving party to provide the customer with a list of the specific nontransferable assets and request the customer's desired disposition of such assets. For example, FINRA Rule 11870(c)(4) places the burden on the receiving party for third-party products that are nontransferable. Although it may already happen in practice, the MSRB believes it is important for at least one of the parties to provide the customer with a list of nontransferable assets. Accordingly, the draft amendments explicitly require the carrying party to provide such a list.[24]

[23] *See* Rule G-26(c)(ii).

[24] Although FINRA Rule 11870 contemplates the receiving party having this burden in certain circumstances, the MSRB continues to believe that the carrying party, which maintains custody of the nontransferable assets the customer wishes to transfer, is in the best position to provide this information.

Liquidation of Nontransferable Assets

One of the disposition options for nontransferable assets available to customers is liquidation.[25] Currently, when providing customers with this option, dealers are required to specifically indicate any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer. FINRA Rule 11870 provides the same requirements, but also requires dealers to refer customers to the disclosure information for third-party products or to the registered representative at the carrying party for specific details regarding any such fees, as well as to distribute any remaining balance to the customer and an indication of the method of how it will do so. The MSRB believes these additional requirements should be included in Rule G-26 to help ensure that customers receive as much relevant information as possible regarding potential redemption fees, including for municipal fund securities. Specifically, the draft amendments require a referral to the program disclosure for a municipal fund security or to the registered representative for specific details regarding any such fees for the same. Further, for maximum clarity, the MSRB believes it is important to require explicitly the distribution of the remaining balance to the customer and an indication of how it will be accomplished.

Transfer of Nontransferable Assets to Customers

FINRA Rule 11870(c)(3)(C) provides an option for nontransferable assets that are proprietary products to be transferred, physically and directly, in the customer's name to the customer. The MSRB believes that some municipal securities that are nontransferable assets could similarly be transferred, physically and directly, to the customer, so the draft amendments add this option to the alternative dispositions available to customers. The MSRB notes that not all municipal securities may be appropriate for this option and that the carrying party would not be required to physically deliver any nontransferable assets of which it does not have physical possession.

Timing of Disposition of Nontransferable Assets

Rule G-26 currently does not provide a time frame for the carrying party to effect the disposition of nontransferable assets as instructed by the customer. FINRA Rule 11870(c)(5) requires that the money balance resulting from liquidation must be distributed, and any transfer instructed by the customer must be initiated, within five business days following receipt of the customer's disposition instruction. The MSRB believes it is important to provide clarity as to the timing of these dispositions to ensure that customer

[25] *See* Rule G-26(c)(ii).

transfers are handled expeditiously. Accordingly, the draft amendments harmonize with FINRA Rule 11870 and establish the same five-day requirement.

Transfer Procedures

Current Rule G-26(d) establishes, as part of the transfer procedures, the requirements for validation of the transfer instructions. To detail the specific validation/exception processes more clearly and to better harmonize with FINRA Rule 11870, the draft amendments provide them in a new, separate section of the rule.

Validation of Transfer Instructions

Under the current rule, upon validation of a transfer instruction, the carrying party must "freeze" the account to be transferred and return the transfer instruction to the receiving party with an attachment indicating all securities positions and money balance in the account as shown on the books of the carrying party. Because the draft amendments allow for partial account transfers of specifically designated municipal securities assets, the draft amendments require the account freeze only for validation of the transfer of an entire account, as the customer's account at the carrying party should not be frozen if certain municipal securities will remain in the account and the customer may want to continue transacting in that account. For whole and partial account transfers, the carrying party will continue to have the responsibility to return the instructions and indicate the securities positions and money balance to be transferred. However, to identify the assets held in the customer account at the carrying party more comprehensively and to harmonize with FINRA Rule 11870 more closely, the draft amendments also require the carrying party to indicate safekeeping positions, which are defined to be any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.

Additionally, the current rule requires the carrying party to include a then-current market value for all assets to be transferred. FINRA Rule 11870(d)(5) provides that the original cost should be used as the value if a then-current value cannot be determined for an asset. The draft amendments include a provision substantially similar to the FINRA provision to provide clarity on how any such municipal securities should be valued and to improve harmonization.

Exceptions to Transfer Instructions

As part of the validation process, the carrying party may take certain exceptions to the transfer instructions authorized by the customer and provided by the receiving party. Currently, Rule G-26 allows a carrying party

to take exception to a transfer instruction only if it has no record of the account on its books or the transfer instruction is incomplete.[26] FINRA Rule 11870(d)(3) provides numerous other bases to take exception to a transfer instruction that the MSRB believes would more comprehensively address potential issues with a transfer instruction with which a carrying party could reasonably take issue.[27]

FINRA Rule 11870(d)(2) precludes a carrying party from taking such an exception and denying validation of the transfer instruction because of a dispute over security positions or the money balance in the account to be transferred, and it requires the carrying party to transfer the positions and/or money balance reflected on its books for the account. The MSRB believes this provision would be equally valuable to transfers covered under Rule G-26 to ensure that customers are able to hold their municipal securities at their dealers of choice.

Recordkeeping and Customer Notification
During the validation process, the parties to the transfer might not identify certain nontransferable assets, resulting in the improper transfer of those assets. FINRA Rule 11870(c)(1)(E) explicitly requires that the parties promptly resolve and reverse any such misidentified nontransferable assets, update their records and bookkeeping systems and notify the customer of the action taken. Rule G-26 does not include a similar requirement, but the MSRB believes it is important to provide this explicit requirement to ensure that dealers address any errors in the transfer process promptly.

Transfer Rejection
FINRA Rule 11870(d)(8) allows the receiving party to reject a full account transfer if the account would not be in compliance with its credit policies or minimum asset requirements. A receiving party may not reject only a portion of the account assets (*i.e.*, the particular assets not in compliance with the

[26] *See* Rule G-26(d)(ii).

[27] For example, a carrying party can take exception to an account that is "flat" and reflects no transferable assets. For such an exception, the receiving party may resubmit the transfer instruction only if the most recent customer statement is attached. To ensure that a customer's transfer is completed when the customer does have a position in the account and to more comprehensively harmonize this "flat" account exception with FINRA Rule 11870, the draft amendments include the same provision.

In order to include the exceptions to transfer instructions with the provisions related to validation, the draft amendments move the existing exceptions to, and add the new exceptions in, the new, separate section on validation of transfer instructions.

dealer's credit policies or minimum asset requirement). Rule G-26 does not include any comparable provisions, but the MSRB believes it is reasonable for a receiving party to deny a customer's transfer request due to noncompliance with its credit policies or minimum asset requirements and this ability should be included in Rule G-26.

Resolution of Discrepancies

Rule G-26 currently provides that any discrepancies relating to positions or money balances that exist or occur after transfer of a customer account transfer must be resolved promptly.[28] FINRA Rule 11870(g) includes these same provisions but also requires that the carrying party must promptly distribute to the receiving party any transferable assets that accrue to the customer's transferred account after the transfer has been effected. Further, FINRA Rule 11870 provides clarity to the promptness requirement by requiring that any claims of discrepancies after a transfer must be resolved within five business days from notice of such claim or the non-claiming party must take exception to the claim and set forth specific reasons for doing so. To provide the same level of clarity and to improve harmonization with FINRA Rule 11870, the draft amendments include these same provisions.

Participant in a Registered Clearing Agency

When both the carrying party and the receiving party are direct participants in a clearing agency that is registered with the SEC and offers automated customer securities account transfer capabilities, Rule G-26 currently requires the account transfer procedure to be accomplished pursuant to the rules of and through such registered clearing agency.[29] FINRA Rule 11870(m) has a similar requirement that provides an exception for specifically designated securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party. As discussed above, FINRA also requires the transfer of residual credit positions through the registered clearing agency. Further, FINRA Rule 11870(m)(4) prescribes several conditions for such transfers for participants in a registered clearing agency.[30] The MSRB believes customers and the parties should have the option of performing a customer account transfer outside of the facilities of a registered clearing agency when an appropriate authorized

[28] *See* Rule G-26(f).

[29] *See* Rule G-26(h).

[30] FINRA also defines a "participant in a registered clearing agency" as a member of a registered clearing agency that is eligible to make use of the agency's automated customer securities account transfer capabilities, and "registered clearing agency" as a clearing agency as defined in, and registered in accordance with, the Exchange Act. The draft amendments include these definitions.

alternate instruction is given. Additionally, the MSRB believes the additional prescription related to the process provided by FINRA would give greater clarity to customers and dealers. Accordingly, the draft amendments include these provisions.

Transfers Accomplished Ex-Clearing

Although most customer account transfers of municipal securities are processed through ACATS, there may be instances where one or both of the parties processing a transfer is not a member of a registered clearing agency. Rule G-26 does not include any provisions addressing these circumstances, but FINRA Rule 11870(n) does. Specifically, it requires each such party to transfer credit balances (both cash and securities) that occur in any transferred account assets within 10 business days after the credit balances accrue to the account for a minimum period of six months. The MSRB believes it is important to provide clarity on the obligation and timing required to transfer such credit balances ex-clearing, and the draft amendments include a provision consistent with FINRA Rule 11870.

Written Procedures

Current Rule G-26 does not include any requirement for policies and procedures, but Supplementary Material .01 to FINRA Rule 11870 requires the establishment, maintenance and enforcement of written procedures to affect and supervise customer account transfers. The MSRB believes it is important for dealers to document the procedures they follow to effect customer account transfers and to require explicitly written procedures for supervision of the same, which is consistent with MSRB Rule G-27. Accordingly, the draft amendments include such a requirement.

FINRA Rule 11650 – Transfer Fees

Neither Rule G-26 nor any other MSRB rule addresses transfer fees. However, FINRA Rule 11650, on transfer fees, specifies that the party at whose instance a transfer of securities is made shall pay all service charges of the transfer agent. The MSRB believes it is important to clarify who is responsible for the fees incurred for a customer account transfer. Accordingly, the draft amendments include provisions consistent with FINRA Rule 11650.

Economic Analysis

1. The need for the draft amendments to Rule G-26 and how the draft amendments to Rule G-26 will meet that need.

The need for the draft amendments arises primarily from two concerns: 1) ensuring that the rule aligns with current market practices; and 2) ensuring that investors seeking to transfer municipal securities assets between accounts can do so reliably, efficiently and promptly.

Existing Rule G-26 refers to certain practices that are no longer consistent with the securities industry standard. These practices are costlier to use and operationally less efficient than what is feasible elsewhere in the securities industry. As such, the existing rule may result in uncertainties, inefficiencies or unnecessary costs associated with customer account transfers. The MSRB does not believe that continuing to refer to these inconsistently used and/or out-of-date practices confers benefits on investors, issuers or other market participants and may, in fact, adversely affect them. The MSRB believes that updating the rule may reduce inefficiencies currently associated with efforts to comply with the existing rule. The amended rule may also reduce uncertainty and confusion in applying the current rule resulting from the current rule's inconsistency with the securities industry standard.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-26 can be considered.

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference in comparison to the expected state with the draft amendments in effect. The economic impact of the draft amendments is generally viewed to be the difference between the baseline and the expected states. The relevant baseline for purposes of the proposed amendments is existing Rule G-26.

3. Identifying and evaluating reasonable alternative regulatory approaches.

The MSRB recognizes that there are alternatives to the approach proposed under the draft amendments that range from modifying specific parameters (*e.g.*, time frames) of the draft amendments to employing significantly different mechanisms to address the identified needs. As an alternative to the proposed amended rule, the MSRB could make updates to Rule G-26 to account for current market practices and shorten the time frames during

which account transfers occur, but not impose any other new requirements to harmonize further with FINRA Rule 11870.

4. Assessing the benefits and costs of the draft amendments to Rule G-26 and the main alternative regulatory approaches.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the draft amendments with the draft amendments fully implemented against the context of the economic baseline. The MSRB has been unable to identify or obtain sufficient data to quantify the economic impact of the draft amendments and, therefore, can only assess the impact of the draft amendments qualitatively. The MSRB is seeking, as part of this request for comment, additional data and/or studies relevant to the practices and procedures referenced in existing Rule G-26, the frequency of customer account transfers involving only municipal securities and the likely costs of complying with the proposed draft amendments.

Benefits

The MSRB believes that the draft amendments would benefit investors and dealers. Specifically, the MSRB believes that dealers may benefit from clarifications and revisions that more closely reflect the securities industry standard and harmonize with other SRO customer account transfer rules. In addition, dealers may be able to more quickly and efficiently execute customer account transfers, which may reduce operational risks to dealers and investors as well as addressing one potential element contributing to operational risk to the financial system. At present, the magnitude of these benefits cannot be quantified.

Costs

The analysis of the potential costs does not consider all the costs associated with the draft amendments, 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 draft amendments would create a new burden on dealers by requiring that account transfers be resolved in a shortened time frame. While, at present, the MSRB is unable to quantitatively evaluate the magnitude of the costs that the draft amendments will impose on dealers, the relatively small number of customer account transfer fails suggests that the costs would also be relatively low. The MSRB is not aware of any significant costs that the draft amendments will impose on investors, and believes that the efficiencies created by

shortening the time frames for the process and by making the process consistent with the industry standard will be beneficial to dealers.

Effect on Competition, Efficiency, and Capital Formation
The MSRB believes that the draft amendments may improve the operational efficiency of the market by addressing potential confusion associated with the existing rule's use of outdated practices and procedures that are not consistent with the securities industry standard and other SRO rules for transferring customer accounts. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses of the impact on capital formation, but believes that the benefits outweigh the costs. Additionally, the MSRB does not believe the draft amendments will create any burden on competition, as all municipal securities brokers and municipal securities dealers will be subject to the modified requirements for customer account transfers. The MSRB believes that the amended rule would make the transfer of customer municipal securities account assets more flexible, easier, faster and more efficient, while reducing confusion and risk to investors and allowing them to better move their securities to their dealer of choice.

Conclusion
The MSRB believes that these changes will provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices. The MSRB is soliciting estimates of these costs in this request for comment, but anticipates, at this juncture, that they will be significantly less than the benefits that will accrue to investors, dealers and the market as a whole.

Request for Comment

The MSRB seeks public comment on the following questions, as well as on any other topic raised in this request. The MSRB particularly welcomes statistical, empirical and other data from commenters that may support their views and/or support or refute the views, assumptions or issues raised in this request for comment.

1) What are the challenges, if any, associated with customer account transfers?

2) To what extent have dealers found it difficult or costly to comply with existing Rule G-26 due to its lack of consistency with other SRO rules? If possible, please quantify the impact of these challenges. What is the per-firm annual cost of compliance with the rule?

3) Is Form G-26 still relevant and necessary? If so, are there any modifications, aside from amendments to conform with an amended Rule G-26, necessary?

4) Under what circumstances do municipal securities in customer account transfers fail to be delivered?

5) Are there circumstances under which a customer long position in a municipal security that allocates to a short position confers benefits to investors or dealers by being transferred? If so, please provide estimates of those benefits, net of any costs associated with complying with Rule G-26.

6) Is there a more effective alternative to making a customer long position in a municipal security that allocates to a short position nontransferable, including, but not limited to, the MSRB and FINRA adopting a consistent time frame for closing out failed customer account transfers? If so, please describe and quantify, if possible, the costs and benefits of such alternative.

7) Will making a customer long position in a municipal security that allocates to a short position nontransferable result in the resolution of any existing short positions?

8) Do municipal securities brokers or municipal securities dealers sell proprietary products that are municipal securities to customers? If so, what types of products are they and should they be transferable?

9) What, if any, modifications should the MSRB consider to the proposed time frames for the customer account transfer process, taking into account current market practices?

10) How frequently do dealers effect customer account transfers ex-clearing?

11) What, if any, systems and business procedures need to be modified to comply with the draft amendments?

12) Would the draft amendments impose any costs or burdens, direct, indirect, or inadvertent, on investors or regulated entities? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

13) Should the MSRB consider additional modifications to Rule G-26 not included in the draft amendments?

January 6, 2017

* * * * *

Text of Draft Amendments*

Rule G-26: Customer Account Transfers

(a) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) - (ii) No changes.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because it is:

(A) ~~it is~~ an issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities;~~, or~~

(B) ~~it is~~ a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party; or

(C) any customer long position in a municipal security that allocates to a short position.

(iv) The term “participant in a registered clearing agency” shall mean a member of a registered clearing agency that is eligible to make use of the agency’s automated customer securities account transfer capabilities.

(v) The term “registered clearing agency” shall be deemed to be a clearing agency as defined in, and registered in accordance with, the Exchange Act.

(vi) The term “safekeeping position” shall mean any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.

* Underlining indicates new language; strikethrough denotes deletions.

(b) *Responsibility to Expedite Customer's Request*.

(i) When a customer whose municipal securities account is carried by a broker, dealer or municipal securities dealer (the "carrying party") wishes to transfer ~~its entire~~municipal securities account assets, in whole or in specifically designated part, to another broker, dealer or municipal securities dealer (the "receiving party") and gives ~~written notice of that fact~~authorized instructions to the receiving party, ~~the receiving party and the carrying~~both part~~y~~ies must expedite and coordinate activities with respect to the transfer ~~as follows~~.

(ii) If a customer desires to transfer a portion of his or her account outside of the National Securities Clearing Corporation's (NSCC) Automated Customer Account Transfer Service (ACATS), authorized alternate instructions should be transmitted to the carrying party indicating such intent and specifying the designated assets to be transferred. Dealers must expedite all authorized municipal securities account asset transfers, whether through ACATS or via other means permissible, and coordinate their activities with respect thereto. Unless otherwise indicated, the automated customer account transfer capabilities referred to in section (i) of this rule shall be utilized for partial transfers.

(c) *Transfer Instructions.*

(i) Parties may use Form G-26, the transfer instruction prescribed by the Board, or the transfer instructions required by a clearing agency registered with the Securities and Exchange Commission in connection with its automated customer account transfer system, or transfer instructions that are substantially similar to those required by such clearing agency, when accomplishing account transfers pursuant to this rule.

(ii) If an account, or an instruction to transfer specifically designated account assets, includes any nontransferable assets, the carrying party must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable:

(A) liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation (including a referral to the program disclosure or the registered representative for specific details regarding any such fees in the case of a nontransferable asset described in section (a)(iii)(B)), ~~and~~ that those fees may be deducted from the money balance due the customer and that any remaining balance will be distributed to the customer, including the method by which it will be so distributed; ~~or~~

(B) retention by the carrying party for the customer's benefit; ~~or~~

(C) transfer, physically and directly, in the customer's name to the customer; or

(D) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(iii) If the customer has authorized liquidation or transfer of assets deemed to be nontransferable, the carrying party must distribute the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

(d) *Transfer Procedures.*

(i) Upon receipt from the customer of an ~~signed~~authorized transfer instruction to receive such customer's municipal securities account assets, in whole or in specifically designated part, from the carrying party, the receiving party must immediately submit such instruction to the carrying party. The carrying party must, within ~~three~~one business day~~s~~ following receipt of such instruction, validate and return the transfer instruction to the receiving party (with an attachment reflecting all positions and money balances as shown on its books) or take exception to the transfer instruction for reasons other than securities positions or money balance ~~differences~~discrepancies and advise the receiving party of the exception taken. The time frame(s) set forth in this paragraph will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the NSCC.

(ii) ~~A carrying party may take exception to a transfer instruction only if:~~

~~(A) it has no record of the account on its books;~~

~~(B) the transfer instruction is incomplete; or~~

~~(C) the transfer instruction contains an improper signature.~~

~~(iii)~~ The carrying party and the receiving party must promptly resolve any exceptions taken to the transfer instruction.

(e) *Validation of Transfer Instructions.*

(i~~v~~) Upon validation of an ~~transfer~~ instruction to transfer municipal securities account assets in whole, the carrying party must~~:~~

~~(A)~~ "freeze" the account to be transferred, *i.e.*, all open orders must be cancelled and no new orders may be taken~~; and~~.

(~~B~~ii) Upon validation of an instruction to transfer municipal securities account assets, in whole or in specifically designated part, the carrying party must return the transfer instruction to the receiving party with an attachment indicating all municipal securities

positions, safekeeping positions and any money balance to be transferred ~~in the account~~ as shown on the books of the carrying party. Except as hereinafter provided, the attachment must include a then-current market value for all assets ~~in the account~~so indicated. If a then-current market value for an asset cannot be determined, the asset must be valued at original cost. However, delayed delivery assets, nontransferable assets, and assets in-transfer to the customer, need not be valued, although the "delayed delivery," "nontransferable," or "in-transfer" status of such assets, respectively, must be indicated on the attachment. A carrying party must provide the description set forth in ~~r~~Rule G-12(c)(v)(E) with respect to any municipal security that has not been assigned a CUSIP number in an account it is to transfer.

(iii) A carrying party may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over municipal securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying party must transfer the municipal securities positions and/or money balance reflected on its books for the account.

(iv) A carrying party may take exception to a transfer instruction only if:

(A) it has no record of the account on its books;

(B) the transfer instruction is incomplete;

(C) the transfer instruction contains an improper signature;

(D) additional documentation is required (*e.g.*, legal documents such as death or marriage certificate);

(E) the account is “flat” and reflects no transferable assets;

(F) the account number is invalid (*i.e.*, the account number is not on the carrying party’s books); however, if the carrying party has changed the account number for purposes of internally reassigning the account, it is the responsibility of the carrying firm to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction;

(G) it is a duplicate request;

(H) it violates the receiving party’s credit policy;

(I) it contains unrecognized residual credit assets (the receiving party cannot identify the customer);

(J) the customer rescinds the instruction (*e.g.*, the customer has submitted a written request to cancel the transfer);

(K) there is a mismatch of the Social Security Number/Tax ID (*e.g.*, the number on the transfer instruction does not correspond to that on the carrying party's records);

(L) the account title on the transfer instruction does not match that on the carrying party's records;

(M) the account type on the transfer instruction does not correspond to that on the carrying party's records;

(N) the transfer instruction is missing or contains an improper authorization (*e.g.*, the transfer instruction requires an additional customer authorization or successor custodian's acceptance authorization or custodial approval; or

(O) the customer has taken possession of the assets in the account (*e.g.*, the municipal securities account assets in question have been transferred directly to the customer).

(v) If a carrying party takes exception to a transfer instruction because the account is "flat," as provided in paragraph (iv)(E) above, the receiving party may re-submit the transfer instruction only if the most recent customer statement is attached.

(vi) The carrying party and the receiving party must promptly resolve and reverse any nontransferable assets that were not properly identified during validation. In all cases, each party shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(vii) Upon receipt of the asset validation report, the receiving party shall designate any assets that are a product of a third party (*e.g.*, municipal fund security) with which the receiving party does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying party, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

(viii) After validation of the transfer instruction by the carrying party, a receiving party may reject a transfer of municipal securities account assets in whole only if the account is not in compliance with the receiving party's credit policies or minimum asset requirements. A receiving party, however, may only reject the entire account for such reasons; it may not reject only a portion of the account assets (*e.g.*, the particular assets not in compliance with the party's credit policies or minimum asset requirement) while accepting the remainder.

(f) *Completion of the Transfer.*

(i) Within ~~four~~three business days following the validation of a transfer instruction, the carrying party must complete the transfer of the customer's municipal securities account assets to the receiving party. The receiving party and the carrying party must immediately establish fail-to-receive and fail-to-deliver contracts at the then-current market value as of the date of validation upon their respective books of account against the long/short positions in the customer's accounts that have not been physically delivered/received and the receiving party/carrying party must debit/credit the related money amount. The time frame(s) set forth in this subsection will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the NSCC. Nontransferable assets and assets in-transfer to the customer are exempt from the requirement that fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been physically delivered. Zero value fail-to-receive and fail-to-deliver instructions shall be established for delayed delivery assets. The customer's account(s) shall thereupon be deemed transferred.

(~~v~~ii) To the extent any assets in the account are not readily transferable, with or without penalties, such assets are not subject to the time frames required by the rule; and if the customer has authorized liquidation of any nontransferable assets, the carrying member must distribute the resulting money balance to the customer within five business days following receipt of the customer's disposition instructions.

~~(e) *Fail Contracts Established.* Any fail contracts resulting from this account transfer procedure must be closed out in accordance with rule G-12(h).~~

(~~f~~g) *Prompt Resolution of Discrepancies*.

(i) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's municipal securities account assets must be resolved promptly.

(ii) The carrying party must promptly distribute to the receiving party any transferable assets that accrue to the account after the transfer of a customer's securities account assets has been effected.

(iii) When a party receives a claim notice relating to a municipal securities account transfer, the party must resolve the claim within five (5) business days from receipt of such claim or take exception to the claiming party by setting forth specific reasons for denying the claim.

(~~g~~h) *Exemptions.* The Board may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any dealer or any type of account, security or municipal security.

(~~h~~i) *Participant in a Registered Clearing Agency*.

(i) When both the carrying party and the receiving party are direct participants in a clearing agency registered with the Securities and Exchange Commission offering automated customer securities account asset transfer capabilities, the municipal securities account transfer procedure, including

the establishing and closing out of fail contracts, must be accomplished pursuant to the rules of and through such registered clearing agency with the exception of specifically designated municipal securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party.

(ii) When municipal securities account assets are transferred in whole and such registered clearing agency has the capability to transfer residual credit positions (both cash and municipal securities) that have accrued to an account after the account has been transferred (residual credit processing), such capability must be utilized for transferring residual credit positions from the carrying party to the receiving party.

(iii) When both the carrying party and the receiving party are participants in a registered clearing agency having automated customer securities account asset transfer capabilities with a facility permitting electronic transmittal of customer account asset transfer instructions, such facilities shall be used in accordance with the following:

(A) parties using such facilities shall execute an agreement specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) the transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving party that it has received a properly executed transfer instruction or other actual authority to receive the customer's municipal securities and funds;

(D) transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying party to respond to the transfer instruction as may be specified by this rule and the clearing agency; and

(E) non-standard ACATS processing and reclaim processing shall be transmitted through such facilities, if the facility permits.

(j) *Transfers Accomplished Ex-Clearing*. If one or both of the parties processing a customer account transfer pursuant to this rule is not a member of a registered clearing agency, each party (including parties that do not utilize automated customer securities account transfer facilities) is required, for a minimum period of six (6) months after the transfer of municipal securities account assets in whole is completed, to transfer credit balances (both cash and securities) that occur in such transferred account assets within ten (10) business days after the credit balances accrue to the account.

(~~i~~k) *Forwarding of Copy of Form G-26 to Enforcement Authority on Request*. The carrying party shall forward a copy of each customer account transfer instruction issued pursuant to paragraph (c)(i) to the enforcement authority having jurisdiction over the carrying party member, at the request of such authority.

---Supplementary Material:

.01 Customer Authorization. For purposes of this rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.

.02 Written Procedures. Municipal securities dealers must establish, maintain and enforce written procedures to affect and supervise the transfer of municipal securities account assets pursuant to this rule that are reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules.

.03 Transfer Fees. The party at whose instance a transfer of municipal securities is made shall pay all service charges of the transfer agent.

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2017-01 (JANUARY 6, 2017)

1. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated February 17, 2017

2. Michael Paganini: E-mail dated January 6, 2017

3. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated February 17, 2017

BDA Bond Dealers of America

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February 17, 2017

Submitted Electronically

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

RE: Request for Comment on Draft Amendments to MSRB Rule G-26 on Customer Account Transfers

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 request for comment on draft amendments to MSRB Rule G-26 on customer account transfers. The purpose of this letter is to cite specific areas of concern where the proposed amendments need to be improved in order to align with existing dealer systems and processes and facilitate a more efficient customer account transfer process.

BDA's most significant concerns are with the proposed ACATS close-out procedures and the proposed harmonization between MSRB Rule G-26, MSRB Rule G-12(h), and FINRA Rule 11870(f)(1).

The proposed amendment to the definition of 'nontransferable asset' in section (a)(iii)(C) is unworkable.

BDA does not support updating the definition of 'nontransferable asset' to include any firm short position that 'allocates' to a customer long position. BDA firms understand the objective of the change, but current dealer systems are not designed to code or segregate interdealer transaction fails and account transfer fails in the way that the proposal describes. Most firms do not track fails at the account level for compliance with regulatory issues, such as properly tracking substitute interest. Firms typically track fails at the firm-level as opposed to the account level. Therefore, significant operational changes would have to occur in order to make this change feasible. BDA urges the MSRB to engage in dealer outreach to come up with a new solution that better aligns with existing dealer systems and processes.

BDA urges MSRB to harmonize the G-26 timeframe for ACATS fails with the existing timeframes in FINRA 11870(f).

BDA agrees that the settlement-based language of G-12(h) is not appropriately tailored to situations in which firms are dealing with an ACATS fail. However, BDA does not believe the optimal solution is shortening the G-26 account transfer close out timeframe to meet G-12(h) time requirements when FINRA 11870(f) is a perfectly adequate standard for ACATS close-outs. BDA previously stated in comment letters to the MSRB and to the SEC during the recent G-12 public comment process that the reference in G-26 to G-12 was not helpful because it is a reference to settlement dates, which is not a usable standard for resolving ACATS fails.

BDA firms believe that harmonizing G-26 with the timetable of the existing FINRA 11870, which already is well understood across all asset classes, will be a sufficient improvement to the ACATS close-out process. With respect to the recent changes to G-12, which created a more robust interdealer close-out process, there was a clear policy need to improve the rule. BDA members do not see a real policy need to amend G-26, in addition to FINRA 11870, to reduce the timeframes associated with account transfer fails—across all asset classes—in order to harmonize the account transfer close-out process with the municipal securities interdealer close-out process.

* * *

In conclusion, the BDA urges the MSRB to engage in dealer outreach to improve the section of the proposed rule that is designed to align account transfer and interdealer transaction fails and to explore alternative solutions to the proposed definition of ‘nontransferable asset’.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

Comment on Notice 2017-01

from Michael Paganini,

on Friday, January 6, 2017

Comment:

Financial firms are quick and efficient in handling transactions that create revenue for the firm, however they are very inefficient when it comes to account transfers of specific types of assets i.e., some municipal bonds. This inefficiency prevails among both the full service brokerage firms and the discount brokerage firms. When there is a problem with an account transfer it is exasperating, frustrating, and time consuming for the private investor.
Recommend that there be some type of enforcement mechanism or financial penalty, to financial firms,for transfers that cannot be accomplished within a reasonable time period i.e., for example 3 weeks.

Michael Paganini

sifma
Invested in America

February 17, 2017

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

Re: MSRB Notice 2017-01: Draft Amendments to Modernize MSRB Rule G-26, on Customer Account Transfers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2017-01 [2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is making a request for comment on draft amendments to MSRB Rule G-26, on customer account transfers. SIFMA and its members support the stated purpose of the draft amendments, but do not agree that the draft amendments are the optimal way to achieve that goal.

I. The MSRB Should Eliminate Rule G-26

SIFMA and its members feel strongly that Rule G-26 in its current form is unnecessary. The Rule currently requires the use of the automated customer account transfer service in place at a registered clearing agency registered with the Securities and Exchange Commission ("SEC"). As stated in the Notice, that uniform standard is run by the National Securities Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS")[3], and the

[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 2017-01 (January 6, 2017).

[3] *See* NSCC Rule 50 (establishing and governing the ACATS process).

ACATS system must be used if both the carrying broker, dealer, or municipal securities dealer (collectively, "dealer") and the receiving dealer are direct participants in the same clearing agency.

SIFMA recognizes that the MSRB adopted Rule G-26 in 1986 in conjunction with the adoption of similar rules by other self-regulatory organizations ("SROs") such as the New York Stock Exchange's ("NYSE") Rule 412 and the Financial Industry Regulatory Authority's ("FINRA", formerly known as the National Association of Securities Dealers) Rule 11870. SIFMA also recognizes that the NYSE and FINRA Rules are only applicable to members of those SROs, and are not applicable to a few municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers. It is critical to point out that the firms not covered by the NYSE and FINRA rules are thought to be a small fraction of the total of firms that custody customer accounts that include municipal securities, and those few firms, by and large, are not direct clearing participants of NSCC eligible to participate in ACATS. As such, SIFMA believes that if there are any firms not already covered by NYSE Rule 412 or FINRA Rule 11870 regarding customer account transfers, then it is likely that such a dealer is exempt from participating in ACATS under Rule G-26. It is our opinion that few customer account transfers occur ex-clearing, outside of ACATS. Thus, SIFMA and its members feel that Rule G-26 is redundant.

II. If the MSRB Does Not Eliminate Rule G-26, Then the Rule Should Cross-Reference FINRA Rule 11870

It is important to note that over the intervening years since the adoption of Rule G-26, the MSRB recognizes that Rule G-26, NYSE Rule 412 and FINRA Rule 11870 have not been uniformly updated and conformed to reflect changes to NSCC Rule 50. As a result of G-26 being out-of-date, market participants have largely not been complying with the rule. Instead, market participants have been applying FINRA 11870, which conforms to current NSCC Rule 50 on ACATS procedures. This discordance also leads to confusion among all market participants (investors and dealers alike) and regulatory risk for dealers.

As described in the Notice, SIFMA and its members note that currently NYSE Rule 412 is a direct cross-reference to FINRA Rule 11870 for the purposes of incorporating it into the NYSE rulebook.[4] This cross-reference is beneficial regulatory construction in that it both eliminates any concern that some dealers may not be covered by the rule, and eliminates concerns about a lack of harmonization between the various SRO rules. For these reasons, we feel strongly that if the

[4] There is also precedent in the MSRB Rulebook for incorporation of other regulator's rules by reference. *See, e.g.,* MSRB Rule G-41 on Anti-Money Laundering Compliance Program.

MSRB keeps Rule G-26, it should amend Rule G-26 to follow the NYSE model and incorporate FINRA Rule 11870 by reference as follows, "Municipal securities brokers, dealers and municipal securities dealers shall comply with FINRA Rule 11870, concerning the transfer of customer accounts between members, and any amendments thereto, as if such Rule is part of MSRB's Rules."[5]

If the primary purpose of the Notice and the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other SROs. Again, this methodology is the most efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers. Maintaining a separate substantive Rule G-26 does not further the regulatory goals as stated in the Notice.

III. Update and Harmonization of Relevant FINRA Rules is Needed

SIFMA and its members recognize that irrespective of the approach the MSRB chooses to take regarding Rule G-26, FINRA 11870 must be amended as soon as practicable to reflect the recent amendments to Rule G-12 relating to close-outs.[6] SIFMA suggests that FINRA delete FINRA 11870(f)(1)(J), and insert a new FINRA 11870(2) as follows, "Any fail contracts in municipal securities resulting from this securities account asset transfer procedure shall be included in a member's fail file and closed-out in accordance with MSRB Rule G-12(h), and any amendments thereto, as if such Rule is part of FINRA's Rules."

Additionally, SIFMA suggests that FINRA consolidate its provisions that relate to the transfer of securities into FINRA 11870. To that end, we recommend that FINRA 11650 be deleted, and its operative language inserted as new FINRA 11870 Supplementary Material .04.

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[5] Another alternative would be structured similarly to current MSRB Rule G-35 on Arbitration, in that bank dealers who are not NASD members are subject to the NASD Code of Arbitration Procedure as if they were a member of the NASD.

[6] 81 Fed. Reg. 57,960 (Aug. 24, 2016). *See also*, the SEC approval of amendments to MSRB Rule G-12 here: http://www.msrb.org/~/media/Files/SEC-Filings/2016/MSRB-2016-07-SEC-Approval.ashx.

IV. Nontransferrable Assets

As described in the SIFMA Close-Out Letter I, [7] there are a number of reasons why securities may fail to settle irrespective of whether the accounts was transferred or not. These reasons include operational errors, trading desk errors, customer-based execution errors, a failure to receive securities (creating chains of fails) or a partial call of the securities in between the trade and settlement dates. These reasons, and changing market conditions, may make it difficult or impossible for dealers to buy-in securities or find similar securities. There are clearly benefits to limiting the time any customer's fully paid for securities are long in their account, but allocated to a firm short. Resolving all shorts promptly through compliance with Rules G-12(h), G-26 and FINRA 11870 minimizes issues and concerns about the tax characterization of the interest paid during the settlement period.

In the Notice, the MSRB suggested FINRA amend Rule 11870(c)(1)(D)'s definition of "nontransferrable asset" to add new section (vii) which would include any customer long position in a municipal security that allocates to a short position. We disagree with the MSRB's analysis this this amendment would reduce counterparty risk and increase customer confidence. This amendment would be disruptive to industry practice, and outside of standard ACATS procedures. Automated systems fail to be efficient if they require manual processes, such as validating if a long municipal security position is allocated to a short firm position. The more efficient alternative is the use of systems such as NSCC's automated fail clearance system, Reconfirmation and Pricing Service ("RECAPS"), which will match a dealer failing to receive with a dealer failing to deliver. A dealer failing to deliver doesn't impact the ACATS transfer; it is merely a settlement issue.

Dealers may sell propriety products that are municipal securities to customers. FINRA 11870 addresses the transferability of these products.

SIFMA notes that in footnote 24 of the Notice, the MSRB suggests that they believe the carrying party is always in the best position to provide the customer with a list of the specific nontransferable assets and request the disposition of such assets. We disagree. Current industry practice and standard is reflected in FINRA 11870(c), which requires either the carrying party or the receiving party to provide the customer with a list of the nontransferable assets and request the customer's desired disposition of such assets. We believe FINRA 11870(c) is the more appropriate approach.

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[7] *See* Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 6, 2016 (regarding MSRB Notice 2016-02 (Jan. 6, 2016) (the "SIFMA Close-Out Letter I"), available at: http://www.sifma.org/issues/item.aspx?id=8589959171.

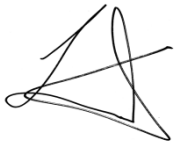
V. Economic Costs and Benefits

SIFMA agrees that existing Rule G-26 is not consistent with the securities industry standard. SIFMA also agrees that the existing rule likely results in uncertainties, inefficiencies and unnecessary costs associated with customer account transfers for all market participants. However, SIFMA believes that the most clear and efficient way to resolve these issues is for dealers to apply FINRA 11870, either directly (due to their FINRA or NYSE membership in the case of the elimination of G-26) or indirectly (as a result of a cross-reference in G-26 to FINRA 11870).

VI. Conclusion

SIFMA and its members support the stated purpose of the draft amendments, but do not agree that the draft amendments are the optimal way to achieve that goal. Again, if the primary purpose of the Notice and the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other SROs. This would be the most efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers. Maintaining a separate substantive Rule G-26 does not further the regulatory goals as stated in the Notice. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful, including working with FINRA to ensure that FINRA 11870 is updated as soon as practicable. 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
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cc: ***Municipal Securities Rulemaking Board***
Robert Fippinger, Chief Legal Officer
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