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Invested in America

February 19, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2012-63 (December 18, 2012):
Request for Comment on MSRB Rules and Interpretive Guidance

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("**MSRB**") initiative to review its rules and interpretive guidance. Our members commend the MSRB for pro-actively soliciting comments to determine whether any rules or guidance should be revised or restated due to changes in market practices or conditions, or to be more closely aligned with rules of other self-regulatory organizations or government agencies so as to promote more effective and efficient compliance.

SIFMA's comments are organized as follows: first, guiding themes which our members believe should direct MSRB rulemaking; and secondly, specific suggestions to revise specific rules due to changed market practices, or promote greater compliance efficiencies.

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

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I. Guiding Themes

SIFMA believes that the following over-arching themes should be woven into the MSRB's rulemaking:

- A level regulatory playing field;
- Fair and efficient regulation;
- Harmonization of competing regulatory requirements;
- Principle-based rulemaking; and
- Balanced and equitable fee structure.

a. Leveling the Regulatory Playing Field for Market Participants

As a result of the Dodd-Frank Act, the MSRB was granted the authority to write rules governing municipal advisors. While SIFMA feels strongly that the issuance of most of these rules should be delayed until the SEC releases its final definition of "municipal advisor," we are concerned that there are a number of financial advisors who have not taken any qualification test or professional examination and are engaging in the business of advising issuers, and most importantly, without disclosing their background as required by registered representatives. Additionally, such independent, non-dealer, financial advisors can use consultants, and make unlimited[2] political contributions and gifts to issuer officials that would otherwise be prohibited for municipal securities dealers under the MSRB's rules. Nor are they subject to a system of supervisory controls or required to retain records or present a statement of financial condition to clients. At this time anyone can hold him- or herself out as a financial advisor. It is important to advance public trust and confidence in the municipal securities market by having professionalism and knowledge standards for all market participants, and also that any such standards are fair and equivalent (and enforced to the same extent – with the same reputational and financial consequences) for different participants engaging in the same activities.

b. Fair and Efficient Regulation

SIFMA and its members believe that evaluating the costs and burdens of new regulation, and weighing those costs against any benefits derived from such new regulation, is critical to ensure efficient regulation. We strongly believe that the vigorous enforcement of existing regulation is integral to confidence in a market. Adding redundant or overly prescriptive regulations won't impact the determined bad actors.

[2] Subject to applicable state and/or local rules and laws.

However, for firms that are trying their best to stay in full compliance, each new regulation represents significant increased costs in systems development, testing, legal analysis, training, compliance monitoring, and regulatory discipline exposure, while those firms must continue serving clients (and remaining profitable.) We reiterate: Only enforcement will halt bad actors in the marketplace. Before any new regulations are created, it first should be determined whether vigorous and consistent enforcement of existing regulations would not be sufficient to address regulators' and market participants' concerns alike.

In evaluating new regulations, regulators should pay particular attention to potential unintended consequences, not just on municipal securities functions within a business entity, but also on unrelated areas of such business entities or market participants. For example, SIFMA has commented to the SEC that the proposed definition of municipal advisor may have significant effects on not only municipal advisor activity, but also banking activity, investment advisor activity and brokerage. Some of the unintended consequences from the SEC's proposal will be further exacerbated by anticipated MSRB Rules related to municipal advisors. Such unintended consequences need to be minimized or eliminated, or else market harm is likely to ensue.

An essential component of this principle is conducting a true, reality-based, (and if possible dollar-specific) cost-benefit analysis of new rule proposals and other initiatives. Fully consider the costs and burdens to both the MSRB and its funders weighed against potential benefits, which we understand are much more difficult to value. The outcome should be the best, most innovative, and least burdensome tool for achieving regulatory ends. In this context, it is important to note that municipal securities dealers often require more time to precisely assess potential costs of a new rule than is usually allowed by the time frame to submit comments in response to a regulatory notice.

With the advent of EMMA, the MSRB has undertaken a new role for itself in the market, which greatly increased fees upon brokers, dealers, and municipal securities dealers. SIFMA supports additional transparency when it would be helpful to the market (after appropriately weighing the potential benefits against the costs and burdens to both the MSRB and its funders), particularly if no additional burdens are put on industry members.

c. Harmonization of Competing Regulatory Requirements

The municipal securities market has many unique characteristics and market participants, with which the MSRB is well familiar and which are too long to list for

purposes of responding to MSRB Notice 2012-63. SIFMA believes that this market benefits from the essential role of persons with extensive market insight and experience making the rules that govern this market. However, most if not all brokers, dealers and municipal securities dealers are subject to other regulatory regimes. Given the absence of any rationale for dual regulation and also considering the extra cost of complying with varying standards for the same conduct, or of requiring firms to simultaneously enforce different standards and collect different /data elements for different sets of regulators, such regulations should be harmonized to the extent possible to promote more effective business practices and efficient compliance. Some examples include: suitability, communications/advertising, political contributions, gifts, document retention, and rules governing interest rate swap disclosures. This principle should equally apply to the forthcoming MSRB rules governing municipal advisors: proper regulatory oversight of municipal advisors can be effected without subjecting already regulated entities (such as banks and broker-dealers) to an additional, unnecessary layer of regulation.

SIFMA also encourages the MSRB to continue to coordinate its regulatory efforts with other regulators of municipal market participants. Additional training of SEC, FINRA, and OCC examiners will only serve to promote efficient enforcement by their examination teams across the country. Our members also believe that the MSRB should be the final regulatory arbiter of interpreting MSRB rules.

d. Principles Based Rulemaking

SIFMA believes that a principles-based approach to rulemaking is preferable to overly rigid, prescriptive, and burdensome "one-size-fits-all" rule making. In our view, principles-based regulation involves a regulator moving away, whenever possible, from dictating the precise path a firm should follow to reach a desired regulatory outcome. This does not remove the need for some detailed rules, but suggests an approach where the analysis does not, as a default, begin with the creation of a rule. Instead it considers first whether firms, supported by regulatory guidance as appropriate, could assume the responsibility to achieve those desired outcomes in the context of their business processes and existing supervisory obligations. This approach would allow each broker, dealer, and municipal securities dealer (and eventually municipal advisors) to create firm-specific policies and procedures tailored to its individual business model.

e. Balanced and Equitable Fee Structure

SIFMA and its members believe that the costs for regulating the municipal securities industry should be shared equitably among market participants. This concept can be parsed in a number of ways. First, SIFMA feels that the broker dealer

community pays a disproportionate amount of the MSRB's cost to regulate the industry, particularly considering the amount of time and effort the MSRB is putting into developing regulations for municipal advisors and outreach to that constituency. Second, there is a feeling that smaller retail-sized trades bear a disproportionate percentage of the cost of regulation, given that these trades are charged the same flat MSRB technology fee that larger trades are charged. In addition, retail-sized trades typically travel through a distribution chain involving multiple transactions, each of which is charged not only the MSRB technology fee, but also the following regulatory fees: MSRB secondary market trading fee, the new Governmental Accounting Standards Board ("GASB") support fee and the FINRA trading activity fee. SIFMA thinks the MSRB should analyze the collective cost of these fees on investors in each segment of the market to ascertain the impact on each type of investor. In addition, we reiterate our previous suggestion that the MSRB undertake a top-to-bottom analysis of its fee structure.

II. Specific Suggestions

SIFMA believes the detailed rule changes suggested in Appendix A are worthy of consideration.

III. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the MRSB rules and related interpretive notices. We look forward to working with you to address the issues set forth above to achieve the common goals of revising and or restating rules or guidance due to changes in market practices or conditions, or to be more closely aligned with rules of other self-regulatory organizations or government agencies so as to promote more effective and efficient compliance.

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

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director
Ernesto Lanza, Deputy Executive Director
Gary Goldsholle, General Counsel
Karen Du Brul, Associate General Counsel

U.S. Securities and Exchange Commission
John Cross, Director, Office of Municipal Securities

Financial Industry Regulatory Authority
Cynthia Friedlander, Director of Fixed Income Regulation

Appendix A

SIFMA's Comments on MSRB Notice 2012-63

The MSRB is conducting a review of its rules and related interpretive guidance and is soliciting comments to determine whether any rules or guidance should be revised or restated due to changes in market practices or conditions, or to be more closely aligned with rules of other self-regulatory organizations or government agencies.

MSRB Rule	SIFMA Comments
Rule G-3. Classifications of Principals and Representatives	The MSRB should permit the Series 7 General Securities Representative exam to qualify an individual to perform all municipal securities representative activities, not just sales activity, whether the exam was completed before or after November 7, 2011. MSRB should not require separate qualification as a Municipal Securities Representative (Series 52) to perform other municipal securities representative activities such as underwriting. The MSRB should work with FINRA to adjust Series 7 exam content as needed to achieve this result, perhaps by adding a municipal market supplement. This change will eliminate confusion and allow for greater flexibility in representative responsibilities. Mobility within a firm for employees with a limited license, such as a Series 52, may be negatively impacted by the current licensing requirements. Additionally, continuing education modules for the Series 52 and Series 53 should be more focused municipal securities activities. The MSRB should similarly work with FINRA to allow the Series 24 General Securities Principal exam or Series 26 Municipal Fund Securities Limited Principal exam to qualify an individual to perform all Municipal Securities Limited Principal (Series 51) activities. Currently, the Series 6 Limited Representative – Investment Company and Variable Contracts Products exam qualifies an individual to process transactions in 529 Plans. If the MSRB and FINRA do not believe that a Series 24 or Series 26 should qualify and individual to supervise transactions in 529 Plans, then, as suggested above, SIFMA believes adding a municipal fund securities supplement to those respective exams would create greater efficiency, while still properly qualifying individuals as registered principals to supervise 529 transactions.

MSRB Rule	SIFMA Comments
Rule G-9. Preservation of Records	The MSRB should reconsider requiring records under Rule G-9(b) to be retained for 3-years rather than 4-years in order to be consistent with the SEC's Exchange Act Rule 17a-4. This will reduce administrative efforts and costs associated with retaining records for an additional year especially with respect to electronic communications. Real time transaction data is available for review on a daily basis. When a periodic examination is conducted, FINRA reviews a sampling of transactions occurring during the period of review. The substantial costs of requiring additional record keeping for ***all*** dealers (especially those dealers that are examined on an annual or semi-annual basis – which is likely to be a more or less static list of dealers) so that certain records would be available to review at those dealers that are examined in year four of the proposed four year review cycle (i.e. dealers with the smallest footprint or risk profile) should be weighed against the nominal benefit of allowing FINRA to review a few records from "year one" for that subset of dealers.
Rule G-10. Delivery of Investor Brochure	The MSRB should eliminate the requirement to deliver a copy of an investor brochure to a customer promptly upon receipt of a complaint. In practice, the brochure content is not germane to the complaint and its delivery can result in a further complaint from a customer concerning receipt of an unwelcome brochure, leaving the member in the precarious position of having to send *another* brochure in order to be in compliance. The investor brochure is of limited, if any, value to institutional customers, as well as purchasers of municipal fund securities. When Rule G-10 was implemented, the MSRB's web site did not exist. The MSRB can alternatively accomplish the objective of Rule G-10 by posting the content of the investor brochure on the MSRB web site.

MSRB Rule	SIFMA Comments
Rule G-11. Primary Offering Practices	The MSRB should consider the following regarding primary offering practices: G-11(e): Currently requires a syndicate manager (or sole underwriter) to give priority to customer orders over orders by members of the syndicate for their own accounts or orders for their respective related accounts (or orders for the sole underwriter's own account or orders for its related accounts), unless otherwise agreed to with the issuer. The MSRB should (i) revise this provision to allow underwriters to treat syndicate member (or sole underwriter) and affiliate orders for their own accounts equally with customer orders, with disclosure to issuer of the implication of such treatment and requiring dealers to give the issuer the ability to opt-out of such equal treatment; and (ii) specify that this particular provision applies only to negotiated underwritings, and not to competitive underwritings. Allocation of bonds to such syndicate orders would still be subject to the overriding requirement of Rule G-11(e) that such allotment be in the best interests of the syndicate consistent with the orderly distribution of securities in the offering. G-11(f): Currently requires the senior syndicate manager to furnish in writing to the other members of the syndicate a written statement of all terms and conditions required by the issuer, prior to the first offer of any securities by a syndicate. It would be helpful in determining whether G-11(f) is consistent with current industry practice if the MSRB would clarify what is meant by "first offer of any securities" . G-11(g): Modernize rule to be consistent with current market and industry practice. G-11(g) requires the senior syndicate manager to disclose to the other members of the syndicate, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated. It is industry practice to disclose this information for group net and net designated orders. To the extent that any given transaction has a retail order category that carries a higher priority than group net, the rule would require disclosure of the allocations to this category as described above; however, industry practice is that this retail order allocation disclosure is not made (only group net and net designated). G-11(h): Modernize rule to be consistent with current market and industry practice. G-11(h) requires the senior syndicate manager to furnish to the other members of the syndicate a summary statement showing the identity of each person submitting a group order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated. This has raised privacy concerns and has resulted in an industry practice not to disclose the identity of natural persons, but instead to state "retail account" or similar.

MSRB Rule	SIFMA Comments
Rule G-14. Trade Reporting	Repos, TOBs, ETFs: The MSRB should reconsider the requirement to trade report certain transactions which do not add to market transparency such as transfers of municipal securities that underlie repurchase agreements ("repos"), tender option bond ("TOB") deposit and withdrawals with trustees, and the creation and redeeming of exchange-traded funds ("ETFs"). The municipal market is the only market that requires repo reporting. While repo reporting agreements for single name municipal securities must be reported to the MSRB, they are not disseminated to the public as their price is not indicative of current market values (such trades should be coded M9c0 special condition indicator). This reporting regime as it relates to municipal repos places an unreasonable burden on firms. Repo trades are typically processed in modules of trade processing systems that are funding modules, not cash trading modules; and funding modules are not built to accommodate trade reporting. Data elements that are required for G-14 trade reporting do not map to the features of repo trades. Some firms have devised work around processes and others have chosen to limit their participation in this market. Other than the trade reporting requirements of G-14, the MSRB has no regulatory authority over repo transactions. Therefore, this requirement should be eliminated. With respect to TOBs, transfers to and from the trustee should not be subject to trade reporting requirements. The reporting is duplicative as generally any purchase or sale back to a customer is already being reported. Industry practices are inconsistent across the dealer community and should the MSRB decide to continue requiring reporting for TOBs, the reporting requirements need to be more clearly articulated. Similarly, trade reporting of trades in connection with creating and redeeming ETFs does not further providing beneficial data to market participants, as recently recognized by FINRA in its amendments to FINRA Rule 6730(e). This amendment excluded from Trade Reporting and Compliance ("TRACE") trade reporting requirements of TRACE-Eligible Securities for the sole purpose of creating or redeeming instruments such as ETFs. Trade Corrections: The MRSB should exclude trade corrections from contributing to a firm's late reporting statistics when completed outside of the prescribed reporting window. Broker-dealers, for a variety of reasons including price improvements, may need to correct trades and should not be penalized when corrections occur outside of the 15 minute reporting window. RTRS Procedures: With respect to the pending change to the Rule G-14 RTRS Procedures, section (a)(ii)(B) described in MSRB 2012-64, the MSRB should consider tightening up the language to read "…short-term instruments maturing in **with original maturities of** nine months or less…" As written, the language is ambiguous as to how the phrase "short-term instruments maturing in nine months or less" is to be understood; i.e., does that phrase mean short-term instruments with "original" maturities of nine months or less, or short-term instruments with "remaining" maturities of nine months or less? The phrase "maturing in" can reasonably be read to have either meaning. It is our understanding that the MSRB intends this phrase to mean "original" maturities; and therefore MSRB should eliminate the ambiguity and revise this phrase as noted. Finally, the MSRB should work with NYSE to eliminate trade reporting requirements that create barriers to listing municipal securities on NYSE.

MSRB Rule	SIFMA Comments
Rule G-15. Confirmations	The MSRB should make interpretations concerning yield calculations under Rule G-15 consistent with FINRA's and the SEC's interpretations under Exchange Act Rule 10b-10 so that yield information is presented consistently regardless of product. Furthermore, the MSRB should more generally harmonize G-15 with SEC Rule 10b-10 with respect to specific points of information required to be disclosed.
Rule G-17. Fair Dealing	SIFMA is encouraged that the MSRB will reorganize or eliminate certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles. Incorporating certain interpretive notices into the rules themselves will make the rules easier to understand by investors, issuers, dealers, and regulatory examiners. We also urge the MSRB to provide additional guidance to assist dealers in implementing the interpretive guidance on disclosure obligations to their state and local government clients. A number of specific suggestions for consideration are: establishing and defining a "sophisticated issuer" (for which underwriters would not be required to send the disclosures currently required); providing for a co-manager *de minimis* exception from sending such disclosure letter for participations below a certain level; and requiring an issuer's financial advisor to provide the requisite disclosures instead of the underwriter.
Rule G-19. Suitability of Recommendations	The MSRB should make the investor profile information required to be obtained under Rule G-19 consistent with that required under FINRA Rule 2111 rather than with legacy NASD Rule 2310 given the substantial industry effort and expense associated updating systems and processes to comply with Rule 2111. The MSRB should make its interpretation regarding what constitutes a "recommendation" consistent with FINRA's including that it generally requires a "call to action" given changes to the municipal securities markets including expansion of offerings and alternative trading systems.

MSRB Rule	SIFMA Comments
Rule G-21. Advertising	The MSRB should harmonize the requirements governing communications with the public (i.e. correspondence, communications with retail customers, communications with institutional customers) with FINRA 2210.
Rule G-23. Activities of Financial Advisors	The MSRB should assess the impact of recent changes to Rule G-23, particularly the impact on small issuers and small issues of bonds, where there are frequently a limited number of potential underwriters in both negotiated and competitive underwritings. Additionally, consistent with the Rule's objectives, a financial advisor should be allowed to serve as a placement agent as long as it is appropriately registered as a broker dealer, is not taking a principal position in the bonds and acting on behalf of the issuer and not the purchaser.
Rule G-27. Supervision	The MSRB should harmonize its requirements governing supervision with FINRA's 3100 rule series. Additionally, the MSRB should review requirement that each office of supervisory jurisdiction must have an appropriately registered principal on site in cases where such office is staffed by one person. Requiring a person in a one person office to have a principal registration does not advance any public policy objective, since such a person would not be expected to supervise him or herself.
Rule G-32. Disclosure in Connection with Primary Offerings	The MSRB should establish parameters around the definition of a business day for purposes of submitting an official statement for a primary offering of municipal securities (as is the case of an RTRS Business Day under Rule G-14(d)(ii)). There should be an end of day cut off, such as 5:00pm local time, and federal and state holidays should be excluded. In connection with competitive underwritings, financial advisors should be responsible for submission of Preliminary Official Statements, supplements thereto, and Official Statements to EMMA. With respect to filings for commercial paper transactions ("CP"), the rule should clarify who has filing responsibilities and the timing of such filings: 1) for programs with more than one remarketing agent; 2) for programs with multiple tranches; and 3) for programs where no securities are offered to investors at the time of program closing. When a program has more than one remarketing agent, the rules do not provide guidance as to who has the filing responsibility requirement. For multiple tranche issues, the EMMA system today requires dealers to set up each tranche separately and upload the offering statement for each tranche. This is unduly burdensome. In addition, should a filing be late, FINRA's G-32 report card charges the reporting dealer with multiple lates for the filing of a single document. EMMA should be upgraded to permit remarketing agents to associate one document upload with the multiple tranches associated to this document. The MSRB should also consider the fact that issuers periodically update offering documents and dealers should have an option in EMMA to replace the offering document without having to set up the issue as a new issue. Issuers do not want the updated document to be filed as continuing disclosure, but prefer it to be visible on the "Official Statement" tab. When a new CP program is initiated, there may not be any CP offered to investors at that time. The current rule is unclear as to whether there is a filing requirement if there has not been any offering made to investors. If a dealer waits to file when there is a public offering, they are recorded on the FINRA G-32 report card as having filed late.
Rule G-34. CUSIP Numbers, New Issue, and Market Information Requirements	For direct purchase transactions that involve a syndication, the MSRB should allow for no CUSIP number assignment or depository eligibility application if the bonds are going to be delivered in physical form. Additionally, the requirement pursuant to G-34(a)(ii)(B) to affix CUSIP numbers to all securities certificates should be updated to reflect current market practices.

MSRB Rule	SIFMA Comments
Rule G-37. Political Contributions	The MSRB should make the *de minimis* exception for political contributions under Rule G-37 ($250 if entitled to vote) consistent with the *de minimis* exception under the SEC's Advisers Act Rule 206(4)-5 and CFTC External Business Conduct Standards 23.451 ($350 if entitled to vote or $150 if not entitled to vote) since many firms are subject to multiple rules. This lack of uniformity amongst the MSRB, SEC and CFTC rules makes it difficult for firms to develop comprehensive compliance systems and standards, and to provide employees clear and consistent guidelines for permissible political activity. We also note that Rule G-37's lack of a *de minimis* exception with respect to contributions by donors outside a candidate's voting district may have a disparate adverse impact on minority candidates and contributors. Additionally, in light of the primary offering data submitted to the MSRB and available on EMMA, the requirement of G-37(e)(i)(c) to list ***all*** issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business during such calendar quarter, listed by state, along with the type of municipal securities business, is no longer warranted in this format. Only transactions that are in the jurisdiction of a reportable political contribution made within some period of time of such transactions, if any, should continue to be reportable under this rule. Finally, the MSRB should consider revising the definition of a municipal finance professional (MFP). Certain activities reflected in the current definition of MFP are overly broad. At a minimum, these should carry a rebuttable presumption standard. For example: • "Deeming" an individual that does not primarily engage in municipal securities business as having engaged in a "solicitation" because of their receipt of an internally designated revenue production credit without any additional activity or behavior on the part of such individual. • "Deeming" an individual that does not primarily engage in municipal securities business as having engaged in a "solicitation" because of such individual's presence in the room while municipal securities business is being discussed with an issuer without any additional activity or behavior by such individual.