



May 6, 2013

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

**Re: MSRB Notice 2013-07 (March 11, 2013):
Request for Comment on Revisions to Suitability Rule: MSRB Rule
G-19**

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”) Request for Comment on Revisions to Suitability Rule (MSRB Rule G-19²) (the Proposal). As it has in the past³, SIFMA continues to support the harmonization of Rule G-19 with Financial Industry Regulatory Authority (“FINRA”) Rule 2111.

I. Harmonization with FINRA 2111

SIFMA supports the MSRB efforts to harmonize MSRB Rule G-19 with FINRA Rule 2111 – as current Rule G-19 had been harmonized with the predecessor rule to FINRA 2111, NASD 2310. Such harmonization will promote more effective business practices and efficient compliance. Additionally, SIFMA concurs with the MSRB that for purposes of conducting a customer suitability analysis, the factors to consider when developing their investment profile should contain the same components across financial products: there are no unique attributes of customers purchasing municipal securities

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

² MSRB Notice 2013-07 (March 11, 2013) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-07.aspx>.

³ See comment letter from David L. Cohen, SIFMA, to Ronald W. Smith, MSRB, dated February 19, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589942049>.

warranting distinct investment profile elements. SIFMA's members, and others, have worked with FINRA over many years to fine-tune, and enhance customer facing and back office recordkeeping systems, and train and educate their registered representatives about FINRA 2111's new requirements. FINRA continues to provide guidance, most recently issuing Frequently Asked Questions about this new rule⁴.

II. Differences between the Proposal and FINRA 2111

SIFMA notes that there are certain differences between FINRA 2111 and the Proposal. Yet our analysis has not identified unique attributes of the municipal securities market that would justify differences between G-19 and FINRA Rule 2111 – except for the application to 529 securities, as further detailed below. We believe the MSRB should eliminate or justify any other differences – as separate rules covering the same conduct will unnecessarily lead to regulatory confusion and increased compliance costs.

i. Application to SMMPs

As noted in the Proposal “[p]rovisions in guidance to Rule G-17 exempt dealers from the duty to perform a customer-specific suitability determination for recommendations to sophisticated municipal market professionals (“SMMPs”). FINRA’s suitability rule has similar provisions with respect to institutional accounts. The MSRB does not propose incorporating the SMMP exemption into Rule G-19.” SIFMA’s members would prefer the MSRB to explicitly include the SMMP exemption in G-19 as with the institutional account exemption in FINRA 2111(b), even though the MSRB has proposed separate rules codifying current SMMP guidance⁵. We believe the current Proposal should at a minimum cross reference the forthcoming SMMP rules – in a similar fashion to which proposed Rule G-47 is referenced in the Proposal. The MSRB’s omission of its SMMP exemption from this “harmonized” suitability rule risks this unnecessary regulatory confusion. Separately, it is our understanding, as reaffirmed in MSRB Notice 2013-10, that nothing in the Proposal impacts current G-17 Securities and Exchange Commission (“SEC”) approved guidance⁶ that exempts dealers from the duty to perform a customer-specific suitability determination for recommendations to SMMPs.

⁴ See FINRA Rule 2111 (Suitability) FAQ, December 11, 2012, available at <http://www.finra.org/Industry/Issues/Suitability/>.

⁵ See MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx>.

⁶ See MSRB Notice 2012-27 (May 29, 2012) (SEC Approves Revised MSRB Definition of Sophisticated Municipal Market Professional) available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-27.aspx>.

ii. Supplementary Material – Exclusions from Recommended Strategies

The SEC, in its 2012 report on the Municipal Securities Market, expressly calls for amending Rule G-19 to be consistent with FINRA’s Rule 2111 “including with respect to the scope of the term strategy.”⁷ However, in proposed Supplementary Material, the MSRB omits important exclusions from Recommended Strategies to be covered under Rule G-19 that are present in FINRA’s suitability rule in the absence of the recommendation of a particular security including with respect to: descriptive information about an employee benefit plan; asset allocation models such as investment analysis tools; and other interactive investment materials. The omission of these exclusions solely with respect to municipal securities will result in continued confusion for firms in implementing and maintaining suitability procedures and recordkeeping and is contrary to the MSRB’s stated goal of promoting more effective and efficient compliance. Materials and output of this nature provide investors with valuable information when considering investment decisions and should be recognized by MSRB as exclusions from the requirements of Rule G-19.

SIFMA supports the inclusion of “general comparisons between tax-exempt and taxable bonds and the concept of tax-equivalent yield” as the type of general and investment information that would be excluded from coverage by Rule G-19 as long as such information does not include (standing alone or in combination with other communications) a recommendation of a particular municipal security or municipal securities. SIFMA suggests additionally listing 529 plan education savings calculator and tools as a type of excluded “general and investment information”.

III. Proposed Deletion of MSRB Interpretive Notice 2002-30

Under the Proposal, the MSRB has identified MSRB Notice 2002-30⁸ for rescission and to be superseded by revised Rule G-19. SIFMA supports the rescission of this notice as such rescission reflects the evolution and expansion of municipal securities offerings through alternative trading systems, other online trading platforms, and technological advances over the past decade and further harmonizes with FINRA guidance on what constitutes a “recommendation” in the online context.

IV. Clarification Related to 529 Plans

SIFMA requests clarification of endnote 15 that reads: “This does not include suitability obligations with respect to 529 plans. The MSRB proposes including these

⁷ SEC’s Report on the Municipal Securities Market, page 141 (July 31, 2012) available at <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

⁸ MSRB Notice 2002-30 (September 25, 2002): Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-30.aspx?n=1>.

obligations in a separate rule for 529 plans.” We believe that this endnote and the text in the proposal that it accompanies creates confusion about the applicability of the proposed rule to firms selling 529 plan securities. In lieu of a separate suitability rule for 529 plans, we suggest that the MSRB consider incorporating existing interpretive guidance related to suitability assessments for 529 plans⁹ into the proposed rule, either by adding a sentence to the proposed Rule G-19 specific to assessing the suitability of a 529 plan security, or in the alternative, by incorporating this existing interpretive guidance into the Supplementary Material.

V. Reconciliation of Comments and Synchronization of Effective Dates for the Proposal, Proposed Rule G-47, and Proposed Rule G-48

Given the proposed cross reference in Rule G-19 to proposed Rule G-47 with respect to satisfying reasonable basis suitability, SIFMA appreciates the MSRB’s careful consideration of comments submitted in response to MSRB 2013-04 including the scope of a municipal securities dealer’s time of trade disclosure obligation. In addition, as noted above, and in SIFMA’s comments to the MSRB regarding proposed Rule G-47¹⁰, the determination of a customer’s status as an SMMP means that certain of a dealer’s fair practice obligations will be deemed as fulfilled. Currently these circumstances are detailed in MSRB Notice 2012-27. We commend the MSRB’s recognition of the interdependencies of the proposed revisions to Rule G-19, proposed Rule G-47, and proposed Rule G-48 (Transactions with Sophisticated Municipal Market Professionals) by intending to file each of these rule proposals with the SEC at the same time.¹¹ SIFMA respectfully requests that these three rule making proposals be implemented simultaneously with the same effective date.

VI. Implementation Period

As noted above, FINRA 2111 was the result of a multi-year process – including an implementation period of approximately 19 months¹². Any regulatory scheme takes time to implement properly. Municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training. Municipal securities dealers that are FINRA members will also need time, albeit less than

⁹ See MSRB Notice 2006-07, MSRB Files Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans with the SEC, (March 31, 2006), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2006/2006-07.aspx?n=1>

¹⁰ See comment letter from David L. Cohen, SIFMA, to Ronald W. Smith, MSRB, dated March 12, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589942417>.

¹¹ See MSRB Notice 2013-10.

¹² In November 2010, the SEC approved FINRA Rule 2111 (Suitability), which became effective on July 9, 2012.

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non-FINRA members, to implement the proposed changes to Rule G-19. Therefore, SIFMA requests an implementation period, which would be no less than one year from approval by the SEC, before the Proposal becomes effective.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the harmonization of Rule G-19 with FINRA Rule 2111 as detailed above.

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 L. Goldsholle, General Counsel

Lawrence P. Sandor, Deputy General Counsel – Regulatory Support