



June 2, 2021

VIA ELECTRONIC SUBMISSION

Jake Lesser
General Counsel
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: SIFMA Concerns Regarding Amendments to Rules G-19 and G-48

Dear Mr. Lesser,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to address an issue regarding recent amendments to Rules G-19 and G-48 with the Municipal Securities Rulemaking Board (“MSRB”). As the MSRB continues its retrospective review of its rulebook, we appreciate the MSRB’s willingness to listen to industry members regarding their thoughts on the rulebook. We welcome this opportunity for a constructive conversation on this issue with the MSRB.

On June 25, 2020, the Municipal Securities Rulemaking Board (MSRB) received approval² from the U.S. Securities and Exchange Commission (“Commission”) for amendments to MSRB rules that aligned MSRB rules to the Commission’s then recently adopted Rule 15l-1 under the Exchange Act³ (“Regulation Best Interest”). In MSRB Notice 2020-13 (the “Notice”), the MSRB announced the approval of harmonization of the MSRB rules with Regulation Best Interest. The Notice stated, “Regulation Best Interest was adopted to establish a new standard of conduct for broker-dealers and the natural person associated persons of a broker-dealer (collectively, “broker-dealers”) when they make a recommendation to a *retail* customer, defined generally as a natural person or the legal representative of such person, who receives and uses a

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² Exchange Act Release No. 89154 (June 25, 2020) (File No. SR-MSRB-2020-02).

³ 17 CFR 240.15l-1.

recommendation from a broker-dealer primarily for personal, family, or household purposes, of any securities transaction or investment strategy involving securities (emphasis added).”⁴ There was no stated intent in Regulation Best Interest to change standards related to recommendations to institutional or clients other than retail customers who are natural persons.

The amendment to Rule G-19 eliminated the language stricken below (the “Control Requirement”) from clause (c) of Supplemental Material .05 (the “Quantitative Suitability Requirement”). There are also corresponding amendments to Rules G-8, 9, 20 and 48. The suitability exemption afforded to sophisticated municipal market professionals (“SMMPs”) as provided by Rule G-48(c) does not apply to clause (c) of the Supplemental Material .05. Some SIFMA members believe that as a result of removal of the language stricken below in the Supplemental material, the Quantitative Suitability Requirement may now be applicable to SMMPs with non-discretionary accounts, as Rule G-48 only exempts the customer specific suitability requirement. Section (c) of Supplemental Material .05 was amended to read:

(c) Quantitative suitability requires a broker, dealer or municipal securities dealer ~~who has actual or de facto control over a customer account~~ to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule G-19. No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a broker, dealer or municipal securities dealer has violated the quantitative suitability obligation.

Our concern relates specifically to this elimination of the Control Requirement language in Rule G-19 from clause (c) of Supplemental Material .05 relating to the Quantitative Suitability Requirement exemption for SMMPs. We note that on page 6 of MSRB Notice 2020-13, there is a reference to natural person SMMPs, and feel this reference is consistent with the notion that the intended amendments were only to change the standard for SMMPs who are natural person. SIFMA members feel strongly that the Quantitative Suitability Requirement in Rule G-19 should be clarified, and interpreted as applicable only to natural person SMMPs, but not to institutional SMMPs. Extending the Quantitative Suitability Requirement to all SMMPs would be unduly costly and burdensome and would does not harmonize the MSRB rules with Regulation Best Interest. Regulation Best Interest has changed many aspects of the relationship between broker dealers and their retail customers. Extending Regulation Best Interest to also include institutional and other non-natural persons SMMPs would necessarily alter those relationships as well, in costly and fundamental ways, and exceed the intended scope of the rule changes. SIFMA and its members urge the MSRB to clarify that the Quantitative Suitability Requirement in Rule G-19 does not apply to SMMPs who are not natural persons.

⁴ MSRB Notice 2020-13.

Although SIFMA recognizes that the MSRB's goal was harmonization between FINRA and MSRB with the Reg BI and quantitative suitability amendments, SIFMA believes that it is important to analyze the differences between how MSRB treats SMMPs in Rule G-30 versus how FINRA treats exempt institutional investors ("EII") in FINRA 2111 Supplementary Material: .07.

There are a number of areas where MSRB currently treats SMMPs differently than FINRA treats EIIs. SIFMA acknowledges that MSRB exempts SMMPs from G-19 customer-specific suitability, and FINRA also exempts EIIs from FINRA 2111 customer-specific suitability. However, this is where the similarities end. MSRB also exempts SMMPs from the application of its "best execution" rule standards; while FINRA does not exempt EIIs from application of its "best execution" rule standards. MSRB also exempts SMMPs from the application of its fair and reasonable pricing standards in G-30 in certain circumstances, while FINRA does not exempt EIIs from application of its similar fair prices and commissions rule in FINRA 2121.

Further, the MSRB has recently proposed to treat SMMPs differently from non-SMMPs in the mailing of the G-10 annual notice. This is yet another difference in treatment that SIFMA supports.

The MSRB has a long history of treating SMMPs differently from non-SMMPs, based on a reasoned recognition of the differences between these two investor classes and the relative protections that should be afforded to both. SIFMA is requesting MSRB to make another reasoned departure in how it treats SMMPs from how FINRA treats EIIs with respect to the Quantitative Suitability Requirement; and how it treats SMMPs vs how it treats non-SMMPs. Just as MSRB has determined that SMMPs do not need the protections of its "best execution" standards despite the fact that FINRA has not taken the same position for EIIs, we are asking MSRB to also determine that SMMPs do not need the protections of the quantitative suitability standards that became effective with the recent amendments to Rule G-19, even though FINRA may not take the same position. There is already precedent for MSRB to do so, and for the same reason that MSRB has determined to treat SMMPs differently from how it treats non-SMMPs as noted above, it should do so for quantitative suitability as well.

Thank you for considering SIFMA's comments. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Gail Marshall, Chief Regulatory Officer
David Hodapp, Director, Market Regulation