



April 27, 2026

VIA ELECTRONIC SUBMISSION

Ernesto Lanza
Chief Regulatory and Policy Officer
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Comments on MSRB Rule G-12(h) on Fails and Close-Outs

Dear Mr. Lanza,

SIFMA¹ appreciates this opportunity to work with you on issues related to ensuring timely close-outs of failed municipal securities transactions pursuant to MSRB Rule G-12(h) (the “Rule”). SIFMA also applauds the MSRB’s ongoing overall efforts to modernize its rules to reduce undue compliance burdens on regulated entities while continuing to provide appropriate investor and issuer protections.

The MSRB’s 2016 amendments to the Rule greatly reduced settlement fails. However, settlement fails continue to occur in the municipal securities market and moreover, there have been recent regulatory enforcement actions with significant fines. Many of these remaining fails arise from market structure and clearing system mechanics—rather than dealer inaction or misconduct. Issuer behavior (e.g. back-dated calls and redemptions) and Continuous Net Settlement (“CNS”) pairing dynamics contribute to settlement fails. These operational challenges limit the degree of control broker-dealers can exercise over settlement outcomes and complicate compliance with Rule G-12(h)’s close-out framework. Dealers that demonstrate efforts to comply by acting in a reasonably commercial manner should not be found in violation of the Rule. Regulatory change in this area is needed without further delay.

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).

In furtherance of the MSRB's stated goals, it should:

- Clarify that Rule G-12(h) does not and has never imposed strict liability on a purchaser if an inter-dealer fail-to-receive persists for more than 10 or 20 calendar days (inclusive of extensions), as the case may be, given that the broker-dealer is constrained by investor client considerations and operational and other market structure issues;
- Make clear in the Rule that both the firm failing to receive and firm failing to deliver securities have responsibilities pursuant to the Rule, with the firm failing to receive operationally obligated to initiate close-out action; and
- Require firms to exit transactions that fail to settle from the CNS process at the Depository Trust and Clearing Corporation ("DTCC"), and issue interpretative guidance regarding the use of DTCC's Reconfirmation and Re-pricing Service ("RECAPS") for municipal securities.

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I. MSRB Should Clarify That MSRB Rule G-12(h) *Does Not Impose Strict Liability* on a Purchaser if an Inter-Dealer Fail-to-Receive Persists for More Than 10 or 20 Calendar Days

The MSRB must clarify that, contrary to apparent recent interpretations by FINRA via enforcement actions in this area, the Rule *does not impose strict liability* on a purchaser if an inter-dealer fail-to-receive persists for more than 10 or 20 calendar days after settlement date (inclusive of extension[s]), as the case may be, if the broker-dealer is constrained by investor client considerations and operational and other market structure issues.

Failed municipal securities transactions and issues related to closing out those failed transactions remain a problem and there are several reasons why municipal securities transactions may fail to settle. Reasons include operational errors, trading desk errors, issuer action events such as failed deliveries following back-dated calls, partial redemptions, a partial call of the securities in between the trade and settlement dates, or a late notification of a call, all resulting in failure to receive/deliver securities (creating chains of fails).² In the scenarios described above, broker-dealers are frequently placed into involuntary short positions in municipal securities. For example, if an issuer backdates a call and the client has sold and settled its municipal security prior to announcement of the call, it may not be possible to cure. Unlike other asset classes, municipal securities are often less liquid, making it difficult or impossible to source replacement securities to affect a buy-in within prescribed timeframes or at all, particularly as securities are partially redeemed over time.³ Additionally, the Rule and related FAQs do not reflect the

² There are instances where DTCC has permitted back-dated call notices. This practice should be prohibited, as it effectively passes (and perpetuates) a problem, such as a missed call, onto parties that had no participation (or culpability) in the initial omission, error or wrongdoing, as the case may be. When DTCC accepts a back-dated call notice, it creates an inordinate amount of problems for broker-dealers and investors, who were trading on the information available when they made their investment or trade decision. To impose a material change to that analysis, ex post facto, is de facto an unfair market practice.

³ Importantly, when Rule G-12 (h) was originally adopted and later amended, Regulation Best Interest was not yet in effect. Since June 2020, broker-dealers have been subject to an affirmative obligation under Regulation Best

scenario where the parties did not transact together, but were “paired off” during the CNS process at DTC.

Holding a dealer to a strict liability standard through enforcement of Rule G-12(h) does not adequately reflect these market structure constraints or the limited control broker-dealers have over processing outcomes. These reasons, coupled with changing market conditions and the historically, and comparatively, illiquid municipal securities market,⁴ may make it difficult, if not impossible, for brokers, dealers, or municipal securities dealers (collectively, “broker-dealers”) to buy-in securities or find “comparable” securities, pursuant to Rule G-12(h). The MSRB and other regulators should not mandate that there be a successful buy-in by the firm with the fail-to-receive in order to be in compliance with G-12(h), especially if there is no current market for the bond. Further, as set forth below, while G-12(h) provides the alternative option of “requir[ing] the selling dealer to repurchase (‘mandatory repurchase’) the securities...” this has proven difficult to accomplish in practice, hence the recommendation we provide below to clarify the responsibility of the selling dealer to cooperate with close-out action taken.

Furthermore, regarding the alternative option of offering “a transaction in municipal securities which are comparable to those originally bought...”, what constitutes a comparable municipal security is not fully defined. Differing features, such as tax treatment, yield, call features, redemption rights or reinvestment risks render it difficult to find a comparable municipal security that is economically equivalent or otherwise suitable for a retail client. SIFMA recommends the MSRB to consider removing the option to accept a comparable municipal security from the language of the Rule, as member firms have never actually utilized this close-out in practice. While offering a comparable municipal security may work in theory, municipal bonds are not fungible, and this option is not actually workable in practice, thereby rendering it a futile choice.⁵

Interest, which applies to recommendations to retail customers, to act in the best interest of retail customers, including an obligation to exercise reasonable diligence, care, and skill to avoid placing customers in a worse position where reasonably available alternatives exist. In practice, broker-dealers are increasingly confronted with circumstances in which compliance with Rule G-12(h)’s close-out framework—particularly forced buy-ins or substitutions under illiquid market conditions—can result in placing customers in worse positions or otherwise resulting in unnecessary market impact. Forced buy-ins often entail offering clients significant premiums over market price which can result in off-market prints in trade reporting. In these situations, firms are effectively required to choose between strict compliance with Rule G-12(h) and their obligations under Regulation Best Interest. This tension underscores the need for the MSRB to modernize the Rule to incorporate a reasonableness standard that appropriately reflects current post-Reg BI investor protection frameworks, and the remedies available to broker-dealers in resolving certain failed municipal securities transactions.

⁴ In 1973, the SEC issued an order providing for an “indefinite suspension” of SEA Rule 15c3-3(m) buy-in requirements for certain kinds of fails to deliver with regard to certain exempted securities, including municipal securities, precisely because of their illiquidity. Pursuant to the SEC 3-3(m) order, the SEC formally acknowledged the “operational hardships that may result from attempts to buy-in exempted securities, particularly municipal obligations,” and in particular, that “[t]he Commission has been advised that primarily because of the very thin floating supply and numerous serial maturities of municipal obligations such securities may be difficult to buy-in and very often contracts to purchase such obligations may remain failing for long periods of time.” 38 Fed. Reg. 12103, May 9, 1973.

⁵ MSRB Rule G-30 Supplementary material .02 sets forth the prevailing market price “waterfall” for determining fair pricing, which states the relevant factors in determining the fairness and reasonableness of prices.

The most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and

Notably, the DTCC template buy-in notice in connection with such close-out actions under the Rule does not even provide any option for the counterparty receiving such notice to deliver a comparable bond.

Additionally, we have been told by SIFMA members:

- If a firm is failing to receive and deliver the same security, FINRA's expectation is that the firm close-out the failure to receive. If firms take FINRA's expected approach, this would create instances in which firms are now short municipal securities with limited or no recourse. It is important that the MSRB clarifies responsibilities to avoid this situation;⁶
- When dealers are unable to close-out short positions and then must notify customers regarding the tax status of certain interest payments, FINRA is of the view that dealers should be sending such notice to RVP/DVP clients, and the failure to do so violates MSRB Rule G-17. For such RVP/DVP clients, firms do not produce tax documentation for these clients and since they are not the custodian, would have no insight into whether the client's custodian has possession or control of a sufficient number of securities that would require notification of substitute interest to the client. We believe reconsideration of this view is warranted. In the absence of such reconsideration, the market should be put on notice through specific guidance; and
- As described above, settling the failed transaction with comparable securities is virtually never an acceptable solution for a customer. Unlike equity securities, municipal securities are not fungible. Each credit and maturity brings its own set of risks and benefits. Offering settlement with comparable securities in the MSRB Rules creates a regulatory red herring, and this option should be removed from the Rule.

A strict liability standard in the Rule is unfair to broker-dealers, who are constrained by investor client considerations and operational and other market structure issues. The MSRB should clarify the standard in the Rule to a reasonableness standard,⁷ to reflect the realities of the marketplace. In doing so, the MSRB can take into account the following and ensure that all regulatory guidance related to the treatment of municipal securities should come from the MSRB and remember the MSRB's Proposed Amendment to Rule G-12(h) in 2016. In January 2016,

block size then available in the market. Using comparable securities as a guide for pricing is very different than expecting a customer to accept such a security as a substitute for one they expected to own. As mentioned above, municipal securities are not fungible, and customers should not be expected to accept a comparable security.

⁶ It should be noted that this is at odds with the Exam Priorities FINRA issued in 2023 which state: "What is your firm's process to close out fails-to-receive and fails-to-deliver in accordance with the methods and time frame prescribed under MSRB G-12(h)?" <https://www.finra.org/sites/default/files/2023-01/2023-report-finra-examination-risk-monitoring-program.pdf>.

⁷ Examples of how a broker-dealer could demonstrate unsuccessful "reasonable" steps taken to resolve these various issues include the following scenarios: (1) documenting communications with the client and attempts to buy-in the securities; (2) documenting communications with a customer regarding an account for which the purchaser rejects the option of the seller to repurchase the securities, and (3) documenting communication with the customer rejecting receiving comparable securities.

MSRB requested comment on amendments to Rule G-12—the first update in 30 years.⁸ There, the MSRB itself acknowledged that perfection (*i.e.*, zero fails) was not the standard, and it should adopt this stance today:

*[T]he MSRB is aware that there are dealers, who would like to resolve inter-dealer fails, but, in the absence of a willing or cooperative counterparty, are unable to do so, because the existing rule does not mandate resolution. Selling dealers that are unable to deliver securities may wish to resolve the fail to relieve them of the market risk associated with any increases in the price of the securities, purchasing dealers may wish to resolve the fail to ensure that they may confidently sell the securities to their customers without risk of leaving their customers with a long position allocated to a firm short position, ensure they are receiving tax exempt interest, or taking other actions that may be costly or detrimental to their customer. By shortening the timelines in the rule, and making completion of the transaction mandatory, the MSRB believes that the total number of inter-dealer fails will decline, the resolution of inter-dealer fails will occur more quickly, and dealer risk will be reduced.*⁹ (emphasis added).

*[P]urchasing dealers may lack sufficient enforcement mechanisms to resolve inter-dealer fails and may have to frequently resort to more costly methods such as arbitration.*¹⁰ (emphasis added).

Therefore, the MSRB acknowledged that it expected the number of fails to decline under the amendments, but that certain fails may continue for reasons outside of broker-dealers' control. Based on the recent developments discussed above, the MSRB should once again clarify that strict liability is not the standard under Rule G-12(h).

II. The MSRB Must Make Clear in the Rule That There is Responsibility for Both Firms Failing to Receive and Firms Failing to Deliver Securities

a. 2019 MSRB FAQs re: MSRB Rule G-12(h)

Three years after the amendments to the Rule, in 2019, the MSRB gave additional guidance when it issued answers to FAQs on MSRB G-12. The MSRB stated that the purchasing dealer “may, at its option, take one of the following [close-out] actions:

- Purchase (‘buy-in’) at the current market all or any part of the securities necessary to complete the transaction for the account and liability of the selling dealer;

⁸ MSRB Regulatory Notice 2016-02, Request for Comment on Amendments to MSRB G-12 on Close Out Procedures 2016-02 (January 6, 2016).

⁹ MSRB Regulatory Notice 2016-02, Request for Comment on Amendments to MSRB G-12 on Close Out Procedures 2016-02 (January 6, 2016) at pages 7-8.

¹⁰ MSRB Regulatory Notice 2016-02, Request for Comment on Amendments to MSRB G-12 on Close Out Procedures 2016-02 (January 6, 2016) at page 10.

- Accept from the selling dealer in satisfaction of the seller’s obligation under the original contract (which shall be concurrently cancelled) the delivery of municipal securities that are comparable to those originally bought (‘substitutions’) in quantity, quality, yield or price, and maturity, with any additional expenses or any additional cost of acquiring such comparable securities, being borne by the selling dealer; or
- require the selling dealer to repurchase (‘mandatory repurchase’) the securities on terms which provide that the selling dealer pays an amount which includes accrued interest and bear the burden of any change in market price or yield since the time of the original transaction.”

The MSRB guidance on the parties’ close-out obligations further supports the industry’s reasonable belief that both parties have the obligation to work together to resolve a streetside cancellation or a seller repurchase. Indeed, MSRB chose to boldface the word “both”—the only such emphasis designation in all the FAQs:

7. If the purchasing dealer provides notice of the close out, is it then the responsibility of the purchasing dealer to resolve the fail?

Under Rule G-12(h), **both** the purchasing dealer and the selling dealer have responsibility to resolve the failed transaction, in accordance with the rule’s provision, by no later than 10 calendar days after settlement date. The requirement under the rule exists even if the parties did not transact together but were “paired off” during the Continuous Net Settlement (CNS) process at the Depository Trust Company (DTC). (emphasis in original).

The Rule itself addresses the responsibilities of the purchaser in the event of a failure to receive securities. However, the Rule does not specifically address the responsibilities of a seller who has failed to deliver securities. The only mention of the responsibilities of a seller who has failed to deliver securities is in the above-quoted FAQ 7.

MSRB must provide clarity on this issue in the Rule itself, or in the supplementary materials thereto. Also, MSRB must provide clarity on when the same firm is both failing to receive and failing to deliver the same security at the same time. As discussed above, FINRA’s view on this scenario would be to put such firm in the position of having to carry short municipal inventory with limited recourse.

Taken together, Rule G-12(h) and the FAQ interpretive guidance related thereto set forth that it is the responsibility of both the purchasing dealer and selling dealer to resolve the fail.¹¹ In this regard, while it is necessary that the obligation to initiate close-out action rest with the dealer with the fail to receive, there should then be cooperative steps taken by the selling dealer. Operational processes pertaining to close-outs of municipal fails do require the purchasing dealer

¹¹ Attributing responsibility to both the purchasing dealer and the seller dealer is also consistent with SEC Rule 15c3-3(d). For each fail-to-receive by the purchasing dealer under (d)(2), there is a fail-to-deliver by the selling dealer under (d)(4). Both parties have responsibility under SEC Rule 15c3-3(d).

who has the CNS fail-to-receive to take action to exit the fail from CNS and provide notice of the close-out. No similar process is available to a selling dealer who is failing to deliver. Rather, the selling dealer would need to contact DTCC to determine who is the counterparty on the fail-to-receive side, and then would need to contact such counterparty to initiate the exit from CNS. We do note that these are operational conventions, and not reflective of legal responsibility. In this instance, cooperation from both dealers is necessary for resolution of the failed transaction. In the past, not all broker-dealers have recognized the responsibility of the firm failing to deliver, with many still not actively assisting with closing out failed transactions.¹² FINRA has orally informed some clearing firms that the firm should notify FINRA if a contra party is not cooperative with the cancellation request. To avoid any confusion, MSRB should amend the Rule to explicitly set forth requirements of selling dealers who are failing to deliver securities within the text of the Rule itself.

b. MSRB Should Require Firms to Exit Transactions That Fail to Settle From the CNS Process at DTCC on T+2, and Issue Interpretive Guidance Regarding the Use of DTCC RECAPS for Municipal Securities

Failed municipal securities transactions can become “masked” after a transaction enters the DTCC’s RECAPS processing, which is part of its obligation warehouse (“OW”). Industry participants have observed that the longer a failed municipal transaction remains in CNS, the greater the risk that allocation lotteries and subsequent pairing activity will obscure the original settlement failure and complicate close-out efforts. These dynamics can result in regulatory exposure unrelated to a firm’s diligence or good-faith efforts to resolve the failed transaction. The MSRB issued a regulatory notice when the original Rule was amended in 2016, which made it clear that firms could not rely solely on CNS to close-out fails in a timely manner.¹³ However, when firms exit CNS the receive/deliver obligation enters the OW and DTCC automatically includes the trade in RECAPS processing cycle (unless a firm chooses to remove such obligation). Once the receive/deliver obligation is in RECAPS the security is repriced and a new settlement date is established twice a month according to the DTCC RECAPS calendar.¹⁴ Unfortunately, given current reporting and compliance tools, this situation may lead to fails that inadvertently extended past the close-out deadlines set forth by Rule G-12(h) because the original contractual settlement can become masked. To this end, SIFMA and its members seek the guidance of the MSRB.

¹² There are other regulations that cover broker-dealers generally that overlay the Rule, including Reg BI, and SEC Rule 15c3-3, on customer protections and safe custody of securities. Rule 15c3-3(d)(2) requires carrying broker-dealers to take prompt action, specifically within 30 calendar days after the settlement date, to obtain physical possession or control of customer securities that are not in their possession.

Some firms have found that counterparties with fails-to-deliver have been nonresponsive or unwilling to close out positions on their end. FINRA has orally informed some clearing firms that the firm should notify FINRA if a contra party is not cooperative with the cancellation request.

¹³ “The MSRB expects that firms will not solely rely upon the CNS system or the services of a registered clearing agency to resolve inter-dealer fails and will take prompt action to close-out inter-dealer fails in a timely manner. Under the amendments, regardless of the date the positions are exited from CNS, the inter-dealer fail must be resolved within 10 calendar days of the purchasing dealer’s original settlement date.” *See*, MSRB Notice 2016-21 (Aug. 19, 2016).

¹⁴ *See*, e.g., DTCC RECAP Calendar, <https://www.dtcc.com/-/media/Files/pdf/2025/11/17/a9676.pdf>.

The MSRB should thus require broker-dealers to exit CNS on T+2, if a transaction fails to settle to T+1. If a failed transaction is not exited from CNS the day after the failed settlement, many transactions may occur in the following days, and the original purchaser who is failing to deliver may not be the counterparty with which the original seller is matched.¹⁵ The longer that a failed transaction stays in CNS, the greater the number of transactions that need to be unwound to get back to the original purchaser and seller, which is necessary if a repurchase of the securities is needed.

SIFMA is proposing that the MSRB provide interpretive guidance on the use of the RECAPS/OW process in connection with the close-out requirements for failed transactions. SIFMA recognizes that Rule G-12(f) states the following:

In the event that a transaction submitted to a registered clearing agency for comparison in accordance with the requirements of this paragraph (i) shall fail to compare, the party submitting such transaction shall, as soon as possible, use the procedures provided by the registered clearing agency in connection with such transaction until such time as the transaction is compared or final notification of a failure to compare the transaction is received from the contra-party.

While DTCC provides the RECAPS/OW process, as described above, as one method to assist its participants in resolving failed transactions, SIFMA believes DTCC participants are not mandated to utilize this process. In fact, there are several procedures that DTCC offers to assist with failed transactions including “invitation to cover,” including DTCC SMART/Track (facilitates buy-ins), and, of course, CNS. SIFMA is unaware of any MSRB requirements for municipal securities dealers to participate in DTCC’s RECAPS processing. Likewise, FINRA’s rules do not mandate RECAPS/OW for municipal securities as the FINRA uniform practice rules do not apply to municipal transactions.¹⁶ While no rule appears to mandate use of the RECAPS/OW processing for municipal securities, the fact that it is available to DTCC participants as a “procedure provided by the registered clearing agency” may be leading some dealers to believe that it is permissible to treat municipal securities transactions submitted to RECAPS/OW as uncomparated and, therefore, not subject to the close-out timeline of Rule G-12(h). In effect, the RECAPS process is masking the original contractual settlement date.

It would be helpful for the industry if the MSRB would provide interpretive guidance on the interplay between the RECAPS/OW systems and Rule G-12. SIFMA believes that the MSRB can clarify, for example, that the RECAPS/OW process may not on its own be an acceptable process for purposes of compliance with Rule G-12(f) as it could, because of masking, inadvertently appear to extend the close-out of a receive/deliver obligation for an indefinite period of time.

¹⁵ As regular way settlement for municipal bonds is the standard T+1 cycle, fails are known on T+2. It is SIFMA’s belief that failed municipal securities transactions should be exited from CNS on T+2, unless the dealer has a reasonable belief that the transaction will settle within the 10-day window.

¹⁶ See FINRA Rule 11000(a)(2).

III. Other Close-Out Issues

a. Accounts Transferred into the Broker-Dealer with Failed Municipal Securities Transactions May Require an ACAT Fail Reversal

A particular problem for broker-dealers occurs in accounts that have been received through the Automated Customer Account Transfer Service (“ACATS”). An account that has been received by a dealer through ACATS may be failing to deliver or may be short the securities. The transfer of the account to a different dealer may complicate the disclosure due to the purchasing party from the seller that failed to deliver. Also, ACATs cannot be unilaterally unwound. For the ACATS receiving party, if there is no market to buy-in, the obligation should reside with the original dealer failing to deliver and clearly indicate for ACATS transfers that the obligation resides on that sending firm to close-out the fail. Operationally, this is achieved through an ACATS fail reversal, which sends that security failing to deliver back to the customer’s former broker-dealer. MSRB Rule G-26(e) regarding failed contracts on customer account transfers should continue to require broker-dealers to close-out pursuant to Rule G-12(h).

b. MSRB Rules Should Take into Account the Specific Issues Related to Clearing Firms and Brokers’ Brokers

Fully disclosed clearing firms engage in clearance and settlement for unaffiliated introducing broker-dealers and unaffiliated registered investment advisers (“RIAs”) who contract with the clearing firm to perform this “back office” function for their end customers. The clearing firm does not have the direct customer relationship with any of the underlying end customers. This allocation of responsibilities is set forth in the clearing agreements filed with and approved by FINRA under FINRA Rule 4311. Under the standard agreements used in the industry, all direct interactions with an end customer (“front office” responsibilities) are the exclusive responsibility of the introducing firm and not the clearing firm. The agreements all generally provide that the clearing firm acts at the direction of the introducing firm. The clearing firm’s limited back office role is disclosed to each end customer of an introducing firm or RIA upon account opening.

Although the clearing firm is legally required to onboard the end customers as its own customers, this is solely for purposes of the SEC financial responsibility rules, namely SEC Rule 15c3-3 and the Securities Investor Protection Act (“SIPA”). The end customers are not considered to be customers of the clearing firm for any other purpose. Thus, the clearing firm does not take orders directly from end customers, and it does not make recommendations to, such end customers. Rather, such responsibility belongs exclusively to the introducing brokers or applicable investment advisers. Rule G-12(h) as currently written is not reflective of industry practice or the contractual nature of the fully disclosed clearing firm model.

Therefore, a clearing firm may be a party to a failed transaction, despite having had no role in initiating the transaction and having had no direct contact with the end customers of its introducing brokers for which it clears. This leaves the clearing firm in an awkward position with regard to closing out the failed transaction. If the clearing firm has a fail-to-receive in a municipal bond extending greater than 10 days, it cannot unilaterally force the end customer to accept a “comparable” bond; nor can the clearing firm unilaterally force a cancellation of that trade without customer consent (communicated from its introducing firm) and/or consent of the

contra party. MSRB Rule G-12(h) as currently written is not reflective of industry practice or the contractual nature of the fully disclosed clearing firm model. Based on the particular circumstances of a clearing firm and its correspondent, both may have regulatory obligations arising from a single municipal securities transaction. FINRA Notice 15-27 states that MSRB Rules G-17 and G-27 apply to both introducing and clearing firms, but the rules do not acknowledge or differentiate their roles.¹⁷

As noted above, recently FINRA has begun taking what ultimately amounts to a strict liability approach via enforcement actions against firms that have allegedly violated Rule G-12(h) for failure to close out fails-to-receive in municipal securities persisting for more than 10 (or 20) days. However, as noted, there is no such strict liability standard in the Rule itself, and imposing such a standard upon firms is grossly unfair—particularly to fully disclosed clearing firms—who do not have control over the counterparties or the end customers of unaffiliated introducing brokers or RIAs. As stated above, the MSRB should amend the close out standard in the Rule to a reasonableness standard, to better reflect the realities of the marketplace.

Interdealer brokers such as brokers' brokers have similar issues in that they act as intermediaries and do not have a direct relationship with the ultimate customer.

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Thank you for considering SIFMA's comments. We look forward to working with you to encourage and ensure timely close-outs of securities transactions in accordance with Rule G-12. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130.

Sincerely,



Leslie M. Norwood
Managing Director and Associate General Counsel
Head of Municipal Securities

cc: ***Municipal Securities Rulemaking Board***

John Bagley, Chief Market Structure Officer

Financial Industry Regulatory Authority

Racquel Russell, Senior Vice President and Director of Capital Markets

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¹⁷ Additionally, it is important to note that a clearing firm does not have a relationship with the customer and thus does not have any duties pursuant to Reg BI.

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