



September 23, 2013

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Re: Amendment No 1. to File No. SR-MSRB-2013-05, Notice of Filing of a Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods**

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment to the Securities and Exchange Commission (“SEC”) on Amendment No. 1 to the proposed rule changes filed by the Municipal Securities Rulemaking Board (“MSRB”) to MSRB Rules G-8, G-11 and G-32 to include provisions specifically tailored for retail order periods. This letter supplements the comments previously filed with the SEC<sup>2</sup> on these proposed rule changes.

In prior comments to the MSRB on this issue<sup>3</sup>, SIFMA suggested that concerns raised about retail order periods could be addressed through the enforcement of existing MSRB guidance<sup>4</sup>. Now the MSRB has decided to reorganize some of its interpretive guidance associated with MSRB Rule G-17 into new or revised rules<sup>5</sup>. Consequently, SIFMA supports the proposed rule changes to the extent they would protect dealers that

---

<sup>1</sup> 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).

<sup>2</sup> See Letter from David Cohen, SIFMA to Elizabeth M. Murphy, SEC, dated July 18, 2013 (response to File No. SR-MSRB-2013-05) available at <http://www.sifma.org/issues/item.aspx?id=8589944461>.

<sup>3</sup> See Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated November 2, 2012 (response to MSRB Notice 2012-50) available at <http://www.sifma.org/issues/item.aspx?id=17179869219>. See also, Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated April 13, 2012 (response to MSRB Notice 2012-13) available at <http://www.sifma.org/issues/item.aspx?id=8589938319>.

<sup>4</sup> See SEC Release No. 34-66927 (May 4, 2012); 77 FR 27509 (May 10, 2012). See also [MSRB Notice 2012-25 \(May 7, 2012\)](#) (“The Notice reminds underwriters not to disregard issuers’ rules for retail order periods by, among other things, accepting or placing orders that do not satisfy issuers’ definitions of “retail.”).

<sup>5</sup> See MSRB Notice 2013-04 (February 11, 2013) Request for Comment on Codifying Time of Trade Disclosure Obligation, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx?n=1>

follow issuers' instructions and require timely notice of retail order period terms and conditions to all syndicate and selling group members, as well to investors through the MSRB's Electronic Municipal Market System (EMMA).

## **I. Amendment No. 1:**

Amendment No. 1 partially amends the text of the proposed rule change to revise the definition of "retail order period" in Rule G-11(a)(vii). "Retail order period" has not been previously defined under MSRB rules. Since the MSRB initially solicited comments on rules governing retail order periods<sup>6</sup>, SIFMA has recommended that the MSRB delete all references to "going away orders" as the proposed usage was inconsistent with the commonly accepted meaning of the term. We appreciate that the MSRB has now deleted this term from its newly proposed definition of retail order period. However, our members believe, contrary to the MSRB, that "conditionally committed" is less precise than "*bona fide*"<sup>7</sup> customer orders that meet the issuer's designated eligibility criteria.

## **II. Initial MSRB Submission**

### **i. Representations and Required Disclosures about Each Order**

In SIFMA's July 2013 comment letter to the SEC, we suggested a reasonable alternative for dealers to make the proposed retail order period representations. SIFMA's proposed compliance alternative is not detrimental to issuers or investors and is less prescriptive and burdensome than the approach proposed by the MSRB. In its rebuttal comments to the SEC, the MSRB states: "The MSRB understands but disagrees with SIFMA's suggestion that the MSRB select the least burdensome approach for dealers . . . . Such a rule would be effectively aligned with what is done today." (emphasis in original). We find it odd and disappointing that the MSRB is so dismissive of a reasonable alternative approach as well as the associated costs of rulemaking – which other securities regulators are *required* to consider and weigh appropriately<sup>8</sup> Secondly, the MSRB fails to appreciate the costs in elevating a business practice to a regulatory requirement. SIFMA again asks the SEC to adopt a less burdensome approach to fulfill the regulatory goals of ensuring that only orders that meet the issuer's designated eligibility criteria are filled during a retail order period.

---

<sup>6</sup> See MSRB Notice 2012-13 (March 6, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-13.aspx?n=1>.

<sup>7</sup> The *Merriam-Webster Dictionary* defines *bona fide* as "made in good faith without fraud or deceit", available at <http://www.merriam-webster.com/dictionary/bona%20fide>.

<sup>8</sup> See *Current Guidance on Economic Analysis in SEC Rulemaking* (March 16, 2012) available at [http://www.sec.gov/divisions/riskfin/rsfi\\_guidance\\_econ\\_analy\\_secrulemaking.pdf](http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf)

**ii. Issuer to “Approve” Terms and Conditions**

In SIFMA’s July 2013 comment letter to the SEC, we objected to the proposed rule change’s requirement that an issuer approve the written statement of all terms and conditions when that statement is prepared by the syndicate manager rather than the issuer or its financial advisor. Rule G-11 currently provides that a statement of terms and conditions prepared by the syndicate manager shall be provided to the issuer but does not specifically require approval by the issuer.

Our members believe that the existing rule is more than sufficient to ensure that an issuer is aware of and agrees with any requirements imposed on the syndicate and selling group members in its name. SIFMA is not aware of enforcement actions taken against syndicate managers for not honoring terms and conditions required by the issuer. Prior to imposing this new regulatory requirement, we believe it is important for issuers to voice their views, as they have raised concerns about the G-17 disclosures<sup>9</sup>. This proposed new requirement will likely result in some of the same unintended consequences along the lines experienced by underwriters in seeking to obtain issuer acknowledgement of receipt of the MSRB Rule G-17 underwriter disclosure to issuers: which issuer representative can provide such approval, the preference of certain issuer officials to simply acknowledge (rather than approve) the G-17 disclosures; what if the issuer is unwilling to provide such approval. Again, our members believe the current rule is sufficient.

**III. Conclusion**

SIFMA sincerely appreciates this opportunity to comment upon the proposal. Subject to the proposed refinements suggested above, SIFMA supports the proposed rule changes to the extent they would protect dealer that follow issuer instructions, clarify issuer terms and conditions, and require timely notice of retail order period terms and conditions.

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

Sincerely yours,



David L. Cohen  
Managing Director  
Associate General Counsel

---

<sup>9</sup> *The Bond Buyer, Underwriter Disclosures to Issuers Still Causing Confusion*, (June 3, 2013) available at [http://www.bondbuyer.com/issues/122\\_106/underwriter-disclosure-letters-required-under-msrb-rule-cause-confusion-1052272-1.html](http://www.bondbuyer.com/issues/122_106/underwriter-disclosure-letters-required-under-msrb-rule-cause-confusion-1052272-1.html).

Ms. Elizabeth M. Murphy  
Securities and Exchange Commission  
Page 4 of 4

cc:

***Municipal Securities Rulemaking Board***  
Lynnette Kelly, Executive Director  
Gary L. Goldsholle, General Counsel  
Kathleen Miles, Associate General Counsel