December 15, 2023

**VIA ELECTRONIC SUBMISSION**
Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

**Re: MSRB Notice 2023-08 – Request for Comment on Retrospective Rule Review of Rule G-12(c) on Inter-Dealer Confirmations and Related Interpretive Guidance**

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input on the MSRB's retrospective review of Rule G-12(c).[2] Overall, SIFMA applauds the MSRB's review of these rules to facilitate compliance and reduce unnecessary burdens while ensuring Rule G-12(c) continues to achieve its goals consistent with current market practices. Rule G-12(c) is outdated and should be eliminated. Should the MSRB decide to retain Rule G-12(c), SIFMA recommends the MSRB proceed with a more measured pace of change to avoid unintended consequences.

## Recommendations

- Rule G-12(c) should be deleted as electronification of systems has rendered it obsolete and eliminated the need for interdealer trade disclosures.
- If the MSRB chooses to retain Rule G-12(c), the amount of guidance being amended, codified, merged into the rule, or retired by the Notice is significant and the volume of

[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] *See* MSRB Notice 2023-08 (Sept. 28, 2023) (the "Notice").

guidance makes it difficult to fully assess any unintended consequences resulting from the proposed changes.

- Given the scope of proposed changes, the MSRB should prioritize addressing guidance that is not being incorporated into the rule or otherwise does not require a rule amendment before taking further action on items that do trigger such amendments.

## I. <u>Rule G-12(c) Should Be Deleted as Electronification of Systems has Rendered it Obsolete and Eliminated the Need for Interdealer Trade Disclosures.</u>

### *a. Electronification of Systems Has Made Paper Interdealer Confirmations Obsolete.*

Rule G-12(c) should be deleted as electronification of systems has rendered it obsolete. Rule G-12(c) had value when it was originally adopted, and it served a valid purpose in an operational environment where there were a significant number of trades that were ineligible for automated comparison. However, Rule G-12(c) has been made obsolete in large part to the speed of computers as settlement cycles have continued to shrink from T+3 to the current T+2 and the planned move to T+1 in May 2024.

While Rule G-15 customer confirmations still have value, paper interdealer confirmations do not. Currently, industry practice is to evidence interdealer trades with Bloomberg screen captures, VCONs, or trade blotters. These are also the types of items that FINRA examiners ask for as evidence of interdealer trades.

### *b. Dealers Need Information to Settle Trades, Not Disclosures.*

Rule G-12(c), if the MSRB chooses to retain it in some form, should be pared down and materially simplified. For interdealer trades, the only information that should be required to be transmitted is that which is required to settle the trade. There is no need to harmonize Rule G-12(c) and Rule G-15. As stated above, Rule G-15, as well as Rule G-47, describes information disclosures due at the time of confirmation, or trade, to customers. These information disclosures are unnecessary to send to dealers, and merely create a web of potential regulatory foot-faults without any benefit.

To be clear, dealers rely on their information service vendors for all data points related to trade execution, confirmations, clearance, and settlement. In the current environment, no dealers would use data received inbound on a G-12(c) interdealer confirmation to populate a G-15 customer confirmation. Operationally, dealer computer systems are not designed to consume data from interdealer confirmations or anywhere other than their information service vendor to update their security master database. Aside from the technological challenges, the risk that the data may be incorrect would be too great. As a necessary cost of doing business, all dealers have access to reliable security master information through an information service vendor. As dealers all have access to reliable security master information in order to conduct business, there is no need for dealers to send security disclosure information to other dealers on interdealer trades.

Again, the only information that is necessary for a dealer to send to another dealer regarding a trade is the information needed to settle the trade.

SIFMA would welcome a retrospective review by the MSRB of Rule G-12(h) on close-out procedures, as we feel Rule G-12(h) could be better aligned with current market practices and MSRB goals.

## II. If the MSRB Chooses to Proceed, the Amount of Guidance Being Amended, Codified, Merged into the Rule, or Retired by the Notice Should be Reduced.

While SIFMA members applaud the goal of reducing unnecessary duplication in the rule book, the number of pieces of guidance being amended, codified, merged into Rule G-12(c) or retired by the Notice is overwhelming and could be better paced over the course of more than just a single request for comment. A more focused investigation and analysis would be beneficial to understand the scope of these changes in terms of number of trades impacted, including closeouts, step-out trades, and other special yet common situations. The significant scope of the proposed rule changes makes it difficult to gauge any unintended consequences. Further study on various current market practices, industry vendor processes, and information flows are necessary before proceeding with specific incorporation of new rule text.

## III. The MSRB Should Prioritize Addressing Guidance Not Being Incorporated into the Rule Before Taking Further Action.

The MSRB should prioritize addressing guidance not being incorporated into the rule and allow those changes to be implemented before taking further action. Changes to rules themselves can cause significant unintended consequences, increasing risks of non-compliance. SIFMA recommends that MSRB address the guidance to be retired or codified into FAQs before addressing guidance that is proposed to be codified into the rule. Addressing these many pieces of varied guidance in a phased approach will allow for a more paced and thoughtful process that will hopefully avoid most or all unintended consequences. In any case, MSRB has asserted in the request for comment that the proposed changes are merely duplicative and/or non-substantive. Therefore, SIFMA would appreciate specific assurances in any rule filing that if a firm has existing policies and procedures that are compliant with the existing rule, such policies and procedures would not need to be substantively updated once such changes become operative.

* * *

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's retrospective rule review project and its objective to aid compliance by regulated entities and reduce unnecessary burdens while ensuring the rule continues to achieve its goals. SIFMA asks that the MSRB consider our comments in furtherance of these goals, particularly the potential elimination of Rule G-12(c) due to changes in the speed of technology and market practices. If the MSRB chooses to continue with this project, we ask that the MSRB further analyze the scope of the impact of the proposed changes and various current market practices, and adopt any changes with a more incremental approach. SIFMA would also welcome a retrospective review by the MSRB of rule G-12(h) on close-out procedures, as we feel the rule could be better aligned with current market practices and MSRB goals. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

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

cc: ***Municipal Securities Rulemaking Board***
Ernesto A. Lanza, Chief Regulatory and Policy Officer
Abha Mohla, Associate Director, Market Regulation

## APPENDIX A

## QUESTIONS

1. Would the draft amendments achieve the objectives of clarifying and modernizing the rule text regarding confirmation disclosures required for the inter-dealer transactions that are ineligible for automated comparison? If not, please consider providing examples of how to provide greater clarity regarding these regulatory obligations.

No. Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information like this from other dealers, as all dealers have access to security master information.

Also, the speed of current technology makes paper inter-dealer confirmations obsolete. Interdealer trades are currently evidenced by Bloomberg screen captures, VCONs or trade blotters. Current market practice has almost all trades being submitted for automated comparison. If the trade fails to settle, then dealers sort out the issue in real-time through phone calls and electronic messages. The current settlement cycle of T+2 does not allow time for dealers to wait for a paper inter-dealer confirmation before remediating a failed trade, and settlement cycles are scheduled to reduce even further to T+1 in May 2024.

Further, should the MSRB believe it necessary to proceed with amendments to Rule G-12(c), codifying, merging, and/or retiring several different pieces of guidance requires a more deliberate and incremental approach to avoid unintentional consequences. We have concerns about guidance that is codified into the rule, as condensing language can cause new interpretation issues and compliance concerns. If this initiative continues, the MSRB should prioritize addressing guidance that is not proposed to be incorporated into Rule G-12(c) first.

2. How might the MSRB better clarify and streamline the Rule G-12(c) text? Are there any other confirmation disclosures that are not specifically discussed in this Request for Comment that should be added (including any confirmation disclosures that are required under Rule G-15(a)) into Rule G-12(c) to promote consistency in the market?

Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. There is no need to harmonize Rule G-15(a) and Rule G-12(c). Dealers do not need disclosure information like this from other dealers, as all dealers have access to security master information. The MSRB should focus its retrospective rulebook efforts on Rule G-12(h) on close-outs.

3. The MSRB believes that very few inter-dealer trades currently rely on Rule G-12(c) because the vast majority of such trades are in fact eligible for automated comparison. Is this correct? What are some situations in which Rule G-12(c) applies?

While buy-ins, close-outs and step-out trades may require exception processing, they are almost always[3] submitted for automated comparison before they are exited from NSCC, and the continuous netting settlement process, to DTCC for ex-clearing settlement. Any exceptions represent far less than 1% of total trading counts and volume.

4. For transactions in which Rule G-12(c) applies, have differences between Rule G-12(c) and Rule G-15(a) resulted in any challenges for dealers executing transactions with customers? For example, if a dealer sells to a customer a municipal security subject to Rule G-12(c) that it acquired from another dealer, does the difference in information requirements under the two rules impair the selling dealer's ability to fulfill its obligation to provide the required information in the customer confirmation under Rule G-15(a)? If so, what items of information typically cause such problems and would the draft amendments address such problems?

No. The information needed for a client confirmation is very different than the minimal information needed to operationally settle an interdealer trade. Dealers rely on information service vendors to provide all information needed for trading, confirmations, clearance and settlement, and would never use data received on a paper confirmation for a subsequent electronic trade. The draft amendments do not address the core issue which is that Rule G-12(c) is obsolete.

5. More generally, have dealers purchasing municipal securities subject to Rule G-12(c) been harmed or experienced operational inefficiencies or other difficulties as a result of the inclusion or exclusion of particular items of information under current Rule G-12(c)? If so, what items of information typically cause such problems and would the draft amendments address such problems?

Operationally, market practice has rendered interdealer confirmations obsolete. If paper interdealer confirmations are created, they are typically not utilized in any way, and immediately discarded. The requirement to have an interdealer confirmation pursuant to Rule G-12(c) is inefficient, burdensome and wasteful. Rule G-12(c) merely creates regulatory compliance risks without benefits. Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information from other dealers, as all dealers have access to security master information.

6. Are there any existing requirements under Rule G-12(c) or draft amended Rule G-12(c) that should be eliminated in addition to any requirements addressed in the questions above? If so, why?

Yes, Rule G-12(c) should be eliminated in whole, in addition to any requirements addressed in the questions above.

[3] It is possible there may be rare trades which are ineligible for automated comparison in NSCC's RTTM system due to the lack of a CUSIP number on that particular security.

7. As identified in Appendix A (I), Appendix A (III) and Appendix A (V) in this Request for Comment, the MSRB is retiring various pieces of guidance pertaining to confirmation disclosure obligations. Is there any MSRB guidance pertaining to confirmation disclosure obligations that the MSRB proposes to retire that may still be beneficial for the market and should be retained? For example, should the MSRB retain one or more items that represent well understood concepts or common knowledge in the industry, address uncommon practices or are otherwise viewed as of limited utility in order to provide guidance to new market entrants or in the event of shifts in market practice? Please indicate so, and why?

At this time, even if Rule G-12(c) is retained, SIFMA agrees that the MSRB should retire the guidance as suggested in the Notice. However, Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information like this from other dealers, as all dealers have access to security master information.

8. As noted above, the MSRB proposes to retain the guidance identified in Appendix A (IV) in this Request for Comment without change at this time. Is there any MSRB guidance listed under Appendix A (IV) that market participants believe is not beneficial at this point and should be retired or amended instead?

SIFMA members agree that the guidance identified in Appendix A (IV) in the Notice should be retained without change at this time. These pieces of guidance largely relate to determining the character of the trade, which may continue to be beneficial.

9. In Rule G-15 Guidance: Yield Disclosures: Yields to Call on Zero Coupon Bonds dated January 4, 1984, the MSRB noted that, in the case of a computation of a yield or dollar price to a call or option feature on a transaction in a callable zero coupon security, for the purposes of Rule G-12 and Rule G-15, the call price shown on the confirmation should be expressed in terms of a percentage of the security's maturity value. This would be incorporated into the draft MSRB Notice 2023-08 amendment to Rule G-12(c)(v)(A)(7)(c)(iii)(C). The MSRB seeks comment on the current market practice in this area. Do commenters agree with this approach? Is this still the current market practice?

It is still current market practice to express the call price of a zero coupon security in terms of a percentage of the security's maturity value and SIFMA agrees with this approach for G-15 customer confirmations. However, Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Yield to call information is not required for trade settlement. Dealers do not need this kind of disclosure information from other dealers, as all dealers have access to security master information.

10. Currently Rule G-12(c)(vi)(H)(1) requires an "ex-legal" designation on confirmations. The draft amendments would delete the "ex-legal" delivery designation from Rule G-12(c). The MSRB understands that "ex legal" is a term which refers to the absence of a

legal opinion and an “ex legal” designation on a confirmation describes the rare instances where a bond is physically delivered without a legal opinion attached. This reference was removed from Rule G-15(a) in 1995 due to the movement away from physical delivery of certificates. To further promote consistency with the analogous confirmation requirements noted in Rule G-15(a), the MSRB proposes to remove this confirmation disclosure requirement from Rule G-12(c) as well. Does the market see any benefit in retaining the “ex-legal” confirmation disclosure requirement?

If the MSRB keeps Rule G-12(c), SIFMA agrees that removing this term from Rule G-12(c) is appropriate. However, Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information like this from other dealers, as all dealers have access to security master information.

11. Currently, Rule G-12(c)(v)(E) provides that the description of the bonds should specify if they are “limited tax.” Traditionally, a limited tax bond is a general obligation bond secured by a specific tax or category of taxes, or a specific portion of any such taxes. This requirement was deleted from Rule G-15(a) in 1995 since its meaning over time had become ambiguous as various states implemented a variety of their own tax limitation measures. In staying consistent with Rule G-15(a), the MSRB proposes to remove this requirement from Rule G-12. Is there any benefit to retaining this requirement?

SIFMA agrees that there is no benefit to retaining this requirement in Rule G-12(c). Also, this type of disclosure is not needed for trade settlement. Dealers do not need disclosure information from other dealers, as all dealers have access to security master information. Maintaining disclosure requirements in Rule G-12(c) merely creates a regulatory burden for no tangible benefit to market participants.

12. In Rule G-15 Guidance: Securities Description: Revenue Securities dated December 1, 1982, the MSRB notes that for purposes of Rule G-12 and Rule G-15, revenue securities should be designated as such, regardless of whether such designation appears in the formal title of the security. This could lead to the revenue designation being stated twice on the confirmation, once in the title, and again in a separate information block. In 1995, MSRB acknowledged this redundancy issue and revised Rule G-15(a) to make clear that, if the bond is identified as a revenue bond on the title, there is no need to make an additional disclosure that the bond is a revenue bond. The MSRB proposes to follow the same approach by adding similar rule text into draft amended Rule G-12(c) and eliminating the requirement of redundant confirmation disclosures. Do commenters agree with this approach?

SIFMA agrees with this approach, if the MSRB decides to retain Rule G-12(c). However, Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information from other dealers, as all dealers have access to security master information.

13. If the MSRB were to codify the text noted under Rule G-15 Guidance: Confirmation Disclosure Requirements for Callable Municipal Securities, dated February 20, 1986, under draft amended Rule G-12(c)(v)(C)(2)(a) as is, in the event of alerting customers to additional call features, the draft amended rule text would require the confirmation disclosure to note that other call features exist, and dealers "must provide clarifying information about the noted call." The MSRB addressed this obligation in 1995 when it revised Rule G-15(a) to put customers on notice regarding the presence of additional call features and for dealers to furnish the information "upon customers' request" instead of a mandatory obligation for dealers to provide information. This approach is less burdensome for dealers. The MSRB proposes to make a similar change to Rule G-12(c) since this approach would be analogous to Rule G-15(a). Also, under Rule G-12(c)(v)(C)(2)(a), the MSRB is using the phrase "next pricing call" as noted under Rule G-15(a), instead of the term "first 'in-whole' call" as noted under the guidance to stay consistent with the terminology used in the market. Do commenters agree with both of the proposed language enhancements reflected in the draft amended rule text?

SIFMA agrees with both of these language changes, should the MSRB decide to retain Rule G-12(c). However, Rule G-12(c) should be eliminated or pared down to be limited to information required for trade settlement. Dealers do not need disclosure information from other dealers, as all dealers have access to security master information.

14. In Rule G-33 Guidance: Calculations for Securities with Periodic Interest Payments, dated February 23, 2016, the MSRB reminded dealers that computations of yields and dollar prices shall be made in accordance with the formulas prescribed in Rule G-33; this requirement already exists in Rule G-15(a) and is being proposed in the draft amended rule text of Rule G-12(c). Further, this notice provides that prior to July 18, 2016, dealers would be in compliance with Rule G-33(b)(i)(B)(2) if calculating price and yield on interest-bearing securities with periodic interest payments and more than one coupon period to redemption factoring in the actual interest frequency rather than assuming a semi-annual interest payment. Since the safe harbor given in this guidance in 2016 is no longer applicable, the MSRB is seeking to retire and archive this guidance. Is there any aspect of this guidance that should be retained in any way? If so, please specify.

This guidance does not need to be retained.

15. Would the draft amended rule text impose any burdens unique to minority and women-owned business enterprise ("MWBE"), veteran-owned business enterprise ("VBE") or other special designation firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-12(c)? Please offer suggestions.

No, these changes would not impose any unique burdens on MWBE, VBE or other special designation firms, other than those that may otherwise be classified as small firms. Eliminating Rule G-12(c) would reduce the burdens on these dealers without reducing any information or protections to market participants.

16. Would the obligations proposed in connection with Rule G-12(c) result in an undue impact on access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-12(c)? Please offer suggestions.

Regulatory changes typically do create higher burdens on small dealers that may have less resources for systems and compliance changes. Eliminating Rule G-12(c) would reduce the burdens on these dealers without reducing any information to or protections for market participants.

17. Would the obligations proposed in connection with the draft amendments to Rule G-12(c) result in an undue impact on access to business opportunities for MWBE, VBE or other special designation firms? If so, do commenters have any specific recommendations to alleviate these impacts while still promoting the objectives of Rule G-12(c)? Please offer suggestions.

No, these draft amendments would not result in an undue impact on access to business opportunities for MWBE, VBE or other special designation firms. However, eliminating Rule G-12(c) would clearly reduce the burdens on these dealers.

18. Would draft amended Rule G-12(c) result in an undue impact on access to business opportunities for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of Rule G-12(c)? Please offer suggestions.

These draft amendments would not result in an undue impact on access to business opportunities for small dealer firms. However, SIFMA feels a better result would be to eliminate Rule G-12(c).