May 9, 2024

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number SR–MSRB– 2024–03; Release No. 34–99949; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G– 47, on Time of Trade Disclosure, To Codify and Retire Certain Existing Interpretive Guidance and New Time of Trade Disclosure Scenarios

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input to the SEC on the Municipal Securities Rulemaking Board's ("MSRB's") filing.[2] SIFMA applauds the MSRB's goal to modernize its rule book while continuing to provide appropriate issuer and investor protections without placing undue compliance burdens on regulated entities. We appreciate that some of the comments in our prior letter[3] were incorporated into the Filing, and would like to provide additional comments on the following issues:

[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] 89 Fed. Reg. 27809 (Apr. 18, 2024) (the "Filing").

[3] *See* Letter to from Leslie Norwood, Managing Director and Association General Counsel, SIFMA, to Ronald W. Smith, Secretary, MSRB, dated April 17, 2023, available at: https://www.sifma.org/resources/submissions/request-for-comment-regarding-a-retrospective-review-of-the-msrbs-time-of-trade-disclosure-rule-and-draft-amendments-to-msrb-rule-d-15-on-sophisticated-municipal-market-professionals/ .

- SIFMA continues to be concerned about the scope of time of trade disclosures, and believe the scope of disclosures should be narrowed;
- MSRB should review the affirmations related to SMMPs; and
- Time of trade disclosures for 529 savings plans should be covered in a separate rule.

I. The Scope of Time of Trade Disclosures Should be Narrowed.

As discussed in our Prior Letter, SIFMA members feel the list of time of trade disclosures has grown to be unnecessarily long. Requiring time of trade disclosures about factor bonds, certain market discount information, zero coupon bonds or stepped coupon bonds, yield to worst calculations, the unavailability of an official statement, and the unavailability of continuing disclosure information adds compliance risks and burdens. The list of time of trade disclosures has become over-broad and unnecessarily increases risks to broker dealers without providing material benefit to issuers and investors. SIFMA urges the MSRB to reconsider the amendments regarding these time of trade disclosures.

a. Factor Information

SIFMA urges the MSRB to make clear that a dealer should only be responsible for providing factor information pursuant to the rule if there is an event filing on EMMA which specifies that the factor concept applies, or the dealer otherwise has specific knowledge of factor payments. Issuers, obligors and trustees are in the best position to know information about bond defaults and subsequent pre-payments that create a factor bond, but do not always provide clear timely event disclosures regarding the timing of the default or factor payments. Moreover, it is not always made clear whether a bond is subject to pro-rata payments. FINRA representatives have publicly acknowledged[4] that information on factor payments in certain contexts can be difficult to nearly impossible to ascertain for dealers and their information vendors. While pre-payments are typically trackable in information vendor systems, there is no data source, including the MSRB, that includes reliable information which highlights whether a bond is a factor bond. To that end, if certain factor information is not made known to the market by the parties best positioned to know the factor information, the dealers should not be held responsible for a customer time of trade disclosure. Further, when disclosures are made by the issuer, obligor or trustee, dealers should be able to substantively rely on such information.

b. Market Discount

SIFMA continues to be concerned about the market discount disclosures and feels strongly that it should be made clear that broker dealers neither give tax advice nor should they be perceived to be giving tax advice. We believe that the original guidance should be preserved, which merely requires notification of the existence of a discount. Dealers have a growing concern about examination inquiries into discount disclosures to clients that may force dealers to move closer to

[4] Caitlin Devitt, FINRA tip leads to investor repayments on defaulted bridge bonds, THE BOND BUYER (Mar. 15, 2023), https://www.bondbuyer.com/news/finra-tip-leads-to-repayments-on-defaulted-florida-bridge-bonds. *See also,* See also, https://www.finra.org/media-center/blog/santa-rosa-bonds.

the line of giving tax advice, as some FINRA examiners have been requiring dealers to disclose the de minimis cutoff price. SIFMA requests that the MSRB clarifies that dealers are merely obligated to indicate where there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

c. Zero Coupon Bonds or Stepped Coupon Bonds

Dealers should be only required to disclose whether bonds are zero coupon bonds or stepped coupon bonds, but not the details of the special characteristics of these features, such as the details of the increases to the interest rates. Flagging these bonds as either zero coupon bonds or stepped coupon bonds should be sufficient to alert investors of a unique feature without burdening them with potentially voluminous detail that is difficult or impracticable for dealers to obtain. Information about zero coupon bonds is limited from the MSRB's primary market feed, as the coupon is listed as "0" without further information. Information is even further limited on step coupon bonds, as the current coupon is listed, without any further step information.

d. Yield to Worst

SIFMA remains concerned about the MSRB more specifically articulating a time of trade obligation to disclose a "Yield to Worst" calculation – in part because of the potentially misleading and confusing nature of describing this disclosed computation as the "Yield to Worst." SIFMA is concerned that by describing this disclosure as the "Yield to Worst," regulatory examiners and/or customers alike may believe that this is the computation which accounts for all potential scenarios and represents the absolute worst possible yield a customer may experience when purchasing a municipal security. As noted in the proposed rule change, MSRB Rule G-15 currently requires the disclosure of a "Computed Yield." MSRB Rule G-15(a)(i)(5)(c)(ii) specifically contemplates calculations based only on certain "in whole calls." As result, the call features used to a calculate a "Computed Yield" on a customer confirmation as required by MSRB Rule G-15 may not in fact be the absolute worst possible yield a customer may receive, such as, for example, in scenarios where a security may include atypical "in part" calls and/or certain extraordinary redemption features.[5] Accordingly, SIFMA requests that if the MSRB moves forward with requiring this time of trade disclosure, that the MSRB make clear that the time of trade disclosure it is articulating in the proposed rule change is the same "Computed Yield" calculation that is required under Rule G-15's confirmation requirements and that dealers are not expected to provide any additional or different disclosures in this regard. Relatedly, SIFMA requests that the proposed rule language be amended to eliminate potentially misleading references to "Yield to Worst" and instead refer to "Computed Yield," consistent with Rule G-15 and the actual calculation performed disclosed on customer confirmations.

[5] It is our information and belief that these calculations are not currently presented by information vendor systems, and all components of the yield to worst calculation may not be known until the trade is consummated.

e. Unavailability of Official Statements

SIFMA would like the MSRB to amend the proposed rule change to eliminate the time of trade disclosure requirement related to whether an "official statement is available on EMMA or that the official statement is only available from the underwriter." In the alternative, if the disclosure is not eliminated in whole, SIFMA requests the MSRB provide additional detail and clarification regarding the application of the proposed rule change.

As drafted, the amended rule would state, "In sales to customers of new issue securities constituting offered municipal securities within the meaning of Rule G-32, the fact that no official statement is available on EMMA or that an official statement is only available from the underwriter." SIFMA believes the proposed rule change as drafted would provide little to no actionable information for investors in a public offering (who already have the benefit of a Preliminary Official Statement's description of whether the offering would include a "Final Official Statement" (as defined in SEC Rule 15c2-12(f)(3)). Similarly, SIFMA believes that the proposed rule change may be confusing to the sophisticated investors involved in a Rule 15c2-12(d) exempt offering of municipal securities.

More specifically, for public offerings of municipal securities that meet the requirements of Rule 15c2-12, SIFMA wants to confirm that it is not the intent of the proposed rule change to require dealers to disclose to investors at the time of trade that a "final official statement is not currently available on EMMA but is anticipated to be available prior to or at closing." As the MSRB alludes to in the filing, a Final Official Statement (as defined in Rule 15c2-12(f)(3)) is typically not available at the time of trade for a primary offering of a new issuance of municipal securities and generally is only available for posting to EMMA several business days after the execution of the bond purchase agreement or the formal award of a competitive bid.[6] SIFMA notes that investors in a public offering have the benefit of a "deemed final" Preliminary Official Statement under Rule 15c2-12, and so investors in a public offering have the benefit of knowing the offering has been made to conform with the "Final Official Statement" requirements of Rule 15c2-12(f)(3). SIFMA presumes it is not the MSRB's intent for this disclosure to be about the timing of the Final Official Statement, as this would make the disclosure potentially superfluous or confusing.

Alternatively, in a limited offering of municipal securities that the issuer has structured to be exempt from the offering document requirements of Rule 15c2-12 (including the requirement to meet the definition of a "Final Official Statement" in Rule 15c2-12(f)(3)), SIFMA is unclear as to what disclosure the amendment intends to be made, particularly in light of the fact the purchasers participating in such offerings must meet the sophistication requirements of Rule 15c2-12(d)(i)(A). SIFMA believes that in such instances where an offering document is drafted and disseminated, but such offering document does not fully meet the definition of a Final Official Statement under Rule 15c2-12(f)(3), the proposed rule change should not require dealers

[6] In this way, the Final Official Statement will seldom, if ever, be available on the day of First Execution, and so dealers will not be able to systematically rely on the fact that the information is posted on EMMA to fulfill this obligation (as the MSRB seems to suggest in the proposed rule change).

to disclose to such sophisticated investors that an "'official statement'[7] is not available on EMMA but is available from the underwriter(s)." SIFMA feels that this interpretation of the amendment could create confusion where we believe there currently is none. For example, a sophisticated purchaser might be confused by a dealer's reference to "official statement" and question whether the offering was actually intended to be in conformance with Rule 15c2-12's Final Official Statement and other requirements.

If the MSRB does not amend the proposed rule change to eliminate this requirement, then SIFMA requests that the MSRB clarify its application and disclosure requirements in various scenarios, including: (1) public offerings where it is anticipated that the issuer will produce a Final Official Statement by settlement but a Final Official Statement is not available at the Time of Trade; (2) Rule 15c2-12 exempt offerings where an issuer has drafted and disseminated an offering document that does not technically meet the Final Official Statement requirements of Rule 15c2-12 but would meet the official statement definition of Rule G-32(c)(vii); (3) Rule 15c2-12 exempt offerings where the issuer declines to draft an offering document[8] for the offering; and (4) remarketings of municipal securities that may be deemed to be a primary offering of municipal securities under Rule 15c2-12 and Rule G-32.[9] Similarly, for the reasons outlined above, SIFMA believes that the MSRB should adhere to the principle in such scenarios that if a Final Official Statement is in production, but merely is not available yet, then this Time of Trade disclosure is not required. Also, SIFMA supports the MSRB proposals that any such time of trade disclosure should be limited to underwriters in new issue trades.

f. Unavailability of Continuing Disclosure

Similarly, SIFMA also believes that disclosing the issuer or obligated person has not agreed to make continuing disclosures with respect to the municipal securities, as contemplated under Securities Exchange Act Rule 15c2-12, that will be available on EMMA should be limited to new issue trades. Securities exempt from 15c2-12 would typically have such a disclosure in an

[7] SIFMA notes that there is a distinction between (a) Rule G-32(c)(vii)'s definition of an "official statement", (b) the definition of final official statement in Rule 15c2-12 and (c) the requirements of Form G-32. More specifically, the Rule G-32(c)(vii) reference to "a document or documents prepared by or on behalf of the issuer that is complete as of the date delivered to the underwriter and that sets forth information concerning the terms of the proposed offering of securities" would make application of the proposed rule change challenging as it does not align with Rule 15c2-12(f)(3).

[8] Relatedly, SIFMA believes that additional clarity regarding what does and does not meet the definition of an "official statement" in MSRB Rule 32(c)(vii) would be helpful for this requirement to be workable from a compliance perspective and meaningful to investors. For example, SIFMA maintains that a simple term sheet produced for an offering of municipal securities with a short maturity exempt from Rule 15c2-12(d)(ii) should not be deemed "a document or documents prepared by or on behalf of the issuer that is complete as of the date delivered to the underwriter and that sets forth information concerning the terms of the proposed offering of securities, whereas a limited offering memorandum would be deemed to fall withing the definition of official statement for the purposes of MSRB Rule 32(c)(vii)."

[9] As one example, SIFMA seeks to confirm that where there may be a tender, a change in interest rate mode, a supplement to an official statement which may be drafted by the issuer many years after the original Final Official Statement is not considered a new Final Official Statement.

investor letter, so a specific time of trade disclosure is unnecessary. Investors making secondary market trades can see offering documents, or the lack thereof, on EMMA.

g. Extraordinary Redemption Provisions

SIFMA would also like to express concern about the MSRB's April 2024 Municipal Market Issue Brief entitled "Possible Redemption of Build America Bonds".[10] This Brief is framed as an investor education piece that SIFMA believes could be helpful to investors. However, SIFMA wants to ensure examination and enforcement regulators do not use this resource to impute a broker dealer time of trade disclosure. Similar to disclosures about market discount, SIFMA feels strongly that it should be made clear broker dealers neither give legal advice nor should they be perceived to be giving legal advice. It is not appropriate to require a dealer to analyze an indenture's extraordinary redemption provisions ("ERP") and come to a legal conclusion as to whether a specific Build America Bond may be called through an ERP.

In conclusion, the list of time of trade disclosures has become over-broad and unnecessarily increases risks to broker dealers without providing material benefit to issuers and investors. It is the position of the industry that the issues set forth above, particularly with respect to the three new time of trade disclosures, create a significant risk of regulatory "foot faults" that far outweigh their perceived benefits. SIFMA urges the MSRB to reconsider the amendments that add these additional time of trade disclosures.

II. MSRB Should Review the Affirmations Related to SMMPs.

We urge the MSRB to move forward with the aspects of its request for comment in MSRB Notice 2023-02 related to disclosures owed to managed accounts, SMMPs and Rule D-15. SIFMA feels strongly that it is important to make clear that a dealer trading with one RIA or multiple RIAs or a dealer that is dually registered as an RIA (when acting in its capacity as RIA) is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the RIA's client. RIAs are already subject to the fiduciary duties mandated by the Investment Advisers Act, including the Duty of Care, which requires the RIA to know the product they are recommending or investing in to determine whether it is in the best interest of the client.[11] Requiring broker dealers, including broker dealers that are dual-registered RIAs, to provide the Rule G-47 disclosure to RIAs and/or the underlying investor, would result in duplicative and overlapping regulation. The MSRB has appropriately recognized that, a dealer trading with an RIA is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15, on transactions with SMMPs, if the RIA is itself an SMMP.[12] The logic that led to this interpretation applies equally with respect to time of trade disclosure.

[10] Available at: https://www.msrb.org/sites/default/files/2024-04/Possible-Redemption-of-Build-America-Bonds.pdf.

[11] *See* SEC Study on Investment Advisers and Broker-Dealers (January 2011) (pgs. 27-28).

[12] *See*, Application of MSRB Rules to Transactions in Managed Accounts (December 1, 2016), https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts.

Additionally, SIFMA strongly agrees that all SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. This exemption should also be extended to state registered investment advisers, who have essentially the same duties as federally registered investment advisers but a smaller amount of assets under management. As stated above, RIAs are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients. Since the elements of customer protection modified by MSRB Rule G-48, are already imposed on RIAs by the Investment Advisers Act and/or state regulation, requiring RIAs to sign an SMMP would be anomalous. Furthermore, RIAs typically are given full discretion (or shared with another RIA) to trade on behalf of their clients, who may not want to be informed of the details of each trade or may be forbidden from knowing the details of trades in their account.[13] Obtaining SMMP certifications from federal and state registered RIAs would impose an undue compliance burden, and could potentially result in delayed or lost investment opportunity for their clients.

III. Time of Trade Disclosures for 529 Savings Plans Should be Covered in a Separate Rule.

SIFMA appreciates that the MSRB will be addressing disclosures related to 529 Plans separately, as SIFMA has long felt that there were areas in the MSRB ruleset that should be amended to more effectively regulate these plans. Like mutual funds, 529 savings plans have offering documents or circulars that are updated as necessary. The rules governing 529 savings plans should be more closely harmonized with those governing mutual funds, and an exemption from the dealer time of trade disclosure obligations is appropriate for transactions in 529 savings plans. A new standalone rule covering obligations for sales of 529 savings plans is warranted.

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Thank you for considering SIFMA's comments. SIFMA greatly appreciates this examination of the MSRB's rules regarding time of trade disclosures and the opportunity to set forth our concerns about certain time of trade disclosures as detailed above. We look forward to the forthcoming discussions related to Rule G-15 affirmation requirements by SMMPs as well as

[13] Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

529 plan disclosures. If a fuller discussion of any 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 Lanza, Interim Chief Regulatory and Policy Officer
Justin Kramer, Assistant Director, Market Regulation