



Municipal Securities Rulemaking Board

July 25, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Release No. 34-83463, Request for Comment, Draft FY 2018-2022 Strategic Plan for the Securities and Exchange Commission

Dear Chairman Clayton,

On behalf of the Municipal Securities Rulemaking Board (MSRB), I am pleased to have the opportunity to provide our comments on the Securities and Exchange Commission's (SEC's) Draft Fiscal Years 2018-2022 Strategic Plan (Strategic Plan).

The Strategic Plan sets forth a broad and proactive vision for the SEC's oversight of financial markets and regulation, including its oversight of the MSRB and other self-regulatory organizations (SROs). The MSRB is appreciative of its ongoing dialogue with and opportunity to provide input to the SEC, and the Strategic Plan is well aligned with key aspects of the MSRB's own strategic plan that guides our oversight of the municipal securities market.

The MSRB is an SRO that regulates broker-dealers, banks acting as municipal securities dealers and municipal advisors in the \$3.9 trillion municipal securities market. The MSRB fulfills its statutory mission to protect investors, state and local government issuers, other municipal entities and the public interest, and to promote a fair and efficient market through its rules for municipal securities dealers and municipal advisors, the dissemination of market data and education and outreach. These activities are carried out subject to close oversight by the SEC, which, among other things, approves the MSRB's rules and conducts inspections and examinations of the MSRB.

Under the Securities and Exchange Act of 1934 (the "Exchange Act"), the MSRB and SEC have shared responsibilities for the regulation of the municipal securities market. These similar missions have historically translated into shared goals for and coordination between the SEC and MSRB, and the next five years present opportunities to continue to work towards common goals.

The MSRB recently completed its strategic planning process, which occurs on a three-year cycle, delivering its strategic plan in April 2017. The plan, among other items, focuses the MSRB on enhancing the Electronic Municipal Market Access (EMMA[®]) public web platform by improving

usability and adding market information and tools; improving data quality and acting as a market resource by supporting the efforts of firms to comply with regulations through guidance, best practices, advisories and continuing education.

This letter highlights particular areas in which MSRB initiatives support or complement goals of the SEC's draft Strategic Plan, and describes the MSRB's current and planned activity in these areas. These include: (1) the development of rules, including regarding disclosures; (2) the delivery of technology that supports disclosures for investors; and (3) the enforcement of rules.

Background

As a self-regulatory organization, the MSRB is positioned to receive continuous feedback from experts in the public and within regulated entities to effectively modernize and streamline its rules, address market developments and harmonize its rules with those of other financial services regulators where appropriate. The MSRB has a collaborative relationship with the SEC in carrying out a shared objective to "expand market knowledge and oversight capabilities to identify, understand, analyze and respond effectively to market developments and risks," as identified in initiative 2.1 of the SEC's Strategic Plan.

Congress established a self-regulatory model for the financial services sector in recognition that industry regulation should be informed by professionals with the deepest knowledge of securities trading practices, but with proper checks and balances. The MSRB's authority as the SRO for the municipal market is broad in scope, as detailed by Congress in Section 15B of the Exchange Act. During consideration of the Securities Acts Amendments of 1975, which established the MSRB, the Senate Banking, Housing and Urban Affairs Committee report notes, "The Board is intended to be the primary medium for regulation of the municipal securities industry and should be furnished ample opportunity to develop responsible rules for the industry."

Today, the MSRB's 21-member, majority public board of directors, along with MSRB staff focused exclusively on the municipal securities market, establish and tailor rules addressing potential harms and risks for the market. While the MSRB has a broad mandate, the SEC's power to approve or disapprove MSRB rule proposals provides for effective review such that the application of industry knowledge remains properly focused on the protection of investors, municipal entities and the public interest. In addition, authority to enforce MSRB rules is vested in the SEC, the Financial Industry Regulatory Authority (FINRA), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve (the "banking regulators"), with the MRSB assisting those regulators as described in the Exchange Act. This serves as a check against potentially inappropriate industry influences on examination for and enforcement of the MSRB's rules.

Under the 1975 amendments to the Exchange Act that established the MSRB, Congress extended the SRO system to the municipal securities market in a manner that reflected its unique features – such as the existence of municipal securities dealer activity within varying institutions including banks and broker-dealers and the exemption from registration and disclosure requirements of the Securities Act of 1933 for state and local government and other municipal securities issuers – all while avoiding duplicative enforcement regimes. Moreover, the municipal securities market does not operate in a manner similar to equities or corporate bonds markets. The municipal market is characterized by over-the-counter trading; over 50,000 individual issuers; and more than one million individual bonds outstanding, the majority of which trade infrequently, if at all, in the secondary market. Congress has consistently recognized the value of an SRO, with SEC oversight, dedicated to the municipal market.

The system of self-regulation for the municipal market requires diligent coordination between and among the MSRB, the SEC, FINRA, and banking regulators to assure consistent and accurate rule interpretations. In light of this need to coordinate and consult, this letter highlights areas under the Strategic Plan in which the MSRB and SEC can share information, data and expertise that inform, among other items, rulemaking efforts, technology to support disclosure, and the appropriate enforcement of MSRB rules.

Rulemakings

The MSRB shares the SEC's goal 1.4 in the draft Strategic Plan, to modernize the design, delivery and content of disclosure so investors, including retail investors, can access readable, useful, and timely information to make informed investment decisions. In this regard, the MSRB strongly supports the Commission's proposal to amend the continuing disclosure provisions of Rule 15c2-12 to address the need for disclosure of material bank loans, direct purchases and similar forms of indebtedness used by issuers and obligated persons. Through concept proposals, guidance and available tools on EMMA, the MSRB has urged the voluntary disclosure by municipal bond issuers of these forms of indebtedness. As an example of its market oversight partnership with the SEC, the MSRB worked to identify and notify the market of concerns regarding the general lack of disclosure of bank loans and other indebtedness to investors, and supports the SEC's view under its proposal that the appropriate remedy is within the purview of the SEC and its rules on continuing disclosure.

Even as the SEC works to finalize its proposed amendments to Rule 15c2-12, as reported on its public regulatory agenda, the MSRB is preparing for technology updates to its EMMA platform so that this new class of issuer disclosures can be accommodated. This technology preparation requires significant, timely communication with the SEC staff well in advance of any potential finalization of the Rule, and the MSRB appreciates the opportunity to collaborate with the SEC in regard to the execution of these updates.

Delivery of Technology

In addition to preparing technology to support additional disclosures for investors in connection with Rule 15c2-12 amendments, the MSRB has worked continuously since EMMA's 2008 launch to make EMMA increasingly user-friendly and content-rich for retail investors, municipal securities issuers and market professionals. This is another key project that supports the SEC's objective 1.4 to modernize the design, delivery and content of disclosure for investors as cited above. The EMMA updates are consistent with recommendations made by the SEC in its 2012 Report on the Municipal Securities Market (2012 Report), including that "the MSRB pursue enhancements so that retail investors have better access to pricing and other municipal securities information."

Information provided by EMMA has several components: primary market information such as official statements and offering documents; secondary market trade information, continuing disclosures and financial statements; and analytical tools. Since the 2012 Report, EMMA has added a price discovery tool that helps investors compare prices of similar securities; graphical displays of trade data, prices and trends, initial offering price and yield information; expanded access to credit ratings by Moody's Investors Service, Fitch Ratings, Standard and Poor's and Kroll Bond Agency; a calendar of new municipal securities issuances coming to market; municipal market yield curves from third-party providers; and customized alerts for users wanting to be notified of specific types of continuing disclosures.

This year, the MSRB unveiled a first phase of usability improvements that make it easier for retail investors to navigate EMMA. The updates reflect the goals of the MSRB's multi-year strategic plan, as well as a culmination of feedback from retail investors, municipal securities issuers, analysts, and other market stakeholders and professionals who use the system. Stakeholder input was gathered through a request for comment connected to the MSRB strategic plan, and a year-long series of focus groups through which the MSRB explored how it could improve the usability of the EMMA website, including by highlighting and providing quicker access to certain features. In April, the MSRB launched a new EMMA homepage with improved navigation features; easier-to-find investor disclosures, including a notice of contracted filing deadlines so users can determine whether an issuer has late financial information filings; and an improved presentation of information about individual securities.

Two additional phases of the EMMA redesign will be completed over the next two years, with enhancements geared toward municipal securities issuers who make primary offering and continuing disclosure submissions to EMMA and financial professionals. EMMA will continue to evolve with increasingly comprehensive data and information, with a future-state goal of further enhancing the availability of pre-trade and pricing-related municipal market data.

Enforcement

The SEC's Strategic Plan includes the goal of pursuing "enforcement and examination initiatives focused on identifying and addressing misconduct that impacts retail investors" (1.3). With SEC approval, the MSRB has adopted a number of rules particularly for the protection of retail investors, a category of investor that participates broadly in the municipal securities market. The MSRB's time-of-trade disclosure rule (Rule G-47), best execution rule (G-18), fair dealing rule (Rule G-17), suitability rule (Rule G-19), and recently effective mark-up disclosure requirements (Rules G-15 and G-30) are examples of rules with direct impacts for retail investors. Examination for and enforcement of compliance with these and other MSRB rules by the SEC's Office of Compliance Inspections and Examination, FINRA and banking regulators (the "examining authorities") is a critical aspect to fulfilling the MSRB's mission to protect investors, municipal entities and the public interest.

The Exchange Act authorizes the MSRB to provide guidance and assistance in the enforcement of, and examination for, compliance with its rules to the examining authorities. Consistent with this authority, the MSRB works collaboratively with examining authorities, seeking to ensure that regulatory priorities are communicated and that the MSRB's rules are applied as intended. Furthermore, robust communication with examining authorities about activities in the municipal market discovered by their examination staffs informs the MSRB on the effectiveness of its rules to ensure that, as designed, they continue to provide investor protections.

The MSRB supports this interagency coordination by providing examining authorities with guidance and assistance in the examination for compliance with, and enforcement of, MSRB rules in a variety of ways. These include developing and offering a range of regulatory trainings for examiners, and the development of Regulator Web (RegWeb), a secure site maintained to provide examiners the ability to run queries across certain MSRB data sets, such as transaction data. Through these ongoing efforts, the MSRB and regulators with related jurisdictions can maintain their goals of developing and implementing new and amended rules consistently, appropriately accounting for differences in asset classes and markets, and avoid burdensome duplication.

The MSRB has made significant strides toward retail investor protections and municipal securities industry transparency through improved regulation, EMMA enhancements, enforcement coordination and other efforts. A notable example is the work done by the MSRB to address the market structure, disclosure and regulatory efficiency recommendations of the SEC's 2012 Report on the municipal securities market. As an SRO, the MSRB is well-suited to gaining the perspective and insights needed to drive regulatory efficiency and will continue to engage with the SEC and the other examining authorities in proactive and constructive joint oversight of the municipal securities market.

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I would be pleased to answer any questions that may be helpful in the consideration of your draft Strategic Plan, and to meet with you or your designees as you gather input. Do not hesitate to contact me directly at 202-838-1301 or lkelly@msrb.org.

Regards,

A handwritten signature in cursive script that reads "Lynnette Kelly". The signature is written in black ink and is positioned above the typed name.

Lynnette Kelly
President and Chief Executive Officer