



January 13, 2014

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: **MSRB Notice 2013-22 (December 13, 2013):
Request for Comment on Proposed Changes to MSRB Rule G-3: Continuing
Education Program, Financial Operation Principal, and Limited
Representative – Investment Company and Variable Contract Products**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on the proposed changes to MSRB Rule G-3 detailed in Regulatory Notice 2013-22² (the “Proposal”). This Notice contains three proposed changes: (a) expanding the scope of persons subject to and the substance of the “firm element” of a broker, dealer, or municipal securities dealer’s continuing education requirements contained in MSRB Rule G-3(h); (b) eliminating the requirement of MSRB Rule G-3(d) for certain firms to appoint at least one Financial and Operations Principal, and (c) modifying the scope of permissible activities for a Limited Representative – Investment Company and Variable Contracts Products (Limited Representative) in MSRB Rule G-3(a)(ii)(C).

SIFMA supports eliminating the requirement of MSRB Rule G-3(d) for certain firms to appoint at least one Financial and Operations Principal, and modifying the scope of permissible activities for a Limited Representative – Investment Company and Variable Contracts Products (Limited Representative) in MSRB Rule G-3(a)(ii)(C). However, we believe the proposed changes to MSRB Rule G-3(h), while well-intentioned, require

¹ 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).

² MSRB Notice 2013-22 (December 13, 2013) available at <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2013-22.ashx?n=1>.

additional consideration and analysis. Due to timing of the comment period, including the recent year-end holidays and effective date of the SEC's Municipal Advisor Rule and the requisite implementation planning and training, we have received limited feedback from SIFMA's members on the proposed rule changes. We believe MSRB should reconsider the proposal altogether, and preliminary feedback includes the issues below.

I. MSRB should not “de-harmonize” its Continuing Education Requirements from FINRA Rules

As noted by the MSRB, in addition to individual licensing and regulatory continuing education requirements administered by FINRA, “dealers [are required] to establish a formal training program to keep certain registered persons up to date on job and product-related subjects (the “Firm Element”). In planning, developing and implementing the Firm Element program, each MSRB registrant must consider its size, structure, scope of business and regulatory concerns. Further, each registrant must administer its Firm Element program in accordance with its annual needs analysis and written training plan, and must maintain records documenting the content of the program and completion of the program by certain registered persons.”

These MSRB requirements are currently harmonized with FINRA's Rule 1250(b) Firm Element Continuing Education Requirements. The SEC's 2012 Report on the Municipal Securities Market includes a recommendation for the Commission work with the MSRB to harmonize MSRB rules with similar FINRA rules.³ However, the MSRB appears to disregard this theme by proposing to “de-harmonize” its Firm Element Continuing Education rule from FINRA's without offering any compelling evidence that this is necessary or that those primarily engaged in municipal securities activities are inadequately trained or educated.

II. MSRB should not expand application of Firm Element Continuing Education to Unregistered Associated Persons Primarily Engaged in Municipal Securities Activities

This proposal would expand the individuals required to take firm element continuing education. It would apply to *associated persons primarily engaged* in municipal securities activities whereas current MSRB and FINRA rules apply to *registered* individuals with *customer contact* (and also registered operations professionals). MSRB would uniquely expand the Firm Element to certain middle and back office personnel and perhaps to roles related to finance and accountings that would result in a distinct educational module for personnel without customer contact. However, MSRB has not demonstrated a compelling need to subject these individuals to additional training and education or that the type of training proposed (e.g. investment features, suitability, sales practices, regulations) would even be relevant to their particular job functions.

³ Report on the Municipal Securities Market, U.S. Securities and Exchange Commission, July 31, 2012, at page 141, available at <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

- Furthermore, MSRB’s introduction of a new “primarily engaged in” standard would create additional uncertainty and administrative burden in making the determination of who is covered⁴. This would be a highly distinct standard from existing requirements to identify registered individuals with customer contact.
- The proposal would also mandate training in a particular product area (and presumably would need to cover topics unique to municipal securities that are listed in the notice as examples) as well as mandating a specific time requirement whereas FINRA’s rule included flexibility on content and time that allows firms to address “hot topics” or compliance issues that may pose the most risk to the firm and its customers in the current market environment.⁵
- In most circumstances, registered individuals primarily engaged, or engaged at all, in municipal securities activities with the public do receive training on municipal securities through various means including Firm Element Continuing Education. Individuals engaged in back office operations receive training appropriate to their job function. The administrative costs of having inconsistent requirements would outweigh the benefits and this proposal is in conflict with stated goals of rule harmonization.

⁴ The phrase “primarily engaged” is not defined in the MSRB Rules, and there is no guidance in the MSRB commentary that sheds any light as to how this standard is to be applied. This will lead to disparate interpretation as to what “primarily engaged” means by various dealers. While the Proposal points to the use of this “primarily engaged” concept in other MSRB rules, the fact remains that the MSRB has never given any guidance as to how to apply that standard in any of their other rules, either. MSRB should set forth a bright line definition of what “primarily engaged” means in order to ensure that the individual they intend to be covered by this new training requirement are captured uniformly across the industry.

⁵ While MSRB Notice 2013-22 cites anti-money laundering training as an example of particular topic training, it important to note that such training is required by statute under the Bank Secrecy Act. SIFMA is not aware of financial services product specific training imposed by a regulatory agency, nor is any cited. Additionally, the “one hour” specific requirement is flawed. One hour is a subjective requirement that is easily manipulated and does not focus on the quality of the training being delivered. Focusing on the quantity (i.e., time element) versus the quality of the training provided is misguided. A presenter (or a participant) may move through material very slowly and achieve the one hour requirement with very little actual material being covered. While the literal requirement of the rule would be met (one hour of muni-specific training), it would obviously fall short of the MSRB’s objective. As such, a requirement for an arbitrary one hour training requirement is fundamentally flawed.

III. Level Regulatory Playing Field with Previously Unregulated Municipal Advisors/Financial Advisors

SIFMA is pleased that the MSRB is expeditiously moving forward in defining the scope of duties that a municipal advisor owes to its municipal clients⁶. In addition to the concerns raised above, prior to expanding the scope and manner of training of dealer employees, SIFMA believes that efforts to revise the MSRB's continuing education program should instead be focused on newly regulated/previously unregulated financial advisors to establish a minimum threshold of training annually that is appropriate in the public interest and for the protection of investors, municipal entities or obligated persons.

IV. Financial Operations Principal and Limited Representative – Investment Company and Variable Contracts Products

SIFMA concurs with the MSRB that the requirement of MSRB Rule G-3(d) for certain firms to appoint at least one Financial and Operations Principal should be eliminated, and the scope of permissible activities for a Limited Representative – Investment Company and Variable Contracts Products (Limited Representative) in MSRB Rule G-3(a)(ii)(C) should be modified as proposed.

⁶ MSRB Notice 2014-01, Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors (January 9, 2014), available at <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-01.ashx?n=1>. MSRB Notice 2014-01 is also notable as it is the first time the MSRB has officially incorporated an economic analysis into its rulemaking. MSRB Notice 2013-22 is silent regarding economic analysis.

V. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the eliminating the requirement of MSRB Rule G-3(d) for certain firms to appoint at least one Financial and Operations Principal, and modifying the scope of permissible activities for a Limited Representative – Investment Company and Variable Contracts Products (Limited Representative) in MSRB Rule G-3(a)(ii)(C). However, we believe the proposed changes to MSRB Rule G-3(h), while well-intentioned, requires additional consideration and analysis for the reasons discussed above.

We would be happy to meet with you and the MSRB's staff to discuss our comments further. Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

A handwritten signature in blue ink that reads "David L. Cohen". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director
Ernesto Lanza, Deputy Executive Director
Gary L. Goldsholle, General Counsel
Lawrence P. Sandor, Deputy General Counsel