VIA ELECTRONIC DELIVERY

April 20, 2023

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Comments Concerning MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals*

Dear Mr. Smith:

Thank you for the opportunity to submit comments pursuant to the above-referenced MSRB Notice 2023-02 (the "Notice"). AKF Consulting LLC dba AKF Consulting Group is a registered Municipal Advisor that works solely with State issuers of municipal fund securities including 529 Savings Plans and 529A ABLE Plans. We also advise State Administrators of Auto-IRA Programs, which, as currently structured, fit within the definition of municipal fund securities under MSRB Rule D-12.[1] Since our formation in 2002, we have had the privilege of working with 49 State Administrators across 37 States. We recognize and value the important role that the MSRB plays in regulating brokers, dealers, and municipal advisors in the municipal fund securities market, and recommend best industry practices reflected in the MSRB's jurisdiction.

With this in mind, our comments solely address Question 1 under Time of Trade Disclosure Obligations with Respect to 529 Savings Plans (page 19 of the Notice). While AKF professionals collectively understand the dealer obligations and business practices addressed in Questions 2 through 4, we base our comments on our service as a fiduciary to the State issuers of municipal fund securities.

> **1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?**

AKF Consulting appreciates that when Rule G-47 was adopted, it specifically did not codify the August 7, 2006 *Interpretive Guidance on Consumer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (the "Guidance"). In our view, codification was likely unnecessary since college savings

[1] State-run Auto-IRA Programs are subject to the rules and regulations applicable to Roth IRAs

market participants understood and even embraced the Guidance's directives regarding matters such as out-of-state disclosures from the start. To that end, specific points have been included in the Voluntary Disclosure Principles adopted by the College Savings Plans Network, which have been amended over time to reflect regulatory developments and evolving best practices.

Notwithstanding the clarity of the Guidance and the universal implementation of the disclosures it includes, we would support a new, standalone rule that expressly applies to 529 College Savings and ABLE Plans as municipal fund securities. In taking this position, we recognize that 529 College Savings and ABLE Plans (and by analogy, State-run Auto IRAs) are more like mutual funds than traditional municipal debt obligations. To that point, the time of trade disclosures should incorporate the concepts that apply to continuously offered securities as opposed to securities that are offered at one time, with set terms and durations. Having such a rule would acknowledge the magnitude of the market overall for State-run Investment Plans, which in our view, include 529, ABLE and Auto-IRA Plans. Importantly, a dedicated rule would eliminate any uncertainties about the consumer protections that must be in place for investors in any of these important programs.

In our role as fiduciaries to State issuers of 529, ABLE and Auto-IRA Plans, we work with our clients to ensure that each one understands its obligations and responsibilities under applicable federal securities laws. A clear, concise rule that addresses material time of trade disclosures in connection with the municipal securities issued by these Plans would, in our view, assist State issuers and consumers by clarifying dealers' obligations and promote consistent application of the Guidance within the industry.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. Please contact us if you have any questions or if would like additional information.

Sincerely,

Andrea Feirstein

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BDA Bond Dealers of America

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April 17, 2023

Ronald W. Smith, Corporate Secretary
MSRB
1300 I Street NW
Washington DC 20005

Dear Mr. Smith,

The Bond Dealers of America ("BDA") is pleased to provide comments on MSRB Notice 2023-02, "Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals" (the "Proposal"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal describes contemplated changes to MSRB Rules G-47 and D-15 and related guidance as part of the Board's retrospective rule review. Many of the amendments in the Proposal are consolidations or reorganizations of existing policy documents, including incorporating guidance into rule text and consolidating and retiring some guidance. The Proposal would also add three data items that "may be material and require time of trade disclosure to a customer." These are whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. The Proposal would also specify that dealers do not need "to disclose to their customers material information that, pursuant to the dealer's policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer's registered representatives who are engaged in sales to and purchases from a customer."

Proposed amendments to Rule D-15 would remove the requirement with respect to a SEC-Registered Investment Advisor ("RIA") for a dealer to obtain an attestation from the customer as a condition of that investor having the status of Sophisticated Municipal Market Professional ("SMMP").

BDA is generally not opposed to the Proposal as it relates to Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens[1]. The exceptions to this are the three additional data items not currently referenced as "information that may be material in specific scenarios and require time of trade disclosures to a customer" in Supplementary Material .03 of Rule G-47—whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. While some dealers likely incorporate these disclosures currently, not all do. For those who do not, these amendments

[1] To ensure the descriptions and explanations contained in the soon-to-be-archived guidance remain easily accessible, we recommend adding a link to "Archived Interpretive Guidance" (www.msrb.org/MSRB-Archived-Interpretive-Guidance) to the MSRB's "Regulatory Documents for the Municipal Market" landing page (msrb.org/Regulatory-Documents).

would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information, likely from vendors.

As the Proposal recognizes, "dealers could incur costs as a result of the proposed actions." As the Proposal also recognizes, this is especially "true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47." Compliance costs are not borne equally across the industry. Smaller dealers tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue. While the marginal compliance costs associated with the Proposal may be relatively small, they would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule. Together, these initiatives would impose significant new compliance costs on MSRB-regulated dealers. We urge the MSRB to be mindful of the combined effects of the Board's initiatives as well as regulations promulgated by the SEC, especially the effects on small and mid-size dealers.

BDA supports the proposed changes to MSRB Rule D-15. We agree with the Proposal that SEC-registered RIAs "are typically very sophisticated" and "the burdens associated with obtaining an attestation from these professionals" are not supported "by the protections afforded to them."

The Proposal states "one alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission." Apparently the Board rejected this provision because "investment advisers registered with the Commission are typically much larger than state-registered advisers." We do not believe the size of the RIA is a driving factor in the RIA's sophistication or their ability to otherwise meet the requirements of SMMPs. State-registered RIAs generally bear a fiduciary duty to their customers comparable to the fiduciary duty imposed by SEC RIA rules. We urge the Board to reconsider the D-15 proposal and include state-registered RIAs in the proposed exemption from the requirement to obtain a SMMP attestation.

BDA is again pleased to provide comments on the Proposal. We are generally not opposed to the proposed changes to Rule G-47, and we fully support the proposed changes to Rule D-15. Please call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

COLLEGE SAVINGS PLANS NETWORK

A Network of the National Association of State Treasurers

By Electronic Delivery

April 17, 2023

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice"). CSPN is an affiliate of the National Association of State Treasurers ("NAST") and membership includes elected officials and senior staff in state government with responsibilities with regard to 529 College Savings Plans ("529 Plans"). These state members of CSPN are not brokers, dealers and municipal securities dealers (collectively, "Dealers") under the rules of the Municipal Securities Rulemaking Board (the "MSRB") and so do not have direct insight into some aspects of this request for comment. CSPN also has corporate affiliate members who may be Dealers. However, this response is not made on their behalf as we assume they will provide their own responses to the Notice.

We appreciate the MSRB's continuing commitment to assisting consumers seeking to invest in 529 College Savings Plans ("529 Plans") and its interest in ensuring that State administrators of 529 Plans receive sound, balanced support from their advisors. CSPN appreciates the opportunity to provide comment on time of trade disclosure obligations regarding 529 Plans and is pleased to offer the following responses to Questions 1 and 2.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify

existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

CSPN is appreciative of the guidance received in 2006, *Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* ("Guidance") to date on the time of trade obligations of brokers, dealers and municipal securities dealers (collectively, "Dealers"). We believe the Guidance is clear and are unaware of member difficulties in applying the Guidance. The Guidance is also memorialized in the CSPN Disclosure Principles Statement No. 7, which was adopted October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

In light of the consistent application of the Guidance within the industry, we do not believe codification of the Guidance is required at this time.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

In general, for 529 Plans sold directly to the public, the Plan's disclosure documents are provided at the time the participant opens an account. Generally, 529 Plans require participants to acknowledge that they have received, read and understand the applicable disclosure documents. This happens during the online enrollment process or on the paper application if the participant is not enrolling online.

In general, for 529 Plans sold through financial professionals, the Plan's disclosure documents are provided to the financial professional by the 529 Plan so that the financial professional can satisfy any time of trade obligations.

In addition, 529 Plans generally have significant disclosures included in marketing and outreach materials. These materials include printed, electronic and website disclosures advising the reader of important considerations including:

- Investment returns are not guaranteed, and you could lose money by investing in the 529 Plan
- Read and consider carefully the 529 Plan's disclosure documents before investing. These documents include investment objectives, risks, charges, expenses, and other important information.
- Before you invest, consider whether your or the beneficiary's home state offers any state tax or other benefits that are only available for investments in that state's 529 Plan. Other state benefits may include financial aid, scholarship funds, and protection from creditors.

We are unaware of difficulties caused by current business practices in meeting applicable time of trade obligations, regardless of the method of enrollment in the 529 Plan.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach CSPN by contacting Chris Hunter at (202) 630-0064 or chris@statetreasurers.org.

Sincerely,

Rachel Biar
Nebraska Assistant State Treasurer
NEST 529 College Savings Program Director
Chairman, College Savings Plans Network

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D. C. 20001
(202) 393-8467

July 21, 2023

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2023–02 Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Participants

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) appreciates the opportunity to provide comments regarding the request for information that was included in MSRB Notice 2023-02. Specifically, we would like to address the definition of Sophisticated Municipal Market Professionals (SMMP) as part of MSRB Rule D-15.

Question #4 in the Notice asks ……. "*Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?"*

As you are aware, municipal entities are not only issuers of municipal securities, but also may be investors of municipal securities.

The current definition of SMMP in Rule D-15 (and corresponding FINRA rules) states that one of the criteria that needs to be met for SMMP status is for the investor (or institutional account as noted in Rule D-15), to have $50 million in assets. This is different than the language that was part of Rule G-47 and the definition of SMMP held prior to changes in 2012, where the threshold for one of the SMMP criteria was $100 million in municipal securities investments.

The GFOA believes that the definition and SMMP criteria should be reinstated to the threshold prior to 2012: $100 million in municipal securities investments. Many governments – including small governments - have a great deal of infrastructure and assets in place; however, that is not an indication of whether those entities are sophisticated investors.

We believe that this definition as it currently stands (governments with $50M or more in assets) captures a vast audience of governments who should not be labeled SMMP and therefore a broader audience forfeits several layers of protections. Rule D-15 should be changed to better reflect whether an entity is likely a sophisticated investor based on criteria that directly corresponds to investing.

One of the MSRB's greatest roles is to protect issuers and investors. Keeping one of the criteria for the SMMP definition at $50 million in assets, jeopardizes rather than enhances investor protections for municipal entities. By changing the definition to investible assets, the MSRB (and FINRA in corresponding rules) can avoid capturing a vast audience of governments that should not go without vital disclaimers, best execution standards, suitability standards and time of trade disclosures about their investments.

We would also like to mention that in this Notice, other concepts raised related to disclosures in limited private offerings. While disclosures are not required nor are they the responsibility of issuers in these transactions, we understand the concerns the MSRB has that these bonds could be sold in the secondary market to investors who are unaware of the agreement with the initial purchaser at the time of initial sale. GFOA supports efforts to ensure investors understand when disclosures may not be available.

Sincerely,

Emily Brock
Director, Federal Liaison Center

cc: Ms. Saliha Olgun, Interim Chief Regulatory Officer - MSRB
Dave Sanchez, Director – Office of Municipal Securities, Securities and Exchange Commission

Comment on Notice 2023-02

From: Curtis McLane,

On: April 19, 2023

Comment:

It Would be more conservative on a time basis in all honesty I do greatly appreciate MSRB and SEC they honestly do try to do what's fair and true even if it burdens them. And they do it with ease I hope one day I can learn to be as effective as you all are and as helpful. we all should be grateful for the time and effort you spend everyday trying to make things fair and equal for everyone.

my529®

By Electronic Delivery

April 17, 2023

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The Utah Educational Savings Plan dba my529 ("my529") was established by the State of Utah as a qualified tuition program under 26 U.S.C. § 529 (529 Plan(s)). my529 is the official and only 529 plan sponsored by the State of Utah. Since its founding, my529 has become the third largest direct-sold 529 Plan in the country. my529 is pleased to have the opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice").

my529 appreciates the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 Plans. my529 is uniquely situated in the industry in that it does not have an advisor-sold 529 plan, nor does it contract with any firm as an underwriter to distribute the Plan's securities. Nevertheless, my529 strives to align its practices with applicable MSRB rules and thus feels compelled to provide comments.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

Although 529 Plans are issuing a municipal security, the municipal fund security issued by 529 Plans is fundamentally different from the bulk of municipal securities overseen by the MSRB.

Because of the fundamental differences between a contribution to a 529 Plan and the purchase of a municipal bond, my529 believes that there may be utility in codifying a standalone rule regarding time of trade disclosure obligations for 529 Savings Plans. A standalone rule for 529 Plans would have two benefits: (1) it would allow the MSRB to better see and understand the unique nature of municipal fund securities issued by 529 Plans; and (2) it would provide greater certainty, as well as a potential safe harbor to 529 Plans.

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When an account owner contributes to a 529 Plan, the account owner is investing in a municipal fund security. That contribution looks and acts, however, far more like an investment in a mutual fund[1] than a purchase of a municipal bond which has a set maturity date and coupon rate. In contrast, the municipal security issued by a 529 Plan is a continuous offering.

Contributions to 529 Plans typically fit into one of the following areas, each requiring different time of trade disclosures.

1. **Initial account opening**. An account owner opening a new account should receive offering materials prior to opening the account. As a continuous offering, disclosure materials are readily available. Generally, hardcopies are made available to any account owner who has not requested electronic delivery. Clear guidance on electronic delivery or availability of the disclosure materials is needed.

2. **Automatic or one-time contributions**. Account owners may contribute automatically with scheduled contributions, or may choose to contribute sporadically when they have funds to invest. Clear guidance is needed in these circumstances. Providing disclosure documents for every transaction after the account is opened is impractical and expensive. Like mutual funds, supplemental materials should be provided when plan changes material to the investment decision are made.

3. **Third-party contributions**. Anyone is allowed to contribute to a beneficiary's 529 Plan account (e.g., gifting platform, grandparent, friend, aunt, etc.). Clarity is needed around any disclosure requirements in this circumstance. my529 believes no disclosure requirement is needed because these are gifts to an account over which the giver has no control.

If the MSRB were to propose a new standalone rule, existing Rule G-17 interpretative guidance addressing out-of-state disclosure obligations should be codified because it would provide greater certainty to 529 Plans. The current guidance has been voluntarily adopted by the College Savings Plans Network ("CSPN") in recommended disclosure principles for 529 Plans. The current version of these disclosure principles is CSPN Disclosure Principles Statement No. 7, which was adopted on October 6, 2020 (available at: https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf).

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

[1] In fact, my529 has observed that some account owners may get confused that they do not own the underlying mutual funds when they make a contribution to their account (i.e., invest in a municipal fund security). Accordingly, my529 has taken steps to better communicate to its account owners and prospective account owners about the fundamental nature of the municipal fund security that they are purchasing when they contribute to their accounts.

my529's current business practice is to provide its program disclosure document (i.e., the my529 Program Description) to all new account owners prior to opening an account. Whether opening an account online or using a paper form, my529 makes the my529 Program Description available in hard copy or electronic format (depending on the stated preference of the individual account owner) as part of the account signup process. New account owners must specifically agree and certify to the following:

> "I have received, read, understand, and agree to all the terms and conditions in the Program Description and this Account Agreement and will retain a copy of the Account Agreement for my records."

The my529 Program Description is also available on my529's web site and is posted publicly as a voluntary disclosure on EMMA.

When the my529 Program Description is updated via supplement, copies of the supplement are sent to all account owners either in hard copy or electronic format. The Supplements are also posted to my529's website and are posted to EMMA as a matter of best practices.

my529's advertisements (except for those that meet an exception to MSRB Rule G-21(e)(i)(B)) also contain disclosure urging the reader to "[c]arefully read the Program Description in its entirety for more information and consider all investment objectives, risk, charges and expenses before investing." This disclosure would be present on all advertising that presents a "call to action" on the part of the viewer—whether the viewer is an existing account owner or merely a prospective one.

Time of trade disclosures are generally not a hindrance to current account-opening business practices. However, a requirement to provide disclosure materials for every contribution after the initial account opening would be expensive and impracticable. As an example, my529 processed more than 3.1 million contributions in 2022.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

my529 is not a municipal dealer and does not work with any dealers on distribution. As a result, my529 does not have direct knowledge of municipal dealers' current business practices. my529 is, however, mindful of the burden and cost imposed on dealers who are required to provide time of trade disclosures either orally or in writing. As noted previously, the municipal fund securities sold by 529 Plans are fundamentally different than a municipal bond. my529 believes that dealers, and self-operated plans like my529, may satisfy their time of trade disclosure obligations by electronic notice and reference to program disclosure documents that are publicly available, whether that be on the website of a 529 Plan or on EMMA.

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4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

It is common for my529 account owners to set up automatic contributions that happen on a monthly or other regularly-scheduled basis. This complicates time of trade disclosures because the investment decision is not made when each contribution is made—rather the investment decision is made when the account owner sets the automatic, recurring contribution schedule.

The account owner's motivation in setting such a schedule is so that he or she does not have to make further investing decisions, unless he or she wants to cancel or modify that automatic, recurring contribution. To require a 529 Plan to provide ongoing, mandatory time of trade disclosures under such circumstances is expensive and impracticable. For example, the printing and mailing costs for my529's most recent Program Description was approximately $2.30 per account. Program Descriptions were mailed to more than 34,000 account owners. This does not include personnel expenses for drafting, editing and review by compliance and disclosure employees or consultants. For the 15 percent of account owners that request printed documents, the cost would exceed $1.0 million annually, or an increase to my529's annual budget of seven percent. Such disclosures, if mandated, would only needlessly increase cost and damage the goodwill that exists between a 529 Plan and its account owners because the account owners would receive such disclosures long after the investing decision had already been made.

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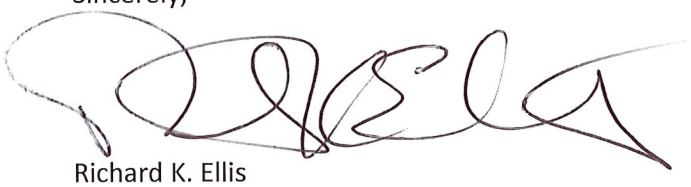
Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach my529 by calling Greg Dyer at (801) 366-8441.

Sincerely,



Richard K. Ellis
Executive Director
my529
60 South 400 West
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April 17, 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 2023-02 – Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input on the Municipal Securities Rulemaking Board's ("MSRB's") Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (the "Notice").[2] SIFMA applauds the MSRB's goal to modernize the rules while continuing to provide appropriate issuer and investor protections without placing undue compliance burdens on regulated entities. In furtherance of this goal:

- MSRB rules should be harmonized with the Investment Advisers Act rules.
- All RIAs should be exempt from attestation requirement.
- Supplemental Material .01 (d) is outdated and should be retired, as security information is now readily available.
- The scope of time of trade disclosures should be clear and not increase; MSRB should clarify that rules should not be construed to require broker dealers to give tax advice.

[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] MSRB Notice 2023-02 (February 16, 2023).

- Time of trade disclosures for 529 savings plans should be covered in a separate rule.

I. MSRB Rules Should be Harmonized with the Investment Advisers Act Rules,

It is important that the rules be consistent with rules adopted under the Investment Advisers Act of 1940 (the "Advisers Act"). RIAs registered with the SEC are subject to the requirements of the Advisers Act and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act obviate the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48. If the RIA does not comply with such obligations, they are arguably not fulfilling their fiduciary duties, so the MSRB should not need to layer on additional investor protections for municipals.

The MSRB should codify the guidance related to transactions in managed accounts as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). 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.[3] In other words, for purposes of Rule D-15 the RIA is the customer. The logic that led to this interpretation applies equally with respect to time-of-trade disclosure, so for the purposes of MSRB Rule G-47, the MSRB should consider the RIA, and not the underlying investors, to be the dealer's customer. For example, when an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

II. All RIAs Should be Exempt from Attestation Requirement

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. RIAs typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade

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

or may be forbidden from knowing the details of trades in their account.[4] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

III. Supplemental Material .01 (d) Is Outdated and Should Be Retired, as Security Information is Now Readily Available

The draft amendments to Supplementary Material .01(d) attempt to codify certain language from existing interpretive guidance reminding purchasing dealers to obtain information about limited information bonds. The original 1986 guidance states:

> Customers are not subject to the Board's rules, and no specific disclosure rules would apply to customers beyond the application of the anti-fraud provisions of the federal securities laws. I note, however, that a municipal securities professional buying securities from a customer should obtain sufficient information about the securities so that it can accurately describe these securities when the dealer reintroduces them into the market.[5]

The original guidance does not state that the dealer is to obtain information from the customer, however, merely that the dealer must obtain the information prior to reintroducing the security to the market. Regardless, this guidance is outdated and should be retired instead of codified. The information environment in the municipal securities market is fundamentally different today than when the original guidance was published, thanks in large measure to the work of the MSRB and its EMMA website.

Furthermore, the language in the Notice codifying this 1986 guidance is unclear and misleading. This provision should have been a mere reminder that a dealer must understand the securities they are selling, and that one source of the information could be to obtain information from the selling customer. However, the language in the Notice sets a new standard beyond what is required by Rule G-47. It is important to make clear that a dealer does not have a duty to obtain information about a security from a customer in all cases, and security information need not be obtained from the selling customer. For these reasons, this guidance should be retired, as codifying the language as proposed in the Notice will merely create confusion and potentially the perception that an information inquiry must be made of all customers.

IV. The Scope of Time of Trade Disclosures Should Be Clear and Not Increase; MSRB Should Clarify that Rules Should Not Be Construed to Require Broker Dealers to Give Tax Advice

SIFMA is concerned about the proposed increase in scope of time of trade disclosures. Requiring time of trade disclosures about factor bonds, zero coupon bonds, stepped coupon bonds, the availability of an official statement, and yield to worst calculations adds compliance

[4] 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.

[5] *See,* Rule G-17 interpretive guidance (April 30, 1986), https://msrb.org/Description-Provided-or-Prior-Time-Trade.

risks and burdens. Further, SIFMA is concerned that information that is widely available and obvious will be required to be disclosed (as well as documented and subject to supervisory policies and procedures). Time of trade disclosure of obvious information, on the contrary, obfuscates material information.

Currently firms likely do have access to non-public information, including information in data rooms, that should not be required to be disclosed. SIFMA appreciates the MSRB retaining the clarification that it is not the MSRB's intent to require dealers to violate dealer processes that have been established to facilitate compliance with another obligation in order to comply with Rule G-47.

SIFMA is further concerned about the 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,[6] 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 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.

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. SIFMA urges the MSRB to reconsider the changes that add these additional time of trade disclosures.

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

529 savings plans are more similar to mutual fund investments than state and local government bond debt, and 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. As part of that effort, the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified. As stated above, SIFMA members would like the MSRB to clarify 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.

* * *

[6] The archived guidance is still helpful. SIFMA requests that archived guidance be easier to find on the MSRB's website.

Thank you for considering SIFMA's comments. SIFMA greatly appreciates the MSRB's review of the rules regarding time of trade disclosures and the SMMP affirmation requirements. 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***
Saliha Olgun, Interim Chief Regulatory Officer
Gail Marshall, Senior Advisor to Chief Executive Officer
Justin Kramer, Assistant Director, Market Regulation

APPENDIX A

QUESTIONS

Rule G-47

1. Are there any other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified? Are there any other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03?

SIFMA members feel that the MSRB should codify the guidance related to transactions in managed accounts, as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client). Also, 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.[7] For the purposes of MSRB Rule G-47, the MSRB must legally consider the RIA, and not the underlying investors, to be the dealer's customer. When an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, in these scenarios, the dealer does not have any customer obligations to the underlying investors. When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer.

RIAs registered with the SEC are subject to the Investment Advisers Act of 1940 and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act reduce the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48.

Other than as noted above, there are no other aspects of guidance that relate to Rule G-47 that the MSRB has not proposed to codify, but that should be codified. There are no other time of trade disclosures that are not specifically discussed in Rule G-47, MSRB guidance or this Request for Comment that the MSRB should consider adding to the list of disclosures under Rule G-47 Supplementary Material .03. On the contrary, SIFMA members feel the list of disclosures has grown to be unnecessarily long.

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

2. Is there any other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic?

There is no other guidance pertaining to a dealer's time of trade disclosure obligations in connection with inter-dealer transactions that should be incorporated into the consolidated notice on this topic.

3. Are there situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of?

There are no situations where continuing disclosures are not available to customers that dealers would not reasonably be aware of.

4. Are the technical clarifications set forth above helpful and do they alleviate potential sources of confusion?

The technical clarifications set forth above are largely helpful and do alleviate potential sources of confusion. Additionally, we do suggest retirement of Supplemental Material .01(d).

5. Are the draft amendments regarding specified time of trade disclosure obligations reasonably accessible to the market?

The information required to be disclosed pursuant to the draft amendments regarding specified time of trade disclosure obligations is reasonably accessible to the market.

6. Do commenters agree that evidence of insurance generally is not required to be attached to a security for effective transfer?

SIFMA agrees that evidence of insurance generally is not required to be attached to a security for effective transfer.

7. Are there any aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form)? If so, please specify.

There are no aspects of the guidance that the MSRB proposes to retire that should be retained in any way (e.g., through codification, consolidation or by retaining such guidance in its current form).

Burdens and Impact

8. Would the obligations specified in the newly proposed draft supplementary material result in a disproportionate and/or undue burden for small dealers? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft amendments? Please offer suggestions.

The obligations specified in the newly proposed draft supplementary material do not result in a disproportionate and/or undue burden for small dealers but impose an equal burden on all dealers.

9. Are any of these 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-47? Please offer suggestions.

These burdens are not unique to MWBE, VBE, or other special designation firms.

10. Would the obligations proposed in connection with Rule G-47 result in an undue impact to 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-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 do not result in an undue impact to access to business opportunities specifically for small dealers, but instead impact all dealers similarly.

11. Would the obligations proposed in connection with Rule G-47 result in an undue impact to 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-47? Please offer suggestions.

The obligations proposed in connection with Rule G-47 are unlikely to result in an undue impact to access to business opportunities for MWBE, VBE or other special designation firms.

Time of Trade Disclosure Obligations Regarding 529 Savings Plans

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, a new standalone rule would be more appropriate. As part of that effort, SIFMA believes that the MSRB should review the existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations before such a standalone rule is codified.[8] SIFMA members would like the MSRB to clarify that dealers are merely obligated to indicate where

[8] *See,* MSRB Rule G-17 Interpretive Guidance, "Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans," dated August 07, 2006, available at: https://www.msrb.org/Customer-Protection-Obligations-Relating-Marketing-529-College-Savings-Plans.

there may be tax implications but make clear the rules should not be construed to require dealers to give tax advice.

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

Other than at account opening, investors may engage in self-directed activity (contributions, withdrawal, rollover, etc.) regarding 529 savings plans, some or all of which may be automated to occur once or on a recurring basis. These types of transactions hinder dealers in meeting their time of trade compliance obligations related to 529 savings plans. Again, SIFMA members propose that regulation of 529 savings plans be harmonized with those governing mutual fund investment vehicles.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

SIFMA member firms have a variety of supervisory systems and tools in place to support their supervisory review of time of trade disclosures that are made orally or in writing during the various points of the lifecycle of a trade related to 529 savings plans.

4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

As 529 savings plans are more similar to mutual fund investments than state and local government bond debt, they have offering documents or circulars that are updated as necessary. SIFMA members do believe that an exemption from the dealer time of trade disclosure obligations would be appropriate for transactions in 529 savings plans, as these instruments are more similar to mutual fund investments than state and local government bond debt, and the rules governing 529 savings plans should be more closely harmonized with those governing mutual funds.

Rule D-15

1. Do commenters agree with the MSRB's proposal to exempt SEC registered investment advisers from the Rule D-15 attestation requirement? Should this exemption also extend to state registered investment advisers? Why or why not?

SIFMA strongly agrees that SEC registered investment advisers should be exempt from the Rule D-15 attestation requirement. SIFMA members believe 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. Registered

investment advisers typically are given discretion 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.[9] Investment advisers are fiduciaries, subject to state or federal law and oversight, and are charged with making independent investment decisions on behalf of their clients.

2. Does the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement remove any unnecessary burdens for dealers while still striking the right balance of protection for issuers and investors?

Exempting SEC-registered investment advisers from the Rule D-15 attestation requirement removes unnecessary burdens for dealers, while still providing appropriate protection for issuers and investors. SIFMA members feel that all registered investment advisers should be exempt from the attestation requirement.

3. Would the proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms? What about access to business opportunities? Would it alleviate any such disproportionate or unique burdens or provide greater access to business opportunities for small dealers?

The proposal to exempt SEC-registered investment advisers from the Rule D-15 attestation requirement does not result in any disproportionate or unique burdens with respect to small dealers, MWBE, VBE or other special designation firms. On the contrary, such an exemption would alleviate an unnecessary burden on all dealers.

4. Prior to 2012, assets of at least $100 million (specifically invested in municipal securities in the aggregate in a customer's portfolio and/or under management) were required for a customer to be treated as an SMMP. This $100 million threshold was subsequently lowered to $50 million in assets. Are there any considerations that support, or weigh against, increasing or otherwise modifying the current threshold of $50 million in assets for certain categories of customers? For example, unlike customers who are natural persons, many municipal entities likely would meet the threshold of $50 million in assets. Given the role that municipal entities play in the municipal securities market and beyond, should the asset threshold be modified to potentially extend the protections afforded by Rule G-47 to more municipal entities (e.g., $50 million specifically invested in municipal securities)?

SIFMA believes that the current threshold of $50 million in assets is appropriate as a baseline requirement for any customer to be treated as an SMMP. Customers are not required to opt-in to be treated as SMMPs, and there is no requirement that customers provide the attestations to be treated as an SMMP. The vast majority of customers with $50 million in assets will be sophisticated enough to evaluate bonds in which they invest. To the extent a customer does not

[9] 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.

have this level of sophistication, it could simply decline to provide the affirmation. The customer affirmation requirement is designed to ensure that SMMPs have affirmatively and knowingly agreed to forgo certain protections under MSRB rules.

5. The required affirmations under Rule D-15 aligns with FINRA's under FINRA Rule 2111 related to suitability, but also provides clear disclosure to SMMPs of the other modified dealer obligations under MSRB rules to provide clear disclosures to SMMPs and to obtain affirmative statements from SMMPs that they can, for example, exercise independent judgement in performing the evaluations related to fair pricing, suitability and the other modified dealer obligations. Do commenters feel that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets?

SIFMA feels that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets.

Other

1. While the MSRB proposes to retire the guidance above related to secondary market insurance, would there be value in an educational resource for market participants regarding such bonds? For example, continuing disclosures may not be provided for some bonds that are secondarily insured if, for example, a new CUSIP is obtained on such bonds and the issuer/obligated person is unaware of the new CUSIP number.

SIFMA believes that there would be value in an educational resource for market participants regarding secondary market insurance, and the potential impact on continuing disclosure if and when a new CUSIP is obtained on bonds insured in the secondary market.

2. Are there specific enhancements to EMMA that the MSRB could consider to help investors identify continuing disclosure information that may be relevant to secondarily insured bonds? If so, please describe them and identify any challenges of which the MSRB should be aware.

Currently on EMMA, when a bond issuance has a maturity that is secondarily insured, a new CUSIP number may be assigned to that maturity. Investors would need to know, or need to know how to find, the original uninsured CUSIP for that bond to access the continuing disclosure information for the issue. Some investors may not know how to find the original uninsured CUSIP, when necessary. If an investor researches the new CUSIP number for that bond on EMMA, the continuing disclosure information for the issue may not be linked. To assist an investor in finding the continuing disclosure information on the entire issuance with only the CUSIP number for the secondarily insured bond, the MSRB itself should link the secondarily insured CUSIP directly to the issuer's EMMA page for the original issuance of bonds, or, link the new secondarily insured CUSIP directly to the uninsured CUSIP in EMMA.

3. A dealer is not obligated to provide an SMMP relevant Rule G-47 disclosures, which includes disclosure regarding securities sold below the minimum denominations and the potential adverse effect on liquidity of a position below the minimum denomination. Would it provide greater certainty if a dealer's modified obligations under Rule G-48 specifically identified the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers?

SIFMA does not believe it is necessary for a dealer's modified obligations under Rule G-48 to specifically identify the obligation under subparagraph (f), on minimum denominations under Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. SMMPs are knowledgeable regarding potential adverse effects on liquidity of securities sold below the minimum denomination.