



January 11, 2021

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2020-19 – Input on Strategic Goals and Priorities

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) request for input on its strategic goals and priorities. We welcome this opportunity for a constructive conversation on the direction of the MSRB, particularly at the start of Mark Kim's tenure as CEO and his outreach to various stakeholders. Below we provide high-level feedback on particular priorities identified by Mr. Kim as they relate to the MSRB's mission.

I. Rulebook Modernization – It Should be a Holistic Review

We support the MSRB's strategic goal to modernize its rulebook by updating the interpretive guidance to ensure it remains relevant and reflects current market practices.² However, the goal should be much broader than that. Now is the opportune time to review the rulebook holistically and we offer four considerations. First, we appreciate the MSRB's recent efforts to invite feedback from stakeholders early in the rulemaking process, and we encourage the MSRB to continue this practice to try to ensure that the compliance and operational challenges are identified and addressed ahead of time. We do note that some of these challenges are only able to be identified when coding begins after specifications are released for new

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² See, *A Message from MSRB CEO Mark Kim* (Dec. 21, 2020), <https://www.youtube.com/watch?v=msfcUFETdmA>

systems or compliance systems are developed and put into place, and appreciate working with the MSRB on these concerns when they are brought to light.

Second, the pandemic has highlighted the challenges of outdated rules and the need to modernize rule requirements to leverage technology. A likely long-term impact of the pandemic will be more people working remotely. Working closely with the SEC and FINRA, the MSRB should ease regulatory burdens to promote working remotely, including allowing dealers to establish and maintain supervisory systems that are reasonably designed to supervise the activities of each associated person while working from an alternative or remote location. We also support the MSRB reviewing its guidance to ensure it remains relevant and reflects market practices. We welcome the MSRB consolidating disparate guidance not publicly available, reviewing it for relevance, and going so far as to incorporate it into the rules, allowing the rules to speak for themselves.

Third, a rulebook modernization would not be complete without the goal of harmonizing requirements where possible, a perennial suggestion of ours, with FINRA's rulebook to eliminate regulatory burdens and ease compliance. To do so, the MSRB will have to examine the original justification for a rule that deviated from an analogous FINRA rule and decide whether such justification holds true today. SIFMA has highlighted unnecessary differences in the MSRB and FINRA rulebooks related to several rules, including advertising, customer account transfers, and supervision. As the MSRB undertakes this process, we will be happy to share our specific concerns about the rules that should be harmonized with FINRA rule requirements.

Fourth, while the rulebook is open for review, consideration should be given to leveling the playing field among dealers and municipal advisors (MAs), particularly when there is no justifiable rationale for different treatment. One example is Rule G-24, which prohibits dealers from "...using non-public information obtained in the course of certain fiduciary or agency capacities concerning the ownership of securities in furtherance of their business activities or for financial gain."³ Our members have observed non-dealer MAs using data (e.g., order allotment information) obtained from senior managers in underwritings pursuant to Rule G-11 for commercial purposes, without consent. We see no reason why the same rationale of fair dealing should not also apply to non-dealer MAs, and we request that this gap be closed by extending G-24 to them as part of the rulebook modernization process.

II. Robust Cost-benefit Analysis (e.g., Pre-Trade Price Transparency Initiative)

As it relates to the rulebook and the MSRB's mission of fostering efficient and fair markets, SIFMA reiterates our longstanding request that the MSRB engages in a robust cost-benefit analysis. One current example where SIFMA will be looking for a robust cost-benefit analysis is in any pre-trade price transparency initiative, a long-standing issue that received attention from the SEC's Fixed Income Market Structure Advisory Committee (FIMSAC)

³ MSRB Rule G-24.

recently. The FIMSAC recommended that the SEC, MSRB and others review whether there are effective actions that could be taken to improve transparency.⁴

While we support continued review of this issue, this is an example where we believe that the costs will outweigh any benefits, particularly because there are already mechanisms that provide not only for collecting and accessing trade prices indicative of actual market levels and other trade information, but also for the collection of disclosure information and other related municipal market information and data. The mechanisms are the MSRB's RTRS and EMMA platform, which have been supported by the dealer community through dealer regulatory reports and fees. Certainly, we welcome improving the quality of the data in the RTRS and EMMA if necessary, but we assert that the costs of a pre-trade price transparency initiative would outweigh any perceived benefits. It would be costly to develop and negatively impact market liquidity while yielding limited useful information for investors.

III. Improving Data Quality – Ultimately the MSRB as an Industry Utility

We support the MSRB's strategic priority of improving the quality of data and leveraging data analytics to identify market trends and emerging risks for market participants.⁵ We are happy to offer suggestions on how the MSRB could improve its data. As the MSRB positions itself as a data utility with improved data, we strongly believe it should consider the interests of our members. We would strenuously object to any regulatory requirements that either infringe on the intellectual property of members or require them to purchase their very own data back from the MSRB to meet such requirements.

IV. The MSRB's Role

We reiterate our long-standing belief about the appropriate role of the MSRB as it considers its strategic goals and priorities. With a new CEO, this is an opportune time for the MSRB to consider its role. We offer a few considerations for the MSRB as the self-regulatory organization (SRO) of the municipal securities market.

First, the MSRB must always keep in mind its primary role in relation to other regulators. The concern is that the MSRB has engaged in or considered regulatory initiatives that were more appropriate for another regulator to address and strayed from its core mission. A particularly noteworthy example is the Market Advisory on Selective Disclosure, which many industry members felt was outside the MSRB's jurisdiction, but within the SEC's jurisdiction. It may be hard to ignore newsworthy issues, like derivatives, Environmental, Social and Corporate Governance (ESG), or other issues on its radar, but the MSRB must ask itself – and its stakeholders – whether an initiative would be best left to another regulator with primary regulatory responsibility, and importantly, expertise. This results in better regulation overall.

⁴ See FIMSAC, *Recommendation Concerning Pre-Trade Transparency in the Municipal Securities Market* (June 1, 2020), <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendations-pre-trade-transparency.pdf>

⁵ See, supra note 2.

Second, it is elemental as an SRO for the MSRB to always seek input on rulemaking and guidance from its stakeholders and to not overreach interpreting its own rules. An example that has raised concerns is the MSRB's Compliance Corner. While appreciated, the MSRB must be diligent that guidance does not inadvertently introduce new, conflicting, or duplicative requirements that have not benefited from input through the formal rulemaking process. An example of overreach beyond a rule's requirements is FINRA examination findings this past year that dealers were not in full compliance with Rule G-10 if they had not provided disclosures to every open brokerage account, even if they have never traded a municipal security in their account. The MSRB's interpretation is beyond the rule's requirements and has been costly to address for disclosures irrelevant to entire classes of clients.

Third and finally, the MSRB must always balance the interests of and strive for a level playing field between regulated entities. This includes regulating entities equally to not create competitive disadvantages by way of less regulation of some participants over, which we have seen, for example, with the impacts on the MSRB rules in the wake of the SEC's order this past summer granting MAs exemptive relief from broker-dealer registration for certain activities. This also includes assessing fees fairly, something our members are acutely aware of. Last year, despite a much-appreciated fee holiday, dealers still contributed approximately 94% of the fees collected relative to MAs.⁶ We appreciate the MSRB's greater budget transparency, proper management, and rebates, but we would like to see more effort made to assess fees fairly.

Thank you for considering SIFMA's comments on the MSRB's strategic goals and priorities. We welcome fuller discussion of our comments and can be reached at (212) 313-1000.

Sincerely,

Leslie M. Norwood

Leslie M. Norwood
Managing Director
and Associate General Counsel

Bernard V. Canepa

Bernard V. Canepa
Vice President
and Assistant General Counsel

⁶ See, Annual Report 2019, <http://www.msrb.org/About-MSRB/Financial-and-Other-Information/Annual-Reports/Annual-Report-2019.aspx>. Our percentage was calculated based on discernable fees assessed to dealers.