



September 25, 2014

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2014-14: Request for Comment on Enhancements to Post-Trade Transaction Data Disseminated Through a New Central Transparency Platform

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2013-14² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB is requesting comment on enhancements to the post-trade municipal securities transaction data that would be disseminated from a new central transparency platform (the “CTP”).

I. Executive Summary

SIFMA is pleased with the methodical manner in which the MSRB has proceeded with obtaining input regarding the development of the CTP. SIFMA and its members continue to have concerns about the costs of certain proposed changes, relative to their assumed benefits, particularly related to the proposed addition of a conditional trading commitment indicator and the changes related to dealer compensation arrangements. Additionally, SIFMA feels strongly that the MSRB

¹ The Securities Industry and Financial Markets Association (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). For more information, visit www.sifma.org.

² MSRB Notice 2014-14 (August 13, 2014).

should clarify its guidance regarding the use of the List Offering Price/Takedown Transaction indicator.

II. Background

As described in our prior comment letters³ on the MSRB's two concept releases on the CTP, SIFMA and its members support the concept of transparency, and have been very supportive of some of the MSRB's past transparency initiatives, such as the MSRB's Electronic Municipal Market Access ("EMMA") website, which launched March 31, 2008. There have been a series of initiatives over the past six years that have brought significant changes in the amount of information municipal securities brokers, dealers and municipal securities dealers ("broker-dealers") are required by the MSRB to report, including reset information on variable rate demand obligations and auction rate securities, variable rate securities documents, and new issue security information. Each of these changes were monumental increases in transparency in the municipal securities market, particularly when combined with the move to real-time trade reporting on January 31, 2005.⁴ SIFMA feels that the MSRB should provide statistics to show that investors are actually using this vast amount of new information and that investors feel this new information is helpful to their investment decisions. More information just because "more information is better" can actually be harmful by causing investor confusion and obscuring material information.⁵

We continue to have some specific concerns about these proposals. We believe that some of these proposals will be misleading to investors, potentially harm liquidity and the health of the secondary market for municipal securities, and drive up transaction costs in the industry. We feel the benefits of some of these proposals do not measure up to the astronomical costs and burdens they will impose upon the broker-dealers who will be required to send this information to the MSRB. Each significant change in transparency is driven by a change in reporting

³ See letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 15, 2013 (regarding MSRB Notice 2013-02 (January 17, 2013)), and letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated November 1, 2013 (regarding MSRB Notice 2013-14 (July 31, 2013)).

⁴ The Bond Market Association's website investinginbonds.com was the first website to offer the MSRB's real-time trade reports. For almost a year it was also the only website on which investors could get municipal securities trade information for free.

⁵ See, e.g., SEC Chair Mary Jo White discussing investor information overload here: <http://www.sec.gov/News/Speech/Detail/Speech/1370539878806#.UnM-Xr7D-1t>.

requirements, which not only costs the reporting broker-dealers time and money to change their systems, but also adds costs related to additional personnel to undertake the new reporting, surveillance, and supervision. One set of changes may take years to completely implement and to reduce any error or late rates to a minimal number. Over the past few years, however, the information required to be reported to the MSRB on new issues and trades has been continually changing. We suggest that the MSRB allow time for the full impact of the recent changes to be absorbed by the market before making further significant changes to the amount of information required to be reported to the MSRB by dealers. Additionally, there are significant changes that are on the horizon, such as the Securities and Exchange Commission's ("SEC's") consolidated audit trail ("CAT") mandate, DTCC's shortened settlement cycle ("T+1") project and the implementation of the MSRB's new municipal advisor rules. There are too many significant changes going on in the industry at this time and in the near-term to undertake further changes of this magnitude. We don't think it is prudent to implement these changes at this time. Any changes to dealer information reporting in the municipal market should be timed to coincide with other large systems changes in the industry. The industry deserves a fighting chance to achieve reasonable efficiency in programming mainframes, testing data flow and bandwidth, developing new policies and procedures, and retraining staff.

We also don't know the downstream effects of these proposals. For example, changes to the trade reporting and dissemination systems are not simple and isolated tasks. Many times in the past, a change to one system at one firm has had consequences that ripple throughout that firm's other systems and its out-bound and in-bound processes. Also, the initial costs for any systems changes do not include other significant costs associated with additional surveillance, personnel, and system-fixes from the unintended consequences of these changes. These proposed changes collectively would cost each member of the broker-dealer community at least hundreds of thousands of dollars to make, and many millions of dollars industry-wide. And this does not take into account recurring surveillance, supervision and maintenance. While we cannot precisely report what these changes would cost to implement, our members do have some collective experience with other similar changes⁶ and this is our best estimate. An effort of this magnitude would also take at least years to implement after the rule is final. Indeed, some of these changes will require a wholesale change in the way that the municipal securities secondary market functions and therefore, the costs to investors and industry are difficult to quantify.

⁶ Similar recent changes include adding the reporting of asset-backed securities to Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE") system.

III. Maintain Existing RTRS Portals

SIFMA is pleased the MSRB has decided to maintain all three Real-time Transaction Reporting Service (“RTRS”) portals. SIFMA has long been a proponent of straight-through processing and regulatory efficiency; SIFMA supports the decision to continue to support a straight-through processing approach with regard to trade reporting and marketplace clearance and settlement functions. Most SIFMA member firms use the NSCC Real-Time Trade Matching (“RTTM”) web portal and the RTRS portal. These firms appreciate the single-stream process, and the fact that the trades get a regulatory time stamp when they hit RTTM.

SIFMA appreciates the MSRB’s acknowledgement that there are certain improvements to the RTTM to RTRS pipeline that would be helpful. SIFMA welcomes the MSRB’s efforts to make improvements to the ability for dealers to make corrections to inter-dealer trade reports, and would like to work with the MSRB to resolve these outstanding issues.

IV. Maintain Existing Trade Reporting Deadlines

SIFMA is pleased that the MSRB is maintaining existing trade reporting deadlines. Narrowing the window for trade reporting below 15 minutes would impose substantial costs and burdens on regulated entities. In order for dealers to move to a 10 minute-or-less reporting timeframe, dealers would need to examine their systems and consider reporting out of their front-end systems instead of back office systems. A common reason for delay in reporting is when the indicative data is not in the dealer’s system as the security hasn’t traded in the past year. Most firms report that it takes almost all of the allotted 15 minutes to query an information service provider to upload the missing CUSIP and indicative data, then submit the trade report. Any reduction in the trade reporting deadline would have placed a significant burden on the broker-dealer community.

V. Transaction Reporting of New Issues

a. Establish New Indicator for Conditional Trading Commitments

SIFMA and its members recognize that the marketplace may benefit from an MSRB indicator denoting that the post-trade pricing information for a transaction reflects pricing under a conditional trading commitment (a “CTC”). The indicator, however, would be operationally very difficult to implement and may be misleading because it’s an indication only of the client’s interest at that specific point in time. The date and time of CTC would only be marginally additive, however, as many of these CTC trades are also list offering trades made at a price already known to the market and disseminated.

The potential requirement for including the date and time a CTC was formed is the most significant operational change for firms in this Notice. SIFMA supports the MSRB's suggestion for an alternative approach that defines a CTC as a trade execution on the first day of trading in a new issue that results from an order formed two or more hours in the past. We feel CTC trades also should be defined as trades that are not at list price or takedown trades, as those prices are known to the market and are not necessary for transparency purposes.

The CTC indicator change will create a significant cost burden to regulated entities. SIFMA and its members estimate that this limited change alone will likely cost firms several hundred thousand dollars each to implement.

b. Expand Application of Existing List Offering Price and RTRS Takedown Indicator

SIFMA and its members feel the current List Offering Price/RTRS Takedown Transaction indicator is a useful indicator for users of disseminated pricing information for transactions on the first day of trading in a new issue. The List Offering Price/RTRS Takedown indicator should not be broadened to apply to transactions that have different list offering prices set each day for a number of days. SIFMA feels that this potential change has no upside. This potential change would be confusing for investors and would be a very costly change for broker-dealers, who would need to repeatedly update their security master databases.

Distribution agreements in the primary space are being used by underwriters with increasing frequency. In these agreements, a distribution participant agrees to assist an underwriter in selling the primary offering to the public at the list offering price, without assuming syndicate liability. Since the distribution participant is not a syndicate or selling group member, the current RTRS Procedures require the underwriter's first day sales to the distribution participant and the distribution participant's first day sales to be reported within 15 minutes, even though the distribution participant is performing a similar function to a selling group member and the executions do not provide meaningful information about the price to the market for the securities. For these reasons, SIFMA and its members feel these trades should get the same end-of-day exception as other List Offering Price/Takedown trades.

The absence of meaningful information also arises when sales are recorded between syndicate members at the list offering price (e.g., group net or net designated orders), since the price to the public will still be the list offering price (unlike sales to a broker dealer who is not involved in the syndicate, selling group, or a distribution agreement). In addressing the aforementioned circumstances and

incorporating the substance of MSRB Notice 2007-03, we request that the MSRB consider modifying Rule G-14 RTRS Procedures (d)(vii) as follows:

"List Offering Price/Takedown Transaction" means a primary market sale transaction executed on the first day of trading of a new issue:

(A) by a sole underwriter, syndicate manager, syndicate member, ~~or~~ selling group member, ***or distribution participant to a customer*** at the published list offering price for the security ("List Offering Price Transaction"); or

(B) by a sole underwriter or syndicate manager to a syndicate ***member, or*** selling group member, ***or distribution participant*** at a discount from the published list offering price for the security ("RTRS Takedown Transaction"); ***or***

(C) by a sole underwriter or syndicate manager to a syndicate member, selling group member, or distribution participant at the published list offering price for the security (also a "List Offering Price Transaction"); or

(D) by a syndicate member or distribution participant to a distribution participant at a discount from the published list offering price for the security (also a "RTRS Takedown Transaction").

Note that the discount from the published list offering price may differ between the RTRS Takedown Transactions for the security.

This clarification should be made, as it will conform the rule to widespread industry practice. If this clarification is not made, we believe that it will take 18 to 24 months of development to fully change syndicate programs. There will be substantial costs to the syndicate system provider, and each broker dealer that will need to make a change, if this rule is not clarified in the aforementioned manner.

VI. Transaction Yields

In the Notice, the MSRB proposed to eliminate the requirement for dealers to include yield on customer trade reports. The MSRB has proposed that it will calculate and disseminate yield on customer trade reports in the CTP. SIFMA supports these proposed changes, as it would harmonize the reporting paradigm with the FINRA's TRACE system and be helpful to the broker-dealer community

due to the reduction in mismatch reports between the broker-dealer calculated yield and the MSRB's calculated yield.

However, SIFMA has concerns that these proposed changes may lead to investor confusion, as not all transactions are consummated based on yield to worst⁷. The broker-dealer is that party that has calculated the yield upon which the security has traded, communicated that information to their customer, and put that yield on the customer's G-15 confirm. There are many reasons and scenarios why the dealer calculated yield and the MSRB's calculations of yield might not match. These situations include trading based on yield-to-average life for continuously callable securities, and questionable holidays or market closes, all which cause a significant amount of questionable trades. To calculate yield-to-worst, the MSRB would need to maintain a security master database, and permit dealers to do additional calculations on the trade reporting screens to determine yield-to-worst. As yield-to-worst is required to be on a customer confirm, we question how that yield would get back through the dealer's systems onto a customer confirm, if the dealer itself didn't calculate that yield. This programming effort would be a significant rebuild from the current system on both the MSRB and dealer sides, and we question the value. Yield-to-worst is an important data point that customers and other dealers use to calculate various yields, which provide important price transparency in the market. Broker-dealers have a responsibility to report an accurate yield-to-worst calculation to their clients, so the MSRB should not eliminate this requirement. Also, eliminating the requirement to provide yield-to-worst would not greatly reduce the burden on the broker-dealers, as their systems are currently programmed to provide this information. If the MSRB does decide to compute yield-to-worst, then it should eliminate the requirement for reporting of yield-to-worst by the dealers in these customer transactions to avoid redundancy.

To accurately show the investor the relevant yield, the MSRB may need to calculate and display multiple yields. SIFMA and its members feel, however, that having multiple yields publicly disseminated for some or all trades could potentially add to confusion in the marketplace. The market participants currently have the information they need to calculate all the yields they need. Any such additional information should be on a "drop- down" menu that is not on the face of the transparency system.

The elimination of the broker-dealer requirement to report yield on customer trade reports does also alleviate some operational concerns in connection with

⁷ MSRB Rule G-15 and its Interpretation Letters conflict regarding the issue of continuously callable securities.

reporting certain “away from market” trade reports, such as transactions arising from customer repurchase agreements.

VII. Dealer Compensation Arrangements

a. New Indicator of Customer Trades Involving Non-Transaction-Based Compensation Arrangements

SIFMA and its members feel that in order to provide the users of trade transparency products information about valid reasons for variations in trade prices, there should be an indicator to indicate trades with non-transaction-based compensation arrangements. SIFMA and its members acknowledge that this information would be helpful for transparency purposes, and feel that the most efficient way of implementing a change to achieve this goal would be for the MSRB to disseminate information it already collects: whether a trade is done as agent or as principal. Principal trades typically involve transaction-based compensation. Trades that have non-transaction-based compensation are typically agency trades. It is important to point out that some fee arrangements are hybrid in nature, and incorporate a small transaction-based component as well as a non-transaction-based component. Alternatively, we feel that it would be sufficient to require dealers to report this indicator as an “M code” and for the MSRB to disseminate this indicator. SIFMA and its members feel that disclosing the exact nature of such non-transaction-based compensation arrangements is extremely burdensome, as they can be variable, individually tailored, and the terms not readily input into the trade reporting system. These non-transaction-based compensation arrangements are private agreements between the investment manager and its clients. The terms of these arrangements have no transparency value to other market participants. The infrastructure cost to provide such information would vastly outweigh any potential benefits, and thus we recommend, if a dealer reporting change is required, only the inclusion of an indicator denoting that a trade was subject to a non-transaction-based compensation arrangement, without requiring the reporting of the exact nature of such arrangement.

b. Establish New Field for Reporting Miscellaneous Transaction Fees

The MSRB has proposed, in the Notice, to require dealers to report any miscellaneous transaction fees in a separate field on trade reports to support the audit trail function of transaction data, but not to publicly disseminate any such fees reported. SIFMA vigorously opposes this proposal. If this change is merely for audit trail purposes, then a significantly cheaper and more narrowly tailored solution is to have examination staff ask for the information from each regulated broker-dealer. Any policies or procedures regarding miscellaneous transaction fees, such as ticket recapture fees, paper surcharge, flat trade fees, etc., would typically

be uniform across an entire firm. It would be an unnecessary and unfair burden to make broker-dealers report the same information repetitively on all of their trades. As many firms trade report from their front end trading systems using a vendor for customer reporting, it would be extraordinarily difficult to capture this kind of data that is only available in back office systems that handle customer confirmations. This proposed change presents the industry with a high cost of compliance with no increased transparency to investors and a flow of information to regulators that they could receive in a cheaper fashion merely by asking for it during a firm's periodic examination.

VIII. Market of Execution

With respect to market of execution, the MSRB proposes that for those ATSS that take a principal position between a buyer and seller, the ATS and the dealers that transact with the ATS would be required to include the ATS indicator on trade reports. SIFMA feels that this is unnecessary and unduly burdensome, as the MSRB already knows what ATS firms take a principal position between a buyer and a seller, and can flag trades with those entities as ATS trades, just like it flags trades currently between dealers and municipal securities broker's brokers.

The MSRB also proposed that in instances where an ATS connects a buyer and seller but does not take a principal or agency position between those parties and does not have a transaction reporting requirement, the dealers that transact with each other as a result of using the services of the ATS would be required to include the ATS indicator on trade reports and also report information that identifies the ATS used. SIFMA recognizes that the MSRB has a legitimate interest in determining ATS participation in the market, and likely has no other way to get this information on a real-time basis. Although flagging these trades would be a significant operational and administrative burden, the burden would be minimized for the broker-dealer community if the result was a mere change in an "M code".

It should be recognized that some broker-dealers use these electronic platforms to display and track all trades or movements of securities, even offerings from their own inventory to internal sales personnel. When a broker-dealer's sales person unknowingly buys something from the broker-dealer's own inventory, that "internal cross" would not currently trigger a trade report to the MSRB. We do not expect that such "internal crosses" would trigger a trade report in the future; however, a subsequent dealer to customer trade would be reported, without an ATS flag.

If this rule change is approved, SIFMA believes that it will take approximately four months to implement after the rule is finalized, and between \$100,000 and \$200,000 in development costs, per firm, to implement, depending on the approach taken by the MSRB.

IX. Economic Analysis

As described in prior comment letters, SIFMA and its members believe that evaluating the costs and burdens of new regulation, and weighing those costs against any benefits derived from such new regulation, is critical to ensure efficient regulation. An essential component of this principle is conducting a true, reality-based, (and if possible dollar-specific) cost-benefit analysis of new rule proposals and other initiatives. Fully consider the costs and burdens to both the MSRB and its funders weighed against potential benefits, which we understand are much more difficult to value, as well as reasonable alternatives. SIFMA is pleased that the MSRB has adopted a formal framework for its approach to integrate economic analysis into its proposed rulemaking.⁸

SIFMA agrees with the MSRB's goal to improve the transparency in the municipal securities market. However, it is critical that the MSRB strike the appropriate balance between investor protection interests and the efficient operation of the municipal markets. SIFMA would be pleased to work with the MSRB to obtain additional reliable empirical data to assist it in quantifying such costs and benefits. As SIFMA has said in prior comment letters, such data cannot be obtained in the tight time frame of a Request for Comments deadline. A data request could include: the costs components for developing, preparing, and maintaining such systems, including the following: (i) outside developer costs, (ii) information technology vendor costs, (iii) other out-of-pocket costs, and (iv) employee- and staff related costs. Expense categories should include: hardware and software, support and testing/audit; business review, risk review and surveillance.

⁸ Policy on the Use of Economic Analysis in MSRB Rulemaking (September 26, 2013) available at <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx>

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
Page 11 of 11

X. Conclusion

SIFMA and its members are supportive of additional transparency insofar as additional costs and burdens are not put upon the industry without commensurate benefits. As discussed above, we have serious concerns that the cost of implementing some of these proposals vastly outweighs any perceived benefits. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Leslie M. Norwood', with a stylized, overlapping loop structure.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Gary L. Goldsholle, General Counsel
Justin R. Pica, Director, Product Management – Market Transparency