March 6, 2016

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

Re: MSRB Notice 2016-02: Request for Comment on Amendments to MSRB Rule G-12 on Close-Out Procedures

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2016-02[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on amendments to MSRB Rule G-12 on close-out procedures ("MSRB Close-Out Procedures"). SIFMA and its members are very pleased that the MSRB has requested comment on the close-out procedures, as they have not been updated in over 30 years. SIFMA wholeheartedly supports rulemaking and procedures that reduce risk and costs to broker dealers while giving investors greater certainty. The current MSRB Close-Out Procedures are essentially voluntary, and require broker dealers to wait before acting to resolve problem trades. The Notice mandates new timeframes for faster resolution of open transactions and requires their use. The proposed amendments are largely very helpful, but to support the goals of the amendments, SIFMA suggests that the new timeframes should be even shorter than those proposed by the MSRB. Our full comments on these amendments can be found herein.

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1 SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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 http://www.sifma.org.

2 MSRB Notice 2016-02 (January 6, 2016).

I. The Close-Out Process and Duties of Short Sellers and Buyers

There are a number of reasons why securities may fail to settle, such as operational errors, trading desk errors, customer-based execution errors, a failure to receive securities (creating chains of fails) or a partial call of the securities in between the trade and settlement dates. These reasons, and changing market conditions, may make it difficult or impossible for brokers, dealers, or municipal securities dealers ("broker dealers") to buy-in securities or find similar securities.

There are challenges associated with resolving existing inter-dealer fails within the 90-calendar day grace period. These challenges include the fact that the current MSRB Close-Out Procedures are voluntary, without repercussions, and don't put mandatory duties on any party. Also, shorts as a result of partial calls are a challenge because there are necessarily less securities to potentially buy-in as a result of the partial call. Finally, fails that have been outstanding for an extended period of time may be part of a chain of failed transactions. Despite these challenges, SIFMA and its members feel that it is necessary for the MSRB to mandate that existing inter-dealer fails be resolved within 90-calendar days of the effective date of the proposed amendments. However, with respect to the 90-day period and the standard period for close-outs, we recommend that purchasers who exercise commercially reasonable efforts to close out the transaction should not be liable for failure to close out.

Regarding MSRB's question whether there are circumstances under which a customer long allocated to a firm short may realize a benefit from not resolving the inter-dealer fail, the customer assumedly is still receiving interest payments. However, the interest payment may be treated as taxable to the customer. This situation is a condition the proposal is seeking to eliminate.

In the procedures, a firm can cancel a transaction or delivery of securities when effecting a close-out only if both sides agree; it cannot be unilateral. What happens if a bi-lateral agreement cannot be reached to close-out the outstanding fail? Firms do not typically seek to resolve or have the authority to resolve inter-dealer fails outside of the mechanisms identified in Rule G-12(h), so G-12 must provide for solutions that are workable. SIFMA and its members request guidance regarding the documentation needed for the situation where one dealer is trying to resolve a fail, but the other party is not willing, or cooperative. As part of that effort, the MSRB might consider permitting a party to unilaterally cancel a transaction if the related counterparty is non-responsive, after the requesting party has taken reasonable steps to resolve the fail.

Most buyers of municipal bonds in National Securities Clearing Corporation's ("NSCC's") systems take delivery in DTCC ("Depository Trust & Clearing Corporation") from the NSCC's Continuous Net Settlement ("CNS") system on Settlement Date or within a few days thereafter. SIFMA and its members feel fails should be kept in CNS if at all possible, to avoid increasing counterparty risk. If the counterparty is CNS, however, there are logistical challenges for the buyer to determine who caused the short into CNS. Currently, a broker dealer failing to receive a security can do a Web Inquiry Notification System ("WINS") inquiry, or alternatively, contact NSCC CNS operations who, in turn, will contact the broker with the oldest short position and ask that their name be given to the broker that is long. The name "give-up" is only optional, which can be problematic if the only party that is able to provide a resolution through their long position is unwilling to be contacted. Although these services can provide some aid in determining the identity of the counterparty, most resolutions require the dealer to exit the trade from CNS. Unfortunately, when a dealer exits a trade from CNS, they lose the guaranty on the trade, which is a significant disincentive for firms.

Invitation to Cover Short Request ("ICSR") is a DTCC service that can be used to help participants that have failed to deliver, find long participants that have the security within DTCC, outside of CNS. ICSR is a costly service, and has a fee of $300 per use. Also, firms being requested to sell securities to cover another's deficit understandably typically will only sell at a premium. If a counterparty still does not agree to be given up in WINS or ICSR, then a firm needs to file a notice to buy-in the securities through the DTCC's SMART/Track system.

A particular problem for broker dealers occurs in accounts that have been received through the Automated Customer Account Transfer Service ("ACATS"). An account that has been received by a dealer through ACATS may be failing to deliver or may be short the securities. The transfer of the account to a different dealer may complicate the disclosure due to the purchasing party from the seller that failed to deliver. MSRB Rule G-26(e) regarding fail contracts on customer account transfers should continue to require broker dealers to close-out pursuant to Rule G-12(h). Broker dealers need a regulatory requirement to rely on in order to close-out customer accounts where they have no discretion.

Requiring inter-dealer fails to be resolved within 30 calendar days will necessarily result in the resolution of any customer long positions allocated to a firm short position. Five days from the date of execution of the close-out notice is sufficient time for either party to forward any moneys due on the transaction.

In theory, a purchaser should not be required to accept a partial delivery on an inter-dealer fail. At the time of trade, the buyer and the seller contracted to buy a certain amount of bonds at a set price. It is understood on trading desks that orders are all-or-none unless otherwise stated. Fundamentally, a partial delivery may be unfair to the client. A partial delivery may not fit a purchaser's investment criteria or goals, or may violate the minimum denomination or lot requirement. Although the firms have a comparison contract with NSCC and are participants in CNS, the delivery of the securities through the clearance and settlement process is merely an operational issue. Currently, CNS will make a partial delivery if the full amount of the securities is not available through CNS, and a buyer in CNS is not able to reject a partial delivery from CNS and return the securities to CNS. We also understand that allowing buyers to reject partial deliveries in CNS would be extremely problematic for the system. SIFMA and its members would like to continue the dialog with the MSRB and DTCC on this issue; further consideration of this issue may yield a reasonable and workable solution.

In the event the purchasing dealer has multiple transactions in an inter-dealer fail status with one or more counterparties, the purchasing dealer should utilize the FIFO (first–in-first-out) method for determining which contract date for use for the failing quantity.

Rule G-12(h)(i)(G) regarding "cash" transaction is still relevant and necessary, particularly for premium transactions.

II. Suggestions and Alternatives

The goals of the amendments are to reduce risk and costs to broker dealers while giving investors greater certainty. With that in mind, SIFMA suggests the failed transactions should be closed out no later than 15 calendar days after settlement, and urges the MSRB to shorten the proposed mandatory closeout deadline in the amendments. Almost universally, failed transactions don't get better with age, and it is easier to have conversations about close-outs for failed transactions sooner rather than later.

The proposed alternatives identified in the Notice represent a comprehensive set of reasonable regulatory alternatives. Some SIFMA member firms feel consideration should be given to a simpler rule in which more onus is placed on the dealer failing to deliver to take responsibility for and action on resolving the short position. Particularly if the seller made an error, the seller that fails to deliver needs to be able to break the trade or resolve the fail in some manner. The simplest way to resolve a short is to require the dealer failing to deliver to either buy back the position at the current prevailing market price or to break the trade. In connection therewith, the parties should have the opportunity to make claims to recoup reasonable and necessary costs and expenses related to the close-out, which may vary in nature in view of the circumstances of the transaction.[3]

[3] *See also*: http://www.msrb.org/msrb1/pdfs/Close-Out-Procedures.pdf (these procedures will need to be updated to reflect the rule amendments, and should include greater detail regarding the close-out process and recoupable cost and expenses).

For self-directed customer accounts, it would be extremely helpful to have guidance that in the instance where the customer won't cancel the trade by giving the position in the bonds back to the seller, the broker dealer should have the authority to close-out the position by returning the position to the seller. It is important to note that in self-directed customer accounts, broker dealers are not allowed to use discretion; without discretion, broker dealers do not have the authority to buy or sell positions without the express consent of the customer.

Finally, SIFMA members do suggest the MSRB make another minor change to the proposed amendments. We suggest an exemption to the proposed required time period to resolve a short if the buyer affirmatively consents to an extended period of time. This exception would be helpful if the dealer failing to deliver is on the cusp of resolving the fail, but needs a short amount of additional time to deliver or close-out the position. SIFMA and its members suggest that this exception should permit the dealer failing to deliver at most another 15 days, for an aggregate total of 30 days.

III. Cost and Benefit Analysis

SIFMA and its members feel that mandating shorter timeframes for the resolution of close-outs will be more difficult for and require more resources from broker dealers than the current rule. However, SIFMA and its members feel that the draft amendments are a benefit to customers by providing greater certainty in their securities transactions. Whether the new rule requires municipal securities transactions to be closed-out no later than 30 days, as stated in the Notice, or per our recommendation, 15 calendar days after settlement date or 30 days total with the consent of the buyer, there are clearly benefits to limiting the time any customer's fully paid for securities are long in their account, but allocated to a firm short. Resolving shorts promptly also minimizes issues and concerns about the tax characterization of the interest paid during the settlement period. Further, the amendments reduce costs and market risk by facilitating the timely resolution of inter-dealer fails. SIFMA and its members believe that the benefits of the amendments as stated in the Notice outweigh the costs and generally support their adoption.

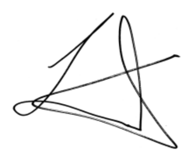
IV. Implementation Period

SIFMA and its members feel it is important to have an implementation period of at least 90 days after approval of the amendments by the SEC to allow for the grace period to resolve outstanding fails. This time period should give broker dealers ample opportunity to alter systems and business procedures to comply with the proposed amendments.

V. Conclusion

Again, SIFMA and its members largely support the MSRB’s proposed amendments to the MSRB’s Close-Out Procedures in Rule G-12. We agree with MSRB’s efforts to eliminate existing aged municipal fails over 90 days, and believe this proposed change will improve the safety and soundness of the U.S. markets. SIFMA urges the MSRB to shorten the proposed mandatory closeout deadline in the amendments for new failed transactions to no later than 15 calendar days after settlement, with an exception that would permit the dealer failing to deliver at most another 15 days, with consent of the buyer, for an aggregate total of 30 days. 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,



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