



June 28, 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 2021-08 – Amendments to Rule G-10 Notification Requirement for Dealers

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”) Notice 2021-08 (the “Notice”),² which proposes an amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify the requirements for brokers, dealers, and municipal securities dealers (“dealers”) to provide the annual notifications to those customers who would be best served by receipt of the annual notifications. SIFMA appreciates the MSRB reviewing Rule G-10 and proposing these amendments which SIFMA generally supports as a way to reduce the compliance burden on the dealer community without reducing investor protections. SIFMA members do have some suggested clarifications and further changes, as set forth below.

I. Scope of Customers To Be Notified

SIFMA members feel the most critical issue is to modify the scope of customers that are required to receive the annual notifications pursuant to Rule G-10. SIFMA proposes that the added language “to each customer for which a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position during that calendar

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 2021-08 (May 14, 2021).

year” be narrowed to “to each customer that held municipal securities in an account with the broker as of a date within a reasonable period of time prior to the date the notices are made.” Dealers can readily reference their stock records at any point in time to identify those customers for whom municipal securities are being held, but it is much more burdensome to “look back” at the prior 12 months—or, as currently required, current calendar year—of transactional records and daily stock record positions, to identify customers who either transacted through, or otherwise held with, a dealer municipal security positions during that time period but for whom their positions are no longer held with that same dealer. To the extent such positions were transferred to another dealer in that same calendar year, the application of the rule would require the dealer currently holding the position to provide the notice. Admittedly, by reducing the scope of the required notifications to being based on positions held at the time of the notification, the mailing would not include any customers whose entire holdings were called or matured prior to the stock record review date. These conditions, however, would seem to impact only a small number of customers and, as discussed below, many of those customers may still be able to locate the notifications on the websites of those prior custodial or executing dealers that choose to provide the notifications on the internet, further reducing the total number of customers potentially impacted.

II. Relevant Time Period

SIFMA members suggest that the language “once every calendar year” be restated as “at least annually” or alternatively “at least once each year.” The current language leads some firms to believe the customer notification needs to occur at the end of the calendar year in December. These firms have stated that since the G-10 disclosure is required to be sent to any customer for whom a municipal security was held by the dealer during the calendar year, if the “annual disclosure” is sent out in September but certain customers did not have positions carried by the dealer until November, the rule could be interpreted to read that those customers would not have received the annual disclosure in that calendar year.³ Therefore, SIFMA members would appreciate clarification that they may send the customer notices at any time during the year. Some SIFMA members send other annual notices to customers at different times during the calendar year due to other regulatory requirements, including those set by FINRA and the SEC. Sending all possible notices to customers at once reduces the burdens on the dealer and the environmental impact of printing and mailing such customer notifications. In addition, the requested clarification, coupled with the change we propose above with respect to the scope of customers to be notified, would allow dealers to more readily identify the customers to whom the annual notice would need to be sent.

³ See MSRB Notice 2020-17 (Nov. 20, 2020) fn 6: “In instances where a dealer provides notice to customers at a point in time earlier than the end of the calendar year, e.g., during March, the dealer needs to ensure that any new customers receive the required notifications by the end of the calendar year. See “FAQs on MSRB Rules on Investor and Municipal Advisory Client Education and Protection,” (“FAQs”) Question #3 (September 2017).”

III. Issuer Notifications

SIFMA members feel strongly that Rule G-10 should not require dealers to provide notification to clients at the earliest stage of the underwriter's relationship with the issuer client when an issuer client has not otherwise engaged a municipal advisor. Any such disclosures due by the dealers to the issuer client are detailed in the bond purchase agreement or in Rule G-17. Adding additional disclosures in Rule G-10 will add to the complexity of dealer compliance without added benefit. If the MSRB feels that additional disclosures should be made to municipal securities issuers, those regulatory requirements should be added to the disclosures due to issuers under Rule G-17.

IV. Notification by Municipal Advisors

SIFMA members believe that current Rule G-10(b), amended Rule G-10(d), should not require annual disclosure by municipal advisors to their municipal advisory clients. Such disclosure is already required to be made promptly after the establishment of a municipal advisory relationship and is included in municipal advisor agreements. This is both a manual and unnecessary process to determine which relationships are subject to the annual disclosure whereas website disclosure of the related information should be sufficient. There is no other municipal advisor disclosure that is required to be made on an annual basis and if any changes in disclosure by municipal advisors are thought necessary, then those changes should be made in Rule G-42. Rule G-42 details the disclosures required by non-solicitor advisors. Again, in this instance SIFMA members feel the information required to be disclosed by Rule G-10 can adequately be communicated by municipal advisors to their municipal advisory clients through website disclosure.

V. SMMPs

SIFMA appreciates the MSRB's amendments to proposed Rule G-48(f). Requiring dealers to send customer notifications pursuant to Rule G-10 to sophisticated municipal market participants ("SMMPs") is costly for dealers, without any related benefits. SMMPs are by definition sophisticated investors that should not require "hand-holding" in order to find the investor brochure on the dealer's website, or elsewhere, or to otherwise require guidance as to how to file a complaint with the appropriate regulatory authority. It has been the experience of dealers that SMMPs do not need or want such basic customer disclosures, and many object to the unnecessary mailings as merely a waste of resources, especially as many SMMPs deal with multiple dealers and are therefore receiving similar and duplicative notifications from each dealer with which they deal. Placement of the customer notifications on dealers' websites provides adequate notice to SMMPs that have engaged in a municipal securities transaction or that maintain a municipal securities position.

VI. 529 Plan Investors

SIFMA also feels that the MSRB should provide an exception to the annual customer notifications requirement to exclude investors in 529 savings plans from receipt of such ongoing annual notifications after their initial purchase of units in a 529 savings plan. Such notifications are redundant and unnecessary. Website disclosure of such information should be sufficient for investor protection without imposing unnecessary burdens on the dealers.

VII. Certain Other Exclusions

SIFMA members appreciate the inclusion of new Rule G-10(b). However, we propose to clarify this exception as follows, “Notwithstanding the requirement in paragraph (a) of this Rule, any dealer that does not have customers or ~~is a party to a carrying agreement where the carrying firm member complies~~ that has agreed with a clearing firm servicing its customer accounts that the clearing firm will comply with paragraph (a) of this Rule is exempt from the requirements of this Rule.” We feel this new language clarifies that the exclusion should only apply if a clearing firm has agreed to comply with Rule G-10(a).

VIII. Cost Savings and Impact

Although the potential cost savings from the proposed amendments are difficult to quantify, it is likely dependent upon the size of the dealer. Members agree that the savings is likely more significant for larger firms, although the change would reduce the compliance costs for all dealers. Any physical notifications that can be avoided, without impacting customer protection, reduces costs as well as the environmental impact of printing and mailing each customer notification. The COVID-19 pandemic also added an additional risk for dealer staff that need to produce and mail these physical customer notifications. Likewise, the recent societal changes mean that many customers may not be receiving mail at their offices and may be less willing to touch any mail they do receive.

SIFMA members state that their estimated percentage of customers that effect a municipal securities transaction that have not previously effected a transaction in municipal securities is anecdotally reported to be less than 1%. Similarly, each year the percentage of complaints that are made by a customer that did not own municipal securities or did not effect a trade in the prior year at the time of a complaint was anecdotally reported to be zero.

* * *

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's proposed amendments, and the opportunity to set forth our additional suggestions and clarifications above. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***

Bri Joiner, Director, Regulatory Compliance

Lisa Wilhelmy, Assistant Director, Market Regulation