



December 10, 2015

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

**Re: MSRB Notice 2015-22: Request for Comment on Changes to
MSRB Rules to Facilitate Shortening the Securities Settlement
Cycle**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2015-22² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB is requesting comment on changes to MSRB rules to facilitate shortening the securities settlement cycle. The draft amendments are in response to a financial services industry-led initiative to shorten the regular way settlement for equities, corporate bonds, municipal bonds, and unit investment trusts from T+3 (trade date plus three days) to T+2 (trade date plus two days).³

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 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 2015-22 (November 15, 2015).

³ See, Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, and Kenneth E. Bentsen, Jr., President and CEO, SIFMA, to Mary Jo White, Chair, Securities and Exchange Commission (June 18, 2015).

I. Support for Shortening the Settlement Cycle

SIFMA and its members support the industry-led move to T+2 regular way settlement for municipal securities. We feel that it is important for the regular way settlement cycle for municipal securities to be consistent with that of the equity and corporate bond markets. We agree that MSRB Rules G-12 and G-15, as identified in the Notice, are the two key rules that need to be modified to effect this change for municipal securities, as they cover the mechanics of clearance, settlement and delivery for these securities. SIFMA and its members support the necessary changes to these rules, in conjunction with SEC amendments to SEC Rule 15c6-1(a), which will set T+2 as the standard for regular way settlement for equities and corporate bonds. We support the industry's proposed migration timeline to complete the move to T+2 by the third quarter of 2017.

As it relates to the timing of the changes to MSRB Rules G-12 and G-15, SIFMA respectfully requests that the MSRB finalize the necessary changes to these rules no later than the second quarter of 2016. The issuance of final rules no later than the second quarter of 2016 is necessary to provide market participants sufficient time to implement necessary system and process changes, and fully test internally and with other industry participants prior to the move to T+2 in the third quarter of 2017.⁴

II. Supplemental Rulemaking to Consider

Separately, this may be an opportune time to review customer disclosure requirements of brokers, dealers and municipal securities dealers ("dealers") pursuant to MSRB Rule G-32. However, SIFMA requests that the MSRB's consideration of any changes to Rule G-32 not impede the proposed changes to Rules G-12 and G-15, which are critical to achieving T+2 by the third quarter of 2017.

MSRB Rule G-32 governs disclosures in connection with primary offerings. Pursuant to Rule G-32(a)(i):

No broker, dealer or municipal securities dealer shall sell, whether as an underwriter or otherwise, any offered municipal securities⁵ to a

⁴ See SHORTENING THE SETTLEMENT CYCLE: THE MOVE TO T+2, pages 11-12 (Jun. 18, 2015), available at <http://www.ust2.com/pdfs/ssc.pdf> (outlining the need for regulatory certainty including final self-regulatory organization rule changes by the second quarter of 2016).

⁵ The term "offered municipal securities" is defined to mean municipal securities that are sold by a dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered

customer unless such broker, dealer or municipal securities dealer delivers to the customer by no later than the settlement of the transaction a copy of the official statement or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any. (emphasis added)

Concerning the baseline legal requirement of Rule G-32, for dealers delivering paper official statements to customers, the move to T+2 will compress the timeframe dealers have to complete the delivery of offering documents in fulfillment of this disclosure obligation. Although the Rule G-32 amendments of 2009, reflected in Rule G-32(a)(ii) and (iii), largely ameliorate this timing issue, we believe the MSRB should consider clarifying certain aspects of Rule G-32. For instance, it would be helpful to specifically express in the text of Rule G-32(a)(ii) that such provision deems the delivery obligation satisfied for all customer sales by all dealers, other than sales of municipal fund securities. The general applicability of this provision to all dealers, not just underwriters, selling offered municipal securities (other than municipal fund securities) was clearly intended by the MSRB, as expressed in its 2009 filing with the SEC. Nevertheless, the lack of express language of such general applicability in the text of Rule G-32(a)(ii) may lead some market participants to believe that it applies solely to underwriters.⁶ Thus, clarification on this point would be helpful.

In addition, under Rule G-32(a)(iii), all dealers entitled to rely on the provisions of Rule G-32(a)(ii) have the obligation to send to the customer by settlement either the paper official statement, or a notice advising customers how to access the official statement on the MSRB's Electronic Municipal Market Access system and that a copy of the official statement will be provided by the dealer upon

(Continued)

in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. The term "primary offering disclosure period" shall mean, with respect to any primary offering, the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter. Therefore, official statements need to be delivered, or have the requirement to deliver deemed satisfied, for customer transactions entered into up through 25 days after final delivery of the bonds by the issuer to the underwriter.

⁶ See Proposed Rule Change by the Municipal Securities Rulemaking Board Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, File No. SR-2009-02 (March 23, 2009), available at: <http://www.msrb.org/~media/Files/SEC-Filings/2009/SR-MSRB-2009-02.ashx?la=en>, at page 53. SR-MSRB-2009-02 (March 23, 2009) (the "Rule Filing") at page 51.

request.⁷ However, there is a policy statement in the MSRB's Rule Filing,⁸ and repeated in the SEC approval order,⁹ which provides that dealers are required to honor any customer's explicit standing request for copies of official statements for all of his or her transactions with the dealer.¹⁰ This gloss on the rule differs from how "access equals delivery" is implemented under the SEC rule paradigm as set forth in Rules 172, 173 and 174 of the Securities Act of 1933, which merely mandate a dealer send a customer an offering document upon each request.¹¹ Dealers thus face operational challenges with respect to municipal securities, but for no other classes of securities, due to the process they must undertake to ensure that they properly honor standing orders for paper offering documents. The shortening of the settlement cycle by one day will only increase these challenges.

SIFMA and its members believe that internet use is now almost ubiquitous, and has increased dramatically since 2009, thereby reducing the concerns that investors in municipal securities may face greater barriers in accessing electronic offering documents than do investors in other markets. Thus, although we feel it is not a pre-condition to moving forward with shortening the settlement cycle, we petition the MSRB to take this opportunity to put on its agenda a plan to update its approach to this issue under Rule G-32 and to harmonize its "access equals delivery" rule to the SEC model, and only require paper official statements on a transaction by transaction basis upon customer request. Again, we feel strongly that

⁷ MSRB Rule G-32(a)(iii). The MSRB noted in the Rule Filing that its 2009 amendments shifted the timing of the requirements under Rule G-32(a) from delivery of the official statement to the customer by settlement as required prior to the amendments to sending of either the official statement or the required notice of availability of the official statement as required after the amendments were implemented. *See* the Rule Filing at page 52, footnote 48.

⁸ *See*, the Rule Filing at page 53. *See also*, MSRB Notice 2009-28: MSRB Establishes Electronic Official Statement Dissemination Standard Under Rule G-32 and Launches Permanent Primary Market Disclosure Service of the Electronic Municipal Market Access System ("EMMA") (June 1, 2009), available at: <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-28.aspx?n=1>.

⁹ *See*, SEC Order Granting Approval of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G-32 and G-36 (May 21, 2009), available at: <https://www.sec.gov/rules/sro/msrb/2009/34-59966.pdf>, at page 7.

¹⁰ Under the MSRB Rules, dealers have one business day from the time of the customer request for a paper copy of the official statement to send the document by first class mail or other equally prompt means.

¹¹ *See also*, Final Rule on Securities Offering Reform, File No. S7-38-04, available at: <https://www.sec.gov/rules/final/33-8591.pdf>, at page 245. Thus, it is the norm in the registered market for customers to make a specific request for a copy of the offering document individually with each transaction, and standing orders are not used.

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consideration of any changes to Rule G-32 should not impede the proposed changes to Rules G-12 and G-15, which are critical to achieving T+2 by the third quarter of 2017.

III. Conclusion

Again, SIFMA and its members support the industry's move to T+2 regular way settlement for municipal securities and unequivocally support the MSRB's proposed rule changes to Rules G-12 and G-15. We also do believe this may be a good time to separately revisit the timing of dealers' offering document disclosure requirements, and would like the opportunity to continue the dialog with you on this point. 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,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
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