BDA Bond Dealers of America

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July 16, 2018

Submitted Electronically

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

RE: Request for Comment on MSRB Notice 2018-09 (the "Notice") relating to Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's request for comment on the Notice. The BDA appreciates the MSRB's efforts in consolidating discretionary transaction rules and, except for one provision, supports the MSRB's draft Rule G-36.

The BDA believes that paragraph (a)(iii) of draft Rule G-36 is overly prescriptive and dealers should have the flexibility of fashioning appropriate policies and procedures.

The BDA believes that paragraph (a)(iii) of draft Rule G-36 is overly prescriptive in that it requires either a municipal securities principal or municipal securities sales principal to approve each order in writing. The BDA believes that Rule G-36 should give dealers the flexibility to fashion reasonable policies and procedures—including which individuals are responsible for approving orders—to ensure that the order is both authorized by a customer authorization and meets suitability requirements. Dealers vary in size and structure and the draft rule affords little flexibility in the approval requirements.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

FINANCIAL SERVICES INSTITUTE
VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

July 16, 2018

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

Re: Regulatory Notice 2018-09|Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts and Related Draft Amendments (Notice)

Dear Mr. Smith:

On May 16, 2018, the Municipal Securities Rulemaking Board (MSRB or the Board) published its request for public comment on the Board's intent to reinstitute a standalone rule that would govern discretionary transactions.[1] That request also seeks public comment on the Board's plans to establish new requirements for discretionary transactions by individuals other than dealers and dealers' associated persons (Proposed Amendments).[2] The proposal's regulatory objective is to clarify dealers' obligations and to harmonize the Board's rules with the rules of other regulators.[3]

The Financial Services Institute[4] (FSI) appreciates the opportunity to comment on this important Notice. FSI believes that, where practicable, laws and regulations should be harmonized and we recognize these Proposed Amendments further that goal. Additionally, and perhaps more importantly, the Proposed Amendments heighten investor protection and add clarity to the MSRB's rules.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing registered representatives.[5] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).[6]

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[1] *See* MSRB Regulatory Notice 2018-09 (May 16, 2018).
[2] *Id.*.
[3] *Id.* at p. 1.
[4] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.
[5] Cerulli Associates, Advisor Headcount 2016, on file with author.
[6] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.[7]

FSI Supports the Proposal

FSI commends the Board on this undertaking. While the Proposed Amendments do not represent, verbatim, the rules of other regulators; in a practical sense, they would more closely align the Board's rules with those of other regulators. Additionally, the newly required documentation heightens investor protection and enhances firms' abilities to supervise for potential misconduct.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with MSRB on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

Robin Traxler
Vice President, Regulatory Affairs & Associate General Counsel

registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

[7] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

sifma
Invested in America

July 16, 2018

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

Re: MSRB Notice 2018-09: Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Transactions

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] greatly appreciates this opportunity to respond to Notice 2018-09[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") on their request for comment on draft MSRB Rule G-36, on discretionary transactions in customer accounts, and related draft amendments. At first blush, merely centralizing the requirements with respect to discretionary transactions in customer accounts into one rule would seem non-controversial. SIFMA appreciates when the MSRB simplifies rules and provides clarity on rule requirements. We also appreciate that the proposed new rule attempts to harmonize new Rule G-36 with the existing FINRA rules and permits the new rule to be satisfied through updated "electronic" means. However, we would like to take this opportunity to address certain overarching member concerns regarding this MSRB Notice including: (1) the scope of the rules potentially being duplicative with the Investment Advisers Act of 1940 (the "Investment Advisers Act"), (2) potential conflict with current

[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 $18.5 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 2018-09 (May 16, 2018).

proposals by the U.S. Securities and Exchange Commission (the "Commission") and the Financial Industry Regulatory Authority ("FINRA"), and (3) definitional issues within the proposed rule.

I. Scope of Proposed Rule

The key question that SIFMA members feel the MSRB needs to make clear in the Notice is that it only applies to broker dealer activity and brokerage accounts. Some firms are dually registered as broker dealers and investment advisers, and want to ensure the proposed amendments do not apply to investment advisory accounts, as such would be duplicative with the requirements of the Investment Advisers Act.[3] For clarity's sake, we believe that Rule D-10 should include a specific exclusion for accounts regulated pursuant to the Investment Advisers Act, or otherwise make clear that only brokerage accounts are within the scope of the defined term of "discretionary account".

II. SEC Regulation Best Interest and FINRA Quantitative Suitability Proposals

SIFMA notes that Section 913 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 required the Commission to conduct a study (the "Study")[4] to evaluate: (1) the effectiveness of existing legal or regulatory standards of care (imposed by the Commission, a national securities association, and other federal or state authorities) for providing personalized investment advice and recommendations about securities to retail customers; and (2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.[5]

An outgrowth of that Study is the Commission's Regulation Best Interest Proposal ("Reg. BI").[6] Comments are due on the Commission's Reg. BI proposal on August 7, 2018. Further, FINRA released Regulatory Notice 18-13 (the "FINRA Notice"), requesting comment on proposed amendments to the quantitative

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3 See, e.g. Rule 204-2 of the Investment Advisers Act.

4 The Commission's Study on Investment Advisers and Broker-Dealers is available at: https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

5 Id.

6 83 Fed. Reg. 21574 (May 9, 2018).

suitability obligation under FINRA Rule 2111.[7] Comments were due on the FINRA Notice on June 19, 2018.[8] Both proposals govern standards of conduct due to retail investors and related record-keeping requirements. Rule harmonization aids investor comprehension of the governing rules, and aids regulated entities with rule compliance. We can think of no valid argument to have a different rule set of protections for retail investors in municipal securities compared to retail investors in any other security. SIFMA's members feel strongly that the MSRB should work together with the SEC and FINRA to ensure that Reg. BI and the proposed amendments to FINRA Rule 2111 are harmonized with proposed Rule G-36.

III. Definitional Issues

SIFMA and its members feel that there are some key definitional issues that need to be clarified with respect to the MSRB Notice. First and foremost, SIFMA would like to request clarity regarding the difference between a "discretionary account", as defined in MSRB Rule D-10, and a "managed account", as described in MSRB Notice 2016-29, Interpretive Notice on the Application of MSRB Rules to Transactions in Managed Accounts.[9] Also, there appears to be no clarity as to whether the MSRB's Interpretive Notice Regarding Rule G-47, on Time of Trade Disclosure, Disclosure of Market Discount[10], requires disclosures to be made for discretionary accounts and/or managed accounts.

While we do understand that prompt principal approval of discretionary transactions is currently part of the MSRB rule set, sections (ii) and (iii) of Rule G-36(a) utilized a number of terms that could use additional clarification. Terms such as "promptly", "frequent", and "excessive" are vague.

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[7] FINRA Regulatory Notice 18-13 (April 20, 2018), available at (http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-13.pdf.

[8] *See* Letter from Kevin Carroll, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated June 18, 2018, available at: https://www.sifma.org/wp-content/uploads/2018/06/Regulatory-Notice-18-13.pdf.

[9] MSRB Notice 2016-29 (Dec. 1, 2016), available at http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2016-29.ashx?n=1.

[10] MSRB Notice 2016-27 (Nov. 22, 2016), available at http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2016-27.ashx?n=1.

IV. Natural Persons at Entities

With respect to Rule G-36 (b), SIFMA feels this record-keeping requirement is burdensome, and we feel there is no reason to regulate municipal securities differently than any other securities in this regard. SIFMA agrees that it may be a good practice to ensure that a signed, dated prior written authorization permitting the third party to exercise discretionary power with respect to the account is in hand prior to accepting any orders for that account, if a customer wishes to grant such authority. Rule G-36(b) puts the onus on the broker dealer, which may not be in privity of contract with the investment adviser, for keeping a list of third party adviser employees, which is a significant change to current practice and an undue burden. Currently, entities that act as advisers on brokerage accounts typically sign agreements with the relevant broker dealer that include representations as required by the Investment Advisers Act, as well as a hold harmless representation and an indemnity clause. The relevant agreement may cover one or thousands of brokerage accounts that receive advice from the entity. Obtaining, and keeping current, the names of all individuals authorized by the entity to act on behalf of the customer, can create a significant compliance challenge, and is essentially unworkable. SIFMA and its members suggest that broker dealers should not be required to collect the information required by Rule G-36(b) from entities subject to regulation pursuant to the Investment Advisers Act, as these entities are already subject to regulation in this area. Further, the Financial Crimes Enforcement Network ("FinCEN") has also recognized the duplicate nature of collecting and maintaining such authorization information with respect to regulated entities that exercise discretion over retail client accounts through contractual advisory arrangements.[11] In the CDD Rule, FinCEN explicitly excluded regulated Investment Advisers from the control prong of the rule. Alternatively, we suggest that when the third party with discretionary power is an entity, the dealer must only obtain an authorization that the entity may exercise discretionary power.

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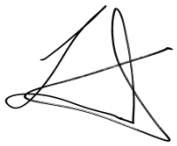
[11] *See generally*, the FinCEN Customer Due Diligence Requirements for Financial Institutions (the "CDD Rule") available at: https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-10567.pdf, and FINRA Regulatory Notice 18-2019 available at: http://www.finra.org/industry/notices/18-19, which incorporates by reference the FinCEN CDD Rule.

V. Conclusion

SIFMA and its members stand ready to provide further feedback or 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***
Michael L. Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
Carl E. Tugberk, Assistant General Counsel