



February 26, 2024

**VIA ELECTRONIC SUBMISSION**

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

**Re: MSRB Notice 2023-11 – Request for Information on Impacts of MSRB Rules on Small Firms**

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to provide input on the MSRB’s Request for Information on Impacts of MSRB Rules on Small Firms,<sup>2</sup> as part of the MSRB’s retrospective review of its rule book. Overall, SIFMA is concerned about the regulatory burdens on all regulated entities.

**Recommendation**

The MSRB should:

- Carefully analyze the necessity of any regulatory change, as all MSRB rules and activities impose a burden on all regulated entities; and
- Consider the pace and volume of regulatory changes, in conjunction with other market changes.

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<sup>1</sup> 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).

<sup>2</sup> See MSRB Notice 2023-11 (Dec. 4, 2023) (the “RFI”).

**I. All MSRB Rules and Activities Impose a Burden on Regulated Entities.**

As set forth in the RFI:

[U]nder the MSRB’s statutory mandate in Section 15B of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>3</sup> the MSRB rules may not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act<sup>4</sup> and also may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons.<sup>5</sup> . . . [T]he MSRB’s rules must be designed to prevent fraudulent and manipulative practices, promote fair and equitable principles of trade, foster a free and open market in municipal securities and municipal financial products, and, importantly, protect investors, municipal entities, obligated persons, and the public interest.<sup>6</sup>

Rules for regulated market entities are necessary to protect investors and maintain fair, orderly, and efficient markets. Rulemaking does create regulatory, compliance, operational, administrative, and other burdens for all regulated market entities. It is critical to ensure a balance of the benefits of regulation with the burdens on regulated entities.

Regulated entities need to be mindful of each action from the MSRB, whether it be a rule change, FAQ or other guidance, or a compliance resource. Entities must review the action, review their entities’ current operations, policies and procedures, and determine if any changes need to be made. When implementing any changes, which may include a variety of systems both internally and with vendors or agents, updates must be rolled out in a coordinated fashion and connectivity tested end-to-end. New staff may need to be hired or existing staff responsibilities realigned. Written policies and supervisory procedures may need to be drafted or revised and implemented. Trainings must be scheduled for staff on the new policies and supervisory procedures. Any and all regulatory change involves a significant amount of work for regulated entities and their operations,

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<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> Section 15B(b)(2)(C) of the Exchange Act; 15 U.S.C. 78o-4(b)(2)(C).

<sup>5</sup> Section 15B(b)(2)(L)(iv) of the Exchange Act; 15 U.S.C. 78o-4(b)(2)(L)(iv).

<sup>6</sup> Section 15B(b)(2)(C) of the Exchange Act; 15 U.S.C. 78o-4(b)(2)(C).

compliance and administrative teams. This creates a significant burden on any regulated entity, regardless of size.

There are occasionally instances where exceptions for smaller regulated entities could be beneficial. Small firms, with proportional compliance departments, may not have enough staff to manage the regulatory change process as quickly as larger firms. Also, some necessary vendor solutions may have a cost that is prohibitive when weighed against a small firm's level of market activity. For example, SIFMA does support a de minimis exception to the MSRB proposal to reduce trade reporting deadlines from fifteen minutes to one-minute, as this will be a major set of technological changes for broker dealers.<sup>7</sup> However, by and large, most regulatory action creates burdens for all regulated entities.

## **II. MSRB Should Consider the Pace and Volume of Regulatory Changes, in Conjunction with Other Market Changes.**

The MSRB should consider the pace and volume of regulatory changes, in light of other market changes. The move from T+2 to T+1 settlement is monumental and forcing broker dealers to focus a tremendous amount of resources on this change scheduled for May 28, 2024 is a significant requirement for any firm. Simultaneously, the industry is analyzing changes to bank capital rules, a potentially new and different SEC best execution rule, and a proposal for one-minute trade reporting, among others. Each and every one of these changes is significant, but collectively they are overwhelming for all firms that have a primary duty to focus on servicing their clients. The MSRB should be mindful of the totality of the burdens on the regulated parties when planning additional regulatory changes.

## **III. Classifications of Firms.**

SIFMA members note that the existing classifications by FINRA of firms are based on the number of registered representatives.<sup>8</sup> Firms with 1 to 150 registered representatives are deemed small, 151 to 499 mid-sized, and over 500 large. Another classification example appears in the de minimis exception to the MSRB proposal on one-minute trade reporting.<sup>9</sup> In that proposal, the exception was

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<sup>7</sup> See letter from Kenneth E. Bentsen, Jr., SIFMA, to Vanessa A. Countryman, SEC, on File Number SR-MSRB-2024-01; Release No. 34-99402; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-14 to Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB and File Number SR-FINRA-2024-04; Release No. 34-99404; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute.

<sup>8</sup> See: <https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf>.

<sup>9</sup> <https://www.sec.gov/files/rules/sro/msrb/2024/34-99402.pdf>.

based on level of business activity, and applied to broker dealers with very low trading volume. SIFMA members believe that a better system for the classification of regulated entities is based on revenue or capital.<sup>10</sup> For example, the Small Business Administration determines small investment banking and securities intermediation firms as those that are independently owned and operated, with average annual gross receipts of \$47 million or less, averaged over the previous three years.<sup>11</sup>

#### **IV. MSRB Should Provide Market Leadership in Related Regulatory Issues.**

##### **a. Net Capital Haircut Requirements**

The MSRB should provide market leadership in related regulatory issues that impact regulated entities in the municipal securities market. One issue that has created a disproportionate burden on small firms is related to the net capital haircut requirements for brokers or dealers under the Securities Exchange Act Rule 15c3-1. Before a co-manager can reduce their open contractual commitments charge in an underwriting in which they did not receive an allocation of bonds, FINRA examiners are requiring written notification from the managing underwriter to a co-manager confirming they no longer have exposure to the underwriting transaction. SIFMA members ask that MSRB assist the industry by requesting that FINRA examiners take a rational basis approach and permit co-managers, consistent with longstanding industry practice, to continue to rely on evidence that is currently produced by senior managers, including balance wires, IPREO allocation and/or retention wires, and free to trade wires. MSRB Rule G-11(g)(ii) requires that the senior manager: “notify all members of the syndicate and selling group members, at the same time, via an industry-accepted electronic method of communication, that the issue is free to trade . . . .”<sup>12</sup>

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<sup>10</sup> SIFMA members suggest that the most appropriate classification should also take into account the revenue or capital of the entity’s corporate parent or related entities.

<sup>11</sup> [https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards\\_Effective%20March%2017%2C%202023%20%281%29%20%281%29\\_0.pdf](https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%281%29%20%281%29_0.pdf).

<sup>12</sup> “The free-to-trade wire communicates to members of the syndicate that the various syndicate restrictions set forth in the AAU or otherwise communicated to the syndicate have been removed and indicates to syndicate members that they may trade the bonds at prices other than the initial offering price.” <https://www.msrb.org/sites/default/files/2018-15.pdf>.

Syndicate members are informed the bonds are “free to trade” after allocations have been made to all syndicate members. If a co-manager receives the “free to trade” wire, but no allocation of bonds, and no notification of a retention, the co-manager knows that it has no continuing underwriting commitment. While SIFMA acknowledges that a co-manager with no allocation of bonds may continue to have legal liability under the agreement among underwriters, it should not

Bloomberg messages, wires, or similar messages are an industry-accepted electronic method of communication. MSRB should consider guidance to MSRB Rule G-11 to make clear that the “free to trade” wire is evidence members of the syndicate no longer have capital at risk, therefore no related open contractual commitments should be required.

**a. Supervision**<sup>13</sup>

Another issue that creates a disproportionate burden on small firms is related to supervision. MSRB Rule G-27 requires the designation of one or more appropriately registered principals in each office of “municipal supervisory jurisdiction” (OMSJ). Many broker dealers have utilized the temporary COVID-era relief granted by FINRA and the MSRB under which entities were not required to designate the homes of employees working alone from home as “offices.” As the temporary relief is ending,<sup>14</sup> broker dealers will need to comply with the supervisory requirements of MSRB Rule G-27 related to these home offices that continue to be in use in the current age of technological tools and flexible work. For example, designating these home offices as an OMSJ, pursuant to MSRB Rule G-27(g), requires traders working from home order taking or market making to obtain a Series 53 license. However, since any person working alone in those home offices cannot supervise themselves, they will need to be supervised by another principal from a separate location, rendering the Series 53 taken by the person in the one-person office useless. SIFMA requests the MSRB consider guidance and relief to the industry by indicating that G-27(g)(ii) gives exemption to a municipal branch office from being named as such (and therefore also an exemption from being designated an OMSJ), if the orders taken or placed by that person are entered through a designated branch office or electronic system that is reviewable at the municipal branch office. We request similar relief for municipal finance investment bankers working remotely, regarding the location of structuring and underwriting.

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be required to maintain open contractual commitments charges in this instance as a matter of course.

<sup>13</sup> SIFMA recognizes that FINRA has recently adopted FINRA Rule 3110.19 (Residential Supervisory Location) and FINRA Rule 3110.18 (Remote Inspections Pilot Program), and announced the end of temporary relief related to updates of office information on Forms U4 and BR (<https://www.finra.org/rules-guidance/notices/24-02>), with which MSRB is planning to harmonize Rule G-27 on Supervision. As MSRB considers the impact of its rules on small firms, it was important for SIFMA to highlight this issue.

<sup>14</sup> <https://www.msrb.org/sites/default/files/2023-04/SR-MSRB-2023-04.pdf>.

**V. Losing Any Market Participants Reduces Liquidity in the Municipal Securities Market.**

In recent years, the municipal securities market has not only seen the loss of small firms in the industry, but also major firms exiting the municipal securities market. While such decisions usually are not attributed to solely one factor, regulatory changes driving compliance, operational and administrative burdens, and the commensurate costs are most certainly a major contributing factor. Whether large, mid-sized or small, these firms all serviced clients and had balance sheet committed, which are critical functions to maintain a liquid and resilient market. When fewer participants are in the market, the negative impacts on market liquidity may not be readily apparent in calm market conditions. However, markets with fewer participants are less resilient because there are fewer, if any, participants ready to step in during times of dislocation in the market. In recent years the municipal securities market has “broken” or seen major dislocations during the Great Recession of 2007-2008 as well as during the COVID liquidity crisis of 2020. The MSRB should continue to track the number of market participants, as well as the size of their balance sheet committed to making markets in municipal securities, to monitor the robustness of the market.

The SEC’s 2012 Report on the Municipal Securities Market<sup>15</sup> detailed a number of market structure proposals, many of which have been adopted by the MSRB. Since 2012, the MSRB has instituted changes to the municipal market structure through rulemaking, and the release of various related guidance, on procedures for determining “prevailing market price,” disclosure of mark-up or mark-down on retail customer confirmations, and “best execution” for customer orders. The MSRB has historically and repeatedly dismissed the market liquidity concerns of the broker dealer community when faced with the impacts of the costs and burdens of these and other regulatory changes, many of which had a stated intent of improving the transparency of market information to investors. Further, the SEC is currently considering yet another different best execution rule and the MSRB has filed a proposal for one-minute trade reporting and continues to consider implementing a pre-trade price transparency regime. Our members cannot say this strongly enough: there is a tipping point at which the additional costs for broker dealers to provide marginal improvements in transparency to investors makes the municipal market no longer a good use of the broker dealer’s capital. Aspirational transparency goals cannot blindly trump liquidity concerns and use of resources. Investors, issuers and obligors all rely on a healthy, functioning municipal securities market for various financing needs. Broker dealers are critical participants to keep the municipal market functioning.

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<sup>15</sup> The SEC Report on the Municipal Securities Market, July 21, 2012, available at: <https://www.sec.gov/files/munireport073112.pdf>.

Thank you for considering SIFMA's comments. Overall, SIFMA appreciates the MSRB's retrospective rule review project's goals to reduce unnecessary costs and burdens for regulated entities while still meeting the MSRB's regulatory obligation to protect investors, municipal entities and obligated persons. However, SIFMA recommends the MSRB proceed with a more measured pace and volume of change on changes that are deemed necessary, while taking into account other industry changes, to avoid unintended negative consequences to the municipal securities market, including additional market participants exiting the marketplace. 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 read 'L. Norwood', with a stylized, overlapping loop at the end.

Leslie M. Norwood  
Managing Director and Associate General Counsel  
Head of Municipal Securities

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

Ernesto A. Lanza, Chief Regulatory and Policy Officer  
Carol Converso, Director, Market Practice