



Municipal Securities Rulemaking Board

August 29, 2016

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments on SR-MSRB-2016-09

Dear Secretary:

On June 30, 2016, the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) a proposed rule change to the MSRB’s facility for the Real-Time Transaction Reporting System (RTRS) to establish an historical data product to provide institutions of higher education (“academic institutions”) with post-trade municipal securities transaction data collected through RTRS (“MSRB Academic Historical Transaction Data Product,” hereinafter referred to as “RTRS Academic Data Product”) for purchase (“proposed rule change”). The SEC published the proposed rule change for comment in the Federal Register on July 20, 2016¹ and received two comment letters, one that generally supports the proposal with suggested modifications, and one that opposes the proposal.² This letter responds, as appropriate, to the comments, most of which are substantially similar to previous comments made in response to the related MSRB request for comment.³

SIFMA continues to support the MSRB’s effort to improve market transparency to investors and promote regulatory efficiency, but believes the proposal, in some cases, could provide additional protections to mitigate the concerns of reverse engineering and information leakage. Specifically, SIFMA reiterates its suggestions to age the data provided in the RTRS Academic Data Product by no less than 48 months, and to make the data available through groupings of comparable brokers, dealers and municipal securities dealers (collectively, “dealers”). Despite the concerns for reverse engineering and information leakage, SIFMA also reiterates its suggestion to expand the universe of potential users of the RTRS Academic Data Product to include any not-for-profit that has a separately-identifiable research department and regularly publishes research reports, in addition to academic institutions.

¹ See Exchange Act Release No. 78323 (Jul. 14, 2016), 81 FR 47211 (Jul. 20, 2016) (“SEC Notice”).

² See letters from Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated Aug. 9, 2016; and Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director and Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association (“SIFMA”), dated Jul. 27, 2016.

³ MSRB Notice 2015-10 (July 16, 2015) (“Request for Comment”).

The MSRB continues to believe that the proposed rule change strikes the appropriate balance between addressing risks regarding potential reverse engineering with facilitating the ability of academic researchers to study the market for municipal securities. As noted above, SIFMA's comments are substantially similar to previous comments it submitted in response to the Request for Comment, and the MSRB has addressed them in detail in the filing discussing the proposal, which is fully incorporated herein by reference.

BDA remains opposed to the proposed rule change because it does not believe it adequately protects the identities of dealers. In particular, BDA believes the MSRB has a responsibility to ensure that the information is protected both during transmission and when it is held at the academic institution, which BDA believes is impossible to do. Additionally, BDA is concerned that certain academic institutions may be subject to the federal Freedom of Information Act (FOIA) or any other federal, state or local freedom of information, open records, open meetings, "sunshine" or similar laws or regulations (collectively, "FOIA Laws"), under which requests for disclosure could include the trade data provided in the RTRS Academic Data Product, potentially jeopardizing the confidentiality of the data, despite the MSRB's use of an agreement to prevent distribution and disclosure that could allow for reverse engineering of the data.

The MSRB understands and appreciates the concerns for the security of the data included in the RTRS Academic Data Product. The MSRB agrees that it cannot guarantee the security of the data, and it has acknowledged, in the filing discussing the proposal, that the data provided in the RTRS Academic Data Product could be reverse engineered. However, the MSRB believes the agreement relating to the RTRS Academic Data Product will be an important complement to the measures included in the proposal to mitigate those risks.⁴ As such, the MSRB expects that the agreement will include the following: (1) a prohibition on reverse engineering; (2) a provision requiring the use of commercially reasonable measures to protect the data, including, for example, the use of user ID's and passwords, and other forms of entitlements to gain access to the data; (3) a definition of the term "Internal User" to clarify to whom access to the data may be provided; and (4) a requirement that users have reasonable security procedures in the place(s) where the data are used, accessed, processed, stored and/or transmitted to ensure the data remain secure from unauthorized access, including specific requirements regarding physical and logical access, encryption, and network and system security. In addition to the provisions in the agreement to protect the data while in the custody of academic institutions, the MSRB plans to encrypt the data on the discs on which they are provided to users to prevent access to the data in the event a disc is lost, stolen or otherwise misappropriated in transit.

⁴ The MSRB believes that the measures it would take—*e.g.*, anonymizing dealer identifiers, aging the data for 36 months, imposing liability on academic institutions for breaching the terms of the agreement (which would, among other things, include a provision prohibiting reverse engineering), and limiting users of the RTRS Academic Data Product to academic institutions—, on balance, sufficiently reduce the risk of reverse engineering, and of harm resulting therefrom.

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The MSRB also recognizes that certain academic institutions may be subject to requests under FOIA Laws that might require the disclosure of certain information, potentially including the trade data provided in the RTRS Academic Data Product. However, the MSRB notes that there are nine exemptions to federal FOIA requests, and similar exemptions that vary by state for requests under state FOIA Laws, which, if properly asserted, would prevent disclosure of the information at issue. These exemptions often include protection for trade secrets or commercial or financial information that is confidential or privileged; information that, if disclosed, would invade another individual's personal privacy; and information that concerns the supervision of financial institutions. The MSRB believes that the trade data provided in the RTRS Academic Data Product may be subject to one or more of these, or other like, exemptions for requests under both federal and state FOIA Laws. Accordingly, to ensure that the data is afforded the available protection under the law, the MSRB expects the agreement relating to the RTRS Academic Data Product to include provisions designed to limit the risk of public disclosure of the trade data as a result of such requests. Specifically, the MSRB expects that the agreement will require academic institutions to notify the MSRB of any such requests under federal or state FOIA Laws prior to any disclosure, claim any and all applicable exemptions from such requests and provide the MSRB the opportunity to seek an injunction, protective order or confidential treatment, and limit any disclosure ultimately required to the minimum legally necessary.

The MSRB continues to believe that the establishment of the RTRS Academic Data Product would add to the MSRB's current offering of data products and further the MSRB's mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions.

If you have any questions regarding this matter, please contact me at (202) 838-1500.

Sincerely,



Carl E. Tugberk
Assistant General Counsel