

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78826; File No. SR-MSRB-2016-09)

September 13, 2016

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Establish the MSRB Academic Historical Transaction Data Product

I. Introduction

On June 30, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of proposed amendments to establish an academic historical transaction data product (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on July 20, 2016.³

The Commission received two comment letters on the proposed rule change.⁴ On August 29, 2016, the MSRB responded to the comments received by the Commission⁵ and on August

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ Securities Exchange Act Release No. 78323 (July 14, 2016) (the “Notice of Filing”), 81 FR 47211 (July 20, 2016).

⁴ See Letters to Secretary, Commission, from Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director & Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association (“SIFMA”), dated July 27, 2016 (the “SIFMA Letter”); and Mike Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated August 9, 2016 (the “BDA Letter”).

⁵ See Letter to Secretary, Commission, from Carl E. Tugberk, Assistant General Counsel, MSRB, dated August 29, 2016 (the “MSRB Response Letter”).

31, 2016, the MSRB filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁶ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

The proposed rule change consists of proposed amendments 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,” hereafter referred to as “RTRS Academic Data Product”) for purchase.⁷

MSRB Rule G-14 requires dealers to report trade information to the RTRS on all executed transactions in municipal securities within 15 minutes of the time of trade, with limited exceptions.⁸ The MSRB then makes much, but not all, of the reported data publicly available on the Electronic Municipal Market Access (“EMMA”) website, through subscription services or historical data sets.⁹ The data that are made available through the EMMA website do not include any information regarding the identity of the dealers that reported the transactions, and thus,

⁶ See Letter to Secretary, Commission, from Carl E. Tugberk, Assistant General Counsel, MSRB, dated August 31, 2016 (the “MSRB Amendment Letter”), available at <https://www.sec.gov/comments/sr-msrb-2016-09/msrb201609-4.pdf>. In Amendment No. 1, the MSRB partially amended the text of the proposed rule change to conform the description of the RTRS Academic Data Product in the RTRS facility to the description intended by the MSRB and fully described in the Notice of Filing.

⁷ See Notice of Filing.

⁸ Id.

⁹ Id.

according to the MSRB, limit a researcher’s ability to fully understand secondary market trading practices.¹⁰ According to the MSRB, the absence of any dealer identifiers in the EMMA data caused certain academics to request that the MSRB develop an enhanced version of RTRS trade data that includes dealer identifiers.¹¹ As noted in the Notice of Filing, following the requests from members of the academic community, the MSRB published the Request for Comment on Establishment of an Academic Historical Trade Data Product on July 16, 2015 (the “Request for Comment”) to solicit comments from market participants on a proposed academic historical trade data product.¹²

As stated in the Notice of Filing, after careful consideration of the comments received in response to the Request for Comment, the MSRB decided to make the RTRS Academic Data Product available only to academic institutions, to include anonymous dealer identifiers therein, and to populate the new data product with the same transactions included in the RTRS historical data sets currently available with the exclusion of list offering price and takedown transactions.¹³ According to the MSRB, the proposed rule change will allow the MSRB to provide academics with trade data that include anonymous dealer identifiers while providing protections against the potential for reverse engineering of trade data.¹⁴ With respect to protecting against reverse engineering, the MSRB stated in the Notice of Filing that any academic institution that wishes to obtain the RTRS Academic Data Product will have to agree: (1) not to attempt to attempt to

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

reverse engineer the identity of any dealer; (2) not to redistribute the data in the RTRS Academic Data Product; (3) to disclose each intended use of the data; (4) to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction; and (5) to return or destroy the data if the agreement is terminated.¹⁵

The MSRB stated in the Notice of Filing that the effective date of the proposed rule change will be announced in a regulatory notice to be published no later than 90 days from the date of this Order, and such effective date will be no later than 270 days following publication of the regulatory notice announcing Commission approval of the proposed rule change.¹⁶

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received two comment letters on the proposed rule change, and the MSRB Response Letter. One commenter – SIFMA – generally supported the proposed rule change, while the other commenter – BDA – generally opposed the proposed rule change.

While generally supportive of the proposed rule change, SIFMA expressed the view that the MSRB could make modifications to provide additional protections against the potential for reverse engineering the data without impeding its goals of promoting academic access and research.¹⁷ SIFMA stated that the potential impact of reverse engineering could include deciphering a dealer's trading strategies and revealing confidential business information relating to specific client transactions.¹⁸

¹⁵ Id.

¹⁶ Id.

¹⁷ See SIFMA Letter.

¹⁸ Id.

BDA, however, argued that the proposed rule change would expose dealers and their customers to unnecessary risks.¹⁹ For example, BDA stated that “[i]t is very likely that, as a consequence of this proposal, private and non-educational entities will end up possessing full trade history including dealer names for every trade released.”²⁰

SIFMA and BDA offered differing views on the MSRB’s efforts to mitigate the risk of reverse engineering of the historical trade data provided to academics. SIFMA approved of the MSRB’s decision to exclude list offering price and takedown transactions from the data product and noted that such exclusion would mitigate the risk of reverse engineering.²¹ SIFMA also acknowledged that the proposed aging period of 36 months (expanded from 24 months in the Request for Comment) would help reduce the risk of reverse engineering, but thought that an aging period of no less than 48 months would be more appropriate.²² BDA also acknowledged that excluding list offering price and takedown transactions from the data product, expanding the aging period, and masking dealer identifiers would make reverse engineering more difficult, but ultimately concluded that these measures were not sufficient to reduce the risk of reverse engineering to an acceptable level.²³

With respect to protecting dealer identities, both SIFMA and BDA reiterated their respective suggestions that the MSRB make the transaction data available according to groupings of comparable dealers instead of on an individual level, arguing that masked dealer identifiers

¹⁹ See BDA Letter.

²⁰ Id.

²¹ See SIFMA Letter; see also MSRB Amendment Letter.

²² See SIFMA Letter.

²³ See BDA Letter; see also MSRB Amendment Letter.

might not effectively protect dealer identities.²⁴

SIFMA and BDA also offered suggestions regarding strengthening and enforcing the proposed user agreements. SIFMA urged the MSRB to develop “robust operational frameworks around the execution and ongoing oversight of user agreements . . . [in order to] further mitigate concerns of reverse engineering and information leakage.”²⁵ BDA stated that although the proposed user agreements are designed to prevent the redistribution of data, federal and state freedom of information (“FOIA”) laws could defeat such intention if the transaction data is held by a public university and classified as a public record.²⁶ In addition, BDA raised concerns about data security, suggesting that the data could be subject to hacking or data theft during transmission or when held by an institution of higher education.²⁷

In response to these comments, the MSRB stated that it “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.”²⁸ With respect to SIFMA’s comments, the MSRB noted in its response that “SIFMA’s comments are substantially similar to previous comments submitted in response to the Request for Comment” and that the MSRB addressed those comments in the

²⁴ Id.; see also SIFMA Letter. The MSRB addressed these comments in the Notice of Filing.

²⁵ See SIFMA Letter.

²⁶ See BDA Letter.

²⁷ Id.

²⁸ See MSRB Response Letter.

Notice of Filing.²⁹

In response to BDA’s data security-related comments, the MSRB stated that it “understands and appreciates” BDA’s data security concerns and agrees that it cannot guarantee the security of data provided to academics through the proposed RTRS Academic Data Product.³⁰ Nonetheless, the MSRB then noted its belief that the terms of the user agreements relating to the RTRS Academic Data Product will “mitigate those risks.”³¹ To that end, the MSRB stated that it expects each user agreement to include the following:

(1) a prohibition on reverse engineering; (2) a provision requiring the use of commercially reasonable measures to protect data, including, for example, the use of user IDs 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.³²

In addition to contractual data security measures like those listed above, the MSRB also stated its intention to encrypt data delivered to users.³³

In response to BDA’s FOIA law-related comments, the MSRB recognized the possibility that certain recipients of RTRS Academic Data Product data might be subject to FOIA laws that could require the disclosure of certain trade data but, notwithstanding

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

such risk, noted that federal and state FOIA laws include a variety of exemptions that would likely prevent disclosure of data delivered to users of the RTRS Academic Data Product.³⁴ The MSRB also stated its expectation that the user agreements “will require academic institutions to notify the MSRB of any . . . requests under federal or state FOIA [l]aws 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.”³⁵

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, the comments letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,³⁶ which requires, among other things that the rules of the MSRB be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because

³⁴ Id.

³⁵ Id.

³⁶ 15 U.S.C. 78o-4(b)(2)(C).

the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market in municipal securities by enabling subscribers to the RTRS Academic Data Product to better understand the pricing practices and trading behaviors of participants in the municipal securities market and thereby facilitate higher quality research and analysis of the municipal securities market. Furthermore, the Commission believes that by enhancing transparency in the municipal securities market, the proposed rule change is reasonably designed to protect investors, municipal entities, obligated persons, and the public interest.

In approving the proposed rule change, the Commission has also considered the impact of the proposed rule change on efficiency, competition, and capital formation.³⁷ The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No.1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-

³⁷ 15 U.S.C. 78c(f).

2016-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2016-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2016-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in

the Federal Register. As discussed above, Amendment No. 1 partially amends the text of the proposed rule change to conform the description of the RTRS Academic Data Product in the RTRS facility to the description intended by the MSRB.³⁸ The proposed rule change, as described in the Notice of Filing, contemplated the exclusion of list offering price and takedown transactions; however, the proposed text of the proposed rule change did not include any reference to such exclusion.³⁹ According to the MSRB, it was the MSRB's intent to include the exclusion in the proposed rule change, thus the MSRB submitted Amendment No. 1 in order to conform the proposed description of the RTRS Academic Data Product in the RTRS facility with the description thereof in the Notice of Filing.⁴⁰

As noted by the MSRB, Amendment No. 1 is consistent with the purpose of the proposed rule change and does not raise any significant new issues not already addressed by commenters.⁴¹

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

³⁸ Supra note 6.

³⁹ See Notice of Filing.

⁴⁰ See MSRB Amendment Letter.

⁴¹ Id.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴² that the proposed rule change, as modified by Amendment No. 1 (SR-MSRB-2016-09) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.⁴³

Robert W. Errett

Deputy Secretary

⁴² 15 U.S.C. 78s(b)(2).

⁴³ 17 CFR 200.30-3(a)(12).