

# **Bond Case Briefs**

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## **SIFMA to SEC: MSRB Proposals Too Burdensome.**

The Municipal Securities Rulemaking Board's proposed rule changes on retail order periods would be burdensome, costly and would result in some unintended adverse consequences for dealers and issuers, the Securities Industry and Financial Markets Association warned on Monday.

SIFMA issued the warning about the proposed changes to MSRB Rules G-11 on primary offering practices, G-32 on primary offering disclosures, G-8 on books and records, in a recent three-page letter sent to the Securities and Exchange Commission. The commission must approve the proposed rule changes, which the MSRB proposed in June, as well as a recent amendment the MSRB filed, before they become final.

The MSRB contends the rule changes are needed because sometimes, when issuers want their bonds to be initially sold to retail investors, underwriters have mischaracterized orders as "retail" when they are not, and have failed to disseminate the terms and conditions of the retail order period to selling group members and other dealers on a timely basis.

But SIFMA's letter, signed by managing director and associate general counsel David Cohen, complains that some of the MSRB's proposals would create new record-making systems for dealers and that the board has not given sufficient consideration to its proposed alternations, which would be much less burdensome.

One of SIFMA's main concerns is that the proposed rule changes would require syndicate and selling group members, in the retail orders they submit to the managing underwriter at the time the bonds are formally awarded, to include four representations: that the order meets the issuer's eligibility criteria for a retail order period; that the order is a retail order; whether the dealer received more than one order from a single customer for a security for which the same Cusip number was assigned, and; the par amount of the order.

"The MSRB fails to appreciate the costs in elevating a business practice to a regulatory requirement," SIFMA told the SEC in the letter.

Instead, the dealer group wants the SEC adopt a less burdensome approach under which all of the dealers would agree, in their agreement among underwriters, that retail orders would meet the issuer's criteria for retail orders.

The MSRB has rejected this approach, saying it would represent the status quo.

But SIFMA told the SEC, "We find it odd and disappointing that the MSRB is so dismissive of a reasonable alternative approach as well as the associated costs of rulemaking — which other securities regulators are required to consider and weigh appropriately."

The dealer group also complained about the MSRB's proposal that issuers approve the senior syndicate manager's statement of all of the retail order period terms and conditions required by the issuer. Current rules allow the syndicate manager to just provide the statement to the issuer,

without any need for the issuer to approve it.

“Our members believe that the existing rule is more than sufficient to ensure that an issuer is aware of, and agrees with, any requirements imposed on the syndicate and selling group members in its name,” SIFMA said.

The group also questioned the need for this requirement, saying, said it “is not aware of [any] enforcement actions taken against syndicate managers for not honoring terms and conditions required by the issuer.”

SIFMA warned this requirement will lead to adverse unintended consequences, much like the MSRB’s recent requirement under G-17 on fair dealing that underwriters get issuers to approve the fair dealing disclosures they make to the issuers.

Issuers have complained they are getting six- and seven-page disclosure documents from underwriters that they do not understand and have been refusing to approve them.

“Prior to imposing this new regulatory requirement, we believe it is important for issuers to voice their views, as they have raised concerns about the G-17 disclosures,” SIFMA said.

“There’s no indication that issuers even want this,” Cohen said in a brief interview.

In addition, SIFMA criticized the MSRB’s refusal to replace the term “going away orders,” which in the past has been used to mean retail orders, but can also mean other things, with “bona fide” retail orders. Both SIFMA and GFOA made this request.

But in a recent letter to the SEC, MSRB deputy general counsel Michael Post, said “bona fide” was “not sufficiently precise” and proposed using an “order for which a customer is already conditionally committed,” saying this language would not permit orders for dealers’ inventories.

“Our members believe, contrary to the MSRB, that ‘conditionally committed’ is less precise than ‘bona fide’ customer orders that meet the issuer’s designated eligibility criteria,” SIFMA told the SEC in its letter.