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2
3 Good afternoon. My name is Leslie Norwood and I am Co-Head of the Municipal
4 Securities Division of SIFMA.

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6 Thank you for the opportunity to participate in this panel on Self-Regulation to
7 represent the broker-dealer community's views on this important topic.

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9 In creating the MSRB in 1975, Congress recognized the unique nature of the
10 municipal securities markets and acknowledged the value of having rules developed
11 by a self-regulator with direct expertise and experience in the municipal securities
12 market. As a result, Congress originally required two-thirds of the MSRB to be
13 broker-dealer or bank representatives involved in the municipal securities business.

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15 This form of regulation was a system predicated upon the philosophy of supervised
16 self-regulation. It assured that the regulation of this unique business was informed
17 by the experience and expertise of its participants. Market participants have an
18 incentive to police themselves, because participants' trust and confidence in a
19 market is critical to a market's efficient operation. Market participants are also

1 incentivized by knowledge of general and securities law liability — SEC Rule 10b-
2 5 has been applicable long before the creation of the MSRB.

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5 Congress believed that SEC oversight of self-regulatory activities would limit any
6 negative consequences of the potential conflicts of interest inherent in the system.

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8 The enactment of the *Dodd-Frank Act* has dramatically altered this landscape for
9 the MSRB, broadening its authority and scope to a greater degree than any time
10 since its inception.

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12 I daresay that the title of this panel today is a misnomer. I am not the first to say
13 this, but the “S” has been removed from SRO. We are now in an environment in
14 which every former Self-Regulatory Organization now has a public board of
15 directors, and is now an independent regulatory organization, or IRO.

16 In this case, Dodd-Frank mandates the MSRB’s Board now be composed of a
17 “public” majority to include members not affiliated with broker-dealers or bank
18 representatives, including issuers, investors and independent municipal advisors.

1 The MSRB has complied with that mandate as of October 1, and the majority is
2 now indeed public.

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4 Dodd-Frank also requires that non-broker-dealer municipal advisors, including
5 swap advisors and GIC brokers, register with the SEC and the MSRB, with the
6 MSRB serving as the principal rule maker for municipal advisors.

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8 There are a number of statutory changes designed to ensure that non-dealer
9 municipal advisors are regulated similarly to dealers, including compliance
10 examinations, testing and continuing education requirements, among many others.

11 SIFMA supported and strongly advocated for this change and is interested in
12 participating in the rulemaking process that the SEC and MSRB have begun to
13 undertake.

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15 For SIFMA, one of the important underlying reasons for regulating municipal
16 advisors under Dodd-Frank was to attempt to level the playing field for the
17 different types of entities –dealer advisors and the previously unregulated municipal
18 advisors — that engage in the same types of business activities. By bringing
19 municipal advisors under regulation by the SEC and the MSRB, Dodd-Frank

1 brought more fairness to all market participants. I think we can all agree, that
2 permitting regulatory arbitrage, or picking a business structure merely to avoid
3 regulation for otherwise regulated activity, is not helpful to fair and consistent
4 application of the rules across the market.
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6 However, SIFMA continues to have concerns that broker-dealers are still subject to
7 an unlevel regulatory playing field. As we all know, the FINRA enforces the
8 MSRB rules, however, FINRA can only enforce the rules against dealer members
9 of FINRA. Under Dodd-Frank, non-dealer FAs will not be subject to paying
10 FINRA fees or undergoing FINRA enforcement exams and will only face SEC
11 enforcement exams. Thus, the playing field is still not level for the different market
12 participants engaging in the same types of municipal advisor activities.
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14 Another concern that SIFMA members have is that underwriters have historically
15 paid the vast majority of the fees needed to support the MSRB's work. SIFMA
16 strongly believes that with the new independent nature of the MSRB, as well as the
17 additional regulated parties and expanded authority of the Board, that the burdens of
18 the fees that support the MSRB should be shared among all market participants.

1 While there is some variability in the MSRB's revenues based on issuance and
2 trading volume, the MSRB has the ability to adjust its required regulatory fees to
3 closely match its budgeted expenses in a given year. As a result, there is no reason
4 for the MSRB to assess the dealer community more than is necessary to cover
5 annual expenses simply to hold those funds in reserve for future initiatives without
6 a more comprehensive discussion with the dealer community of how much those
7 initiatives will cost, timetables and their projected benefits to the market.

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9 Dodd-Frank recognized that coordination among agencies is vital for effective
10 regulation, and as such, new to the MSRB's purview is a specific requirement that
11 FINRA consult with the MSRB in the enforcement and examination of compliance
12 with MSRB rules. The MSRB, SEC and FINRA are now required to meet at least
13 twice a year to discuss market regulatory issues. FINRA is now also required to
14 request guidance from the MSRB in interpreting rules and provide information back
15 to the MSRB regarding enforcement actions with respect to those rules. SIFMA
16 supports this effort.

1 Some SIFMA members have expressed frustration that FINRA examiners often
2 lack expertise in the municipal securities industry and often broker-dealers are put
3 in the position of teaching FINRA examiners about the municipal securities market
4 and its separate rulebook as an examination unfolds. There are also frustrations
5 about uneven application of the rules across the country with varying penalties for
6 the same violations.

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8 SIFMA supports the creation and funding of the SEC's new Office of Municipal
9 Securities. Some broker-dealers, however, have concerns about the number of
10 regulators in the market and have suggested that consolidation might be beneficial.
11 For instance, SIFMA is publicly on the record advocating for the merger of the SEC
12 and CFTC. We would hope that the new requirements of Dodd-Frank will be a
13 catalyst to strengthen the relationship between all regulators, including the SEC,
14 MSRB and FINRA to provide for more even and insightful examinations as
15 opposed to mere checklist reporting.

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17 SIFMA's Municipal members generally value the separation of the rulemaking and
18 enforcement regulators and believe this separation has served the industry as a
19 whole quite well by managing regulatory conflicts of interest. SIFMA generally

1 believes having a dedicated rule maker such as the MSRB whose focus can be
2 specifically on writing clear rules that best govern the industry is integral to a well-
3 functioning and smartly regulated marketplace. SIFMA does encourage the MSRB
4 to consider common sense and cost-benefit analyses when drafting new rules or
5 amending current ones. While Dodd-Frank granted the MSRB more authority, we
6 would hope that the MSRB would take its time with that authority and would not
7 rush new regulations without first considering the implications their possible
8 unintended consequences. The MSRB should open its doors, and books, to be as
9 transparent as possible given that more stakeholders have come under the MSRB's
10 authority.

11
12 Another twist to the story is that Dodd-Frank also broadened the MSRB's mission
13 to include the protection of state and local government issuers of municipal bonds,
14 in addition to investors and the public. This represents an unprecedented role for
15 any regulator across the securities markets. While the MSRB has some existing
16 rules to protect issuers, including Rule G-17 on fair dealing and Rule G-23 on the
17 actions of broker-advisors, SIFMA believes this new role may create additional
18 levels of compliance for broker-dealers and FAs and certainly adds complexity to
19 the job for regulators. How the MSRB interprets the law and adopts new rules will

1 become precedential. FINRA, for example, is clear in its mission to protect
2 investors and regulates the market based solely on that duty.

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4 Robust capital markets require that market participants have confidence in the
5 fairness and efficiency of the primary and secondary markets. Such confidence
6 derives in part from the known allocation of responsibilities among market
7 participants. Regulators have broad authority over securities dealers, and this
8 authority is exercised to require a high degree of responsibility and accountability
9 on the part of dealers. Dealers must adhere to not only the letter of applicable law
10 but its spirit as well and accept responsibility to act in accordance with just and
11 equitable principles of trade.

12 However, regulation of dealers is too often used to achieve a result deemed
13 desirable, not because it is the most appropriate means, but because it is currently
14 the most convenient lever available to policy makers given existing jurisdictional
15 limitations. For the fixed income markets to operate fairly and efficiently all market
16 participants — broker-dealers, issuers and investors — must accept responsibility
17 for creating and maintaining fair and efficient markets.

1 Because the federal regulatory authorities are largely foreclosed under the Tower
2 Amendment from regulating issuers directly, the municipal market is largely
3 policed from the federal level by indirect regulation.

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5 Some SIFMA members have suggested that the dealer community bears a
6 disproportionate amount of the regulatory burden with respect to issuer disclosure.
7 In other types of securities, the issuer is primarily responsible for describing the
8 securities being offered and the adequacy of the offering documentation, including
9 the fair and complete presentation of material facts about the issuer and the
10 circumstances surrounding the offering, as well as continuing disclosure. However,
11 in the municipal market, because of statutory limitations on the SEC's authority,
12 disclosure rules are largely applied to issuers indirectly. The parties directly
13 responsible for policing issuer disclosure practices are broker-dealers. Under these
14 requirements, firms that underwrite and transact in the secondary market for
15 municipal securities are made to police issuers or risk being held accountable for
16 the actions or omissions of issuers.

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18 While SIFMA is always supportive of disclosure that protects investors and issuers
19 alike, we believe that today's regulatory system, in particular with the MSRB's new

1 authority, would benefit greatly from increased transparency, which, in turn,
2 promotes accountability and increased investor confidence. SIFMA recognizes that
3 Congress and the SEC have focused their lens on improving disclosure conditions
4 and expanding the regulatory world to include more participants in the municipal
5 securities industry. SIFMA members appreciate the large endeavor the SEC and
6 MSRB have to undertake and want to be and are dedicated to being an active
7 participant in the regulatory process for municipal securities. SIFMA hopes to
8 continue to work with the SEC and MSRB on these issues to benefit all parties.

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10 To reiterate, SIFMA believes that the benefits of the MSRB are vast and having a
11 dedicated regulator with the expertise and focus on the municipal securities
12 industry's unique issues is valuable and has generally worked well since 1975 when
13 the board was created. However, the MSRB has shifted into an independent
14 regulatory authority, and it is critical to ensure not just the benefits but also the
15 costs and regulatory burdens are spread to its new constituents.

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17 Thank you again for this opportunity to put SIFMA's views into the record.
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