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Invested in America

January 17, 2015

Ms. Pamela Dyson
Acting Director/Chief Information Officer
c/o Remi Pavlik-Simon
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549

Re: File No. 270-330, OMB Control No. 3235-0372: Proposed Collection; Comment Request Related to Rule 15c2-12

Dear Ms. Dyson:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the request for comment issued by the Securities and Exchange Commission ("SEC") on the existing collection of information provided for in Rule 15c2-12 – Municipal Securities Disclosure (the "Rule"),[2] under the Securities Exchange Act of 1934.[3] As described in the Notice[4], the Rule sets forth the following requirements of broker dealers:

> Paragraph (b) of Rule 15c2–12 requires underwriters of municipal securities: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information prior to making a bid, purchase, offer, or sale of municipal securities; (2) in noncompetitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] 17 CFR 240.15c2-12.

[3] 15 U.S.C. 78a *et seq.*

[4] 79 Fed. Reg. 68730 (Nov. 18, 2014).

> with Rule 15c2–12's delivery requirement and the rules of the Municipal Securities Rulemaking Board (''MSRB''); (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or the obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information on a continuing basis to the MSRB in an electronic format as prescribed by the MSRB. The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements (''annual filings''); (2) notices of the occurrence of any of 14 specific events (''event notices''); and (3) notices of the failure of an issuer or obligated person to make a submission required by a continuing disclosure agreement (''failure to file notices'').[5]

I. Executive Summary

SIFMA and its members welcome a full and complete review of the Rule. We continue to support reasonable disclosure and transparency efforts in the municipal securities market, including the Municipal Securities Rulemaking Board's ("MSRB's") Electronic Municipal Market Access ("EMMA") website. However, we feel it is important to review the Rule to examine its costs and benefits, as well as to examine if the Rule can be amended to enhance its regulatory efficiency.

We remain concerned that even though issuer policies and procedures have been enhanced in the wake of the SEC's Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative, [6] fundamental flaws exist with regard to the structure of the Rule. Continuing disclosure has always been treated as a serious matter by brokers, dealers and municipal securities dealers (collectively, broker dealers), but has taken on a heightened level of seriousness since the March 2012 SEC Office of Compliance Inspections and Examinations ("OCIE") Risk Alert on this topic[7] and the SEC's MCDC Initiative. Broker dealers are concerned that responsibility for compliance under the Rule is not placed with those who have the best access to issuer information. We believe the Rule is unnecessarily confusing, burdensome and complicated as it seeks to regulate indirectly what the SEC largely cannot currently do directly, which is to regulate issuer disclosure filings. While issuer compliance is likely to be higher post-MCDC, underwriters will

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[5] Id.

[6] For general information about the MCDC Initiative, see: http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml.

[7] See: http://www.sec.gov/about/offices/ocie/riskalert-muniduediligence.pdf.

incur the same, if not growing, compliance times, given the SEC's interpretation of the Rule to impose a duty on underwriters of primary market offerings to determine whether there has been any material noncompliance. We continue to believe that the municipal securities disclosure mechanism is broken, and we have concerns that the fundamental flaws in the Rule will make long-term compliance a serious challenge.

We are also seriously concerned about the gross inaccuracies of the SEC's time estimates for compliance with the Rule and the failure of the SEC to estimate the Rule's primary disclosure compliance burdens, as separate and distinct from its secondary market compliance burdens.

SIFMA has formed a new municipal disclosure working group, comprised of senior-level staff at its broker dealer member firms. In the coming weeks and months, this new working group will be focusing on ways to improve disclosure related to municipal securities. Additionally, we are willing and eager to work collaboratively with other industry groups and interested parties on determining ways to improve the system.

II. Whether Information Collected is Necessary

SIFMA agrees with the stated purpose of the Rule, which is intended to enhance disclosure and transparency for investors in the municipal securities market, thereby reducing fraud. However, SIFMA again encourages the SEC to open a full review of the Rule to analyze if more, less or different information should be collected.

It should be noted that both the initial Rule was and its continuing disclosure amendments were adopted before the explosion of publicly available information about issuers. Many states, large cities and counties, and other issuers now maintain publicly available websites on which they include not only information that they are effectively required by the Rule to provide to the MSRB, but also other useful information, and they often update the information more frequently than effectively required by the Rule. Moreover, their information can easily be located by using Google or another internet search engine. For these issuers, the Rule's continuing disclosure provisions may not provide much benefit in avoiding securities fraud. In these circumstances, the more limited amount of benefit should be weighed against the burdens imposed on issuers and underwriters.

III. Accuracy of the SEC's Estimates of the Burden

SIFMA members feel the SEC's estimates materially and significantly underestimate the burden of the Rule. The SEC estimated that approximately 20,000 issuers, 250 broker-dealers and the MSRB will spend a total of 115,248 man-hours per year complying with the Rule. It is important to note that one size doesn't fit all with respect to the burdens of the Rule upon market participants. Although the SEC's staff estimates might be close for some small issuers who issue simple transactions frequently,

at least 90% of the transactions do not fit this mold. We believe most of the SEC's time estimates underestimate the time burdens of the Rule by a factor of 10- or 20-fold.

First and foremost, the SEC's estimates of the burden do not address the incremental extra work to ensure Rule compliance in the development by the issuer and other deal team members, including the underwriter of a negotiated offering, of a preliminary official statement, which is typically "deemed final," and a final official statement, or the requisite review and distribution to potential and actual customers by the underwriters. Since the Rule imposes minimum content requirements for and requires that underwriters receive these documents, that provision of the Rule also imposes a "collection of information" burden on underwriters and, indirectly, on issuers. It would not be uncommon for a deal team (including the issuer, underwriter, financial advisor, and each party's counsel) to spend at least 10 extra hours in the aggregate on the development and review of an official statement to ensure Rule compliance, over and above the time required for underwriters to review the accuracy of issuer representations regarding past compliance with continuing disclosure undertakings (discussed below). In 2013, the MSRB received 12,708 primary market submissions.[8] Assuming each such submission takes approximately 10 extra hours (in addition to continuing disclosure compliance diligence) to ensure are compliance with the Rule, then it takes the industry approximately 127,080 hours to prepare and submit Rule compliant preliminary and final official statements to the MSRB. This does not account for any time the MSRB takes to receive, catalog and maintain these submissions.

To further illustrate this point, consider the "collection of information" mandated by the Rule. The Rule requires that underwriters (1) obtain a final official statement that satisfies the requirements of the Rule, i.e., that includes financial or operating data about each obligated person that is material to an offering and describes their continuing disclosure obligations and each of their material failures to comply with their prior undertakings in the preceding five years and (2) obtain and determine the adequacy of a continuing disclosure undertaking. In order to confirm that they have received a qualifying final official statement, underwriters must determine which entities are obligated persons (applying a definition that is vague at its boundaries) and assure that financial or operating data about them is included in the official statement. In addition, to confirm that the official statement discloses material failures to comply with prior continuing disclosure undertakings, the SEC has stated that underwriters must investigate whether events have occurred that might require a notice and, if so, whether they are material and, in any event, whether required annual reports and event notices were timely filed. In order to determine that an issuer has entered into a continuing disclosure undertaking that satisfies the requirements of the Rule, underwriters must review the undertaking to determine whether it commits the issuer to provide required data for

[8] MSRB 2013 Factbook, p. 103. See: http://www.msrb.org/msrb1/pdfs/MSRB-Fact-Book-2013.pdf .

required persons at the required frequency (at least annually) and meets the other technical requirements of the Rule. The data required to be updated is financial or operating data of the same general type included in the official statement. Consequently, to comply with the requirements of the Rule, underwriters must undertake a time-consuming review of the official statement to assure that the data undertaken to be updated is complete. In addition, they or their counsel must review the undertaking to confirm that it meets the technical requirements of the Rule. Accordingly, the Rule forces underwriters to spend substantial "due diligence" time that, in the absence of the "collection of information" requirements of the Rule would not be required.

Second, infrequent issuers may need more time to compile the financial and operating data that must be updated annually than frequent issuers, which may need to update the material often for use in their official statements in any event. Perhaps the basis for the staff's estimate is the time it takes an issuer to submit the required information to EMMA once compiled. We submit that, if accurate, this is not the appropriate way to assess the burden on issuers of compliance with their continuing disclosure responsibilities.

Third, revenue bond issuers disclose operating data in their offering documents and, as a result, must undertake to update that data annually. Operating data typically is not included in issuer consolidated audited financial reports ("CAFRs"), which often are limited to financial information. Some general obligation bond issuers are also obligated to update tax base data that is not included in their CAFRs. Consequently, to comply with continuing disclosure undertakings ("CDAs") that are effectively required by the Rule, issuers must collect, present, and submit any operating or other data that is not routinely included in their CAFRs but is required to be updated. This process may involve getting information from various departments of the issuer, getting information from third party data collection agencies outside of the governmental entity, educating and getting approval from executive officials or the governing board, and a potential review by accountants, lawyers or other consultants, prior to submission to the MSRB. It may be difficult or impracticable for small or infrequent issuers to have outside professionals readily at hand or on retainer to guide these decisions, and special efforts may have to be made to retain them for this purpose, causing further time expenditures. In addition, continuing disclosure filings are statements in connection with the purchase or sale of securities, so are governed by the anti-fraud provisions of the Securities Exchange Act of 1934. In order to comply with those provisions, issuers must exercise reasonable care when they prepare updated data for reporting, including by confirming that the reported data is not misleading as a result of the omission of a material fact, e.g., a subsequent event that makes the data no longer indicative of future financial results of operations. To comply with their duties under the antifraud provisions (and as recommended by the SEC), many issuers have adopted procedures to assess the accuracy and completeness of their periodic and other filings. These procedures may involve reviews by various officials as well as outside counsel. In view of the many steps

required to responsibly provide annual information in compliance with CDAs effectively required by the Rule, the SEC's estimate of issuer time required to satisfy annual filing requirements--45 minutes per issuer--grossly understates the actual burden on issuers.

Fourth, the Rule requires agreements in CDAs to file notice of many types of events. For some events, a notice is due only if the event is material. Others are not within the knowledge of issuers (e.g., credit enhancer rating changes). To comply with their CDAs, issuers must establish mechanisms for departments to monitor for and report relevant events. In the case of events not readily known to issuers, the Rule effectively forces issuers to investigate frequently whether any such event has occurred, since they must be reported within 10 business days after they occur. Issuers may spend large amounts of time to look for these events periodically, even in years in which none occur and, as a result, they make no event filing. Consequently, compliance times for these events should be measured per securities issue outstanding, not per filed notice. If an event is discovered or otherwise known, an issuer must determine whether it is material (in some cases) and describe the event accurately and fairly. In view of the foregoing, the SEC's estimate of issuer time required to comply with the event filing requirements of the Rule-- 45 minutes per reported event--is also a serious underestimation.

Fifth, it should be pointed out that on competitive transactions, all bidding underwriters need to complete their due diligence pursuant to the Rule prior to bidding. Whereas on small transactions with a par value under $1 million there are on average 2 bidding underwriters, on large transactions over $100 million there are on average 7 bidding underwriters, each conducting the same review for compliance with the Rule.[9] Consequently, the per offering time to review continuing disclosure compliance in competitive offerings is on average in excess of 5 times the average per underwriter review time.

Sixth, the SEC staff estimates in the Notice that the total annual burden on the universe of broker dealers to comply with all provisions of the Rule is 300 hours. As a

[9] Ipreo. Bids on Competitive Bonds in 2014:

Amount (in millions)	Number of Deals	Average Bids Per Deal
0 – 1	462	2
1 – 10	2266	5
10 – 50	809	7
50 – 100	131	8
100+	152	7

representative of broker dealers that not only underwrite, but also trade in municipal securities, we are dumbfounded by this estimate, as it assumes that, on average, each of the 250 underwriters in the market spends a meager 1.2 hours per year on Rule compliance.[10] According to the MSRB, there were more that 12,000 new issues of municipal securities last year. Assuming that 10,000 were primary offerings subject to the Rule, the Notice estimates that underwriters can comply in less than two minutes per issue. Clearly that estimate is grossly understated. SIFMA and its members roughly estimate that the total annual burden on EACH broker dealer to comply with all aspects of the Rule is upwards of approximately 3,000 hours, or the economic equivalent in outside vendor time and fees. As the SEC estimates that there are approximately 250 broker dealers involved in municipal securities offerings each year, the estimated impact on the broker dealer underwriting community is upwards of 750,000 hours.

These are rough estimates, as firms have many different practices. At least a couple of SIFMA member firms have 5 full-time staff members reviewing their client's continuing disclosure compliance. A number of other of our members have 2-3 full-time staff members whose sole job is to review new issue transactions for compliance with the continuing disclosure provisions of the Rule. Those firms that do not have dedicated staff for Rule compliance may have their bankers or other staff take responsibility for Rule compliance, and do all the work themselves. This alternative presents not only costs for their time, but also opportunity costs in the form of transactions not pursued or completed while those bankers were conducting compliance checks. Yet other firms feel that doing this work in-house in impractical, and chose to incur the significant expense of hiring outside vendors to do this work to minimize the burden on their internal staff.[11] Depending on the issuer, the complexity of the deal, and the method of sale of the transaction, review times estimated by dealers range from one hour to in excess of a day or more. It cannot be overemphasized that these reviews are not one-size-fits-all.

In sum, we feel the SEC grossly underestimated all aspects of compliance with the Rule by all parties. In fact, SIFMA believes that the SEC's staff estimates are so far off that either they were prepared by economists who have an insufficient understanding of the municipal securities market and the Rule's impact to make reliable estimates or they resulted from a computational error. It may be that SEC staff relied on estimates prepared when the SEC last proposed amendments to the continuing disclosure

[10] We highly recommend that the Chief Information Officer and the staff of the Office of Municipal Securities discuss this assumption with their colleagues in the Enforcement Division. The Enforcement Division has recent experience with respect to the MCDC Initiative in terms of how long it takes to review for Rule compliance, and the processes and procedures that broker dealers are expected to undertake to ensure such compliance.

[11] There are a number of vendors assisting issuers and broker dealers with compliance with the Rule. One such vendor estimated that they alone spent 50,000 hours assisting over 2,000 issuers with Rule compliance in 2014, not including any work associated with the MCDC Initiative.

provisions of the Rule. Those estimates were roundly rejected in a number of comment letters filed in response to the proposed amendments. The SEC should review those comments again, as well as comments in response to the November Notice, and republish a good faith, reasonable estimate of compliance times for the benefit of the Office of Management and Budget.

IV. Ways to Enhance the Quality, Utility, and Clarity of the Information

SIFMA and its members have been and continue to be supportive of complete and timely disclosure in the municipal securities market. Many ideas have been discussed in the market for potential changes to the Rule, including disclosure of material loans, prescribed formats, mandated GASB or other generally accepted accounting standards, disclosure of compliance with all coverage ratios and other covenants required in the bond documents, and plain English or summary disclosures. Our newly formed municipal disclosure working group will be discussing the benefits and burdens to the industry of these and other suggested changes.

Enforcement of CDAs remains a serious concern. In the event of a late filing, the only enforcement mechanism for CDAs under the current Rule paradigm for bondholders requires an investor or the bond trustee to institute legal proceedings for specific performance by the issuer to produce the required disclosures. We have not heard of a single instance of this process being used, as it is cumbersome, expensive, time-consuming and not likely to yield material information. Possible alternatives for strengthening the enforcement mechanism for CDAs will be another discussion for our municipal disclosure working group. The SEC itself has recognized these and other shortcomings of the disclosure regime in its 2012 "Report on the Municipal Securities Market."[12] Indeed, the SEC stated in that report "The Commission and market participants have identified a number of areas in which there could be improvements in the disclosure practices regarding municipal securities and where amendments to Rule 15c2-12 may be helpful," and suggested changes to both the Rule itself and to the 1994 interpretive guidance associated with the Rule. Unfortunately, in the 30 months since that report's release, the SEC has taken no action, outside of enforcement, to address weaknesses in the disclosure regime that the SEC identified.

V. Ways to Minimize the Burden of Collection and Analysis

SIFMA feels that automated collection techniques or other forms of information technology can be used to reduce the burden on filers and increase the certainty that filings are made. For instance, the SEC should explore the possibility of whether bond insurers should be indirectly or contractually required to report rating changes on all bonds they insure to EMMA. Also, EMMA currently collects and disseminates rating

[12] See: http://www.sec.gov/news/studies/2012/munireport073112.pdf.

changes from the majority of rating agencies. The SEC also should explore the possibility of whether all rating agencies should be required to report all rating changes on all municipal bonds they rate to EMMA.

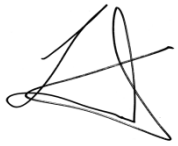
In addition, to aid in the analysis and review of the filings under the Rule, SIFMA members suggest that the use of a date certain in CDAs be mandated. For example, instead stating in a CDA that the filing deadline for annual disclosures is to be 180 days after the end of an entity's fiscal year or 30 days after a state audit, the CDA should state, for example, "by June 30 of every year." With that certainty, the due date of such filings is clearly known without further research about the entity's fiscal year, and late filings are easily flagged.

Finally, many issuers post all information that they are required to provide to EMMA on their own websites. The SEC could modify the Rule to allow them to incorporate their webpages by reference in their annual or event filings, rather than restricting incorporation to documents filed with the SEC or the MSRB. If it does, issuers could file with the MSRB a simple statement that the incorporated documents are available on the issuers' web pages.

VI. Conclusion

Again, SIFMA sincerely appreciates this opportunity to comment to the SEC on the existing collection of information provided for in the Rule. SIFMA members and staff would welcome the opportunity to meet with the SEC to discuss these comments or any developments related to our municipal disclosure working group further. Please do not hesitate to contact me with any questions by phone at (212) 313-1130, or by email at lnorwood@sifma.org.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***SEC***
Jessica Kane, Deputy Director, Office of Municipal Securities
Rebecca Olsen, Chief Counsel, Office of Municipal Securities
MSRB
Lynnette Kelly, Executive Director