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Invested in America

December 8, 2014

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2014-18: Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2013-18[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is seeking comment on draft amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation given or permitted to be given by brokers, dealers and municipal securities dealers ("dealers"). The draft amendments are intended to apply Rule G-20 and the related record-keeping requirements of MSRB Rules G-8 and G-9 to municipal advisors.

I. Executive Summary

SIFMA has long been supportive of a setting a level regulatory playing field for dealer municipal advisors and non-dealer municipal advisors. To that end, SIFMA is generally supportive of the draft amendments in the Notice. SIFMA

[1] The Securities Industry and Financial Markets Association (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 (GFMA). For more information, visit www.sifma.org.

[2] MSRB Notice 2014-18 (October 23, 2014).

feels that the current standards set forth in MSRB Rule G-20 as they relate to dealers are strict enough to cover an entity with a fiduciary duty. SIFMA and its members do have some concerns about the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities and does also suggest some additional minor changes to the draft amendments, including to the definition of "entertainment expenses" and having similar recordkeeping requirements for non-dealer municipal advisors and dealers.

II. Prohibition of the Use of Offering Proceeds

a. Prohibition on Reimbursement of Entertainment Expenses

SIFMA's members agree with the intent of the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities. However, SIFMA members have concerns about the function and interpretation of the prohibition. Heretofor, under the MSRB's rules, it has not been unlawful for entertainment expenses,[3] and dealers have been able to accommodate clients who would like these expenses to be paid for and reimbursed to the dealer out of the proceeds of the offering.[4] SIFMA generally is concerned about federal regulatory creep over state and local issuers of municipal bonds. If a municipal securities issuer would like to spend their bond proceeds in a manner that is not otherwise prohibited by state or local law[5], in theory we see no reason for the MSRB to prohibit such an expenditure. SIFMA's members are concerned that this will become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly.

SIFMA and its members also believe that the proposed rule lacks clarity. For instance, we suggest that the term, "entertainment expenses", as defined for the

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3 It should be noted that the decision in Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) was the opinion of one FINRA panel, and the decision was not appealed to the federal courts. There is also no parallel FINRA Rule, as FINRA Rule 3220 does not prohibit such reimbursement.

4 We understand that such practices may be permitted or prohibited depending on applicable state or local laws.

5 If the issue is tax-exempt, assumedly all appropriate Treasury and IRS rules would also need to be complied with.

purposes of this prohibition, should be changed pursuant to the suggestions made in Setion II.b. below.[6]

If this provision continues to be included in the draft amendments to MSRB Rule G-20, dealers would potentially have to undergo significant and costly changes to their existing compliance programs related to the reimbursement of entertainment expenses.

b. Expenses Reasonably Related to a Legitimate Business Purpose

SIFMA suggests the following edits to the draft amendments to MSRB Rule G-20(e):

> (e) Prohibition of Use of Offering Proceeds. . . . For purposes of this prohibition, entertainment expenses do not include expenses reasonably related to a legitimate business purpose such as ~~reasonable and necessary expenses for~~ meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained. For purposes of this prohibition, proceeds of the offering does not include funds attributable to the underwriter's discount.

These edits to the draft language bring more clarity to the proposed amendments. Also, these edits create a rule for which in-house legal and compliance officers can develop rational policies and procedures. Firms can ascertain what expenses are "reasonably related to a legitimate business purpose". It is unclear what is a "reasonable and necessary expense for meals". For instance, is a hot meal during a meeting at a sit down restaurant reasonable and necessary, or does this limitation require cold sandwiches delivered to an internal conference room? Is a dinner after working all day permissible? Is a dinner meeting the night before rating agency meetings permissible? Firms will need to be able to interpret the new rule to draft their policies and procedures to account for these types of scenarios. Further clarity might be given to this rule if meals were limited to "a fair and reasonable amount, indexed to inflation, such as not to exceed $100 per person.

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[6] In the wake of the decision in Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., *supra*, many dealer firms have updated their policies and procedures to ensure that this activity is not approved going forward.

III. Standardizing the Time Frames in Rule G-9

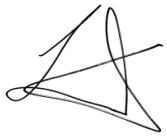
Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 to require municipal advisors to register with the Securities and Exchange Commission (the "SEC"). As part of the permanent registration regime mandated by the Dodd-Frank Act, Rule 15Ba1-8 sets forth requirements for books and records relating to the business of municipal advisors. Rule 15Ba1-8(b)(1) requires municipal advisory firms to maintain and preserve all books and records required to be made for a period of not less than five years, the first two years in an easily accessible place. This SEC rule is a floor, not a ceiling, regarding record retention requirements for municipal advisors.

The draft amendments to MSRB Rule G-9 state that dealers shall preserve certain books and records for a period of not less than six years, whereas municipal advisors only need to preserve those books and records for a period of not less than five years. SIFMA and its members feel that there is no legitimate reason for the difference in record retention timeframes for dealers and municipal advisors. The different record retention rules for municipal advisors create a disparate impact on and increase the cost of compliance for dealers. These unequal rules create particular confusion and undue compliance burden when a firm acts as both dealer and municipal advisor and is thus subject to two different standards. We strongly suggest, in the spirit of fairness, that either the recordkeeping requirement for dealers should be reduced to five years, or the recordkeeping requirement for municipal advisors should be extended to six years. If such a change is not made, the MSRB will be favoring non-dealer municipal advisors over dealers, by making it less expensive for them to do business.

IV. Conclusion

To reiterate, SIFMA and its members are supportive of setting a level regulatory playing field for dealers and municipal advisors. To that end, SIFMA is generally supportive of the draft amendments in the Notice. As discussed above, SIFMA has some concerns about the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities and does also suggest some additional minor changes to the draft amendments, including to the definition of "entertainment expenses" and having similar recordkeeping requirements for non-dealer municipal advisors and dealers. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
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cc: ***Municipal Securities Rulemaking Board***
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