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Invested in America

September 17, 2012

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

Re: MSRB Notice 2012-43: Request for Comment on Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business – Bond Ballot Campaign Committee Contributions

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2012-43[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on a draft amendments to Rule G-37 on political contributions and prohibitions on municipal securities business, as well as Rule G-8 on books and records. The draft amendments require an increase in the type of information publicly disclosed by brokers, dealers and municipal securities dealers ("dealers") regarding any contributions to bond ballot campaigns. SIFMA and its members generally support transparency as a way to eliminate any possible perception of impropriety and were supportive of the MSRB's initial disclosure regime for bond ballot campaign contributions.[3] However, we do have some concerns about specific aspects of the amendments as we will describe more fully below.

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[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 2012-43 (August 15, 2012).

[3] *See*, letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated August 7, 2009 ("Prior Letter"), in response to MSRB Notice 2009-35 (June 22, 2009).

I. Revision of the Definition of "Contribution"

The MSRB has proposed to revise the term "contribution" to cover the full range of cash and in-kind contributions that might be given in the context of a bond ballot campaign and, with regard to in-kind contributions, require dealers to disclose both the value and nature of the services being provided by the dealer or its personnel, including election services or other collateral work provided on behalf of the issuer or bond ballot campaign. This is a significant change from the current requirement that dealers provide information respecting in-kind donations only to bond ballot campaigns and greatly expands the scope of the reporting obligations to cover frequent routine communications between issuers and underwriters. SIFMA feels strongly that this proposed amendment blurs the line between work done for the bond ballot campaign committee which is to be reported on Form G-37 and traditional work for the issuer completed as part of the public finance transaction. In its role as underwriter, dealers routinely have discussions with issuers and provide them with quantitative analyses reflecting all different types of financial scenarios, including increased indebtedness, refundings or refinancings, and changes to cash flows. These types of quantitative analyses are frequently performed for a variety issuers as part of a range of traditional public finance services, as the need for such analyses are independent of the presence of a bond election. For these reasons, any work done for the issuer should not be deemed to be a reportable contribution. SIFMA and its members feel that only in-kind contributions to the bond ballot campaign committee itself should be reportable, and that references to the issuer should be struck from this part of the amendment to the rule. SIFMA agrees that work done for or contributions made to the actual bond ballot campaign committee should be disclosed, as the bond ballot campaign committee is a separate legal entity from the issuer. However, SIFMA feels that any other collateral work provided on behalf of the issuer should not be reported on Form G-37, as much or all of this work blends over into traditional public finance, forms a substantial part of the work of some underwriters and it would be extremely burdensome on the dealer community to separately distinguish, track, quantify and report this information to the MSRB.

II. Requiring Name of Issuer

The MSRB has proposed to require the dealer to provide the complete name of the entity that will issue the bonds that were authorized by the bond ballot campaign, to which a contribution was made by the dealer, its municipal finance professionals ("MFPs") or non-MFP executive officer (other than a *de minimis* contribution, or applicable political action committee ("PAC"), to be included in the quarterly report covering the contribution (a "Qualifying Contribution"). SIFMA and its members feel that this information is always known by the dealer, and would

be beneficial information to include in Form G-37. This increase in transparency would create more benefits than burdens on the regulated dealer community.

III. Requiring Complete Date of Engagement

The MSRB has proposed to require dealers to disclose the complete name of the primary offering resulting from the bond ballot campaign for which such dealer engages in municipal securities business and to which a Qualifying Contribution was made by the dealer, its MFP or non-MFP executive officer or applicable PAC, and to also disclose the specific date on which the dealer was selected to engage in such municipal securities business, to be included in the quarterly report covering the closing date of the offering that was authorized by the bond ballot campaign.

First, the date the dealer was selected to engage in such municipal securities business may not be clear or ascertainable by the dealer. Typically engagement letters are not done with issuers for underwriting services,[4] and there may not always be a bond resolution or other formal appointment of the dealer as underwriter before the signing of the bond purchase agreement. In fact, each issuer typically has its own method for the selection and final approval of underwriters, which makes it difficult or impossible to standardize the process. In the absence of an ascertainable date for the formal engagement of the underwriter by the issuer, SIFMA suggests using the sale date, on which the signing of the bond purchase agreement occurs, as the "date of engagement". However, using the sale date may also be problematic for the purposes of this amendment, as the dealer in a negotiated offering may have been informally chosen as the underwriter for quite some time ahead of the sale date. Therefore, any disclosable contributions made to the bond ballot campaign committee by the dealer or its personnel after the dealer began work on the bonds may appear from the filings to have potentially influenced the issuer's choice of underwriter because the underwriter cannot point to a date of formal engagement, however in fact any such contributions would have occurred after the dealer was chosen as underwriter and not have influenced the issuer's choice of underwriter.

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[4] It is worth noting that MSRB Rule G-23 obligates a dealer acting as financial advisor to enter into a written agreement for providing financial advisory services to the issuer. Due to the significant difference in the nature of the relationship between an issuer and its financial advisor, on the one hand, and an issuer and a dealer in negotiations to conclude an arms-length purchase and sale transaction on the other, there is no parallel engagement requirement for underwriters.

Second, SIFMA suggests that it is critical that any such rule change be effective on a going forward basis from the effective day of the rule, including any potential look back period, so as to permit compliance regimes to be developed. [5]

Third, SIFMA recognizes that dealer contributions to bond ballot campaign committees and any resultant municipal bond offerings should be able to be tracked historically, irrespective of the amount of time that has passed between the bond ballot election and the issuance of the bonds authorized thereto. However, SIFMA notes that individual employees commonly move between firms, and tracking historical individual MFP or non-MFP executive officer contributions to bond ballot campaigns and any resultant municipal bond offerings for an undetermined amount of time until all the authorized bonds have been issued would create significant compliance burdens for dealers, particularly with respect to new employees. SIFMA proposes that there be a two-year look back for contributions by current individual MFPs or non-MFPs executive officers for bond ballot campaign contributions that result in a municipal bond offering underwritten by the dealer, to be phased in from the effective date of the rule.[6] SIFMA feels the compliance risk is significant for a dealer who may unknowingly fail to report a transaction that may have a related years-old contribution the dealer was unaware of, which was made by a new MFP or non-MFP executive officer. SIFMA feels that transactions underwritten by the dealer after a contribution was made to a bond ballot campaign committee by a former employee should not need to be reported.

The ambiguities pointed out above are of concern as they may cause "false positives", or filings which may appear to allude to suspect activity because of an artificial reporting paradigm, but where no impropriety existed. Therefore, SIFMA urges the MSRB to not expand the Form G-37 disclosure to include the specific date the dealer was engaged. Also, SIFMA urges the MSRB to ensure that the rule is applied from its effective date forward and that there is a limitation on reporting individual contributions to coincide with the two-year look back already found in Rule G-37.

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[5] No contributions made, or transactions sold or issued before the effective date of the rule should be reportable.

[6] Any applicable look back provision should not take into account contributions made, or transactions sold or issued before the effective date of the rule.

IV. Requiring Dealers to Disclose Specific Date a Contribution Was Made

In connection with the existing requirement to disclose the contributions to bond ballot campaigns, the MSRB has proposed to also require the dealer to provide the specific date on which a Qualifying Contribution was given by the dealer to the bond ballot campaign. The potential burden of this proposal depends on the number of non-*de minimis* reportable contributions that need to be tracked and reported to the MSRB. For larger firms with many employees, or firms active in states where such bond ballot campaigns are common, the burden to track these additional dates and downstream transactions could be significant.

V. Requiring Dealers to Disclose Reimbursements

The MSRB has proposed to require whether the dealer or any of its MFPs or non-MFP executive officers received payments or reimbursements (e.g., fees and/or expenses charged) related to any bond issuance resulting from a bond ballot campaign to which the dealer, its MFP or non-MFP-executive officer (other than a *de minimis* contribution), or applicable PAC contributed from any third party (including, but not limited to, an issuer, election advisor, or financial advisor), to be included in the quarterly report covering the payments or reimbursements. SIFMA and its members feel that these payments or reimbursements are not common and should be disclosed. Additionally, any such payments would be known to the dealer and disclosure would not cause much burden on the dealer. Finally, it would be material if any such payments were made, and the disclosure of any such payments would shine a light on this behavior. Therefore, SIFMA supports the requiring the disclosure of any such payments or reimbursements.

VI. Application to Municipal Advisors

SIFMA and its members feel strongly that there should be a level playing field for regulated parties. To that end, any of these amendments that impact dealers, as well as the rest of the provisions of Rule G-37, should also be applied to municipal advisors as soon as practicable.

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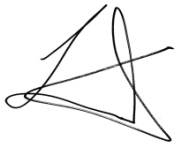
SIFMA and its members are supportive of additional transparency to eliminate any perception of impropriety related to bond ballot campaign contributions. However, we do have the specific concerns listed above regarding the draft amendments. We would be pleased to discuss any of these comments in

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
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Ernesto A. Lanza, Deputy Executive Director and Chief Legal Officer
Leslie Carey, Associate General Counsel