



September 12, 2011

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke St.
Alexandria, VA 22314

In regard to Notice 2011-34

Dear Mr. Smith:

The Securities Industry and Financial Markets Association¹ (SIFMA) is pleased to submit comments on the Municipal Securities Rulemaking Board's ("MSRB") proposed Rule A-11(c), draft Form A-11-Survey (the "draft survey") and related issues raised in MSRB Notice 2011-34.

On August 29, 2011 SIFMA submitted a comment letter² ("SEC letter") to the Securities and Exchange Commission ("SEC") on many issues raised in Notice 2011-34, including the proposed new assessment on municipal advisory firms and proposed new Form A-11-Interim. In our letter we raised serious concerns with the proposed new assessment and form, and while we are pleased that the MSRB has withdrawn proposed Rule A-11 from SEC consideration, those concerns still stand. In this letter we offer comments on the draft survey and on paragraph (c) of proposed Rule A-11, which would require municipal advisors to complete draft Form A-11-Survey for calendar year 2011.

Some of our comments filed with the SEC related to proposed Form A-11-Interim also apply to draft Form A-11-Survey. Our key concerns include:

- The draft survey requests registered municipal advisors to provide extensive information related to their activities as "Financial Advisors" before that term is fully defined in regulation. The definition the MSRB provides for "Financial Advisor" in the draft survey does not provide enough clarity for those expected to complete the survey.

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 Letter from Michael Decker, Managing Director, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, "Comment letter in regard to File No. SR-MSRB-2011-08 (Release No. 34-65015)," August 29, 2011, <http://www.sifma.org/workarea/downloadasset.aspx?id=8589935232>.

- Because proposed Rule A-11 was not in place during the period covered by the draft survey, some municipal advisors, including many who are also brokers, dealers or municipal securities dealers, did not have in place systems to track the information being requested in the survey during the period the survey covers.
- The draft survey overall would be time-consuming and burdensome. We question whether the benefits would outweigh the costs industry participants would bear to comply with the requirement to complete the survey.

As we argued in our SEC letter, there is a lack of regulatory clarity as to what activities constitute “municipal advisory business” in the context of proposed Rule A-11. The SEC has not yet finalized the definition of “municipal advisor” in the context of its proposed rules governing municipal advisor registration (SEC Release No. 34-63576). Also, various references to “municipal advisor,” “advisory activities” and related terms in adopted and proposed MSRB rules are creating inconsistent and conflicting definitions. MSRB Rules G-23 and D-13 include separate and inconsistent definitions of “financial advisory relationship” and “municipal advisor.” Proposed Rules A-11 and G-44 would impose two yet additional concepts of “municipal advisory business” and “municipal advisory activities.” Uncertainty regarding the SEC’s definition of municipal advisor, combined with inconsistencies in various adopted and proposed MSRB definitions of terms related to municipal advisor, would make it exceedingly difficult for respondents to complete Form A-11-Survey.

While the instructions accompanying the draft survey itself include a definition of certain terms such as “financial advisor,” these definitions are only partially helpful. The definitions, for example, do not further define such terms as “advice.”

Moreover, for many financial advisors who are also brokers, dealers or municipal securities dealers (“dealer advisors”), elements of the survey go far beyond what is reasonable and necessary for the MSRB to distinguish between advisory and non-advisory activities. For example, items 2-j, and 2-k of the survey inquire as to revenue derived from non-municipal advisory activities, apparently without limitation. For dealer advisors, municipal advisory activities may make up only a very small portion of their overall business, and non-municipal advisory activities may cover a broad and deep variety of businesses. The MSRB has not justified why it needs to collect information on businesses that may have nothing to do with municipal advisory activities or even with the municipal securities market at all.

A key reason why completing the survey would be so burdensome, especially for dealer advisors, is the retroactive nature of proposed Rule A-11 overall. Proposed Rule A-11, including the draft Form A-11-Survey, would cover a time period before the rule was in effect or even proposed or circulated in draft form. This retroactive period includes October 1, 2010-September 30, 2011 with respect the proposed assessment and January 1, 2011-December 31, 2011 for draft Form A-11-Survey. The retroactive nature of proposed Rule A-11 would make it burdensome for firms to complete the survey since they have not been tracking their business activities and revenues throughout the 2011 calendar year for the purpose of complying with paragraph (c) of proposed Rule A-11. As a result, firms will need to retroactively examine their business activities and revenues. In many cases, this effort will impose significant costs. We question whether the MSRB has undertaken a cost-benefit analysis of proposed Rule A-11(c) to determine whether the compliance costs to be borne by industry members are justified by the benefits that would accrue from the rule.

Because paragraph (c) of proposed Rule A-11 is retroactive in nature, completing Form A-11-Survey would be exceedingly burdensome for many dealer advisors. Because the benefits of proposed Rule A-11(c) do not appear to be justified in relation to the compliance costs industry members would bear in completing the survey form, we urge the MSRB to withdraw paragraph (c) of proposed Rule A-11 and proposed Form A-11-Survey. Short of that action, we urge the MSRB to amend paragraph (c) of proposed Rule A-11 so that the survey would apply prospectively to calendar year 2012 and would be required to be completed and returned to the MSRB by financial advisors in 2013.

We welcome the MSRB's announcement of September 12, 2011 (MSRB Notice 2011-51) stating that the MSRB has withdrawn several pending proposals related to regulating municipal advisors, including proposed new Rule A-11 and Form A-11-Interim, pending the SEC's finalization of its municipal advisor registration rules. We agree with the MSRB that there is "substantial concern regarding the timing of a permanent municipal advisor definition." We hope the MSRB applies the same reasoning to proposed Rule A-11(c) and Form A-11-Survey and suspends any further action on these elements of Notice 2011-34.

We appreciate the opportunity to comment on Notice 2011-34. Please contact us if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "M. Decker". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael Decker
Managing Director