



April 5, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22134

**Re: MSRB Notice 2011-16 Request for Comment on Gifts and
Gratuities Rule for Municipal Advisors**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA” or “we”)¹ welcomes this opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) proposed amendments to Rule G-20 (“**proposed amendments**”),² which would extend Rule G-20’s limitations on gifts and gratuities from brokers, dealers, and municipal securities dealers to gifts from “municipal advisors,” a category created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank Act**”).³ We commend the MSRB for seeking to adopt a gift limit on municipal advisors that parallels the existing gift limit on brokers, dealers, and municipal securities dealers. In addition, we support the MSRB’s decision to adopt a two-stage approach under which it intends to apply Rule G-20 to only those entities and individuals who fit the statutory definition of “municipal advisor” in the Dodd-Frank Act,⁴ without regard to the SEC’s pending municipal advisor registration rulemaking.⁵ As

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 MSRB Notice 2011-16, Request for Comment on Gifts and Gratuities Rule for Municipal Advisors (Feb. 22, 2011) (“**MSRB Notice 2011-16**”).

³ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁴ See MSRB Notice 2011-16 at “Request for Comment.”

⁵ Registration of Municipal Advisors, 76 Fed. Reg. 824, 831-32 (Jan. 6, 2011).

discussed in our correspondence regarding Proposed Rule G-42,⁶ SIFMA believes that this two-stage approach is necessary to give all potentially-regulated parties an adequate opportunity to comment on regulatory changes. Depending upon the SEC's final definition of "municipal advisor," we agree with the MSRB that such a pragmatic approach will provide an opportunity for further comment as needed.

SIFMA supports the MSRB's goal of reducing the risk of conflicts of interest in the award of municipal advisory business by limiting gifts to employees of municipal entities. We write simply to request clarification that the proposed amendments do not exceed the reach of current Rule G-20. We understand that the MSRB intends for the proposed amendments to apply to municipal advisors in the same fashion as Rule G-20 currently does to municipal securities dealers. SIFMA welcomes such an approach, which will promote predictability and consistency across regulatory regimes. To that end, we recommend the MSRB expressly clarify that the proposed amendments to Rule G-20 simply extend the existing Rule G-20 framework, including related Financial Industry Regulatory Authority ("FINRA") guidance, to municipal advisors.

I. WE SEEK CONFIRMATION THAT THE DIFFERENCES IN THE TEXT OF THE PROPOSED AMENDMENTS DO NOT BROADEN RULE G-20'S APPLICABILITY

The proposed amendments would create Rule G-20(a)(i)—consisting of the current gift limits on brokers, dealers, and municipal securities dealers—and Rule G-20(a)(ii)—applying the rule's gift limits to municipal advisors. Proposed Rule G-20(a)(ii) on its face differs from the text of current Rule G-20(a), which provides for a \$100 gift limit that is triggered when a gift is given "in relation to the municipal securities activities of the employer of the recipient" of the gift.⁷ By contrast, proposed Rule G-20(a)(ii) provides that the \$100 gift limit for municipal advisors is triggered whenever a gift is given "in relation to the municipal advisory activities of . . . the municipal advisor."⁸

We understand the MSRB proposed this modification to reflect the difference between municipal advisory activities and municipal securities activities. With respect to the latter, a municipal issuer—the "employer of the recipient" of a gift—is itself a market participant engaged in municipal securities

⁶ Ltr. from SIFMA to Ronald W. Smith, Corporate Sec'y, MSRB (Feb. 25, 2011) ("**SIFMA G-42 Letter**"), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-04/SIFMA.ashx>.

⁷ MSRB Rule G-20(a).

⁸ Proposed Rule G-20(a)(ii). Of course, the proposed amendments substitutes "municipal advisor" for "broker, dealer or municipal securities dealer" in the text of the existing rule.

activities. Therefore, the gift limit with respect to municipal securities activities can be tied to the activities of the recipient's employer (*e.g.*, the municipal entity). But with respect to municipal advisory activities, the term "municipal advisor" is defined so as to preclude a municipal entity—the employer of the recipient of a gift—from engaging in covered advisory activities.⁹ Municipal entities neither advise municipal entities nor solicit municipal advisory business. As a result, the gift limit with respect to municipal advisory activities cannot be tied to the activities of the recipient's employer. Accordingly, we understand that the textual difference between proposed Rule G-20(a)(i) and proposed Rule G-20(a)(ii) is to address the different roles municipal entities play in different markets and that the scope of both provisions is consistent.

SIFMA respectfully requests that the MSRB clarify that the textual difference between proposed Rule G-20(a)(i) and proposed Rule G-20(a)(ii) applies the same scope of coverage to both brokers, dealers, municipal securities dealers and municipal advisors. This clarification would provide regulatory certainty and clear standards for municipal advisors seeking to design appropriately tailored compliance programs.

II. WE SEEK CLARIFICATION THAT EXISTING RULE G-20 AND EXISTING FINRA GUIDANCE APPLY TO THE PROPOSED AMENDMENTS

SIFMA requests that the MSRB confirm that the existing guidance it has issued under Rule G-20 applies to all provisions of the proposed amendments. Most importantly, we ask that the MSRB clarify that its interpretation of "person" to mean only natural persons applies to the proposed amendments to Rule G-20.¹⁰ Under this well-established interpretation under both MSRB and FINRA gift rules, gifts by municipal advisors to individuals would be covered under Rule G-20, but gifts to entities would not be.

We also ask the MSRB to confirm that guidance under the FINRA (and former National Association of Securities Dealers ("NASD")) rules will apply to Rule G-20 wherever relevant. When amending Rule G-20 in 2005, the MSRB stated that it "intends generally that the provisions of Rule G-20 be read consistently with the analogous NASD provisions" and that "relevant NASD interpretations would be presumed to apply to the comparable MSRB provision."¹¹ We ask the MSRB to reiterate its intent to apply relevant

⁹ See MSRB Rule D-13 (defining "municipal advisory activities" as those in 15 U.S.C. §78 o-4(e)(4)(A) (defining "municipal advisor" as an entity which "provides advice to or on behalf of a municipal entity . . . with respect to municipal financial products or the issuance of municipal securities . . . ; or undertakes the solicitation of a municipal entity")).

¹⁰ See Rule G-20 Interpretive Letter (Mar. 19, 1980).

¹¹ *Id.* at 11.

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FINRA/NASD guidance to the proposed amendments to Rule G-20, including the guidance to FINRA Rule 3220, which reflects the consolidation of NASD Rule 3060 with NYSE Rule 350.¹²

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SIFMA appreciates this opportunity to comment upon the proposed amendments to Rule G-20. Please do not hesitate to contact me with any questions at (212) 313-1130; or Barbara Stettner and Charles Borden, of O'Melveny & Myers LLP, at (202) 383-5283 and (202) 383-5269, respectively.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, large, stylized letter 'A' that serves as a watermark or background for the signature.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly Hotchkiss, Executive Director
Peg Henry, Deputy General Counsel
Leslie Carey, Associate General Counsel

¹² See FINRA Rule 3220.