



Invested in America

March 23, 2012

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

**Re: MSRB Notice 2012-09: MSRB Seeks Input on Fiscal Year 2013
Priorities**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to respond to Notice 2012-09² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB seeks public input as it develops its priorities for its new fiscal year that begins October 1, 2012. SIFMA applauds the MSRB for its efforts and outreach to the municipal securities industry. SIFMA and its members believe effective and efficient regulation of the municipal securities markets helps to aid market liquidity and investor confidence.

I. General Municipal Securities Market Concerns

SIFMA’s members feel that there are a number of risks currently facing the municipal securities market, the most significant of those being the proposed Volcker Rule. The Volcker Rule generally prohibits any banking institution from engaging in certain proprietary trading activities or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with “hedge funds” and “private equity funds.” Certain permitted activities to the general prohibition are included in Section 13(d) of the Bank Holding Company Act (the “BHC Act”), including “. . . the purchase, sale, acquisition or disposition of . . . obligations of any

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 2011-50 (Sept. 8, 2011).

State or of any political subdivision thereof.”³ The Proposal correctly exempts from its scope obligations of any State or of any political subdivision thereof. However, as expressed in footnote 165 of the Proposal, the narrow reading of the statute’s scope of permitted activity excludes a substantial portion of municipal securities that are issued in the market today.⁴ SIFMA agrees with the MSRB that the failure to exclude all municipal securities from the Volcker Rule will not only create tremendous confusion in the municipal market, but will also bifurcate the market in an unprecedented manner.⁵ Also, the failure to exclude tender option bonds (“TOBs”) from the proprietary trading prohibition, and failure to exclude TOBs from the definition of covered funds, will seriously disrupt the demand for municipal securities generally.

Legislative threats to tax-exemption are another significant cause for concern in the municipal securities market. Any proposal that would further curtail the ability of states and localities to issue tax-exempt bonds or for investors to earn tax-exempt interest is of particular concern. Any such changes to the taxation of this product would likely have a significant effect on the demand for municipal bonds and would raise state and local borrowing costs.

Finally, the potential changes to money market mutual funds, particularly the suggestion of a floating net asset value (“NAV”), are another significant risk to the municipal securities market. These potential rule changes could have a material effect on the functioning of money market mutual funds, investor demand for money market mutual funds, and thus the demand created by these funds in the municipal securities market. Collectively, these proposals could deal a knock-out punch to the demand for municipal securities, and as a result, cause state and local government issuers to see a significant increase in the cost of capital and a less accessible marketplace for their debt.

II. Regulatory Uncertainty

One notable area of regulatory uncertainty is in the area private placements and bank loans. While we recognize that the MSRB has attempted to address these issues,⁶ we believe significant confusion persists. SIFMA and its members feel that further guidance would be helpful for market participants to distinguish the

³ 12 U.S.C. §1851(d)(1).

⁴ See, <http://www.sifma.org/issues/item.aspx?id=8589937356> .

⁵ See, <http://www.msrb.org/msrb1/Industry-Letters/MSRB-Comment-Letter-on-Volcker-Rule.pdf>.

⁶ See, MSRB Notice 2011-37 (August 3, 2011), and MSRB Notice 2011-52 (September 12, 2011).

characteristics of a bank loan, a privately placed security, and a publicly offered security. Market participants would appreciate clear and specific characterizations of common structures so that they can comply with the securities laws. Additionally, further clarity would be helpful on the permissible activities of a financial advisor in a bank loan or private placement, as well as the specific activities that would make that financial advisor a placement agent. We recognize that some of our areas of concern are outside the MSRB's jurisdiction, and that guidance is needed from the Securities and Exchange Commission (the "SEC"). We urge the MSRB to work with the SEC on these issues so that regulatory clarity can be brought to this space in a timely fashion.

III. Transparency and Disclosure in the Municipal Securities Market

SIFMA commends the MSRB for its Herculean efforts in developing its Electronic Municipal Market Access ("EMMA") website. EMMA has revolutionized the industry by being a free and accessible place for investors to find trade data, Official Statements, annual financial information and material events as reported by issuers. SIFMA members are pleased that the MSRB is continuing to develop enhancements to EMMA. It appears to be a particular concern to regulators that investors may not have access to adequate continuing disclosure and material events to make decisions about their municipal securities investments. We believe EMMA should be the central repository for all municipal securities information, and as such, any information that regulators feel investors need should be incorporated into the site. Indeed, we believe it should not be incumbent on dealers to discern information material to a particular bond that has not been disclosed on EMMA. The MSRB should consider integrating news or other information sources for continuing disclosure information if concerns persist about issuer compliance with continuing disclosure obligations pursuant to SEC Rule 15c2-12. Additionally, the securities of an issuer who is currently not complying with its continuing disclosure obligations should be flagged to alert a potential or current investor of the issuer's failure to comply.

Mechanically, transparency of trade prices could be enhanced if the MSRB differentiated between agency trades and principal trades on EMMA. Trades that are executed by a broker dealer on an agency basis typically trade with a commission that is not included in the trade price. Trades executed by a broker dealer on a principal basis are reported inclusive of the mark-up or mark-down. This disparate reporting makes it difficult to compare "apples to apples," and can confuse investors who may see a variety of contemporaneous prices. At a minimum, an explanation of such variations on the EMMA website placed near trade prices would be helpful to aid in the transparency of what is included in the reported prices.

In addition, we request that for inter-dealer transactions, the MSRB's Real-time Transaction Reporting System (RTRS), as well as the RTRS trade prices disclosed on EMMA, distinguish trades between affiliated dealers and unaffiliated dealers. A significant portion of reported interdealer trades are between dealers that share common ownership or are otherwise affiliated. These trades may not reflect arm's-length, market-based prices, since the parties to the trades are affiliated businesses. Distinguishing those transactions on EMMA would improve transparency.

IV. Leveling the Playing Field for Market Participants

As a result of the Dodd-Frank Act, the MSRB was granted the authority to write rules governing municipal advisors. While SIFMA feels strongly that the issuance of most of these rules should be delayed until the SEC releases its final definition of "municipal advisor," we are concerned that there are a number of municipal advisors who have not taken any qualification test or professional examination and are engaging in the business of advising issuers. We know that broker dealers who engage in municipal advisory activities are required to undertake professional qualification examinations. However, we are concerned that independent municipal advisors, engaging in exactly the same activities, currently are not required to undertake professional qualification examinations. We suggest that such a test be developed and implemented immediately for municipal advisors who do not otherwise have a Series 7, 52 or 53 license. It is important for the integrity of the market to have professionalism and knowledge standards for all market participants, and also that those standards are fair and equivalent for different participants engaging in the same activities.

V. Fair and Efficient Regulation

SIFMA and its members believe that evaluating the costs of new regulation, and weighing those costs against any benefits derived from such new regulation, is critical to ensure efficient regulation. We strongly believe that the vigorous enforcement of existing regulation is integral to confidence in a market. Merely piling redundant or overly prescriptive regulation on top of existing regulation will not halt parties that are intent on circumventing the rules for their own gain; it will only serve to stymie the parties that earnestly want to comply with all applicable regulations, and ably serve their clients while remaining profitable. Only enforcement will halt bad actors in the marketplace. Before any new regulations are created, it first should be determined whether vigorous enforcement of existing regulations would not be sufficient to address regulators' and market participants' concerns alike.

In evaluating new regulations, regulators should pay particular attention to potential unintended consequences, not just on municipal securities functions within

a business entity, but also on unrelated areas of such business entities or market participants. For example, SIFMA has commented to the SEC that the proposed definition of municipal advisor may have significant effects on not only municipal advisor activity, but also banking activity, investment advisor activity and brokerage.⁷ Some of the unintended consequences from the SEC's proposal will be further exacerbated by anticipated MSRB Rules related to municipal advisors. Such unintended consequences need to be minimized or eliminated, else market harm is likely to ensue.

SIFMA suggests the MSRB examine all of its current rules, as well as each new rule that is proposed, with a focus on efficiency. To that end, we applaud the MSRB for its recent efforts to update MSRB Rule G-14 and remove outdated information. SIFMA supports additional transparency when it would be helpful to the market, particularly if no additional burdens are put on industry members. SIFMA also applauds the MSRB for its plan to accept the New Issue Information Dissemination System (NIIDS) feed of information from the Depository Trust & Clearing Company (DTCC) to pre-fill some fields required for dealer submission pursuant to Rule G-34. This move toward straight-through processing will increase data integrity and reduce transaction costs by eliminating the need for dealers to input the same data into two different systems as a result of MSRB rules.

Finally, SIFMA notes that during the past few years, the MSRB has released a significant amount of new and proposed regulations. During this period of unusually high regulatory activity, we have become concerned about the cumulative effect of these new rules. SIFMA urges the MSRB to consider more principles-based regulation, to allow for more flexibility for firms to implement these regulations, as opposed to what appears to be the current trend toward rules-based regulation.⁸ In the same regard, we urge the MSRB to undertake more rigorous cost-benefit analyses of rule proposals to help ensure regulatory efficiency.

VI. Fees

SIFMA and its members believe that the costs for regulating the municipal securities industry should be shared equitably among market participants. This concept can be parsed in a number of ways. First, SIFMA feels that the broker dealer community pays a disproportionate amount of the MSRB's cost to regulate

⁷ See, <http://sec.gov/comments/s7-45-10/s74510-587.pdf>.

⁸ For example, the MSRB's proposed Interpretive Notice on Rule G-17 for Underwriters, MSRB's Notice 2011-12 (February 14, 2011), is highly prescriptive, although the underlying rule is principles-based. See also, SIFMA's most recent comment letter thereto at: <http://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-18.pdf>.

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the industry, particularly considering the amount of time and effort the MSRB is putting into developing regulations for municipal advisors and outreach to that constituency. Second, there is a feeling that smaller retail-sized trades bear a disproportionate percentage of the cost of regulation, given that these trades are charged the same flat MSRB technology fee that larger trades are charged. In addition, retail-sized trades typically travel through a distribution chain involving multiples transactions, each of which is charged not only the MSRB technology fee, but also the following regulatory fees: MSRB secondary market trading fee, the new Governmental Accounting Standards Board (“GASB”) support fee and the FINRA trading activity fee. SIFMA thinks the MSRB should analyze the collective cost of these fees on investors in the each segment of the market to ascertain the impact on each type of investor. In addition, we reiterate our previous suggestion that the MSRB undertake a top-to-bottom analysis of its fee structure. We ask that the MSRB examine, for example, whether a streamlined, simplified fee structure based, for example, on gross revenue derived from municipal securities business levied across all categories of market participants would be a fairer, more efficient means of raising revenues.

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We again wish to thank the MSRB for its efforts and outreach to the municipal securities industry. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the MSRB’s priorities. 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
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