



May 16, 2014

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

**Re: MSRB Regulatory Notice 2014-08; Request for Comment on
Establishing Professional Qualification Requirements for Municipal
Advisors**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide comments on the Municipal Securities Rulemaking Board (“MSRB”) Regulatory Notice 2014-08 (the “Regulatory Notice”) containing a draft proposal for amendments to MSRB Rules G-1, G-2, G-3 and D-13 (“Draft Amendments”) setting professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB rules.

I. Executive Summary

SIFMA supports the MSRB’s efforts to set professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB Rules. However, SIFMA has concerns regarding the Draft Amendments. In particular:

- Persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities, if they so choose. After the effective date of the Draft Amendments, the Series 52 qualification

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.

examination should be sufficient for municipal securities representatives and municipal advisor representatives alike.

- If the MSRB proceeds with developing a new qualification examination for municipal advisor representatives, then associated persons that currently qualify to perform municipal securities activities should be grandfathered as also qualifying as municipal advisor representatives.
- A full cost-benefit analysis should be completed prior to the approval of the Draft Amendments.

II. Qualification to Perform Municipal Securities Activities Should be Sufficient for Qualification to Perform Municipal Advisor Activities

Four years have passed since the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” or “the Dodd-Frank Act”)² was passed into law in 2010. A key reason for the passage of Section 975 of the Dodd-Frank Act was to bring previously unregulated municipal advisors under a regulatory regime, which would level the regulatory playing field for all firms providing municipal advice and ensure all associated persons providing advice were registered, tested and subject to similar regulatory standards.³ SIFMA and its members are very concerned that the development of a new municipal advisor qualification examination, and having associated persons take the qualification examination, will take an additional 2 to 3 years. Dealer municipal advisors have always needed to pass qualification exams, either the Series 7 or now the Series 52.⁴ Additionally, dealer advisors have been subject to regulatory continuing education requirements in order maintain the eligibility of their registrations. Although municipal advisors have a statutory fiduciary duty to their clients, non-dealer municipal advisors are still untested on their basic knowledge of municipal securities. There is a faster, more cost efficient and narrowly tailored alternative than the one proposed in the Draft Amendments.

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ We strongly feel that all municipal advisor representatives should either have passed a qualification exam in the past or pass a qualification examination in the future. If a person has qualified as a municipal securities representative, is not currently at a broker dealer but still within the 2 year period of the validity of their license if they become associated with a firm, we feel that they should be able to qualify as a municipal advisor representative.

⁴ Some firms have voluntarily registered as broker dealers and their associated persons are all licensed by having passed the Series 7 or Series 52 qualification exam, even though their only business is as a municipal advisor. This election shows a willingness to hold themselves to the same qualification standards as municipal securities representatives.

As a general matter, SIFMA feels that any person that currently, or in the future, qualifies to perform municipal securities activities,⁵ should also automatically qualify to perform municipal advisor activities, if they so desire. The knowledge base for these two functions is largely the same and there is substantial overlap in the subject matters necessary for professionals to master; both require knowledge about the municipal securities market, credit, interest rates, regulation and legal issues related to the municipal securities market. These topics are already covered by the Series 52 qualification examination, which is a basic competency examination that tests baseline knowledge of municipal securities.⁶ The key difference in these two functions, municipal advisor representative and municipal securities representative, is their duty to their clients; a difference which is easily tested by potentially adding questions to the content of the Series 52 qualification examination for professionals who would like to newly qualify as either a municipal securities representative or municipal advisor representative. Alternatively, these types of role and rule changes can be covered by firms' continuing education programs.

As a result of the Dodd-Frank Act, the MSRB now has the authority to protect municipal securities issuers, in addition to municipal securities investors. SIFMA and its members can think of no better way to protect municipal securities issuers than by ensuring that those persons that advise issuers pass a basic qualification test. As the Series 52 qualification examination is the current test for associated persons newly qualifying as a municipal securities representative, if this test is deemed sufficient for municipal advisor representatives as well, then municipal advisor representatives could begin taking the test immediately. The Series 52 qualification examination currently exists and there would be no unnecessary delay in developing test material and administering the test, if it were to be used for municipal advisor representatives, which is not the case if a new qualification examination needs to be created for municipal advisor representatives. SIFMA believes that issuers would be best served by having their advisors qualify as municipal securities representatives or municipal advisor representatives as soon as practicable. Additionally, having the same process for qualification as a municipal securities representative and municipal advisor representative will particularly aid small dealers, many of whom serve both functions, that are very sensitive to compliance costs.

⁵ Not all associated persons currently qualified to perform municipal securities activities have taken and passed the Series 52 examination. Some associated persons qualified to perform municipal securities activities as a result of having taken and passed the general securities registered representative examination (the "Series 7") before November 7, 2011. These municipal securities representatives were grandfathered, and did not need to take the Series 52 Examination when FINRA restructured the Series 7 examination. MSRB Rule G-3(a)(ii)(B).

⁶ See MSRB Study Outline for Municipal Securities Representative Qualification Examination at: <http://www.msrb.org/Rules-and-Interpretations/~media/Files/Prof-Qualifications/Series52OutlineOct2010Notice.ashx>.

The creation of another test adds costs for the MSRB to support a separate Professional Qualifications Advisory Committee (“PQAC”) to draft questions for the new test, and the Financial Industry and Regulatory Authority (“FINRA”) to administer the test. The costs then multiply exponentially as potentially thousands of people who are or will be dually registered as municipal securities representatives and municipal advisor representatives, or will be moving from one classification to another, will not only need to take an additional professional qualifications exam, but they and/or their firms will also need to pay for a multitude of expenses.

Cost/Fee Type	Cost/Fee for Each Municipal Advisor Seeking Qualification
Annual Fee (includes one test)	\$300 each fiscal year per MSRB Rule A-11 (\$180 for test) ⁷
Study Materials	Approximately \$150 ⁸ to \$325 ⁹ per person
Training Classes	\$395 ¹⁰ to \$1,000 per person
Time to Study and Take Exam	Assuming 43.5 ¹¹ hours, at approximately \$100/hour
Recordkeeping	Unknown
Compliance Surveillance	Unknown.

⁷ See: <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/Qualifications/p011096>.

⁸ See: <http://www.kfeducation.com/securities/series-52> and <https://solomonexamprep.com/series52>.

⁹ See: <http://www.stcusa.com/Content/CourseView.aspx?s=52>.

¹⁰ Id.

¹¹ Id..

These costs are not insignificant with respect to one representative, but are monumental when aggregated across the 902 currently registered municipal advisor firms, many of whom are also broker dealers who intend to serve both functions.

III. Alternatively, Grandfather Current Municipal Securities Representatives as Municipal Advisor Representatives

If the MSRB decides to continue with the development of a new test for qualification as a municipal advisor representative, then SIFMA and its members feel strongly that associated persons currently qualified as municipal securities representatives should be grandfathered in as municipal advisor representatives, if they so choose. This methodology would be consistent with other major changes to qualifications examinations, including the 2011 restructuring of the Series 7 qualification examination, which grandfathered in as municipal securities representatives those associated persons who took the Series 7 without having taken the Series 52 qualification examination prior to the implementation date of the rule change,¹² and the implementation of the Series 79 qualification examination in 2009.¹³

IV. Continuing Education Requirement for Municipal Advisor Representatives

The MSRB, in current Rule G-3(h), prescribes requirements regarding the continuing education of certain registered persons with a broker, dealer or municipal securities dealer. Continuing education and day to day training are critical parts of the core training of a firm's employees. Regulations change frequently, and firms need to ensure their associated persons are appropriately informed about such changes. SIFMA and its members feel strongly that municipal advisor representatives should be similarly subject to a continuing education requirement. Not only would this requirement level the regulatory playing field for similarly situated groups of regulated persons, but it would also ensure that municipal advisor representatives receive periodic training to stay abreast of issues and changes in the industry.

V. Proposed Grace Period is Sufficient

The MSRB, in its Draft Amendments has proposed a one-year grace period for municipal advisor representatives to study for, take and pass the municipal advisor representative qualification examination. SIFMA feels that this allows sufficient time for municipal advisor representatives to take, and if necessary retake, the applicable qualification examination. If a municipal advisor representative cannot pass the

¹² 76 Fed. Reg 70207 (Nov. 10, 2011); Exchange Act Release No. 34-65679.

¹³ See:

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p119461.pdf>.

qualification examination in a one-year time period, then they should not be permitted to hold themselves out as a municipal advisor representative.

VI. Apprenticeship Period is Unnecessary

The MSRB, in its Draft Amendments, has proposed to eliminate the current 90-day apprenticeship requirement for municipal securities representatives. The municipal securities representative license is the only securities license that still requires an apprenticeship. SIFMA members feel that this apprenticeship requirement is unnecessary, Dealers have an obligation to supervise their personnel, and this includes the responsibility to make sure employees are experienced and educated regarding the products they are discussing with clients.. Most new and inexperienced personnel spend the first couple months of their employment studying for their qualification exam(s), learning about the industry, and learning about their firm. SIFMA members feel that there are no negative consequences in eliminating the current municipal securities representative apprenticeship requirement. Dealers would likely realize certain cost savings, attributable to a reduction in recordkeeping and surveillance costs, if the current municipal securities representative apprenticeship requirement were eliminated.

VII. Economic Analysis is Insufficient

SIFMA's members feel strongly that a full cost-benefit analysis should be completed prior to the approval of the Draft Amendments. SIFMA briefly outlined some of the costs created by the Draft Amendments in Section II above. SIFMA has also described more cost efficient, quicker to implement and more narrowly tailored alternatives to the Draft Amendments, none of which were analyzed in the Regulatory Notice. While SIFMA applauds the MSRB's new policy on the use of economic analysis in its rulemaking,¹⁴ and its general request for comment in the Regulatory Notice on how an economic analysis should apply to the Draft Amendments, SIFMA is disappointed that the MSRB did not prepare an economic analysis of the Draft Amendments. The lack of such cost-benefit analysis fails to meet the MSRB's statutory mandate and its own stated policy.

VIII. PQAC Nomination Process Should Be Revisited

SIFMA and its members feel that the process for nomination to the MSRB's PQAC should be fully transparent and the members of PQAC listed on the MSRB's website. If a new test is developed, then it is in the best interest of every industry member to ensure that the test questions that are developed are fair, even-handed and suitable for a basic competency examination.

¹⁴ See: <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx>.

IX. Series 53 Examination Should be Used for Qualification as a Municipal Advisor Principal

Although discussion of the qualification examination for municipal advisor principals is not covered by this Regulatory Notice, our position is similar with respect to currently qualified municipal securities principals. SIFMA and its members feel that when the issue of qualification examinations for municipal advisor principals is addressed, that the process should be the same as qualification as a municipal securities principal. For associated persons looking to qualify as either a municipal advisor principal or a municipal securities principal after the implementation date of the Draft Amendments, the Series 53 qualification examination should be deemed to be the appropriate qualification examination.

X. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the MSRB's Draft Amendments. SIFMA supports the MSRB's efforts to set professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB Rules. As previously discussed above, we have concerns about certain aspects of the proposal. SIFMA and its members believe that persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities, if they so choose. After the effective date of the Draft Amendments, the Series 52 examination should be sufficient for municipal securities representatives and municipal advisor representatives alike. If the MSRB does proceed with developing a new qualification examination for municipal advisor representatives, then associated persons that currently qualify to perform municipal securities activities should be grandfathered as also qualifying as municipal advisor representatives. Finally, SIFMA feels strongly that a full cost-benefit analysis should be completed prior to the approval of the Draft Amendments.

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Municipal Securities Rulemaking Board
Page 8 of 8

SIFMA members and staff would be happy to meet with the MSRB to discuss these comments further. Please do not hesitate to contact me with any questions by phone at (212) 313-1130, or by email at lnorwood@sifma.org.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'LN', written over a faint, light-colored signature line.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: Lynnette Kelly, Executive Director, MSRB
Lawrence P. Sandor, Deputy General Counsel, MSRB
Michael Cowart, Associate General Counsel, MSRB