



September 22, 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-58255; File No. S7-21-08, Related to
Proposed Amendments to Rule 15c2-12

Dear Secretary Harmon:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on a proposed amendment by the Securities and Exchange Commission (“Commission”) to Rule 15c2-12, adopted under the Securities Exchange Act of 1934 (“Exchange Act”), and related to municipal securities disclosure. The proposal would amend the portion of the rule adopted in 1994 (“1994 Amendments”)² with respect to continuing disclosure repositories. The proposal would provide for a single repository to receive continuing disclosure submissions rather than the current system of multiple repositories. The 1994 Amendments required undertakings in specified circumstances to obligate issuers or obligated persons, as defined in Rule 15c2-12, to submit: (1) annual filings with Nationally Recognized Municipal Securities Information Repositories (“NRMSIRs”), (2) material event notices and failure to file notices either to each NRMSIR or to the Municipal Securities Rulemaking Board (“MSRB”), and (3), if required by state law, all continuing disclosure documents to the appropriate State Information Depository (“SID”).

SIFMA fully supports the Commission’s proposed amendments to Rule 15c2-12 to have the MSRB act as the sole repository to receive continuing disclosure as a means to promote market efficiency, to protect investors, and to assist the compliance obligations of market participants and the regulatory oversight responsibilities of regulators. The proposed amendments would require Participating Underwriters, as defined in Rule 15c2-12, to reasonably determine that an issuer or obligated person has agreed at the time of a primary offering: (1) to

¹ SIFMA, or the “Association”, brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² Securities Exchange Act Release No. 34961 (November 10, 1994).

provide the continuing disclosure documents directly to the MSRB instead of to each NRMSIR (in the case of annual disclosure) and appropriate SID, and (2) to provide the continuing disclosure documents in an electronic format, accompanied by identifying information as prescribed by the MSRB.

The primary benefit of the proposed amendment is that it will allow free access by investors, market participants and regulators to a single internet site of the MSRB to review primary market official statements, corresponding continuing disclosure and real time price information on the MSRB's Electronic Municipal Market Access system ("EMMA"). In our comment letter to the Commission, of even date herewith,³ on the proposed rule change of the MSRB to expand EMMA to accommodate continuing disclosure, we discuss the advantages of the expanded EMMA. Below are comments on the specific requests of the Commission for comments on the proposed amendments to Rule 15c2-12.

The Commission requests comment on whether the availability of continuing disclosure information from a single source would simplify compliance with regulatory requirements by Participating Underwriters and others. The definition of a "final official statement" in both current Rule 15c2-12, and in its proposed amended form, provides that a final official statement is to disclose any instances, in the five years prior to the dissemination of the final official statement, of the failure of an issuer or any other person, who is obligated to file continuing disclosure pursuant to a previous undertaking, to comply, in all material respects, with any previous undertaking. In effect, the definition imposes on Participating Underwriters an obligation to consider alternative diligence procedures to verify compliance. If a Participating Underwriter determines to review the filings for the past five years, it is necessary to have access to all NRMSIRs and SIDs, a costly and unreasonably difficult task that Participating Underwriters have found to constitute an excessively burdensome procedure. Under the proposed amendment, Participating Underwriters will be able to review prior filings at a single site, readily available on the internet, without numerous subscription payments.

Similarly, Rule 15c2-12(c) makes it unlawful for any broker, dealer or municipal securities dealer ("Dealer") to recommend the purchase or sale of a municipal security unless it has procedures in place that provide reasonable assurance that it will receive prompt notice of any material event notice or notice of a failure to provide. The rule effectively obligates Dealers to have routine access to NRMSIRs, SIDs and the MSRB. A single site for continuing disclosure will assist Dealers in meeting its recommendation obligations under the securities laws. The amendment will assist both secondary market Dealers and primary market Participating Underwriters in having access to information in making a reasonable recommendation.

³ SIFMA Comment Letter on Release No. 34-58256; File No. SR-MSRB-2008-05, Relating to Proposed MSRB Continuing Disclosure Service, dated September 22, 2008.

The Commission requests comment on whether the MSRB should serve as the sole repository of continuing disclosure documents. Several factors dictate an affirmative response. The proposed amendments provide for necessary flexibility in changes to technology by delegating to the MSRB the authority to determine electronic formatting and identifying information. The MSRB is itself developing electronic word-searching capabilities. As the Commission notes, the MSRB was established by an act of Congress and is a self-regulatory organization (“SRO”). As an SRO, the MSRB is subject to oversight by the Commission, and thus a delegation to the MSRB is reasonable. The MSRB is also required to publish notices of proposed rule changes and receive public comment. If a rule change becomes necessary to implement Rule 15c2-12, the rule change would be subject to public comment and Commission approval. In addition, the MSRB routinely publishes interpretive notices that are easily accessible at the MSRB website. As the Commission further notes, the MSRB is experienced in the complexities of the municipal securities market, and is developing and maintaining electronic information systems for the municipal market. Finally, a principal benefit of having the MSRB act as sole repository, is the accessibility of official statements, continuing disclosure and pricing information at one location.

SIFMA agrees that it is not necessary to require in Rule 15c2-12 that Participating Underwriters reasonably determine that issuers or obligated persons have contractually agreed to provide continuing disclosure documents to the SIDs. Only three states created SIDs in response to the 1994 Amendments. The ease of public access to EMMA renders specific reference to SIDs, in a federal disclosure system, unnecessary. States remain free to regulate as they determine.

SIFMA agrees that it is not unreasonably burdensome on Participating Underwriters for the Commission to add a requirement, in a new subparagraph (b)(5)(iv) of Rule 15c2-12, that Participating Underwriters reasonably determine that an issuer or obligated person has contractually undertaken to provide identifying information prescribed by the MSRB accompanying documents filed with the MSRB.

SIFMA strongly believes that the Commission should address the status of existing undertakings that reference NRMSIRs and SIDs. There would be an increase of inefficiency if an issuer with currently outstanding securities, which may remain outstanding for decades in the future, to be subject to both the old and the new system. Investors and municipal market participants should have prompt and easy access, free of charge, to continuing disclosure about all securities subject to Rule 15c2-12 if the benefits of the proposed amendments are to be fully realized. Additionally, issuer compliance to two separate systems would be highly burdensome to affected issuers and obligated persons, as well as to Dealers and Participating Underwriters.

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SIFMA favors the Commission's proposal to withdraw existing "no-action" letters to the NRMSIRs, and having the MSRB deemed to be the only NRMSIR, provided that the Commission accompany such action with interpretive guidance to its action. The guidance should address the effect of the withdrawal of "no-action" letters in regard to the status under Rule 15c2-12 of existing continuing disclosure agreements that reference NRMSIRs.

We appreciate this opportunity to comment on the proposed amendments. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully,

A handwritten signature in black ink, appearing to be "L. Norwood", written over a faint, stylized triangular graphic.

Leslie M. Norwood,
Managing Director
and Associate General Counsel

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cc: ***Securities and Exchange Commission***

Martha Mahan Haines

Municipal Securities Rulemaking Board

Lynnette Kelly Hotchkiss

Ernesto A. Lanza

Securities Industry and Financial Markets Association

Municipal Executive Committee

Municipal Legal Advisory Committee

Municipal Syndicate & Trading Committee

Municipal Credit Research, Strategy & Analysis Committee

Regional Dealer Fixed Income Committee