SIFMA Model Underwriter Disclosures Pursuant to MSRB Rule G-17

(as of May 13, 2020)

[Letterhead of Sole or Senior Bookrunning Managing Underwriter] **[Comment 1]**

[Date] **[Comment 2]**

[Name of Issuer] **[Comment 3]**

Address

City, State, Zip Code

Attn: [Name of Authorized Issuer Official] **[Comment 4]**

Re: Disclosures by [Sole or Senior Bookrunning Managing Underwriter] Pursuant to MSRB Rule G-17 [Name or Short Description of Proposed Bond Issue]

Dear [Name of Authorized Issuer Official]:

We are writing to provide you, as [\_\_\_\_\_\_\_\_\_] of [Name of Issuer] (Issuer), with certain

disclosures relating to the captioned bond issue (Bonds), as required by Municipal

Securities Rulemaking Board (MSRB) Rule G-17 as set forth in MSRB Notice 2019-20 (Nov. 8, 2019).[[1]](#footnote-2)

OPTION 1: [Name of Sole or Senior Bookrunning Managing Underwriter] [intends/proposes] to serve as an underwriter, and not as a financial advisor or municipal advisor, in connection with the issuance of the Bonds.

OPTION 2: The [Issuer/[IF A CONDUIT ISSUE, REPLACE ISSUER WITH [Name of Obligor] (Obligor)] has engaged [Name of Sole or Senior Bookrunning Managing Underwriter] to serve as an underwriter, and not as a financial advisor or municipal advisor, in connection with the issuance of the Bonds.

As part of our underwriting services, we may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Bonds.

IF A CONDUIT ISSUE, ADD THE FOLLOWING (MODIFY AS NECESSARY TO REFLECT THE

TERMS OF THE TRANSACTION): [As the issuer of the Bonds, you will be a party to the bond

purchase agreement and certain other legal documents to be entered into in connection with the

issuance of the Bonds, but the material financial risks described in this letter will be borne by the

Obligor, as set forth in those legal documents. A copy of this letter is also being sent to the

Obligor.]

The following G-17 conflict of interest disclosures are now broken down into three types, including: 1) dealer-specific conflicts of interest disclosures (if applicable); 2) transaction-specific disclosures (if applicable); and 3) standard disclosures. [You may receive additional separate disclosure letters pursuant to Rule G-17 from the co-managing underwriters or other syndicate members for the Bonds if they have their own dealer-specific or transaction-specific disclosures.]

1. Dealer-Specific Conflicts of Interest Disclosures **[Comment 5]**

[[Name of Sole or Senior Bookrunning Managing Underwriter] [has/has not] identified [the following/any] actual or potential[[2]](#footnote-3) material conflicts of interest: **[Comment 6]**

* [Conflicts of Interest/Payments to or from Third Parties]
  + [Distribution agreements: [Name of Sole or Senior Bookrunning Managing Underwriter] has entered into a separate agreement with [Name of Distributor] (Distributor) that enables the Distributor to distribute certain new issue municipal securities underwritten by or allocated to the underwriters, which could include the Bonds. Under that agreement, [Name of Sole or Senior Bookrunning Managing Underwriter] will share with the Distributor a portion of the fee or commission paid to [Name of Sole or Senior Bookrunning Managing Underwriter].]
  + [Disclosure of payments, values, or credits received by [Name of Sole or Senior Bookrunning Managing Underwriter] in connection with its underwriting of the Bonds from parties other than the Issuer or Obligor, if applicable, that relate directly or indirectly to collateral transactions integrally related to the Bonds, i.e. such as an affiliate providing a letter of credit or standby bond purchase agreement, or acting as trustee, serving as remarketing agent, swap counterparty, escrow bidding agent, or GIC bidding agent: Affiliates of [Name of Sole or Senior Bookrunning Managing Underwriter] may serve in separate capacities in connection with the issuance of the Bonds, including serving as [ ]. The affiliated entity will be separately compensated for serving in that capacity. [Name of Sole or Senior Bookrunning Managing Underwriter] expects to receive a payment, value, or credit from its affiliated swap dealer affiliate if the Issuer or Obligor, if applicable, decides to enter into an interest rate swap on the Bonds.] **[Comment 7]**
* [Conflicts of Interest/Profit-Sharing with Investors]
  + [Describe any such relationship, if applicable.]
* [Conflicts of Interest/Credit Default Swaps] **[Comment 8]**
  + [[Name of Sole or Senior Bookrunning Managing Underwriter] engages in the issuance or purchase of credit default swaps (CDS) for which the reference is the Issuer or an obligation of the Issuer. This potentially can represent a conflict of interest, in that trading in CDS may affect the pricing of the underlying reference obligations, as well as the pricing of other obligations (such as the Bonds) brought to market by the Issuer.]
* [Other Conflicts of Interest Disclosure]
  + [Employee of [Name of Sole or Senior Bookrunning Managing Underwriter]/affiliate on governing body of Issuer or Obligor, if any]
  + [Director/trustee/employee of Obligor on board of directors of [Name of Sole or Senior Bookrunning Managing Underwriter]/affiliate]
  + [Employee of [[Name of Sole or Senior Bookrunning Managing Underwriter]/affiliate of [Name of Sole or Senior Bookrunning Managing Underwriter]] related to senior [Issuer/Obligor] official]
  + [Bank affiliate of [Name of Sole or Senior Bookrunning Managing Underwriter] to receive swap termination payment, loan repayment, or redemption of bank bonds]
  + [Name of Sole or Senior Bookrunning Managing Underwriter] [may/intends to] place Bonds in the [Name of Sole or Senior Bookrunning Managing Underwriter]’s or an affiliate’s tender option bond program to be held for the account of Name of Sole or Senior Bookrunning Managing Underwriter]or the affiliate]
  + [[Name of Sole or Senior Bookrunning Managing Underwriter]/affiliate holds a loan or securities (in a material amount) of [Issuer/Obligor] outside the ordinary course of business, including, for example, a distressed loan or securities that are not trading and that may be/will be refunded by the transaction]
  + [[Name of Sole or Senior Bookrunning Managing Underwriter] representing multiple issuers/obligors on same project]
  + [For a LIBOR-based transaction, [Name of Sole or Senior Bookrunning Managing Underwriter]/affiliate is a reference bank for purposes of setting LIBOR]
  + [Any other relevant actual or potential material conflicts]

1. Transaction-Specific Disclosures

* Disclosures Concerning Complex Municipal Securities Financing: **[Comment 9]**
* OPTION 1: [Since we have recommended to the Issuer/Obligor a financing structure that may be a “complex municipal securities financing” for purposes of MSRB Rule G-17, attached is a description of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and reasonably foreseeable at this time.]
* OPTION 2: [Since we have not recommended a “complex municipal securities financing” to the Issuer or Obligor, additional disclosures regarding the financing structure for the Bonds are not required under MSRB Rule G-17.]

1. Standard Disclosures

* Disclosures Concerning the Underwriters’ Role:
* MSRB Rule G-17 requires an underwriter to deal fairly at all times with both issuers and investors.
* The underwriters’ primary role is to purchase the Bonds with a view to distribution in an arm’s-length commercial transaction with the Issuer. The underwriters have financial and other interests that differ from those of the Issuer.
* Unlike a municipal advisor, an underwriter does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the Issuer without regard to its own financial or other interests.
* The Issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the Issuer’s interest in this transaction.
* The underwriters have a duty to purchase the Bonds from the Issuer at a fair and

reasonable price, but must balance that duty with their duty to sell the Bonds to investors at prices that are fair and reasonable.

* The underwriters will review the official statement for the Bonds in accordance with, and a part of, their respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction.[[3]](#footnote-4)
* Disclosures Concerning the Underwriters’ Compensation: **[Comment 10]**
  + The underwriters will be compensated by a fee and/or an underwriting discount that will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Bonds. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriters may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

If you or any other Issuer officials have any questions or concerns about these disclosures,

please make those questions or concerns known immediately to the undersigned. In addition,

you should consult with the Issuer’s own financial and/or municipal, legal, accounting, tax and

other advisors, as applicable, to the extent you deem appropriate.

Please note that nothing is this letter should be viewed as a commitment by the underwriters to purchase or sell all the Bonds and any such commitment will only exist upon the execution of any bond purchase agreement or similar agreement and then only in accordance with the terms and conditions thereof.

You have been identified by the Issuer as a primary contact for the Issuer’s receipt of these disclosures, [In the absence of identification: It is our understanding that you have the authority to bind the Issuer by contract with us], and that you are not a party to any disclosed conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately. We are required to seek your acknowledgement that you have received this letter. Accordingly, please send me an email to that effect, or sign and return the enclosed copy of this letter to me at the address set forth [above/below]. Otherwise, an email read receipt from you or automatic response confirming that our email was opened by you will serve as an acknowledgment that you received these disclosures. **[Comment 11]**

Depending on the structure of the transaction that the [Issuer/Obligor] decides to pursue, or if additional actual or potential material conflicts are identified, we may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction and/or describing those conflicts. At that time, we also will seek your acknowledgement of receipt of any such additional disclosures.

We look forward to working with you[, and] the Issuer [and the Obligor] in connection with the

issuance of the Bonds. Thank you.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of Sole or Senior Managing Underwriter]

Acknowledgement:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of Authorized Issuer Official]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CC **[Comment 12]**: [Obligor/Municipal Guarantor]

[Co-managers/Lead Manager]

[Bond Counsel]

[Financial Advisor]

[Underwriters’ Counsel]

*The following comments are included for the convenience of the drafter. All comments should*

*be deleted from the actual letter*.

**[Comment 1]** It is the responsibility of the sole or the senior managing underwriter that is bookrunning the underwriting to send this disclosure letter. Co-managing, non-bookrunning underwriters are reminded that they may be required to send a

separate disclosure letter to the Issuer in certain circumstances if they have their own dealer- or transaction-specifics disclosures. See Comments 5 and 9 below.

**[Comment 2]** The disclosure pursuant to MSRB Rule G-17 concerning the arm’s-length nature of the underwriter-issuer relationship must be made in the earliest stages of the

underwriter’s relationship with the Issuer with respect to an issue (*e.g.*, in a

response to a request for proposals or in promotional materials provided to the

Issuer).

Similarly, pursuant to MSRB Rule G-23, a dealer that clearly identifies itself in

writing as an underwriter and not as a financial advisor from the earliest stages of

its relationship with the Issuer with respect to that issue (*e.g.*, in a response to a

request for proposals or in promotional materials provided to the Issuer) will be

considered to be “acting as an underwriter” under Rule G-23(b) with respect to

that issue. The writing must make clear that the primary role of an underwriter is

to purchase, or arrange for the placement of, securities in an arm’s-length

commercial transaction between the Issuer and the underwriter and that the

underwriter has financial and other interests that differ from those of the Issuer.

The provision of the disclosures required by Rule G-17 would also satisfy

comparable disclosure requirements under Rule G-23 and, depending on timing

and circumstances, may be provided in lieu of a separate notice under Rule G-23.

**[Comment 3]** It is important to note that neither MSRB Rules G-17 nor G-23 generally cover

conduit obligors. For conduit issues, the disclosures should be sent to the Issuer

once it has been identified.

**[Comment 4]** All of the disclosures must be made in writing to an official of the Issuer identified by the Issuer as a primary contact for the receipt of the disclosures. In the absence of such identification, the underwriter may make the disclosures to an official of the Issuer that the underwriter reasonably believes has the authority to bind the Issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not a party to a disclosed conflict.

**[Comment 5]** With regard to conflicts discovered or arising after the underwriter has been

engaged (for example, conflicts that may not be present until an underwriter has recommended a particular financing), the disclosure must be provided in sufficient time before the execution of a contract with the underwriter to allow the Issuer official to evaluate the recommendation.

Conflicts disclosure must be made by the particular underwriter/syndicate

member subject to such conflicts. Conflicts disclosure by the senior bookrunning managing underwriter is not intended to address separate conflicts disclosures from a co-managing underwriter that may be necessary. A co-managing underwriter should consider whether to send its own MSRB Rule G-17 conflicts disclosure letter at the time of its appointment by the Issuer, identifying any applicable actual or potential material conflicts.

The situations listed in this letter are meant to trigger a discussion of potential

conflicts and are not exhaustive. Conflicts disclosure may need to be updated if

additional conflicts arise.

**[Comment 6]** Each underwriter should separately review the actual or potential material

conflicts identified to determine whether any are applicable and

require separate disclosure by that underwriter. Inapplicable items should be

deleted.

**[Comment 7]** The underwriter is not required to disclose the amount of any such third-party

payments. The third-party payments to which the disclosure requirement would

apply are those that give rise to actual or potential conflicts of interest and

typically would not apply to third-party arrangements for products and services of

the type that are routinely entered into in the normal course of business, so long

as any specific routine arrangement does not give rise to an actual or potential

conflict of interest.

**[Comment 8]** Include a description of the underwriter’s CDS activity generally only if the

underwriter is engaging in such activities that are applicable to the Issuer.

Activities with regard to CDS based on baskets or indexes of municipal issuers

that include the Issuer or its obligation(s) need not be disclosed, unless the

Issuer or its obligation(s) represents more than 2% of the total notional amount of

the CDS or the underwriter otherwise caused the Issuer or its obligation(s) to be

included in the basket or index.

**[Comment 9]** If an underwriter in a negotiated offering recommends a complex municipal

securities financing to the Issuer, it must make particularized disclosures as to

the material financial characteristics of the complex municipal securities

financing, as well as the material financial risks of the financing that are known to

the underwriter and reasonably foreseeable at the time of the disclosure. In

addition, the underwriter also must disclose any incentives for the underwriter to recommend the financing and other associated material conflicts of interest. An underwriter may develop standardized complex municipal securities transaction disclosures for commonly recommended complex municipal financings.

The level of disclosure required may vary according to the Issuer’s knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing and financial ability to bear the risks of the recommended financing, in each case based on the reasonable belief of the underwriter. The disclosures must be made in writing to an official of the Issuer identified by the Issuer, or if not identified, to whom the underwriter reasonably believes has the authority to bind the Issuer by contract with the underwriter (i) in sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation (including with any of its counsel or advisors) and (ii) in a manner designed to make clear to such official the subject matter of such disclosures and their implications for the Issuer. If the underwriter making the recommendation does not reasonably believe that the official to whom the disclosures are addressed is capable of independently evaluating the disclosures, the underwriter must make additional efforts reasonably designed to inform the official or its employees or agent. The underwriter also must make an independent assessment that such disclosures are appropriately tailored to the Issuer’s level of sophistication, and to the extent they do not, tailor the disclosures to fully describe the material financial features and risks unique to the recommended financing. If an underwriter has developed standardized disclosures, it may reasonably determine these disclosures do not need to be tailored for a particular recommended financing given the manner in which such disclosures are drafted and still meet its fair dealing obligations under G-17.

General descriptions of certain complex municipal securities financing structures

and the related risks are attached hereto. The disclosures should be tailored as and if necessary and appropriate to the unique features and risks of the specific financing. The level of disclosure may be re-evaluated over time as the Issuer gains experience with a complex financing over the course of multiple new issues utilizing that structure or as the Issuer undergoes personnel changes with new employees with differing levels of expertise.

Although the attached descriptions include disclosure regarding fixed rate bonds,

absent unusual circumstances or features, the typical fixed rate bond offering is

not viewed as a complex municipal securities financing for which disclosure is

required under MSRB Rule G-17. Nevertheless, the underwriter may choose to provide disclosures to the Issuer on the material aspects of a fixed rate bond structure that it recommends, particularly if the underwriter reasonably believes that the Issuer’s personnel lack knowledge or experience with such structure.

**[Comment 10]** Disclosure concerning the underwriters’ compensation must be made at or before the time underwriters are engaged to perform underwriting services.

**[Comment 11]** According to the Revised Notice, while an e-mail read receipt may generally be an acceptable form of an issuer’s acknowledgement, an underwriter may not rely on such an e-mail read receipt as an issuer’s written acknowledgement where such reliance is unreasonable under all the facts and circumstances, such as where the underwriter is on notice that the issuer official to whom the e-mail is addressed has not in fact received or opened the e-mail. If the official of the issuer agrees to proceed with the underwriting engagement after receipt of the disclosures but will not provide written acknowledgement of receipt, the underwriter responsible for making the requisite disclosure may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement.

**[Comment 12]** Although MSRB Rule G-17 generally does not cover conduit obligors, the

underwriter should consider sending a copy of its disclosure letter to an

appropriate official of the obligor and to any other party who will be financially

obligated with respect to the payment of the Bonds. In addition, the senior

managing underwriter should consider sending a copy of its letter to any co-managing underwriters, including those who may be appointed at a later date,

and a co-managing underwriter sending the Issuer a separate disclosure letter

should consider sending a copy of its letter to the senior managing underwriter.

1. Revised Interpretive Notice Concerning the Application of MSRB Rule G‐17 to Underwriters of Municipal

   Securities (effective Mar. 31, 2021). [↑](#footnote-ref-2)
2. When we refer to *potential* material conflicts throughout this letter, we refer to ones that are reasonably likely to mature into *actual* material conflicts during the course of the transaction, which is the standard required by MSRB Rule G-17. [↑](#footnote-ref-3)
3. Under federal securities law, an issuer of securities has the primary responsibility for disclosure to

   investors. The review of the official statement by the underwriters is solely for purposes of satisfying

   the underwriters’ obligations under the federal securities laws and such review should not be

   construed by an issuer as a guarantee of the accuracy or completeness of the information in the

   official statement. [↑](#footnote-ref-4)