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Internal Revenue Service
CC:PA:LPD:PR (Notice 2017-38)
Room 5205
P.O. Box 7604, Ben Franklin Station
Washington, DC 20224

Transmitted by email to notice.comments@irscounsel.treas.gov.

Comments on IRS Notice 2017-38

To Whom It May Concern:

SIFMA's[1] Municipal Securities Division is pleased to provide comments on IRS Notice 2017-38 (the "Notice"), "Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens)." Our Municipal Securities Division is composed of SIFMA member broker-dealer firms engaged in underwriting, trading and selling tax-exempt bonds and other municipal securities and related products.

SIFMA strongly agrees with the Treasury Department's conclusion that "Proposed Regulations under Section 103 on Definition of Political Subdivision" (REG-129067-15; 81 F.R. 8870) ("Proposed Regulation") meets at least one of the first two criteria—we believe both—specified by Section 2 of Executive Order 13789. If adopted as proposed, the political subdivisions rule would impose an undue financial burden on United States taxpayers and would add undue complexity to the Federal tax regulations. We urge the IRS to withdraw the Proposed Regulation.

The Proposed Regulation would establish a new definition of the types of governmental entities that are permitted to issue tax-exempt bonds, narrowing the types of eligible state and local government entities eligible to issue tax-exempt bonds. It would also impose new mandates regarding the governance and organizational structure of certain governmental entities such as development districts, adding significant complexity even for those issuers who would remain eligible to use tax-exempt financing.

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly one million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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.

As we stated in our comment letter on the Proposed Regulation,[2] a completely new standard for defining which entities qualify as political subdivisions for purposes of issuing tax-exempt bonds is unnecessary and would be disruptive to the market. The Proposed Regulation would force some issuers currently eligible to issue tax-exempt bonds to issue costlier taxable bonds instead, and that increased cost would necessarily be passed on to taxpayers. In some cases, infrastructure needed to further the development of cities and towns would not be constructed at all. At best, the new standard would substantially hinder financing of significant infrastructure needs by many states and local governments due to increased costs to issuers arising from higher interest costs for the same projects in the taxable market or a risk premium demanded by the market because of the uncertainty created.

The Treasury Department is correct in its conclusion that the Proposed Regulation meets the criteria established in the President's Executive Order. When the Department addresses Section 2(b) of the Executive Order later this year specifying actions to be taken with respect to regulations identified in this Notice, we urge you to withdraw the Proposed Regulation.

We appreciate the opportunity to comment. Please contact me if you have any questions.

Best regards,

Michael Decker
Managing Director
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[2] Letter from Michael Decker, Managing Director, SIFMA, to the Internal Revenue Service on "Definition of Political Subdivision," May 23, 2016.