



June 13, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549-1090

Re: File No. 265-28; Recommendation of Market Structure Subcommittee of the Investor Advisory Committee; Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds

Dear Mr. Fields:

The Municipal Securities Division of the Securities Industry and Financial Markets Association (“SIFMA”)¹ has reviewed the June 5 draft Recommendation (“Recommendation”) of Market Structure Subcommittee of the Securities Exchange Commission (“SEC”) Investor Advisory Committee² to be considered at the SEC Investor Advisory Committee meeting on June 14, 2018. SIFMA’s Municipal Securities Division members include the vast majority of regulated brokers, dealers, and municipal securities dealers in the municipal securities market. As such, SIFMA’s Municipal Securities Division members feel strongly that municipal securities regulation should support fair, efficient, and transparent markets. Accordingly, we respectfully submit our comments on the Recommendation to the SEC Investor Advisory Committee.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 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 <http://www.sifma.org>.

² Available at: <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-market-structure-subcommittee-recommendation.pdf>.

I. Proposed Amendments to Rule 15c2-12

The Recommendation encourages the SEC to work toward passage of its proposed amendments to Rule 15c2-12 after taking into account key feedback from various stakeholders, to improve disclosure regarding financial obligations incurred by issuers of municipal securities. SIFMA appreciates that the Committee supports adding clarity in the final rule, where appropriate. However, SIFMA members believe that there are significant issues with the current proposed amendments to Rule 15c2-12, that unchanged, will make it extremely difficult for investors, retail investors in particular, to find the very information the SEC wants to make available.³

SIFMA agrees with the Recommendation that a term that needs to be better defined and limited is “financial obligation”,⁴ which should pick up solely “a direct purchase, private placement, or bank loan” but should not be as broad as currently written, which might pick up items such as ordinary course leases. Further, SIFMA notes that at least one member of the Committee suggested that the term “material” may be difficult to define and should be removed from the proposed amendments or made clearer. Rather than a vague materiality qualifier, we recommend a clear, bright-line condition for disclosure, similar to one used elsewhere by the SEC in disclosure filings. We believe the SEC can and should provide guidance in applying the term to specific contexts with respect to municipal securities. Finally, we have significant concerns that the current draft of proposed amendments will be far more time consuming and costly for brokers, dealers, and municipal securities dealers, than estimated by the SEC, both in the context of their time of trade obligations under MSRB Rule G-47 and in the context of an underwriter’s duty in connection with a primary offering. We urge the SEC to take these and our prior comments, together with other stakeholder comments, into consideration as they work toward passage of the proposed amendments.

II. Update of the 1994 Interpretive Release to Rule 15c2-12

SIFMA appreciates that the Recommendation notes enforcement actions brought against underwriters and obligors regarding compliance with continuing disclosure obligations, breaches of fiduciary duty, and false or misleading

³ See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated May 15, 2017, to Brent J. Fields, Secretary, SEC (regarding Proposed Amendments to Exchange Act Rule 15c2-12; File No. S7-01-17) available at: <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comments-to-the-SEC-on-Proposed-Amendments-to-Rule-15c2-12.pdf>.

⁴ Id.

disclosures suggest that underwriters and obligors could benefit from more explicit guidance and commentary regarding their securities laws obligations. The Recommendation also notes that SEC guidance could also present an opportunity for the Staff to signal to the market that investing in obligors with inconsistent, limited or untimely disclosure practices may pose heightened risks.

SIFMA has been and continues to be very supportive of an update to the 1994 Interpretive Release on Rule 15c2-12.⁵ More guidance on the SEC's positions will reduce the need to enforcement actions. SIFMA's recommendations include interpreting the "end of the underwriting period" to harmonize with the definition of "primary offering disclosure period" in MSRB Rule G-32. This clarification would aid a firm in determining when it ceases to be an underwriter and begins to hold bonds as a dealer, as the legal duties are different. Further, SIFMA suggests that the SEC expand upon its statement in the 1989 Interpretation of Underwriter Responsibilities "that the primary responsibility for disclosure rests with the issuer" and its discussion of the application of the antifraud provisions in the 1994 Interpretive Release, both of which pre-date the November 1994 adoption of the continuing disclosure amendments to Rule 15c2-12.

III. EMMA Functionality

SIFMA members find the MSRB's EMMA website very useful and are supportive of additional enhancements to improve the site's usefulness. We applaud the MSRB for the launch of EMMA ten years ago, and the considerable improvements the MSRB has made since then. SIFMA encourages the timely filing of issuer financial information on EMMA. We share the concerns of the Government Finance Officers Association ("GFOA"), as set forth in their letter to you.⁶ In the SIFMA Whitepaper, SIFMA suggested that the existing interpretation of Rule 15c2-12(b)(5)(ii)(C) be revised to require an issuer's continuing disclosure agreement to include a statement of a date certain by which continuing disclosure is due. That information could then be posted on EMMA to aid investors in determining whether filings have been made timely. This simplification of the Rule would benefit investors, issuers, and dealers alike.

⁵ See, e.g., SIFMA Rule 15c2-12 Whitepaper (April 2016) ("SIFMA Whitepaper"), available at https://www.sifma.org/wp-content/uploads/2017/07/Rule-15c2-12_Whitepaper.pdf and Letter from Kenneth E. Bentsen Jr., President and CEO, SIFMA, dated June 9, 2016, to Chair Mary Jo White, Chair, SEC, available at <https://www.sifma.org/resources/submissions/rule-15c2-12-and-potential-updates-to-the-rule/>.

⁶ Letter from Emily S. Brock, Director, Federal Liaison Center, GFOA, dated June 12, 2018, to Brent Fields, Secretary, SEC.

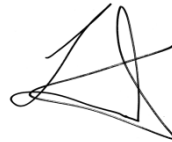
Brent J. Fields
Secretary
Securities and Exchange Commission
Page 4 of 4

Further, in 2016, SIFMA and other trade associations came together to suggest EMMA enhancements to the MSRB, some of which have been implemented.⁷ We welcome the consideration of our remaining suggestions, such as giving EMMA the ability to accept Legal Entity Identifiers (“LEIs”) from issuers, obligors, credit enhancers and other entities who may choose to use them and to make information on EMMA searchable by LEIs. SIFMA and its members would like to continue to be a part of discussions regarding additional enhancements to EMMA with the MSRB.

IV. Conclusion

Again, SIFMA and its members support efforts to ensure the municipal securities market is transparent, efficient and fair for all market participants. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. 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: ***Securities and Exchange Commission***
Rick A. Fleming, Investor Advocate
Rebecca Olsen, Director, Office of Municipal Securities
Anne Sheehan, Chairman, Investor Advisory Committee
Elisse Walter, Vice Chairman, Investor Advisory Committee

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director

⁷ Letter from Bond Dealers of America, Government Finance Officers Association, National Association of Bond Lawyers, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National Federation of Municipal Analysts, and SIFMA, dated Jan. 23, 2017, to Colleen Woodell, Chair, MSRB, available at: https://www.sifma.org/wp-content/uploads/2017/05/Stakeholders_EMMA_Letter_final3.pdf.