October 29, 2019

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File Number SR-MSRB-2019-10; Amendment No. 1 to Proposed Rule Change to Amend and Restate the MSRB's August 2, 2012 Interpretive Notice Concerning the Application of Rule G-17 to Underwriters of Municipal Securities

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to provide input to the Securities and Exchange Commission ("SEC") on Amendment No. 1 to Proposed Rule Change to Amend and Restate the Municipal Securities Rulemaking Board's ("MSRB") August 2, 2012 Interpretive Notice Concerning the Application of Rule G-17 to Underwriters of Municipal Securities (the "Filing").[2] We thank the MSRB for: (1) adopting our proposal that the underwriter recommending the complex municipal securities transaction should be the one to make the requisite

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] 84 Fed. Reg. 55192 (Oct. 15, 2019). The original notice can be found at: 84 Fed. Reg. 39646 (Aug. 9, 2019).

disclosure; (2) clarifying that placement agents may disclaim a fiduciary duty to the issuer if that is consistent with the nature of their arrangement; (3) clarifying the application of scope of the interpretation related to municipal fund securities; and (4) adopting changes regarding acknowledgement of receipt. Although SIFMA appreciates the adoption of the changes mentioned above, the benefits of these changes are outweighed by those not made, including the standard for disclosing potential conflicts of interest, as well as needed clarification regarding complex securities disclosures as we have outlined in our prior letters. Also, it is critical that the industry be given sufficient time to implement these amendments which will require changes in policies and procedures and supervisory procedures, as well as training.

I. The "Reasonably Likely" Standard for Conflicts of Interest Disclosures

In its Prior Letter, SIFMA set forth its concern that disclosure requirements on conflicts of interest should be limited to actual, and not merely potential, material conflicts of interest or, in the alternative, that such conflicts be "highly likely" to occur. The MSRB did recognize in the Filing that the "reasonably foreseeable" standard was difficult to implement and surveil from a compliance perspective and was not helpful to serve the goal of reducing boilerplate disclosure. Unfortunately, the MSRB has settled on a middle ground standard of "reasonably likely," which, unfortunately, does not address the industry's stated concerns. SIFMA reiterates its request that the MSRB require only disclosures of actual conflicts of interest. We note that firms are already obligated to update their disclosures if additional conflicts arise. It is not clear that, without additional change, the MSRB's professed goal of streamlining disclosures and providing clarity will be achieved. Instead, the revised notice will likely only have the effect of "rearranging the deck chairs" by moving disclosures from the body of the "G-17" letter to appendices.

II. Disclosure Requirements Based on Issuer Characteristics

It is important that the MSRB set clear, workable standards for regulated broker-dealers. As noted in SIFMA's comment letter (the "Prior Letter")[3] to the MSRB on the proposal to amend the Interpretive Notice[4], we believe that tiered disclosure requirements may be beneficial to issuers and underwriters. SIFMA is concerned that the proposed final amendments will create confusion as to the required content of complex securities disclosures for any particular issuer or issuance. For compliance purposes, underwriters must adopt policies and procedures that can be implemented for their transactions and businesses in a consistent manner that will satisfy regulatory requirements and examiners. SIFMA's members feel that it is reasonable to give any issuer to which it has recommended a common complex structure a standard written disclosure that describes the nature and risks of that common complex structure, with the understanding that this disclosure would be more tailored if the transaction deviated from the standard. In the vast majority of cases, an underwriter's "independent assessment" of the disclosures would be satisfied by these clear and concise standard disclosures pertaining to that specific type or class of financing. Accordingly, an underwriter may not need to refine such standardized descriptions unless there are additional material risks and features unique to the specific transaction. Finally, SIFMA members read the term "individualized" to mean that these standard or model disclosures are designed to be clear, concise and tailored to the specific type or class of financing (i.e., VRDO, FRN, forward delivery, etc.), and not a book of disclosures relating to all potential types of financings. SIFMA members feel this would be the only way to implement the Interpretive Guidance in a manner that was workable and practicable. Confirmation from the MSRB that this interpretation is reasonable would clear up this confusion from the proposed revised Interpretive Guidance.

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[3] Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA and Bernard V. Canepa, Vice President and Assistant General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB (Jan. 15, 2019), http://www.msrb.org/RFC/2018-29/CANEPA.pdf.

[4] MSRB Notice 2018-29 (Nov. 16, 2018), http://www.msrb.org/~/media/Files/RegulatoryNotices/RFCs/2018-29.ashx??n=1.

III. Disclosure Regarding Use of Municipal Advisors

SIFMA and its members reiterate their objection to the new requirement that underwriters must inform an issuer that "the issuer may choose to engage the services of a municipal advisor to represent its interests in the transaction." We consider this type of disclosure highly unusual and, as stated in our Prior Letter, it has the potential to chill underwriter communications with the issuer and/or create a perceived or actual bias against underwriter-only transactions that, in either case, could lead to increased issuer borrowing costs. This concept will also increase the amount of standard disclosures and is not in the spirit of a level playing field among regulated parties. In fact, the non-dealer municipal advisor community has set forth arguments that they should be able to act as placement agents, which are intermediaries between issuers and investors. There has been no suggestion that, in those cases, the non-dealer municipal advisor should disclose that they are not a registered broker-dealer, and that the issuer may choose to engage the services of a broker-dealer to ensure the appropriate investor protections under the securities laws are satisfied and that the municipal advisor's loyalties are not divided. Therefore, SIFMA feels that the MSRB's statement in the filing that there is no burden on competition is false, and the filing does not meet the standard for approval under the Securities Exchange Act of 1934,[5] thus meriting disapproval by the Commission. Again, the MSRB should make it clear in the Amended Guidance[6] that neither municipal advisors nor underwriters may misrepresent

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[5] The Commission's standards for approval and disapproval are clear. "The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. *The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding*." (emphasis added) U.S. Code § 78s(a)(7)(D)(ii). Also, "[w]henever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, *the Commission shall also consider*, in addition to the protection of investors, *whether the action will promote efficiency, competition,* and capital formation." (emphasis added) U.S. Code § 78c (f). It is clear to market participants that there will be a burden on competition if this change to the Interpretive Guidance is approved, and it will create an un-level playing field, particularly when taking into consideration that non-dealer municipal advisors have no duty to disclose, "the issuer may choose to engage the services of a broker dealer as a placement agent in this transaction." *See*, SEC Proposed Exemptive Order Granting a Conditional Exemption From the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors 84 Fed. Reg. 54062 (Oct. 9, 2019).

[6] As defined in SIFMA's Prior Letter.

the services and duties that the other is permitted to provide. There is no regulatory requirement for an issuer to hire a municipal advisor, and we feel the new disclosure creates, implicitly or explicitly, an unfair competitive advantage for one group over another. This proposed new disclosure should be eliminated.

IV. Implementation Date

SIFMA requests the MSRB set a compliance date of one year from the date the amendments to the Interpretive Guidance are final. It is critical regulated dealers be given sufficient time to implement these amendments which will require changes in policies and procedures and supervisory procedures.

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I 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,

Leslie M. Norwood
Managing Director and
Associate General Counsel

Cc (via Email): ***Securities and Exchange Commission***
Rebecca Olsen, Director, Office of Municipal Securities
Municipal Securities Rulemaking Board
Gail Marshall, Chief Compliance Officer
David Hodapp, Assistant General Counsel