



March 7, 2023

**VIA ELECTRONIC SUBMISSION**

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

**Re: File Number SR–MSRB–2023–02; Notice of Filing of a Proposed Rule Change to Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and to Amend MSRB Rule G-8, on Books and Records**

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to provide input to the Securities and Exchange Commission (“SEC”) on the Municipal Securities Rulemaking Board’s (“MSRB’s”) Proposed Rule Change to Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and to Amend MSRB Rule G-8, on Books and Records (the “Filing”).<sup>2</sup>

Proposed MSRB Rule G-46 continues to be unclear or unworkable in a number of areas. SIFMA members believe that:

- The proposed MSRB Rule G-46 is confusing and unnecessary as many solicitor municipal advisors are already regulated by SEC pursuant to the Investment Advisers Act.<sup>3</sup>
- A safe harbor for inadvertent solicitations is critical in light of the ambiguity about the timing of disclosures, as is additional clarity.

For these reasons, we urge the SEC to disapprove this Filing.

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<sup>1</sup> 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).

<sup>2</sup> 88 Fed. Reg. 9560 (Feb. 14, 2023).

<sup>3</sup> Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. 80b-1 - 80b-2).

**I. The proposed MSRB Rule G-46 is confusing and unnecessary as many solicitor municipal advisors are already regulated by the SEC pursuant to the Investment Advisers Act.**

SIFMA members find proposed MSRB Rule G-46 confusing and unnecessary, as many solicitor municipal advisors are already regulated by the SEC pursuant to the Investment Advisers Act. We see no justification to deviate from the that ruleset. To that end, SIFMA members posit that MSRB Rule G-46 is unnecessary as these solicitors are already regulated and subject to examination and enforcement by the SEC under the Investment Advisers Act.

Further, SIFMA would like to reiterate its call for an MSRB ban on a municipal advisor compensating a third-party for the solicitation of municipal advisory services comparable to the Rule G-38 on compensation for the solicitation of municipal securities business.

Under Rule G-38, no dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of such dealer (the “Dealer Solicitation Ban”). To better align the obligations imposed on municipal advisors with those imposed by the Dealer Solicitation Ban, a broad solicitation ban, similar to Rule G-38, should equally apply to municipal advisors and such ban should be included in Rule G-46.

Solicitation has correctly been an area of concern for regulators in both rulemaking and enforcement. Importantly, the practice of paying municipal advisors for the solicitation of municipal advisory business could create material conflicts of interest and could give rise to circumstances suggesting quid pro quo corruption involving municipal entities resulting from such conflicted interests. Such practice could be damaging to the integrity of the municipal securities market. For these reasons, SIFMA members feel that proposed MSRB Rule G-46 needs further revision.

**II. A safe harbor for inadvertent solicitations is critical in light of the timing ambiguity about the timing of disclosures, as is additional clarity.**

In light of the ambiguities and uncertainties regarding if an entity is acting as a solicitor municipal advisor potentially until after a “pitch”, it is unclear as to when an entity would make such disclosures to remain in compliance with proposed MSRB Rule G-46. A core concern of SIFMA members is their general lack of clarity as to what disclosures are due to which parties and when. They find the content of the disclosures and the timing of the delivery of such disclosures confusing. The Filing sets forth the issue:

When a solicitor municipal advisor first solicits the intermediary, the solicitor municipal advisor *may not necessarily know who the intermediary represents* (i.e., whether the intermediary represents municipal entities, obligated persons, other private entities, or all of the above). Additionally, the solicitor municipal advisor *generally will not know* whether the intermediary will recommend

the solicitor municipal advisor's client to the intermediary's municipal entity client(s) (if any). As a result, ***at the time of the first solicitation, a solicitor municipal advisor may not know*** if it is indirectly soliciting a municipal entity. Moreover, the solicitor municipal advisor's client (e.g., the investment adviser) may engage in multiple subsequent communications with either the intermediary and/or the intermediary's client (e.g., the municipal entity or obligate person) ***during which the solicitor municipal advisor may or may not be present***. In some instances, ***the solicitor municipal advisor may never meet or directly communicate*** with an intermediary's municipal entity or obligated person client (emphasis added).<sup>4</sup>

Once a regulated entity discovers whether it is indirectly soliciting a municipal entity, and learns to which entity disclosures are due, only then disclosure should be made.

As set forth in the Filing, proposed Rule G-46(f) provides that any disclosures required under section (e) of the proposed rule, pertaining to disclosures to solicited entities, must be made in writing. The proposed rule also provides for a dual-disclosure requirement, such that solicitations that result in a solicited entity engaging a solicitor client would receive the requisite disclosures twice. Specifically, they would receive the disclosures once at the time of the first communication giving rise to the solicitation and again at the time that engagement documentation pertaining to the solicited entity's engagement of the solicitor client is delivered (or promptly thereafter). As noted above, however, a solicitor municipal advisor may not know at the earliest communication regarding the transaction if it is indirectly soliciting a municipal entity.

Due to these uncertainties, SIFMA not only requests additional clarity but also reiterates its recommendation that the MSRB include a safe harbor for inadvertent solicitations in Rule G-46, similar to the safe harbor under Rule G-42 Supp. Material .07 for inadvertent advice, to ensure that certain firms are not unintentionally brought into the solicitor municipal advisor regulatory regime due to no fault of their own. We continue to believe there could be scenarios, similar to Rule G-42 Supp. Material .07 Inadvertent Advice, where an inadvertent solicitation is provided to a solicited entity. For example, where a firm initially is soliciting the solicited entity on behalf of itself, but the solicited entity unilaterally chooses not to engage the firm and, instead, seeks to engage a third-party investment adviser and the firm earns compensation based on such engagement. If such an event were to occur, this could be seen as an inadvertent solicitation. SIFMA believes that such a safe harbor has proved beneficial under Rule G-42 and would similarly be helpful under Rule G-46. In addition to relief for an inadvertent solicitation, clarity on when the disclosures would be given, and to whom, in these scenarios would be helpful.

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<sup>4</sup> 88 Fed. Reg. at 9562.

Thank you for considering SIFMA's comments. SIFMA appreciates the MSRB's goal to harmonize MSRB Rule G-46 with the Investment Advisers Act. However, SIFMA asks the SEC to disapprove this Filing as we feel it is necessary to address outstanding industry comments and concerns. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood  
Managing Director  
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***

Saliha Olgun, Interim Chief Regulatory Officer

Gail Marshall, Senior Advisor to Chief Executive Officer