September 8, 2009

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-60332; File No. S7-15-09

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to comment on proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") relating to municipal securities disclosure included in the Release noted above (the "Release").[2]

The proposed amendments would: (i) delete the current exemption from the continuing disclosure obligations of the Rule that exists for demand securities; (ii) require that notice of certain events be filed with the Municipal Securities Rulemaking Board ("MSRB") within ten business days after the occurrence of the event; (iii) remove a materiality standard for certain events that must be reported to the MSRB; (iv) require the disclosure to the MSRB of certain adverse tax events under a continuing disclosure agreement ("CDA"); and (v) require disclosure to the MSRB of tender offers for municipal securities; the occurrence of bankruptcy, insolvency, receivership or similar events regarding an issuer or obligated person; the merger, acquisition or consolidation of an obligated person or the sale of all or substantially all of the assets of the obligated person; and the appointment of successor or additional trustee or a name change of a trustee, if material. As you know, SIFMA supports increased continuing disclosure to investors and agrees with the Securities and Exchange Commission ("Commission"), generally, that the proposed amendments will promote that goal.

[1] SIFMA, or the "Association," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] *See* SEC Release No. 34–60332; 74 Fed. Reg. 36831 (July 24, 2009).

Deleting the Exemption from Continuing Disclosure Obligations for Demand Securities

The Exemption from Paragraphs (b)(5) and (c) of the Rule

While this proposed amendment is intended to fill a gap in the continuing disclosure regimen of the Rule, it raises several important questions. The proposed amendment would delete the exemption for demand securities from paragraphs (b)(5) and (c) of the Rule while leaving in place the exemption from paragraphs (a) and (b)(1) – (4). Requiring demand securities to comply with the continuing disclosure obligations is a positive development because important information will be disseminated to investors over the life of the bond issue. Not requiring that underwriters review a deemed final official statement, however, suggests that that same continuing disclosure information may not be material for investors at the initial issuance of the demand securities. Another concern with this proposed amendment is that, under the Rule, the issuer or obligated person must provide "annual information for each obligated person for whom financial information or operating data is presented in the official statement…." Is the continuing disclosure information still to be based on the financial information and operating data in the official statement even though the underwriter is not obligated to review a final official statement?

SIFMA believes it is important that this unclear message about the materiality of disclosure in the municipal securities market and the relationship of original disclosure to continuing disclosure be fully considered by the Commission before adoption of the proposed amendments.

SIFMA also seeks current guidance from the Commission with respect to what constitutes a "primary offering" for demand securities. For nearly two decades, the industry has relied on the Pillsbury No Action Letter[3] to conclude that ordinary remarketings of optionally tendered bonds are not a "primary offering." During that time, the industry has considered only extraordinary situations as "primary offerings" such as a mandatory tender for a mode change in which the issuer or obligated person has the risk of owning securities that are not successfully remarketed. If the SEC disagrees with this interpretation, we would appreciate clarification.

In addition to the issues noted above, SIFMA is concerned about the effects that the elimination of the exemption for demand securities will have on smaller issuers and not-for profit obligated persons who issued securities before the effective date of the proposed amendments. Requiring these issuers and obligated persons to enter into a CDA, in some cases, years after the original issuance of the bonds, may impose on them an insurmountable administrative burden. In such cases, it is entirely possible that those issuers or obligated persons may refuse to enter into a CDA and commit themselves to an obligation that they cannot fulfill. If, in response to such a refusal, a remarketing agent does not remarket the bonds, it is entirely possible that bond

[3] *See* Securities and Exchange Commission No Action Letter Pillsbury, Madison & Sutro (May 16, 1990).

issue will be in jeopardy. Because this is not the intended result, we urge the Commission to consider the feasibility of creating an exemption for small issuers and obligated persons.

Submitting Event Notices within Ten Business Days of Occurrence of an Event

SIFMA supports the goal of the proposed amendment to require issuers and other obligated persons to provide a time frame within which material event notices should be filed with the MSRB. Because the burden of this proposed amendment falls on issuers and other obligated persons, we defer to the judgment of the Government Finance Officers Association and other issuer groups as to what is an appropriate time frame for submitting notice of material events.

Removing the Materiality Standard for Certain Event Notices

SIFMA supports the proposal to remove the materiality standard for six of the events listed in paragraph (b)(5)(i)(C) of the Rule. Specifically, the phrase "if material" would be deleted if the following events occurred: (i) principal and interest payment delinquencies with respect to the securities being offered; (ii) unscheduled draws on debt service reserves reflecting financial difficulties; (iii) unscheduled draws on credit enhancements reflecting financial difficulties; (iv) substitution of credit or liquidity providers, or their failure to perform; (v) defeasances; and (vi) rating changes. SIFMA agrees that notice of these events should always be provided to investors because their occurrence is always important to investors and other market participants and that, in all probability, the proposed amendment will not result in many changes in the current practice.

Disclosing Certain Adverse Tax Events under a Continuing Disclosure Agreement

SIFMA supports the proposed amendment that would expand the list of adverse tax events that must be reported to the MSRB under a CDA to include, "the issuance by the IRS or final determination of taxability, Notices of Proposed Issue (IRS Form 57-1-TEB) or other material notices of determination with respect to the tax exempt status of the securities…." Investors have a strong interest in being informed of actions taken by the Internal Revenue Service that present a material risk to the tax exempt status of their holdings. As drafted, however, the proposed amendment includes a materiality standard for one provision ("or other material notices of determination") that impliedly applies to other provisions of the proposed rule. In addition, a provision of that paragraph that would not be amended, "or other events affecting the tax-exempt status of the security," suggests a materiality standard without using the word. SIFMA urges the Commission to clarify that the materiality standard applies to all of the tax events for which notice must be given apart from a final determination of taxability, which, by its nature, is material.

Disclosing Additional Events under a Continuing Disclosure Agreement

Lastly, SIFMA supports the proposed amendment that would expand the list of events that an underwriter must reasonably determine that the issuer or other obligated person has agreed to provide notice of to the MSRB under a CDA. The additional events include: (i) tender offers; (ii) bankruptcy, insolvency, receivership or similar proceeding of the issuer or other obligated person; (iii) the consummation or entry into or termination of a definitive agreement involving a merger, consolidation, acquisition, or the sale of all or substantially all of the assets of the obligated person; and (iv) the appointment of a successor or additional trustee or the change of name of a trustee.

With respect to the timing of a notice regarding a tender offer, it is important that the issuer be allowed to file such notice concurrently with the launch of the tender offer and not before that time, so that all market participants will be notified of the tender offer at the same time.

Other Comments

Fulfilling Underwriters' Obligations under the Rule

The Release solicited comments on how underwriters satisfy their obligations under the Rule, including the obligation to ascertain whether issuers or obligated persons are abiding by their continuing disclosure commitments. In this regard, our members have two concerns.

The first involves determining whether an issuer has complied with its filing obligations under a CDA. The lack of a central repository until the recent creation of the MSRB's Electronic Municipal Market Access System ("EMMA") means that underwriters must review each CDA, search the various Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") and compare the obligations in each of the former with the filings in the latter. The second concern is determining whether an issuer has failed to file a material event notice. This requires reviewing all of the events in the life cycle of a municipal bond issue and comparing those events with the various filings in each of the NRMSIRS.

In both cases, even when all the documents, events and NRMSIRs are properly reviewed, the chaotic state of the NRMSIRs does not guarantee that underwriters will successfully fulfill their obligations. To correct that situation, SIFMA seeks guidance with respect to allowing an underwriter to request a certification of compliance to be issued by the issuer or the obligated person, as the case may be. Considering that either of those parties may be the only ones with knowledge of its compliance, it would seem reasonable to permit underwriters to rely on such a certification.

Access to Material Information in the Municipal Securities Market

With respect to the availability of material information in the municipal securities market, we refer to the issues noted in two letters that SIFMA recently filed with Commission and the MSRB.[4]

Conclusion

We appreciate this opportunity to comment on these proposed amendments to the Rule. If you have any questions concerning these comments, or would like to discuss these comments further, please contact me at 212.313.1149 or at lbijou@sifma.org.

Respectfully,

Leon J. Bijou,
Managing Director
and Associate General Counsel

cc: ***Securities and Exchange Commission***
Martha Mahan Haines
Mary Simpkins
Municipal Securities Rulemaking Board
Lynnette Kelly Hotchkiss
Ernesto A. Lanza
Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Legal Advisory Committee
Municipal Syndicate & Trading Committee
Municipal Credit Research, Strategy & Analysis Committee
Regional Dealer Fixed Income Committee

[4] *See* Comment Letter from Leslie M. Norwood, SIFMA, to Elizabeth M. Murphy, SEC, (August 19, 2009) (File No. SR-MSRB-2009-08); Comment Letter from Leslie M. Norwood, SIFMA, to Justin R. Pica, MSRB, (September 1, 2009) MSRB Notice 2009-43.