sifma
Invested in America

January 9, 2014

John J. Cross III
Director
Office of Municipal Securities
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-7010

Re: SEC Rule on Registration of Municipal Advisors

Dear Mr. Cross:

The Securities Industry and Financial Markets Association ("SIFMA")[1] wishes to thank you for taking the time to meet with SIFMA representatives on October 30 and December 4, 2013, to discuss staff interpretive guidance regarding the final municipal advisor regulations issued by the Securities and Exchange Commission (the "SEC")[2]. Through the Release, the SEC adopted final rules, including Rule 15Ba1-1 (the "Rule"), under the Securities Exchange Act of 1934, pursuant to Section 975 of the Dodd Frank Wall Street Reform and Consumer Protection Act, that are effective January 13, 2014. We appreciate the SEC staff's work on this Rule and the forthcoming interpretive guidance. Municipal securities dealers want to comply with the Rule, develop effective policies and procedures and educate relevant employees and clients on the Rule's effects. We continue to believe, however, that additional interpretive guidance to the Rule is critical for regulated entities to develop the required compliance programs. Given that the anticipated staff interpretive guidance has not yet been released on the penultimate business day prior to the Rule's effective date, it will be impossible for firms to incorporate the guidance into their compliance plans and to disseminate that

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. 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.

[2] Exchange Act Release No. 34-70462 (September 18, 2013) (the "Adopting Release" or "Release").

information effectively to their own personnel, let alone their clients, prior to the Rule's effective date on Monday.

At this time, we believe that time-limited relief from enforcement of the portions of the Rule that become effective on January 13, 2014 is essential and justified. As you know, regulated entities were only given 60 days to comply with the Rule after the final Rule was published. Although the interim temporary final rule has been public since December of 2010, the final Rule is substantively different. There is only one business day left before the effective date of the Rule, and the anticipated interpretive guidance, which will substantively impact market participants' views of the Rule and their compliance programs, is still forthcoming. Public finance departments of member firms can have hundreds of bankers, and their affiliates may have thousands of professionals that interact with municipal entities and obligated persons on a regular basis concerning existing accounts and transactions, as well as potential new business. As important aspects of the Rule are still awaiting clarification from the SEC, it has been impossible to properly develop compliance programs and train employees for the implementation of this new Rule. Municipal entities also appear to be unclear on critical aspects of the workings of this new Rule, and have expressed concern to our members about engaging in transactions that may be subject to, or signing documents related to, the Rule until after interpretive guidance is released. SIFMA members are striving to comply with the new Rule, but need to be given a fair and adequate amount of time to do so. This Rule has broad ranging implications and requires wholesale changes in the way our member firms do business. Regulated entities cannot turn on a dime; the development of effective compliance programs, training materials and programs, and supervisory procedures takes time and should not be rushed when it is not absolutely necessary.

Further, SEC registered municipal advisors have a fiduciary duty to the clients they give advice to, but what that duty means is unclear. The Municipal Securities Rulemaking Board just today released the first in its series of regulatory notices requesting comment on proposed rules governing the conduct of municipal advisors. It is notable that the MSRB's proposed definition of fiduciary duty appears inconsistent with the SEC's staff recommendation on uniform fiduciary standard of conduct, as it takes that draconian approach that the potential conflict of a fiduciary cannot be managed by disclosure and consent prior to entering into a principal transaction, and with the transactional approach of the Rule itself. In sum, under the MSRB's proposal, if a bank or broker dealer serves a municipal entity or obligated person as a municipal advisor, then that firm and all of its affiliates will be barred from engaging in any principal transactions with that client. Banks and broker dealers, and their affiliates, that provide any advice to a municipal entity or obligated person would be prohibited from offering principal services such as banking services, brokerage accounts, commodities trading and swaps executions. As currently drafted, this ban on

principal transactions appears to include even transactions completely unrelated to the municipal advisory assignment. This proposal would effectively ban broker dealers from serving municipal entities or obligated persons as a municipal advisor unless the broker dealers are willing to forgo all other business with those parties. As broker dealers typically have many lines of principal businesses, it is likely that they would forgo acting as a municipal advisor, thereby reducing competition for municipal advisory services and reducing options for municipal issuers and obligated persons when choosing a municipal advisor. The MSRB's proposed rule makes the further guidance from the SEC more important than ever.

This rapidly changing and uncertain regulatory environment has created confusion in the marketplace and increased costs due to the need for repeated revision to compliance programs and training materials as. We respectfully suggest that a delay of enforcement of the Rule for at least 30 days after the release of the SEC's anticipated interpretive guidance would likely reduce some of the confusion among brokers, municipal entities and obligated persons and allow for more efficient production of effective compliance regimes and training programs.

Relief from enforcement is particularly critical with issues related to investment of proceeds and municipal escrow investments. Although it may be somewhat less difficult to identify accounts of municipal entities, identifying the accounts of obligated persons has been determined to be a particularly challenging task. Not all firms have systems that allow for easy sorting of accounts because it has never been required for business purposes or regulatory reasons. Any trust accounts and accounts for corporate and non-profit entities might have proceeds of municipal securities or municipal escrow investments, as these entities might be obligated persons. The holders of these accounts, and potentially the character of the funds in these accounts, all need to be researched by banks and broker dealers in order to ascertain whether the Rule applies. In addition, even when those accounts have been identified, determining whether they hold proceeds or are municipal escrow investments has also been quite difficult, particularly in the context of taxable bond proceeds. On average, broker dealer firms surveyed needed to research 356,000 brokerage accounts to determine whether the account holder was a municipal entity or an obligated person, as well as the nature of the invested funds. As an analogy, when this type of process was required for firms to undertake with respect to implementing changes in Financial Industry and Regulatory Authority Rule 2111, firms were given an implementation period of 19 months.

Therefore, we strongly urge the staff to grant narrowly-based, time-limited relief from compliance with the portions of the Rule regarding providing advice to municipal entities and obligated persons regarding proceeds of municipal securities

or municipal escrow investments until July 1, 2014. This additional time would allow the industry to better identify any bond proceeds in the system and to continue to work with the staff to resolve significant related open interpretive matters. We note that this date is consistent with the initial compliance date for the permanent registration and regulatory regime.

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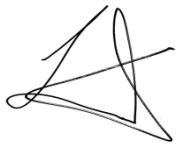
SIFMA and its members are supportive of fair regulation that provides the desired protection for municipal issuers and obligated persons and levels the playing field between all parties engaged in municipal advisory services. However, we feel that a delay in enforcement with respect to this Rule would be beneficial for all parties. We would welcome the opportunity to discuss these comments in greater detail with you, 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: ***U.S. Securities and Exchange Commission***
The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner