August 30, 2019

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

Re: File Number SR-MSRB-2019-10; MSRB 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 the 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] Although SIFMA recognizes the modifications that the MSRB has made to the rule based, in part, upon our

[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. 39646 (Aug. 9, 2019), http://www.msrb.org/~/media/Files/SEC-Filings/2019/MSRB-2019-10%20version%203.ashx?.

comments to MSRB, SIFMA requests that the SEC disapproves of this Filing until such time that the MSRB amends the Filing to address our further comments described herein.

I. Tiered Disclosure Requirements Based on Issuer Characteristics

It is of utmost importance that the MSRB set clear and concise standards for the regulated broker-dealers, but also set rules that are workable. As noted in SIFMA's comment letter (the "Prior Letter")[3] on the MSRB's proposal to amend the Interpretive Notice[4], we believe that tiered disclosure requirements may be beneficial to issuers and underwriters. As cited in the Filing, "the Florida Division of Bond Finance stated that a 'one size fits all' approach is not effective and that issuers could benefit from underwriters tailoring such disclosures based on issuer size and sophistication." SIFMA agrees. A highly sophisticated frequent issuer may not need the same disclosures as a less sophisticated infrequent issuer. For example, it may not be necessary to send disclosures on variable rate demand obligations or floating rate notes to an issuer that frequently issues such securities. Such disclosures would, on the other hand, be useful for an issuer that had not previously accessed such markets. SIFMA requests that the MSRB, either in a revised Filing, or otherwise in a "frequently asked questions document" or other implementation guidance, provide examples of concrete hypotheticals in order to provide clarity to regulated dealers regarding how the content of these transaction-based disclosures may potentially vary by issuer sophistication and still survive regulatory scrutiny. Otherwise, in the absence of regulatory clarity, a one-size fits all approach in this instance is the most workable as evidenced by underwriter practices over the past eight years.

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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.

II. 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 is not helpful to address the industry's stated concerns. SIFMA again asks the MSRB to require only disclosures of actual conflicts of interest. We note that firms are already obligated to update their disclosures if additional conflicts arise.

III. Disclosure Regarding Use of Municipal Advisors

SIFMA and its members strongly object 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." At the same time, the MSRB proposes to limit the inevitable communications between issuers and underwriters on the topic of whether a municipal advisor is needed, conversations that are directly provoked by this disclosure.[5] 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 could lead to increased issuer borrowing costs. This concept will also increase the amount of standard disclosures and create an unlevel 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. Again, the

[5] See p. 347 of Exhibit 5 of the MSRB filing.

MSRB should make it clear in the Amended Guidance[6] that neither municipal advisors nor underwriters may misrepresent 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 an unfair competitive advantage for one group over another. This proposed new disclosure should be eliminated.

IV. Placement Agents

SIFMA is concerned about the MSRB's characterization of the placement agent relationship and related required disclosures, as described in footnote 12 of Exhibit 5 to the Filing. Central to the issue is that, in this instance, the term "placement agent" is being used to describe an intermediary, and not a true agent of the issuer. A placement agent may be a fiduciary or may be an intermediary, depending upon the agreement reached between the issuer and the placement agent. Further, clarification of the duties of municipal placement agents is an issue that is now under consideration by the SEC. As we feel it is inappropriate for the MSRB to front-run any such SEC action in this area, SIFMA strongly suggests that the MSRB remove much of the language in footnote 12.

It is also critical for any such disclosures to be accurate. If a placement agent is a fiduciary, the Rule G-17 disclosures should not require an entity to state they are not. The MSRB's point could be more simply made by merely noting, "If the nature of the engagement makes one or more of the required disclosures not true, than it should be permissible to omit such disclosure and disclaim such in the relevant engagement letter."

V. Swap Disclosures

Currently, the draft interpretive notice requires the underwriter or the syndicate manager to provide disclosures on the material aspects of the financing structures that are recommended. In Exhibit 5, regarding required disclosures to issuers on financings involving derivatives, SIFMA and its members feel strongly and agree with the statement in footnote 32 in Exhibit 5 that a syndicate manager or sole manager need

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

not provide swap disclosures if it is not the swap counterparty. It is not clear in the notice who needs to provide transaction specific disclosures for a swap recommendation if not made by the syndicate manager or sole manager. Based on this statement, we feel the approach should be that, prior to a syndicate being formed, the underwriter recommending a swap, consistent with footnote 27, would provide these disclosures. SIFMA believes, given the specialized disclosures required in the derivatives space as well as the CFTC and SEC rules related thereto, that the duty to provide such disclosures should remain with the underwriter or dealer providing or recommending the derivatives, even after a syndicate is formed. As noted, recommendations on derivatives require specialized knowledge, and SIFMA requests clarification that, in this case, the underwriter or dealer making the recommendation and otherwise providing the derivative product be responsible for making the appropriate transaction-specific disclosures on the material aspects of this financing structure to the issuer.

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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 [redacted].

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
Lynnette Kelly, President and CEO
Michael Post, General Counsel
David Hodapp, Assistant General Counsel