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August 6, 2018

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: MSRB Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am submitting this letter to provide comments to the MSRB's Regulatory Notice 2018-10 (Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities) (the "Notice"). BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA strongly believes that the Rule G-17 Disclosures are important disclosures and Rule G-17 should continue to require them.

The BDA strongly believes that the disclosures (the "Rule G-17 Disclosures") required by the 2012 Guidance (as defined in the Notice) are important and valuable to the municipal securities market. The Rule G-17 Disclosures have established a critical, written communication that clarifies the nature of the role of the underwriter in municipal securities transactions and conflicts of interests, in addition to the other matters covered by the 2012 Guidance. The 2012 Guidance has created a needed formal platform through which underwriters clearly communicate these matters to issuers. Before the 2012 Guidance, many of these matters were relegated to either oral discussions or just underwriters assuming that issuers understood these matters. Accordingly, the BDA supports the continued requirement of the Rule G-17 Disclosures.

The BDA does not believe that the 2012 Guidance should be changed to provide different requirements for different kinds of issuers.

The BDA does not believe that the 2012 Guidance should be changed to provide different Rule G-17 Disclosures to different issuers for two reasons. First, while we understand that some large issuers who frequently issue municipal securities at times receive many Rule G-17 Disclosures, the personnel in those issuers do change regularly and continue to need full Rule G-17 Disclosures. Second, the requirement of the 2012 Guidance that underwriters send Rule G-17 Disclosures to all issuers allows for a consistent, standard process for dealers. If underwriters were required to deliver different disclosures to different issuers, it would impose a significant compliance burden on dealers to prepare those

disclosures. Accordingly, we do not support varying the kinds of disclosure depending on the kind of issuer.

The BDA makes four suggestions to improve the Rule G-17 Disclosures and the 2012 Guidance.

The BDA makes four suggestions regarding how the 2012 Guidance can improve Rule G-17 Disclosures, which we believe will make them more meaningful and also reduce the number of unnecessary Rule G-17 Disclosures:

- *The 2012 Guidance should be modified so that underwriters who secure the IRMA exception under the SEC's municipal advisor rule are not required to deliver Rule G-17 Disclosures.*

The BDA believes that if an underwriter is exempt under the SEC's municipal advisor rule by securing the exception for independent registered municipal advisors, then Rule G-17 Disclosures will be unnecessary and should not be required. The whole point of the Rule G-17 Disclosures is to ensure that issuers understand the role and responsibilities of the underwriter, and ensuring that the issuer understands the role and responsibilities of the underwriter falls within the responsibilities of a municipal advisor. Accordingly, the BDA believes that the Rule G-17 Disclosures would be unnecessary in these circumstances.

- *The 2012 Guidance should be modified to clarify that only material, actual conflicts of interests should be disclosed.*

The BDA believes that one of the factors that contributes to the length and complexity of Rule G-17 Disclosures is that underwriters disclose all potential conflicts of interests instead of known, actual conflicts of interests. The BDA believes that the MSRB should revise the 2012 Guidance so that it is clear that underwriters do not need to disclose a list of boilerplate conflicts of interests and, instead, should disclose known, actual conflicts of interests that could impact the underwriter in the municipal securities transaction. The BDA believes that the clearer that the MSRB can clarify which conflicts of interest really need to be disclosed, the more helpful and valuable those disclosures will be.

- *The 2012 Guidance should be modified to allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances.*

The 2012 Guidance overly prescribes when underwriters should deliver some of the Rule G-17 Disclosures – particularly the disclosures concerning complex municipal securities transactions. Underwriters should deliver some of the Rule G-17 Disclosures at the outset of any engagement – such as the disclosures concerning the role of the underwriter. But the BDA believes that the MSRB should revise the 2012 Guidance so that underwriters have more discretion concerning when to deliver some of the Rule G-17 Disclosures. Appropriate disclosures do evolve through the process of preparing municipal securities transactions. In particular, the BDA believes that the disclosures concerning complex municipal securities transactions are most helpful later on in the process once the characteristics and risks of those transactions are better defined.

- *The 2012 Guidance should be modified to clarify that co-managers usually have no requirement to deliver Rule G-17 Disclosures.*

One of the reasons why large, frequent issuers receive so many Rule G-17 Disclosures is that co-managers send entire Rule G-17 Disclosures which frequently have exactly the same content as the Rule G-17 Disclosures delivered by the senior manager. The BDA believes that the MSRB should revise the 2012 Guidance so that it is clear that co-managers have no requirement to deliver any Rule G-17 Disclosures except for the circumstance where the co-manager has a discrete conflict of interest that materially impacts its engagement with the issuer. Otherwise, the BDA believes it should be clear that co-managers have no requirement to deliver Rule G-17 Disclosures.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

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202.393.8467 *fax*: 202.393.0780

August 6, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20005

RE: MSRB Notice 2018-10: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) welcomes the opportunity to comment on MSRB Notice 2018-10. GFOA has commented in the past on Rule G-17 and subsequent interpretative guidance, as the MSRB's work in this area is very important to municipal securities issuers. Rule G-17, in particular, is representative of MSRB rulemaking that is done to fulfill its mission to protect issuers.

Below are our thoughts on the key issues raised in the Notice.

Required Disclosures

Receipt of Disclosures is Appropriate. Issuers receive G-17 disclosures from underwriters and must acknowledge receipt of those disclosures. As is common practice, the disclosures are sent at an appropriate time at the beginning of the debt issuance planning stage and prior to the release of the POS.

Disclosures Are Often Boilerplate and Cumbersome. In many cases the disclosures are voluminous and not focused on actual conflicts that may exist within the underwriting firm or the specific risks of a particular financing to the entity. Instead, the documents are full of non-material potential disclosures where key material disclosures are not highlighted nor flagged, and in many cases buried in the information provided. In these cases, the intent of the rulemaking – to ensure that issuers are aware of conflicts that exist with their underwriting team and risks associated with a financing – may be missing its mark.

Key Material Disclosures Should be Highlighted as Already Required. From a practical matter, while underwriters may wish to provide boilerplate disclosures to issuers of all types, sizes and levels of sophistication, it is imperative for the MSRB to advocate for the disclosures to be framed in a way that they can be well received and understood by the issuer. It would be helpful if large amounts of non-material disclosures are provided separately from key conflicts (including compensation and other fees earned on the transaction) and risk disclosures. Likewise, issuers would appreciate a notation that the underwriter does not have a fiduciary duty to the issuer. Given these conditions, the rulemaking may meet its intended expectations for underwriters to deal fairly with issuers, and protect issuers from deceptive,

dishonest or unfair practices. These disclosures should also be provided in a "plain English" manner versus legalese to maintain the spirit of the rulemaking to have the underwriter deal fairly with the issuer. The 2012 guidance already requires underwriters to "identify with sufficient clarity and ease of review the applicable portions of [boilerplate disclosures] to a particular transaction." Therefore, the MSRB should emphasize this duty which is already required.

Disclosures are Read and Reviewed by a Variety of Issuer Personnel. As GFOA noted in its December 1, 2011 letter to the SEC on Application of Rule G-17[1], there may be members of the financing team or the governing body who would like to be aware of and review underwriter disclosures. These issuer team members may hold differing levels of expertise about the financing than the "issuer personnel" for whom the underwriter is directed to provide the disclosures to under the Rule.

This reiterates the need for the underwriter to provide disclosures to the issuer, especially in "complex" transactions but also in routine transactions, in order to ensure that information is conveyed to those on the issuer's internal financing team who have various levels of expertise about the municipal securities market. The process would be enhanced by having the underwriter specifically highlight key and material disclosures and include additional disclosures separately within the document as required by the 2012 guidance.

Disclosure Obstacles for Large and Small issuers. Small and large governments are burdened by the disclosures in different ways. Larger issuers who may be frequently in the market have to tackle and acknowledge the paperwork many times, while smaller and infrequent issuers, especially, may find all of the information overwhelming to review and understand how it relates to their specific transaction. Again, a key way of managing this may be to have non-material or boilerplate disclosures be provided separately within same document (e.g., such as Appendix A) from key conflicts and risks and notation that the underwriter does not have a fiduciary duty to the issuer. This would also assist some issuers where the key issuer representative may not require in depth information about routine financings, but others on the financing team or the governing body may wish to have and review that information.

Variables to Determine Ways to Modify Requirements May Be Difficult. Because issuers of municipal securities vary widely and may use multiple underwriters, it would seem to be nearly impossible to develop ways to modify the rulemaking for some issuers over others, and ensure fair dealing is taking place. Even for frequent issuers if certain disclosures were only sent once a year, it would take away from the intent of the rule which is to ensure that the issuer is aware of the fair dealing process for each transaction. Issuer sophistication with financings does not fall neatly into buckets associated with either the size of the issuer or the frequency of their transactions.

A possible way to better manage the process and highlight the important disclosures that are of interest to members of the issuer's internal financing team for each transaction would be if boilerplate disclosures are provided separately but within the same document (e.g., such as Appendix A) or even routinely for frequent issuers (e.g., annual disclosures) while specific conflicts and risks associated with each transaction are sent and acknowledged by the issuer.

Opting Out of Disclosures Should NOT Be an Option. As many issuers learned with financings prior to the 2008 market crash, not getting their hands on or reading the fine print of their transaction documents, led to many problems with various types of financings, and created financial and administrative burdens for issuers. The MSRB should therefore not consider an opt-out provision since having the disclosures, and understanding them, is imperative for issuers. If these disclosures are not provided, it would also

[1] https://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-22.pdf

seem to go against the main tenets of Rule G-17 to ensure that underwriters are not engaged in any deceptive, dishonest or unfair practices.

EMMA Should Not Be Used as a Repository for Underwriter Disclosure Documents. EMMA is a system to assist investors with their investment decisions. Information produced specifically for issuers, of which the issuer must acknowledge receipt, would not be well served to be placed on EMMA, as underwriters may be concerned about investor use of this information. This could cause even further boilerplating of information important to issuers and the decisions they make about their financings.

Further Consideration of Disclosures to Conduit Issuers and Borrowers is Needed. Regarding disclosures to conduit issuers and borrowers, the MSRB should make clear in its Interpretative Notice that the information would best be utilized if it was sent to the party who is making decisions about the issuance and is liable for the debt, which in most case is the borrower and not the issuer.

Underwriter Comments on the Use of Municipal Advisors. The current guidance instructs underwriters to avoid telling issuers not to hire a municipal advisor. In the past GFOA has commented on the need for the guidance to be strengthened to include a requirement that underwriters affirmatively state 1) that issuers may choose to hire a municipal advisor to represent their interests in a transaction and 2) to take no actions to discourage issuers from engaging a municipal advisor. We once again encourage the MSRB to do so (see GFOA's December 1, 2011 letter). Our members continue to observe significant numbers of large negotiated transactions sold by inexperienced debt issuers where no municipal advisor has been engaged.

We appreciate the MSRB's review of its Interpretative Notice on Rule G-17. As we commented many times in 2011, we believe that there should be greater focus and effort to have underwriters provide key and material disclosures about conflicts, risks regarding the transaction, and their non-fiduciary duty to issuer clients in a clear manner. Unfortunately, since 2012 the G-17 disclosures are overwhelming in volume which causes issuers to either ignore or not understand the important information that is being provided to the issuer in these disclosures.

We would be happy to discuss our comments with you in greater detail as well as coordinate conference calls with various types and sizes of issuers to help the MSRB understand the concerns issuers have with the implementation of G-17 disclosures.

Sincerely,

Emily S. Brock

Emily S. Brock
Director, Federal Liaison Center

cc: Rebecca Olsen, Acting Director, Office of Municipal Securities, Securities and Exchange Commission

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

August 6, 2018

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW #1000
Washington, DC 20005

RE: MSRB Notice 2018-10

Dear Mr. Smith:

NAMA appreciates the opportunity to comment on MSRB's Retrospective Review of 2012 Interpretative Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Notice 2018-10).

NAMA strongly believes that issuers should receive certain key disclosures from underwriters and municipal advisors. These disclosures are important for issuers to gain a deeper understanding of the risks of any particular financing and of the various conflicts that may exist with parties that provide them professional services. Additionally, issuers should understand the different role professionals play in the transaction and of the various duties that these professionals owe to the issuer. Rule G-17 related to municipal advisors' and underwriters' responsibilities to deal fairly with issuers and avoid deceptive, unfair, and dishonest practice is an important and fundamental rule to protect issuers. Therefore, its significance in the suite of MSRB rulemaking should not be understated.

In its May 2012 Rule G-17 Interpretive Guidance, the MSRB mandated that underwriters provide certain disclosures to issuers. The disclosures relate to the underwriters' actual and potential material conflicts of interest, the nature and risks of the transactions recommended by the underwriter and of the nature of the underwriter's role. We do not believe that the standards established in the 2012 Interpretive Guidance should be diminished, although there are ways to make them more meaningful.

Below are some significant areas of the Notice that we wish to address. Our comments are based on previous NAMA (then NAIPFA - National Association of Independent Public Finance Advisors) comments related to the Interpretative Guidance and observations that our members have had over the past few years. More importantly, our comments reflect the significance of having the MSRB instill in its rulemaking and interpretative guidance the principal of protecting issuers, as that is a key piece of the MSRB's statutorily defined mandate with respect to the rules governing activity of broker-dealers and municipal advisors.

Volume and Types of Disclosures

NAMA believes that the current types of disclosures that the underwriter provides to the issuer as currently stated in the Interpretive Guidance should remain intact. However, for many issuers, these disclosures are buried within lengthy documents that contain hypothetical potential conflicts and risks.

NAMA believes that there are two potential fixes for this. First, syndicate members should not be allowed to provide long form boilerplate disclosure if that disclosure has already been provided by the syndicate manager. Syndicate members should only be allowed to provide conflict disclosures that are particular to them. Second, the MSRB should highlight its existing guidance about "omnibus disclosures" to ensure that underwriters provide material transaction risks and conflicts disclosures in a manner that is easily identifiable by the issuer (including various members of the issuing entity's internal finance team and governing body). This information should be presented in a straight forward manner, with other general disclosures presented separately from the statements and discussions of material transaction risks and conflicts disclosures (including statement that the underwriter does not have a fiduciary duty to the issuer). We understand that for practical purposes an underwriter may draft boilerplate language regarding various potential conflicts and transaction risks and include all of those in a form G-17 letter; however, the existing MSRB guidance on omnibus disclosures already requires them to make some sort of indication as to which of those omnibus risk disclosures or conflicts actually apply to the immediate transaction. Emphasizing this existing guidance as well as better enforcement would help to achieve the stated aim of making these disclosures more useful to issuers.

Issuer Acknowledgment of Disclosures

Issuers currently acknowledge receiving disclosures from underwriters. This practice should continue, and should allow for issuers to execute acknowledgements as they see fit.

Minimizing Content and Frequency of Disclosures for Different Classes of Issuers

The MSRB asks if they should consider alternative approaches to guidance implementation which may include different requirements for different classes of issuers. NAMA does not support lessening the responsibilities of underwriter disclosures to issuers due to different variables that may be at play (e.g., issuer size, frequency of issuances, dedicated staff). This includes not supporting the idea of annual disclosures. Since the disclosures must reflect conflicts of interest and risks associated with the transaction, it is difficult to understand how this could be done on an annual basis without the need for supplementary material throughout the year. Therefore, the easiest manner of disclosure delivery would be to have it remain as is.

Using EMMA for UW Enhancements to the Guidance

The MSRB asks if EMMA could or should be used to disseminate underwriter disclosures to issuers. Because these disclosures are from the underwriter and to the issuer about their relationship, they may be presented in a way that causes confusion to investors (who will be receiving many of the same disclosures in the context of the official statement where the information is presented in a manner material to investors). We do not think creating an additional public disclosure document separate from the official statement is an idea worth exploring. Furthermore, it is difficult to imagine how an underwriter would appropriately tailor such disclosures by issuer and transaction. Therefore, you would undermine the purpose of the rule by requiring issuers to have to seek out these even more boilerplate disclosures online instead of having them provided directly to the issuer.

If the MSRB is looking at ways to address "general" disclosures separately from those of client and deal specific disclosures, separating boilerplate disclosures from material and client/deal specific disclosures (and making the latter more easily identifiable) would be a better way to achieve this goal. In any event, EMMA should not be used for these disclosures.

Underwriter Statements that an Issuer Should Not Hire a Municipal Advisor

An area our members continue to be concerned with is when underwriters circumvent their duty noted in the statement in the Interpretive Guidance that "The underwriter also must not recommend that the issuer not retain a municipal advisor."

We would request that the statement be updated and strengthened to say that "The underwriter may not make direct or indirect statements to the issuer that the issuer not hire a municipal advisor or otherwise make statements to deter the use of a municipal advisor or blur the distinction between the underwriting and municipal advisor functions and/or duties."

Please let us know if we may answer any questions or provide other assistance related to the Interpretive Guidance. Thank you again for the opportunity to comment on this Notice.

Sincerely,

Susan Gaffney
Executive Director

sifma
Invested in America

August 6, 2018

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Re: MSRB Notice 2018-10: Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2018-10 (the "Notice")[2] issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment in connection with its retrospective review of its Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities, which became effective on August 2, 2012 (the "2012 Guidance").[3] The

[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 on 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). For more information, visit http://www.sifma.org.

[2] MSRB Notice 2018-10 (June 5, 2018).

[3] Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2 and originally published in MSRB Notice 2012-25 (May 7, 2012). The 2012 Guidance was approved by the Securities and Exchange Commission (the "SEC") in Release No. 34-66927 (File No. SR-MSRB-2011-09) (May 4, 2012), 77 FR 27509 (May 10, 2012).

2012 Guidance established a series of mostly new duties owed by underwriters[4] to issuers under MSRB Rule G-17 applicable solely to negotiated issues except where explicitly made applicable to competitive offerings.

The MSRB adopted the 2012 Guidance in the wake of the financial crisis and the significant changes brought to the regulatory landscape by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which among other things introduced for the first time a federal fiduciary duty and a regulatory regime for the newly created category of municipal advisors.

In that context, the 2012 Guidance served to reinforce the fair dealing obligations of underwriters to issuers under MSRB Rule G-17, to expand upon those obligations by ensuring that issuers understood the financing structures that underwriters might recommend and any conflicts of interest that might exist on the part of underwriters, and to provide much needed clarity regarding the role of underwriters, as compared to municipal advisors, in connection with new issue offerings.[5]

SIFMA and its members believe that the 2012 Guidance served as an important and timely tool in the successful transformation to today's municipal marketplace. We offer below our comments on the 2012 Guidance as part of the MSRB's retrospective review process and in response to the specific questions posed by the MSRB with the goal of strengthening the effectiveness of the 2012 Guidance in light of today's more mature regulatory context.

I. Support for Retrospective Review

SIFMA and its members are pleased that the MSRB is engaged in this review of the 2012 Guidance as part of its broader commitment to engaging in retrospective review of its rules to assure that they are responsive to changes in the municipal

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[4] The 2012 Guidance also applies to placement agents in private placements, subject to certain adjustments due to differences in the nature of the placement agent role as compared to the underwriter role, as described in the Implementation Guidance discussed below. Except as otherwise noted in this letter, our use of the term underwriter includes placement agent to the extent applicable under the 2012 Guidance. *See* footnote 11 *infra.*

[5] With regard to the role of underwriter as compared to municipal advisor, the MSRB also took the important step of amending Rule G-23 to more fully address the conflict that arises from serving in both roles on the same transaction and adopting its Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists Under Rule G-23 (Nov. 27, 2011), available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-23.aspx?tab=2 and originally published in MSRB Notice 2011-29 (May 31, 2011) (the "Rule G-23 Interpretation").

securities market and in the policymaking, economic, stakeholder and technological environment.[6] A retrospective review process with the full participation of market participants is critical in understanding the intended and unintended effects of the MSRB's existing rules and should represent the beginning of a conversation about whether rulemaking or additional guidance is called for in order to make existing rules more effective and efficient in support of a free and open market and the protection of investors, municipal entities, obligated persons and the public interest. As such, SIFMA understands that the Notice does not represent a formal rulemaking proposal and that any rule proposals would be subject to an MSRB exposure draft seeking comment on specific rule or interpretative language prior to the formal submission of such proposal with the SEC.

The MSRB's Retrospective Review Process recognizes that there are many means to retrospective review, acknowledging that an effective review process should extend beyond formal written responses to also include meetings with relevant stakeholders. SIFMA urges the MSRB to engage in face-to-face discussions with SIFMA members and other market participants affected by the 2012 Guidance as a critical element of the retrospective review.

II. 2012 Guidance and Related MSRB Guidance

In recognition that much of the 2012 Guidance represented significant new requirements on underwriters and to assist them in implementing the 2012 Guidance, the MSRB published Guidance on Implementation of Interpretive Notice of Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (the "Implementation Guidance") shortly before the 2012 Guidance became effective[7] and Frequently Asked Questions (FAQs) Regarding an Underwriter's Disclosure Obligations to State and Local Government Issuers Under Rule G-17 (the "FAQs") a short time after the 2012 Guidance had become effective.[8] The Implementation Guidance provides a deeper understanding of the 2012 Guidance by including statements made by the MSRB in its filings with the SEC and its formal responses to comments that were included in the rulemaking record generated during the extended rulemaking process for the 2012 Guidance, as well as including additional "practical considerations" akin to staff guidance on how the 2012 Guidance was

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6 The MSRB's process for undertaking retrospective reviews is set out at http://www.msrb.org/About-MSRB/Programs/Market-Regulation/Retrospective-Rule-Review (the "Retrospective Review Process").

7 MSRB Notice 2012-38 (July 18, 2012).

8 MSRB Notice 2013-08 (Mar. 25, 2013).

intended to be implemented.[9] The FAQs provided additional staff guidance responsive to questions raised by underwriters based on their experience with initial implementation of the 2012 Guidance.[10] If the MSRB were to ultimately make any changes through a formal rulemaking process to the 2012 Guidance, SIFMA and its members believe that it would be critical to incorporate or otherwise preserve the guidance included in the Implementation Guidance and FAQs, with any modifications appropriate in light of the changes to the 2012 Guidance.

III. Summary of SIFMA's Views on 2012 Guidance

As a general matter, SIFMA and its members believe that significant portions of the 2012 Guidance have been beneficial to the marketplace and to the protection of issuers. As noted in the Implementation Guidance, the 2012 Guidance can be divided into three broad categories: prohibitions on misrepresentations, fairness of financial aspects of an underwriting, and required disclosures to issuers. SIFMA and its members believe that the aspects of the 2012 Guidance relating to prohibitions on misrepresentations (including the prohibition on discouraging the use of a municipal advisor) and the fairness of financial aspects of an underwriting (including the prohibitions on excessive compensation, guidance on fairness of new issue pricing, guidance on profit sharing arrangements, and prohibition on treating excessive or lavish personal expenses as expenses of a new issue) should be preserved. Given that the 2012 Guidance may often be associated solely with its disclosure requirements, the marketplace would benefit from the MSRB ensuring that these other aspects of 2012 Guidance are well understood.

SIFMA and its members also support the appropriateness of providing the types of disclosures required under the 2012 Guidance. These disclosures consist of disclosure of the underwriter's role, disclosure of conflicts of interests, and transaction disclosure. Except with respect to potential refinement of the nature of conflicts required to be disclosed as described below, SIFMA and its members generally support the content of the disclosures required to be made under the 2012 Guidance. While we

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[9] SIFMA notes that the MSRB included in the Implementation Guidance extensive guidance regarding transitioning to the 2012 Guidance for financings in process on the effective date. SIFMA commends the inclusion of such formal transition guidance and believes that similar transition guidance should be provided as a standard practice in connection with the MSRB's future rulemaking.

[10] SIFMA commends the MSRB for having provided such additional guidance shortly after the effective date to respond to practical issues that arose as underwriters first implemented the 2012 Guidance. We believe that guidance responsive to implementation issues published shortly after the effective date of future rule changes, in instances where the MSRB is made aware of implementation issues, should also be included as a standard practice in connection with the MSRB's future rulemaking.

support these disclosures, the MSRB should be cognizant of the substantial compliance burden on underwriters and complaints expressed by some issuers regarding excessive documentation resulting from the 2012 Guidance, and any efforts to more precisely define the content of and the process for providing the disclosures required by the 2012 Guidance would be highly beneficial to the marketplace. Thus, SIFMA and its members believe that certain changes with respect to the timing and manner of providing disclosures, as well as circumstances where certain disclosures may not be required, should be made, as described more fully below.

SIFMA provides below its specific comments and recommendations with regard to the 2012 Guidance, followed by answers to the specific questions posed by the MSRB in the Notice.

IV. Guidance on Prohibitions on Misrepresentations

The 2012 Guidance provides that an underwriter must not misrepresent or omit the facts, risks, potential benefits, or other material information about municipal securities activities undertaken with an issuer, and that an underwriter must not recommend that an issuer not retain a municipal advisor. The 2012 Guidance provides specific examples, including but not limited to with respect to representations in issue price certificates, information provided to an issuer for use in the official statement, information included in a response to a request for proposals, representations during negotiation of a new issue (such as representations regarding the price negotiated and the nature of orders or investor demand), and representations regarding investors (such as whether they meet the issuer's definition of retail or other representations relating to retail order periods). Further, the Implementation Guidance lays out certain practical considerations in implementing these prohibitions. SIFMA and its members believe that this portion of the 2012 Guidance has been beneficial to the marketplace and to the protection of issuers and therefore should be preserved.

V. Guidance on Fairness of Financial Aspects of an Underwriting

The 2012 Guidance prohibits underwriters from charging or collecting excessive compensation (including certain separate but related payments from the issuer or third parties), provides guidance on fairness of new issue pricing for both negotiated and competitive offerings,[11] notes that profit sharing arrangements between

[11] SIFMA observes that the MSRB recently adopted amendments to Rule G-34 relating to duties of municipal advisors to obtain CUSIP numbers for competitive sales. With respect to that rule change, the MSRB has been providing informal guidance to the marketplace regarding what constitutes a competitive sale for purposes of the new municipal advisor obligation that is not consistent with how the notion of competitive

underwriters and new issue investors may violate Rule G-17 depending on the facts and circumstances, and reminds underwriters of prior interpretive guidance prohibiting the treatment of excessive or lavish personal expenses as expenses of a new issue. SIFMA and its members believe that this portion of the 2012 Guidance has been beneficial to the marketplace and to the protection of issuers and therefore should be preserved.

VI. Required Disclosures

A. Content of Role Disclosure

The 2012 Guidance requires the underwriter in a negotiated offering to make a series of disclosures to the issuer about the role and duties of an underwriter, with the MSRB having provided a sample disclosure document in the FAQs.[12] We note that some or all of these role disclosures required under the 2012 Guidance are intertwined with other regulatory guidance provided by the MSRB in the Rule G-23 Interpretation[13] and guidance provided by SEC staff under SEC Rule 15Ba1-1.[14]

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sale has been defined and generally otherwise understood under MSRB rules, including Rules G-17, G-32 and G-37, as well as in Rule G-34 itself prior to such amendments. With respect to the 2012 Guidance, the Implementation Guidance (referring to MSRB statements in the rulemaking record) treats private placements as negotiated sales subject to the 2012 Guidance but with certain disclosure obligations not being applicable due to the agency status of the placement agent. SIFMA and its members agree that the treatment of placements in the 2012 Guidance is appropriate and that they should not, absent highly unusual circumstances, be characterized as competitive sales.

[12] The role disclosures relate to the fair dealing duty of underwriters, the arm's-length nature of the underwriter-issuer relationship, the lack of a fiduciary duty, the duty to balance pricing between the interests of the issuer and investors, and the underwriter's duty with respect to the official statement.

[13] The arm's-length nature of the underwriter-issuer relationship is a component of the Rule G-23 Interpretation. *See* footnote 5 *supra*.

[14] The arm's-length nature of the underwriter-issuer relationship is a component of the SEC staff's Question 1.2: Treatment of Business Promotional Materials Provided By Potential Underwriters Under the General Information Exclusion from Advice, Registration of Municipal Advisors, Frequently Asked Questions, Office of Municipal Securities (last updated Sept. 20, 2017), available at https://www.sec.gov/info/municipal/mun-advisors-faqs.shtml (the "SEC Staff FAQs"), while the full set of role disclosures is a component of Question 5.1: Engagement to Serve as Underwriter, SEC Staff FAQs. Note that the underwriter exclusion under Exchange Act Section 15B(e)(4)(C) does not require such disclosure; rather, SEC staff reads into the exclusion, as a basic component, the role disclosures required under Rule G-17, effectively viewing the underwriter's compliance with its obligations under Rule G-17 as an underwriter as evidence of the requisite relationship with the issuer with respect to a particular issue of municipal securities for purposes of the underwriter exclusion.

As noted above, SIFMA and its members believe that, during the early stages of the new municipal advisor regulatory structure being constructed at the time the 2012 Guidance was adopted, the role disclosures provided much needed clarity regarding the role of underwriters, as compared to municipal advisors, in connection with new issue offerings. In that context, even the most seasoned issuers benefited from being reminded of the distinction in the roles of underwriters and municipal advisors. It can fairly be argued that at this juncture, issuers generally have come to understand the different natures of these roles. Nonetheless, while repeated provision to issuers of these unchanging role disclosures is increasingly becoming less relevant given that the marketplace has adjusted to the new municipal advisor regulatory regime, we believe that, subject to the suggestions below in Section VI(F) of this letter, such disclosure requirement should not be changed, at least not without coordinated changes to the comparable requirements under the Rule G-23 Interpretation or the SEC Staff FAQs.

B. Content of Conflicts of Interest Disclosure

The 2012 Guidance requires the underwriter in a negotiated offering to make a series of disclosures to the issuer about potential or actual material conflicts of interest, including but not limited to those relating to contingent compensation, certain payments to or from third parties, third-party marketing arrangements, certain profit-sharing arrangements with investors, certain credit default swap activities, and incentives to recommend a complex municipal securities financing.

While SIFMA and its members believe that meaningful disclosures to issuers of conflicts of interest on the part of underwriters is appropriate, we also believes that issuers in many cases are receiving excessive amounts of disclosures of potential and often remote conflicts that are of little or no practical relevance to issuers or the particular issuances and would benefit from more focused disclosure on conflicts that actually matter to them. Thus, we believe that the disclosure requirement should be limited to actual, and not merely potential, material conflicts of interest on the part of the underwriter.[15] We believe this change could reduce substantially the volume of ordinary course or "boilerplate" conflicts disclosures received by issuers and therefore

[15] We also note that, in some cases, it appears that regulators conflate conflicts of interest that might exist on the part of other parties to a financing, including in particular conflicts on the part of issuer personnel, with conflicts on the part of the underwriter, and therefore regulators appear to expect that the conflicts disclosure under the 2012 Guidance should include these conflicts of other parties. SIFMA and its members request that the MSRB clarify that the 2012 Guidance does not require the underwriter to disclose conflicts on the part of parties other than the underwriter.

ensure that issuers do not inadvertently overlook meaningful disclosures of actual material conflicts.

Furthermore, we believe that certain categories of potential conflicts identified in the 2012 Guidance do not merit being specifically called out for disclosure. For example, given the effectively universal practice – and often the necessity – of underwriting compensation being contingent in nature, we see no benefit to issuers in receiving repeated disclosure of the conflict that can be presented by contingent compensation. Instead, the MSRB can instead provide educational materials emphasizing this and any other similar conflicts that make up the bulk of boilerplate conflicts disclosure through its Electronic Municipal Market Access (EMMA) website or its Education Center webpage. SIFMA believes such an approach would strengthen this aspect of the 2012 Guidance.

While issuers may want to be made aware of third-party marketing arrangements in connection with their new issues, we do not believe that the conflicts disclosure requirement under the 2012 Guidance is the appropriate mechanism for ensuring that issuers understand the participation of such third-parties. For example, the existence of selling group members is not typically disclosed in this way. Currently, such information is most effectively conveyed through the syndicate formation process,[16] or could be part of any changes to syndicate formation practices under new MSRB rulemaking, and market practice has evolved to include disclosure in the official statement of such distribution/marketing relationships. The use of retail distribution agreements is not an activity involving suspicious payments to a third party and does not increase costs to issuers; rather, it simply passes on a discounted rate to a motivated dealer, which is commonly available to dealers after the bonds have become free to trade in any event, notwithstanding any agreement. If the MSRB believes that it is important to continue to require disclosure of these agreements, we request that the MSRB explain why such arrangements are seen as a material conflict of interest and why the requirement does not apply to selling group arrangements. Eliminating this disclosure would greatly reduce the need for disclosure letters under the 2012 Guidance by co-managers in large syndicates because the existence of third party distribution agreements is typically the only catalyst for co-manager disclosure under the 2012 Guidance.

In addition, the required disclosure regarding credit default swaps was included in the 2012 Guidance based on limited pre-financial crisis and pre-Dodd-Frank Act activities affecting a vanishingly small number of municipal issuers. The level of credit

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16 See, *e.g.*, MSRB Rule G-11(f); MSRB Rule G-14 RTRS Procedures Section (d)(vii) and (viii).

default swap activity in the marketplace today is significantly smaller, calling into question whether this provision focused on a single type of financial product will become increasingly archaic. We believe this specific reference to credit default swaps should be deleted from the 2012 Guidance, acknowledging that such deletion does not mean that practices in connection with credit default swaps could never constitute a disclosable conflict, such as where an actual material conflict may arise from serving as underwriter to an issuer while also engaging in credit default swap activities related to such issuer.

C. Content of Transaction Disclosure

The 2012 Guidance requires the underwriter in a negotiated offering that recommends to the issuer a so-called "complex municipal securities financing" to disclose the material financial characteristics of the financing, as well as the known or reasonably foreseeable material financial risks of the financing. The 2012 Guidance provides certain examples of complex municipal securities financings, such as variable rate demand obligation offerings or financings involving derivatives, and the types of matters disclosable with respect thereto. In addition, under certain circumstances, the 2012 Guidance also requires disclosure of the material aspects of the financing structure for financings that are routine and do not constitute complex municipal securities financings.

While SIFMA and its members would defer to the issuer community on the ultimate usefulness of the required transaction disclosures, we generally believe that the content of these transaction disclosures as described in the 2012 Guidance is appropriate and does not need to be changed, subject to the suggestions below in Section VI(F) of this letter. We note that the MSRB recently provided guidance on the meaning of recommendation under Rule G-42 with respect to municipal advisory activities, describing a two-prong analysis for determining whether advice is a recommendation for purposes of the rule.[17] SIFMA and its members request guidance as to whether this same two-prong analysis would apply for determining whether an underwriter has recommended a complex municipal securities financing.

D. Timing for Disclosures

The 2012 Guidance establishes three distinct timeframes for delivering different portions of the required disclosure: for disclosure of the arm's-length nature

[17] FAQs Regarding MSRB Rule G-42 and Making Recommendations (June 2018); MSRB Notice 2018-12 (June 20, 2018).

of the underwriter-issuer relationship, the earliest stages of the relationship (*e.g.*, in a response to a request for proposals or in promotional materials provided to an issuer); for other role disclosures and conflicts disclosures, when the underwriter is engaged to perform underwriting services (*e.g.*, in an engagement letter, not solely in a bond purchase agreement); and for transaction disclosure, in sufficient time before the execution of a contract with the underwriter to allow the issuer to evaluate the recommendation.[18] In the context of the establishment of an initial underwriter-issuer relationship, SIFMA believes that, subject to the suggestions below in Section VI(F) of this letter, these timeframes are generally appropriate, with the understanding that the notion of a formal engagement to serve as underwriter for an offering does not match the normal process by which underwriters are brought on to underwrite most issuers' offerings and therefore underwriters often use the communication by issuer personnel that they will participate in an offering as indicative of the timing for such disclosures.

SIFMA and its members wish to note their appreciation for the MSRB's recognition in the Implementation Guidance that not all transactions proceed on the same timeline or pathway so that sometimes precise compliance with the timeframes may be infeasible, and the MSRB's statement that such timeframes are not intended to establish hair-trigger tripwires resulting in technical rule violations so long as underwriters act in substantial compliance with the timeframes and have met the key objectives for providing the disclosures. We urge the MSRB to reconfirm this guidance, as well as to provide further recognition of alternative timeframes for meeting these obligations as suggested below.

In connection with underwriters that engage in one or more negotiated underwritings with a particular issuer, we believe that repeated identical disclosures provided in each transaction by the same underwriter to the same issuer may often only serve to inundate the issuer with useless information. SIFMA and its members recommend that an underwriter engaged in a negotiated offering with an issuer be permitted by the MSRB to fulfill its disclosure requirements under the 2012 Guidance with respect to such offering by reference to, or by reconfirming to the issuer, its disclosures provided within the preceding twelve (12) month period (*e.g.*, disclosures provided in connection with a prior offering during such period or provided on an annual basis in anticipation of serving as underwriter on offerings during the next twelve (12) months). Such reference or reconfirmation must be provided by no later

[18] While the timing requirements include three distinct deadlines, the MSRB should make clear that underwriters can collapse the fulfillment of these requirements without awaiting each applicable deadline. For example, the inclusion of role disclosures, conflicts disclosures and/or transaction disclosures in a response to a request for proposals should be viewed as satisfying the applicable disclosure requirements so long as the content is complete and no subsequent changes occur.

than execution of the bond purchase agreement and could be fulfilled in a representation contained in the bond purchase agreement. If during the course of such subsequent offering new or different disclosures become applicable (*e.g.*, if a new conflict of interest arises, or if the structure of a complex municipal securities transaction materially changes in a manner not previously disclosed), the underwriter would be required to provide such new or additional disclosures as contemplated by the 2012 Guidance – that is, in sufficient time before the execution of the bond purchase agreement to allow the issuer to evaluate the new disclosure. This or a similar alternative to transaction-by-transaction disclosure would be consistent with the more flexible approach permitted by the Commodity Futures Trading Commission (the "CFTC") in connection with disclosures required by a swap dealer to a counterparty in counterparty relationship documentation or in an otherwise agreed upon writing.[19] Of course, an underwriter could still choose to provide its disclosures on a transaction-by-transaction basis as currently required under the 2012 Guidance.

E. Trigger for Transaction Disclosures

Under the 2012 Guidance, transaction disclosure for a routine financing (*i.e.*, not a complex municipal securities financing) is required only if the underwriter reasonably believes that issuer personnel lack knowledge or experience with such routine financing structure that the underwriter has recommended. In contrast, transaction disclosure for a complex municipal securities financing recommended by the underwriter is always required regardless of issuer personnel's knowledge, expertise or experience in such complex municipal securities financing, although the level of disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing.

SIFMA and its members believe that all transaction disclosures should be triggered based on the standard for triggering disclosures regarding routine financings, subject to the suggestions below in Section VI(F) of this letter. Thus, disclosures regarding a recommended financing would be required if the underwriter believes that issuer personnel lack knowledge or experience with the financing structure recommended by the underwriter. The underwriter's belief would be based on the same factors described in the 2012 Guidance for determining the level of disclosure required, so that the trigger for providing transaction disclosure, and the level of disclosure required to be provided, would be based on personnel's knowledge or experience with

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19 *See* CFTC Rule 23.402(e) and (f). *See also* CFTC Rule 23.431.

the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability of the issuer to bear the risks of the recommended financing.

F. Disclosure Opt-In and Opt-Out

Except with respect to the more targeted disclosures of actual material conflicts we recommend in this letter, which we believe should be delivered in all transactions (subject to our recommendations in the last paragraph of Section VI(D) above), SIFMA and its members believe that the invocation by an underwriter of the exemption under SEC Rule 15Ba1-1(d)(3)(vi) for an independent registered municipal advisor ("IRMA") wherein the issuer would be relying on the advice of its IRMA in connection with the transaction should be deemed to satisfy any remaining disclosures under the 2012 Guidance due on or after the date the IRMA exemption is invoked. Thus, if an underwriter invokes the IRMA exemption in the earliest stages of a financing, such underwriter's role disclosures and any otherwise required transaction disclosure would not be required,[20] unless the issuer opts in to receiving such disclosures notwithstanding its engagement of an IRMA to advise it.[21]

Furthermore, we believe that an issuer should be able to opt out of receiving the disclosures required under the 2012 Guidance, other than the conflicts disclosures, in a written election based on its knowledge, expertise, experience and financial ability, upon which the underwriter should be permitted to conclusively rely. Alternatively, the issuer could elect to provide its written opt-out to such disclosures without affirmatively stating the basis for such opt-out, provided that if (i) the underwriter has reason to believe that issuer personnel lack knowledge or experience with the structure of a recommended financing[22] and (ii) the issuer does not employ a municipal advisor

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[20] To the extent the role disclosures are fulfilled by invocation of the IRMA exemption, the MSRB should deem such disclosures as having been provided for purposes of Rule G-23 Interpretation. *See* footnote 13 *supra*. The invocation of the IRMA exemption would obviate the need to address the disclosures described in Questions 1.2 and 5.1 of the SEC Staff FAQs. *See* footnote 14 *supra*.

[21] For example, an issuer that posts an IRMA notice on its website could include in such notice opt-in language stating that it wishes to receive role disclosures and/or transaction disclosures notwithstanding the issuer's engagement of an IRMA. The issuer's opt-in could also be provided in a separate writing.

[22] The underwriter should be permitted to rely on issuer personnel's prior experience with the same or similar financing structure in establishing that it does not have reason to believe that such personnel lacks the requisite knowledge or experience.

for such financing,[23] the underwriter must nonetheless provide the required transaction disclosure.

G. Manner of Providing Disclosures and Seeking Acknowledgement

SIFMA and its members find that the manner for providing required disclosures to the issuer under the 2012 Guidance is generally workable, even though the division of responsibility among syndicate members has contributed to the large amounts of disclosures issuers receive on new issues. We believe that our proposed modifications as described elsewhere in this letter will substantially reduce the volume of such disclosures overall and therefore also reduce the pressure to find additional means of consolidating disclosures by the various members of underwriting syndicates.

However, we believe the requirement for the underwriter to attempt to receive issuer acknowledgement and the efforts to document cases where the issuer does not provide such acknowledgement create a significant degree of non-productive work on the part of underwriter personnel and provide no value to the issuer, but often produce unwanted follow-up inquiries from the underwriter. The MSRB should eliminate the acknowledgement requirement and should instead rely on the same principles for delivery of notices otherwise applied to its other rules. More specifically, underwriters should be permitted to provide the disclosures in a manner consistent with the delivery of other documentation during the course of the transaction, and receipt of an e-mail return receipt should be conclusive proof of delivery if other transaction documentation has also been provided to the same e-mail address.

VII. Responses to Questions Posed in the Notice

SIFMA provides below its answers to the specific questions posed by the MSRB in the Notice.

(1) What is the typical process, as implemented as a practical matter, for a dealer to provide the disclosures to issuers as required by the 2012 Guidance?

In broad strokes, the disclosure aspects of the 2012 Guidance involve the making of disclosures at three stages, each of which triggers a series of activities relating to preparation of the required disclosures, identifying the appropriate issuer

[23] For this purpose, the underwriter need not formally invoke the IRMA exemption so long as the issuer in fact is using a municipal advisor for the financing.

personnel to receive each disclosure, providing the disclosure to such personnel, obtaining (or seeking to obtain) such personnel's acknowledgement of receipt, monitoring and providing any supplemental disclosures that may be required during the course of the financing, and properly documenting all of these activities, in each case for financings that may present different circumstances and different groupings of syndicate members. As such, there is no single process followed by underwriters throughout the market that can reasonably be described as typical. In connection with the adoption of the 2012 Guidance, a SIFMA committee drafted model disclosure documents designed to serve as a starting point for underwriters in preparing their disclosures concerning the underwriter's role, compensation, and conflicts, as well as regarding the material financial characteristics and risks inherent in certain complex transactions commonly recommended by underwriters.[24] Any underwriter using the model documents makes such modifications as it deems appropriate, and other underwriters have produced their own versions of disclosure documents.

(2) The 2012 Guidance allows for syndicate managers to make the disclosures concerning the role of the underwriter and the underwriter's compensation on behalf of other syndicate members, as long as the other syndicate members make the other conflicts disclosures that are particular to them.

a. How often do syndicates utilize this option for making the disclosures? If it has been infrequent, please explain why.

We believe that there are many cases where the syndicate manager may make the disclosures concerning the role of the underwriter on behalf of other members of the syndicate, but there are also many cases where some or all syndicate members will also provide these disclosures to the issuer themselves. One reason this may be the case is that each syndicate member is obligated to provide its own disclosure of actual or potential conflicts of interest, and it is often procedurally easier to combine role disclosures and conflicts disclosures into a single document. Another reason may be that a particular underwriter has determined not to rely on another firm's actions to meet the underwriter's own regulatory obligations, or only permits such reliance upon confirmation that the syndicate manager has provided the required disclosure and has found that providing its own disclosure may be administratively easier than obtaining confirmation of the syndicate manager's disclosure.

[24] SIFMA model documents for the municipal securities market, including model disclosure documents under the 2012 Guidance, are available at https://www.sifma.org/resources/general/municipal-securities-markets.

Note that, because the disclosure regarding the arm's-length nature of the issuer-underwriter relationship must be provided at the earliest stage of the relationship and serves purposes beyond just the 2012 Guidance, many underwriting firms have included this disclosure (and in many cases the other role disclosures) on a wide range of communications with potential issuers that might be viewed as constituting an initial contact with such potential issuers as a prophylactic approach to avoiding inadvertently violating the 2012 Guidance or inadvertently being deemed a municipal advisor. Thus, while this particular disclosure may also be included in the set of role disclosures provided by a syndicate manager or individual syndicate members, in many cases that wider set of disclosures will occur later than the deadline for providing the disclosure on the arm's-length relationship.

b. To the extent it has been used, has this option been effective? If not, how could it be improved?

While this option may, in a subset of offerings, be effective in partially reducing the amount of duplicative disclosures that would otherwise have been provided, it is unlikely that this option could result in significant further reduction in duplicative disclosures without instituting modifications of the type suggested above, including in particular the narrowing of the scope of conflicts disclosure as described in Section VI(B) above and the rationalization of the frequency of disclosures for multiple underwritings with a particular issuer as described in Section VI(D) above.

c. Does the senior manager or any other dealer explain the disclosures to the issuer client or are they simply provided without any further discussion?

Practices in regard to any explanation of role disclosures likely vary considerably depending on the particular underwriter, the particular issuer and the prior experience between the issuer and the underwriter. It should be noted that the statements that make up the role disclosures (as well as whether compensation is contingent) are not difficult to understand on their face and normally are well understood by issuer personnel without further explanation or were well understood before the 2012 Guidance became effective.

(3)[25] **Do dealers typically provide disclosures to both conduit issuers and conduit borrowers?**

The 2012 Guidance by its terms does not require disclosures to conduit borrowers. However, it is common (although perhaps not universal) for underwriters to provide to a conduit borrower a copy of the disclosures provided to the issuer.

(4) Has the 2012 Guidance, particularly relating to required disclosures, achieved its intended purpose of promoting fair dealing by underwriters with issuers? If no, what are the problems?

SIFMA and its members believe that the 2012 Guidance has been, for the most part, successful at achieving its purpose of promoting fair dealing by underwriters with issuers. Certain weaknesses undermining the effectiveness of the disclosure aspects of the 2012 Guidance and potential modifications that could achieve meaningful improvements to the 2012 are discussed above in this letter and in our further responses below.

a. Are the disclosures too boilerplate and/or too voluminous? If so, what are the consequences?

SIFMA and its members believe that some aspects of the required disclosures have become boilerplate and too voluminous, which creates additional burdens to underwriters with no countervailing benefit, serve to obscure particularized disclosures that are material and should be well understood, and create confusion, frustration and unnecessary administrative activities for underwriters and many issuers.

b. Are issuers overly burdened?

While we defer to issuers on the question of whether they are overly burdened by the disclosures required under the 2012 Guidance, we do believe that excessive meaningless disclosures could not reasonably be viewed as beneficial to issuers and, as noted above, creates confusion, frustration and unnecessary administrative activities for many issuers.

c. Are any problems with the 2012 Guidance the same or different for issuers of different sizes?

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[25] This and the following questions have been renumbered for continuity.

While size of issuer may have some indirect bearing on any problems with the 2012 Guidance, it is more appropriate to focus on the knowledge, expertise and experience of issuer personnel, as well as the issuer's access to the advice of a municipal advisor, as the basis for determining whether more or less disclosure is appropriate in regard to an offering with such issuer.

d. Are the disclosures required to be provided at appropriate points in time in the course of the transaction?

SIFMA and its members believe that the points in time during the course of a particular transaction for the delivery of disclosures as provided in the 2012 Guidance are generally appropriate, subject to the observations and suggestions described in Section VI(D) above.

e. Is the issuer's acknowledgment of receipt of the disclosures necessary and meaningful?

For the reasons described in Section VI(G) above, SIFMA and its members strongly believe that the issuer's acknowledgement of receipt of disclosures do not provide any benefit, create significant burdens and should be eliminated. Underwriters should be permitted to provide the disclosures in a manner consistent with the delivery of other documentation during the course of the transaction, and receipt of an e-mail return receipt should be conclusive proof of delivery if other transaction documentation has also been provided to the same e-mail address.

(5) Should the MSRB amend the 2012 Guidance? If so, what are alternative approaches that could better achieve the intended purpose?

SIFMA and its members outline above in this letter certain limited modifications to the 2012 Guidance that the MSRB should make that would greatly enhance the effectiveness of the disclosure aspects of the 2012 Guidance while significantly reducing the burden on compliance.

a. Should the requirements be reduced or otherwise modified for different classes of issuers?

i. If so, how should those classes be defined?

1. Based on size?

As noted above, while size of issuer may have some indirect bearing on any problems with the 2012 Guidance, it is more appropriate to focus on the knowledge,

expertise and experience of issuer personnel, as well as the issuer's access to the advice of a municipal advisor, as the basis for determining whether more or less disclosure is appropriate in regard to an offering with such issuer.

2. Based on frequency in the market?

As described in Section VI(D) above, we believe that frequent issuers would greatly benefit from the 2012 Guidance being modified to allow underwriters that participate in multiple offerings for such issuers to rationalize their disclosures by making an initial set of full disclosures and thereafter disclosing any material changes that may occur during the course of subsequent offerings.

3. Relative to whether the issuer has an independent registered municipal advisor that is advising the issuer on the transaction?

As described in Section VI(F) above, we believe that, the requirement to provide role and transaction disclosures should be deemed satisfied if the underwriter has invoked the IRMA exemption, with certain exceptions described above, and can otherwise be affected if the issuer engages a municipal advisor.

4. Based on the presence of dedicated issuer staff for debt management?

As described in Section VI(E) above, SIFMA and its members believe that the 2012 Guidance should focus on the knowledge, expertise and experience of such dedicated issuer staff for debt management as the basis for determining whether disclosure, and what level of such required disclosure, is appropriate in regard to an offering by such issuer.

ii. If so, how should the requirements be modified? Should issuers of any particularly defined class be able to opt out of receiving the disclosures?

As described in Section VI(F) above, we believe that an issuer should be able to opt out of receiving role disclosures and transaction disclosures, subject to certain conditions described therein.

b. Should all issuers be able to opt out of receiving the disclosures?

While SIFMA and its members believe that all issuers could presumably be able to opt out of receiving role disclosures and transaction disclosures, transaction disclosures may still be required under certain circumstances described in Section VI(F) above.[26] We further believe that issuers should not be able to opt out of receiving disclosures of the more targeted universe of actual material conflicts, as described in Sections VI(B) and VI(F) above.

c. Should the frequency of making the disclosures to issuers be reduced? If so, how (e.g., once per year unless there are material changes to any of the information provided and/or other new information requiring additional disclosure)?

As described in Section VI(D) above, where an underwriter engages in one or more negotiated underwritings with a particular issuer, the underwriter should be permitted to fulfill it disclosure requirements with respect to an offering by reference to, or by reconfirming to the issuer, its disclosures provided within the preceding twelve (12) month period (*e.g.*, disclosures provided in connection with a prior offering during such period or provided on an annual basis in anticipation of serving as underwriter on offerings during the next twelve (12) months). Such reference or reconfirmation must be provided by no later than execution of the bond purchase agreement and could be fulfilled in a representation contained in the bond purchase agreement. If during the course of such subsequent offering new or different disclosures become applicable (*e.g.*, if a new conflict of interest arises, or if the structure of a complex municipal securities transaction materially changes in a manner not previously disclosed), the underwriter would be required to provide such new or additional disclosures as contemplated by the 2012 Guidance – that is, in sufficient time before the execution of the bond purchase agreement to allow the issuer to evaluate the new disclosure.[27] An underwriter could, alternatively, still choose to provide its disclosures on a transaction-by-transaction basis as currently required under the 2012 Guidance.

d. Could or should EMMA be a tool to improve the utility of disclosures and the process for providing them to issuers (e.g., use EMMA to display

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[26] As described above in Section VI(F), role disclosures and transaction disclosures for any issuer, regardless of type or size, should be deemed satisfied if the IRMA exemption is invoked, unless the issuer has opted-in to receive such disclosures.

[27] This approach would be consistent with the more flexible approach permitted by the CFTC in connection with swap disclosures under CFTC Rule 23.402(e) and (f) and Rule 23.431. *See* footnote 19 *supra*.

more general disclosures but continue to require client- and deal-specific disclosures be provided directly to issuers by the dealers)?

As described in Section VI (B) above, we believe that certain categories of potential conflicts of interest do not merit being specifically called out for disclosure to issuers on a transaction-by-transaction basis. Since many potential conflicts (as opposed to actual conflicts) apply broadly to the marketplace, we believe that such information would most effectively and efficiently be made available to issuers through educational materials provided by the MSRB through the EMMA website or on the MSRB's Education Center webpage.

e. Has the level of detail provided by the MSRB in the disclosure requirements been useful in promoting compliance?

i. If so, would greater prescription for any of the requirements be beneficial?

ii. If not, should that prescription be modified? If so, how?

Subject to suggested changes described in this letter, we believe that the 2012 Guidance, together with the Implementation Guidance and the FAQs, generally provides the level of detail needed to promote compliance. As described in Section II above, if the MSRB were to ultimately make any changes through a formal rulemaking process to the 2012 Guidance, SIFMA and its members believe that it would be critical to incorporate or otherwise preserve the guidance included in the Implementation Guidance and FAQs, with any modifications appropriate in light of the changes to the 2012 Guidance.

f. Have the sample disclosures provided by the MSRB in Exhibit A to MSRB Notice 2013-08 been useful in facilitating compliance, and to what extent has the sample been adopted? Should it be revised?

We believe that the sample disclosure provided in Exhibit A to the FAQs has been useful in facilitating compliance and is used by many underwriters.

(6) What have been the costs or burdens, direct, indirect or inadvertent, of complying with the 2012 Guidance? Are there data or other evidence, including studies or research, that support commenters' cost or burden estimates?

SIFMA has not calculated the costs or burdens of complying with the 2012 Guidance, and is not aware of any such calculation by any other party. Nonetheless, it

is clear that such costs or burdens are substantial and reasonable efforts to curtail them, as described in this letter, would be appropriate.

(7) Aside from the disclosure requirements, are there any other requirements addressed in the 2012 Guidance that should be modified or removed or new requirements that should be added?

As described in Sections IV and V above, SIFMA and its members believe that the portions of the 2012 Guidance relating to prohibitions on misrepresentations and the fairness of financial aspects of an underwriting have been beneficial to the marketplace and to the protection of issuers and therefore should be preserved.

VIII. Conclusion

SIFMA and its members appreciate the MSRB's commitment to retrospective review of the 2012 Guidance. We believe that, as a general matter, significant portions of the 2012 Guidance have been beneficial to the marketplace and to the protection of issuers and that the disclosure aspects of the 2012 Guidance would be enhanced by focusing the range of required conflicts disclosures. We also believe that certain changes with respect to the timing and manner of providing disclosures, as well as circumstances where certain disclosures may not be required, would be appropriate and would improve the effectiveness of the 2012 Guidance. We 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 yours,

Leslie M. Norwood
Managing Director and Associate
General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, President and Chief Executive Officer
Lanny Schwartz, Chief Regulatory Officer
Michael Post, General Counsel
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August 8, 2018

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Comment on 2012 Interpretive Guidance on the Application of MSRB Rule G-17

Dear Mr. Smith:

This letter is in response to the request for comments on the 2012 Interpretive Guidance on the application of MSRB Rule G-17. As a frequent issuer and market participant, we believe that current market practices miss the mark on successfully fulfilling the purpose of the rule. Frequently, the required disclosures by underwriters function as a "check-the-box" item more than a meaningful communication with issuers.

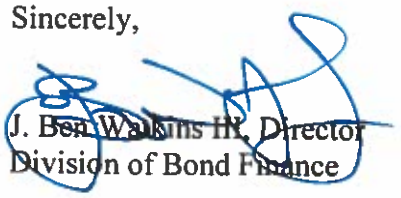
Since the issuance of the interpretive guidance, underwriters have devoted substantial time and effort to craft the required disclosures and obtain issuer acknowledgment of receipt of the disclosures. From the issuer perspective, these efforts offer little value because they are too long and complicated. The disclosures provided to issuers are boilerplate, and may inadvertently bury disclosures of specific conflicts and risks within pages of nonmaterial information and legalese. Also, such disclosures are duplicative when multiple underwriters are involved in the same transaction. More sophisticated issuers do not need the boilerplate disclosures and infrequent or unsophisticated issuers may not understand their import, particularly as it relates to the nature of the underwriter's obligations to its issuer clients. A "one size fits all" approach to such disclosures is not effective, and instead issuers could benefit from underwriters tailoring such disclosures based on issuer size and sophistication.

We believe the interpretive guidance should be modified to encourage the use of plain language to clearly and concisely communicate with issuers the required disclosures, including the nature of the underwriter's relationship with the issuer, material conflicts of interest, and risks of the proposed transaction to the issuer. This will ensure that pertinent information is

meaningfully and clearly communicated to issuers, without creating unnecessary administrative compliance burdens for underwriters and confusion for unsophisticated issuers.

These are our thoughts based on our experiences. Thank you for your consideration.

Sincerely,



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