OMB APPROVAL	
OMB Number:	3235-0045
Expires:	August 31, 2011
Estimated average burden hours per response	38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 60

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2011 - * 10
Amendment No. (req. for Amendments *)

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☒ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☒ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3) ☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Amendments to Rule G-20, on gifts and gratuities, and related amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, and to clarify that certain interpretations by FINRA and NASD would be applicable to municipal advisors

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Peg Last Name * Henry

Title * Deputy General Counsel

E-mail * phenry@msrb.org

Telephone * (703) 797-6600 Fax (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/04/2011

By Ronald W. Smith
(Name *)

Corporate Secretary
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change (the "proposed rule change") consisting of amendments to MSRB Rule G-20 (on gifts and gratuities), which would apply the rule to municipal advisors, along with related proposed amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records), and to clarify that certain interpretations by the Financial Industry Regulatory Authority ("FINRA") of its gifts rule (FINRA Rule 3220) and its predecessor, the National Association of Securities Dealers ("NASD") of its gift rule (NASD Rule 3060), would be applicable to municipal advisors. The MSRB requests that the proposed rule change be made effective on the date that rules defining the term "municipal advisor" under the Securities Exchange Act of 1934 (the "Exchange Act") are first made effective by the Commission.

The text of the proposed rule change is set forth below:[1]

* * *

Rule G-20: Gifts [, Gratuities] and Non-Cash Compensation

(a) *General Limitation on Value of Gifts [and Gratuities]*. In connection with its municipal securities activities or municipal advisory activities, [N]no broker, dealer, [or] municipal securities dealer, or municipal advisor shall, directly or indirectly, [give or permit to be given any thing or service of value, including gratuities] make a gift or permit a gift to be made, in excess of $100 per year to a natural person other than an employee or partner of such broker, dealer, [or] municipal securities dealer, or municipal advisor, if such [payments or services] gifts are in relation to the [municipal securities] activities of the employer of the recipient of the [payment or service] gift. For purposes of this rule the term "employer" shall include a principal for [whom] which the recipient of a [payment or service] gift is acting as agent or representative.

(b) *Normal Business Dealings.* Notwithstanding the foregoing, the provisions of section (a) of this rule shall not be deemed to prohibit occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the broker, dealer, [or] municipal securities dealer, or municipal advisor; or the sponsoring by the broker, dealer, [or] municipal securities dealer, or municipal advisor of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses; [or gifts of reminder advertising;] provided, that such gifts shall not be so frequent or so extensive as to raise any question of propriety.

(c) *Compensation for Services*. Notwithstanding the foregoing, the provisions of section (a) of this rule shall not apply to contracts of employment with or to compensation for services rendered by another person; provided, that there is in existence

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[1] Underlining indicates additions; brackets indicate deletions.

prior to the time of employment or before the services are rendered a written agreement between the broker, dealer, [or] municipal securities dealer, or municipal advisor subject to this rule and the person who is to perform such services; and provided, further, that such agreement shall include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

(d)-(e) No change.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, [and] Municipal Securities Dealers, and Municipal Advisors

(a) (i) - (xvi) No change.

(xvii) *Records Concerning Compliance with Rule G-20*. Each broker, dealer and municipal securities dealer shall maintain:

(A) a separate record of any gift [or gratuity] referred to in Rule G-20[(a)];

(B) No change.

(C) No change.

(a) (xviii) - (g) No change.

(h) *Municipal Advisor Records*. Each municipal advisor shall maintain:

(i) Reserved.

(ii) Records Concerning Gifts Pursuant to Rule G-20.

(A) a separate record of any gift referred to in Rule G-20; and

(B) all agreements referred to in Rule G-20(c) and all compensation paid as a result of those agreements.

(i) The records required by section (h) of this rule shall be maintained in the manner described in section (b) of this rule.

* * * * * *

Rule G-9: Preservation of Records

(a) (i) - (viii) No change.

(ix) the records regarding information on gifts [and gratuities] and employment agreements required to be maintained pursuant to rule G-8(a)(xvii);

(a) (x) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor shall preserve for no less than six years:

(i) Reserved.

(ii) the records regarding information on gifts and employment agreements required to be maintained pursuant to Rule G-8(h)(ii).

Such records shall be accessible and available as required by subsection (d) of this rule and retained in the manner required by subsection (e) of this rule.

* * * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its May 19-20, 2011 and July 27-29, 2011 meetings. Questions concerning this filing may be directed to Peg Henry, Deputy General Counsel, or Leslie Carey, Associate General Counsel, at 703-797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) **Existing MSRB Rule G-20.** Rule G-20 was adopted by the MSRB to prevent brokers, dealers, and municipal securities dealers ("dealers") from attempting to induce other organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of the organizations, including, but not limited to, acts of commercial bribery,[2] and to help to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized. The MSRB has

[2] See MSRB Notice 2004-17 (June 15, 2004).

interpreted Rule G-20 to preclude the payment by dealers of "excessive or lavish" entertainment or travel expenses of issuer personnel, as follows:[3]

> Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities.

Dodd-Frank Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[4] authorized the MSRB to establish a comprehensive body of regulation for all municipal advisors.[5] The Dodd-Frank Act requires the MSRB to adopt rules for municipal advisors that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.[6] It also expands the mission of the MSRB to include the protection of municipal entities[7] and obligated persons, in addition to the protection of investors and the public interest.

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[3] See Rule G-20 Interpretation -- Dealer Payments in Connection with the Municipal Securities Issuance Process (January 29, 2007); see also In the Matter of RBC Capital Markets Corporation, SEC Rel. No. 34-59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G-20 and G-17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); In the Matter of Merchant Capital, L.L.C., SEC Rel. No. 34-60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[5] "Municipal advisor" is defined in Section 15B(e)(4) of the Exchange Act.

[6] See Section 15B(b)(2)(C) of the Exchange Act.

[7] "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act as "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including - (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political

Proposed amendments to MSRB Rule G-20. Pursuant to the authority granted to it by the Dodd-Frank Act, the MSRB is proposing the amendments to Rule G-20. Just as the existing rule helps to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized, the MSRB seeks to reduce the potential for conflicts of interest in municipal advisory activities.[8] The proposed amendments to Rule G-20 would help to ensure that engagements of municipal advisors, as well as engagements of dealers, other municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rule G-20 would make the rule applicable to municipal advisors and would:

- prohibit municipal advisors, in connection with their municipal advisory activities, from, directly or indirectly, making a gift or permitting a gift to be made in excess of $100 per year to a natural person other than an employee or partner of the municipal advisor, if such gifts are in relation to the activities of the employer of the recipient of the gift; [9]

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subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities."

8 MSRB Rule D-13 defines the term "municipal advisory activities" by reference to Section 15B(e)(4)(A) of the Exchange Act (i.e., (i) providing advice to municipal entities or obligated persons on municipal financial products or the issuance of municipal securities and (ii) solicitations of municipal entities on behalf of others).

Section 15B(e)(9) of the Exchange Act defines the term "solicitation of a municipal entity or obligated person" to mean: "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity."

9 See proposed Rule G-20(a). The "municipal advisory activities" of the municipal advisor covered by the proposed amendments to Rule G-20(a) would include both advice provided to municipal entities and obligated persons and solicitations of municipal entities on behalf of third parties. For example, the proposed rule amendments would apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities and obligated persons for which the

- provide certain exemptions from the above prohibition, including: (i) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the municipal advisor; or (ii) legitimate business functions sponsored by the municipal advisor that are recognized by the Internal Revenue Service as deductible business expenses;[10]

- permit contracts of employment or compensation for services rendered by a person other than an employee of the municipal advisor; provided that there is a written agreement[11] between the municipal advisor and the person who is to perform such services, prior to the time of employment or before the services are rendered;[12]

- remove gifts of reminder advertising as a permissible exemption from the $100 gift limit of Rule G-20(a) for municipal advisors and dealers;[13] and

- clarify that existing FINRA and NASD interpretations of the FINRA and NASD gift rules, respectively,[14] apply to comparable MSRB provisions of Rule G-20

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municipal advisor is providing advice or seeking to provide advisory services. It would also apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities being solicited by a municipal advisor to award business to a client of the municipal advisor (e.g., employees of a public pension fund who could influence the pension fund's decision to award investment advisory business). Even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or obligated person, a gift that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the future also would be covered by the provisions of proposed Rule G-20.

10 See proposed Rule G-20(b).

11 The written agreement must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

12 See proposed Rule G-20(c).

13 See proposed Rule G-20(b). Those gifts would be addressed, instead, by NASD Notice to Members 06-69 (December 2006), which the proposed rule change would make applicable to municipal advisors ("NASD Notice to Members 06-69").

14 See NASD Notice to Members 06-69; FINRA Interpretive Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts) dated December 17, 2007; FINRA Interpretive Letter to Charles Wiegert, NFP Securities dated March

> applicable to municipal advisors, with new FINRA interpretations of its gifts rule made applicable to municipal advisors if the MSRB determines that it is appropriate to do so.

Municipal advisors would not be subject to Rule G-20(d), which relates to non-cash compensation in connection with primary offerings.

Proposed amendments to MSRB Rule G-8 and Rule G-9. The proposed amendments to Rule G-20 would necessitate related amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to the same recordkeeping and record retention requirements to which dealers would be subject under amended Rule G-20. Specifically, the proposed amendments to Rule G-8 would require municipal advisors and dealers to create and maintain records of any gifts referred to in Rule G-20 and all agreements for services referred to in Rule G-20 along with the compensation paid as a result of such agreements. The proposed amendments to Rule G-9 would require municipal advisors to preserve the records required to be made pursuant to the proposed amendments to Rule G-8.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to

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15, 2001; and Interpretive Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. dated June 10, 1999.

> protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it would reduce the potential for conflicts of interest in municipal advisory activities. The proposed amendments to Rule G-20 would also help ensure that engagements of municipal advisors, as well as engagements of dealers, municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

While the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it hampers practices that can harm municipal entities and their citizens by contributing to the violation of the public trust of elected officials that might allow gifts to influence their decisions regarding the awarding of municipal advisory business. While the proposed rule change may burden some small municipal advisors, any such burden is outweighed by the need to protect their issuer clients.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors and dealers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others.

On February 22, 2011, the MSRB requested comment on draft amendments to Rule G-20.[15] A copy of the Notice is attached as Exhibit 2. The Notice generated eight comment letters ("Comment Letters") from the following commenters: (1) Catholic Finance Corporation ("CFC"); (2) Robert Fisher ("Mr. Fisher"); (3) Municipal Regulatory Consulting LLC ("MRC"); (4) National Association of Independent Public Finance Advisors ("NAIPFA"); (5) Public Financial Management ("PFM"); (6) Securities Industry and Financial Markets Association ("SIFMA"); and (7) WM Financial Strategies ("WM Financial"). A copy of the comment letters is attached as Exhibit 2.

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[15] See MSRB Notice 2011-16 (February 22, 2011) ("Notice").

The Comment Letters are summarized by topic as follows:

- **Comment:** The draft amendments to Rule G-20 would prohibit payments for ordinary business expenses of municipal advisors, including, but not limited to, rent and salaries.

  Mr. Fisher and PFM stated that a literal reading of the draft amendments to Rule G-20 would restrict payments made by a municipal advisor related to any part of their municipal advisory business, including the payment of rent and the purchasing of supplies. SIFMA noted that it understood why the wording of the gift prohibition for municipal advisors differed from that of the gift prohibition for dealers (i.e., municipal entities do not have municipal advisory activities), but requested that the MSRB clarify that the municipal advisor provision was intended to be interpreted in the same manner as the dealer provision. NAIPFA stated that the proposed amendments would curtail gifts and gratuities given by municipal advisors for the purpose of soliciting municipal advisory business while leaving the rule for dealers unchanged, which would allow such gift giving related to dealer solicitations of municipal securities business.

  MSRB Response: The MSRB did not intend for the draft amendments to Rule G-20 to apply to municipal advisors in a different manner than the rule currently applies to dealers. The difference in wording between draft Rule G-20(a)(ii) (applicable to municipal advisors) and Rule G-20(a)(i) (applicable to dealers) was not substantive. However, the MSRB has determined to revise the draft amendments to Rule G-20 to clarify that dealers and municipal advisors are subject to the same gift limits. Those revisions are reflected in the proposed amendments to Rule G-20(a).

  For the avoidance of doubt, the proposed amendments to Rule G-20 that are part of the proposed rule change use the word "gift," rather than "payment" in section (a). Such amendment would clarify that the thing or service of value to be given would have to be an actual gift and not payments and/or costs associated with normal business activities of the municipal advisor or the dealer. Because of the use of the term "gift," the proposed amendments would remove references to the terms "gratuity" and "gratuities," which are subsumed within the term "gift."

- **Comment:** The MSRB should clarify that references to "persons" in the rule mean "natural persons," consistent with previous MSRB interpretive guidance.[16]

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[16] The MSRB has previously stated that, for purposes of Rule G-20, the term "person" refers only to a natural person and that Rule G-20 is intended to discourage municipal securities professionals from attempting to induce individual employees from acting in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. See Rule G-20; Interpretive Letter, "Person" (March 19, 1980).

This change would have the effect of permitting charitable contributions without violation of the rule.

MRC requested that the MSRB speak directly to the issue of charitable contributions by incorporating language addressing such concerns in Rule G-20, or in guidance applicable to either Rule G-20 or Rule G-17, that charitable contributions are not gifts for purposes of Rule G-20 and are not covered by Rule G-20 because Rule G-20 only covers gifts to natural persons. MRC also stated that it is unclear if certain charitable (or similar) contributions might constitute an unfair practice and thereby cause a municipal advisor making the contribution to violate Rule G-17. NAIPFA also requested guidance and clarification regarding charitable contributions that are made either as a result of a solicitation from an employee or elected official of a municipal entity or with a view toward influencing the decision-making of an employee or elected official of a municipal entity.

MSRB Response: The MSRB believes that the concerns raised by MRC will be addressed by amendments to the rule that would change the term "persons" to "natural persons." Such amendment would clarify that Rule G-20 covers gifts to individuals and not organizations. In response to the concerns raised by MRC and NAIPFA, the Board has previously determined that the occasional pay to play problems that might be associated with the solicitation of charitable contributions by issuers do not outweigh the benefits of such contributions and that such restrictions would have a negative impact on charitable giving. The proposed rule change does not address gifts under Rule G-17. The MSRB will take MRC's comment regarding the potential applicability of Rule G-17 to gifts under advisement for when it considers future interpretations of Rule G-17.

- **Comment:** The draft amendments to Rule G-20 should include an exception to the prohibition of gifts, grants, loans, and other financial assistance or services by a section 501(c)(3) organization within its exempt purpose for the benefit of other nonprofit corporations.

  CFC stated that the proposed rulemaking should include an exception to the prohibition on payments for any thing of value donated by a municipal advisor that is a nonprofit entity as previously determined by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, so long as such donation is within the exempt purpose of such entity.

  MSRB Response: The MSRB has determined to use the term "natural person," which has the effect of permitting gifts to be made to organizations.

- **Comment:** The draft amendments to Rule G-20 should prohibit gift giving and/or provide an annual cap for de minimis gifts in order to prevent pay to play activities under the rule.

Mr. Fisher suggested a general prohibition on gifts under draft Rule G-20(a), subject to a $100 safe harbor for de minimis gifts. NAIPFA recommended a prohibition on occasional gifts and, along with WM Financial, suggested an annual gift or gratuity maximum of $100 with the aggregate of all gifts, gratuities, and entertainment not to exceed $250 annually.

MSRB Response: Rule G-20 is intended to prevent commercial bribery and certain activities, such as excessive gift giving, from influencing dealer and municipal advisor selection. The purpose of the proposed amendments to Rule G-20 is only to extend the existing rule to municipal advisors. The proposed amendments would not impose more stringent limitations at this time. However, should the MSRB become aware of abusive behavior in this area, it might determine to revisit these comments.

- **Comment:** The draft amendments should apply to gifts to family members of issuer personnel because such gifts can be problematic.

  NAIPFA stated that the proposed amendments to Rule G-20 should apply to gifts and gratuities given to family members of issuer personnel.

  MSRB Response: The MSRB has previously stated that the intent of the rule is not to restrict social relationships that do not suggest impropriety.[17] The MSRB believes that an expansion of the rule to family members, as suggested by NAIPFA, would unduly burden dealers and municipal advisors. The MSRB notes, however, that both the existing rule and the proposed amendments prohibit indirect, as well as direct, gifts. A gift to a family member of someone in a position to award business to a municipal advisor would violate the rule if it was indirectly a gift to the person awarding the business and it violated the rule's limits.

- **Comment:** The draft amendments to Rule G-8 (on books and records) are burdensome and unnecessary because they would require municipal advisors to collect all third party employment and service agreements of any kind. In addition, the draft amendments to Rule G-8 do not require reporting of gifts made under existing Rule G-20(b) or the draft amendments to Rule G-20(b).

  PFM stated that the draft recordkeeping requirements increase the data collection burden of municipal advisors to collect all third party employment and service agreements of any kind. NAIPFA stated that the fact that existing Rule G-8 and the draft amendments to Rule G-8 do not require the reporting of gifts made under Rule G-20(b) exacerbates the potential for pay to play as it relates to such "occasional gifts" that are permitted under the rule.

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17 See File No. SR-MSRB-77-12.

MSRB Response: The MSRB has determined not to make changes to Rule G-20 as a result of PFM's comment in order to maintain consistency of the recordkeeping requirements of the rule for dealers and municipal advisors. The MSRB notes that records of employment agreements need only be kept if a municipal advisor is employing some other person's employee, such as an obligated person client's employee. The MSRB also notes that the recordkeeping requirements would facilitate municipal advisor compliance with proposed Rule G-20 and assist enforcement agencies in monitoring compliance with the rule.

The MSRB has considered NAIPFA's comment and has determined to require municipal advisors and dealers to maintain records of all gifts provided under Rule G-20. Rule G-8 does not currently require recordkeeping of gifts that are described in Rule G-20(b) (e.g., tax deductible business meals and entertainment).[18] While gifts provided under Rule G-20(b) must not be so frequent or so extensive as to raise any question of propriety, the MSRB believes records of such gifts would assist with enforcement efforts. The proposed amendments would likely not be burdensome because, in most cases, records are already kept of such gifts when reimbursement is sought, even if only for federal income tax purposes. Therefore, from a practical standpoint, the amendments would merely add a requirement that records of such gifts be kept even though reimbursement is not sought. Accordingly, the recordation of all gifts that are given or permitted to be given under Rule G-20 would be required under Rule G-8(a)(xvii)(A) as it applies to dealers and proposed Rule G-8(h)(ii) as it applies to municipal advisors.

- **Comment:** The MSRB should confirm that (i) guidance under existing Rule G-20 applies to all provisions of the proposed rulemaking and (ii) relevant FINRA guidance would be applicable to the rule as amended as it has previously applied to the existing rule.

  SIFMA requested that the MSRB reiterate its intent to apply relevant FINRA guidance to the proposed amendments. SIFMA also requested that the MSRB confirm that existing guidance under Rule G-20 applies to all provisions of the proposed rule change.

  MSRB Response: The MSRB has previously provided that FINRA and NASD interpretations of comparable provisions of their gifts rules will apply to dealers unless otherwise specified by the MSRB.[19] While the MSRB believes that the existing FINRA and NASD interpretations should also be applicable to municipal advisors, new FINRA interpretations of its gifts rule will not automatically be applicable to municipal advisors. The MSRB plans to post links to the existing interpretations on its website. From time to time, the MSRB may post links to

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[18] Records of gifts under Rule G-20(a) are required to be kept.

[19] See File No. SR-MSRB-2005-02.

new FINRA interpretations if the MSRB determines that they should be applicable to municipal advisors.

The MSRB intends that existing MSRB interpretive guidance under Rule G-20 would be equally applicable to Rule G-20, as amended by the proposed rule change.

6. Extension of Time Period of Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice

2. Notice Requesting Comment and Comment Letters

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2011-10)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Amendments to MSRB Rule G-20 (Gifts and Gratuities) and Related Amendments to MSRB Rule G-8 (Books and Records) and MSRB Rule G-9 (Preservation of Records), and to Clarify That Certain Interpretations by the Financial Industry Regulatory Authority and the National Association of Securities Dealers Would Be Applicable to Municipal Advisors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 4, 2011, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of proposed amendments to MSRB Rule G-20 (on gifts and gratuities), which would apply the rule to municipal advisors, along with related proposed amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records), and to clarify that certain interpretations by the Financial Industry Regulatory Authority ("FINRA") of its gifts rule

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

(FINRA Rule 3220) and its predecessor, the National Association of Securities Dealers ("NASD") of its gift rule (NASD Rule 3060), would be applicable to municipal advisors. The MSRB requested that the proposed rule change be made effective on the date that rules defining the term "municipal advisor" under the Act are first made effective by the Commission.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

Existing MSRB Rule G-20. Rule G-20 was adopted by the MSRB to prevent brokers, dealers, and municipal securities dealers ("dealers") from attempting to induce other organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of the organizations, including, but not limited to, acts of commercial bribery,[3] and to help to

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[3] See MSRB Notice 2004-17 (June 15, 2004).

ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized. The MSRB has interpreted Rule G-20 to preclude the payment by dealers of "excessive or lavish" entertainment or travel expenses of issuer personnel, as follows:[4]

> Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities.

Dodd-Frank Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[5] authorized the MSRB to establish a comprehensive body of regulation for all municipal advisors.[6] The Dodd-Frank Act requires the MSRB to adopt rules for municipal advisors that are designed to prevent fraudulent and manipulative acts

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4 See Rule G-20 Interpretation -- Dealer Payments in Connection with the Municipal Securities Issuance Process (January 29, 2007); see also In the Matter of RBC Capital Markets Corporation, SEC Rel. No. 34-59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G-20 and G-17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); In the Matter of Merchant Capital, L.L.C., SEC Rel. No. 34-60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

5 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

6 "Municipal advisor" is defined in Section 15B(e)(4) of the Exchange Act.

and practices and to promote just and equitable principles of trade.[7] It also expands the mission of the MSRB to include the protection of municipal entities[8] and obligated persons, in addition to the protection of investors and the public interest.

Proposed amendments to MSRB Rule G-20. Pursuant to the authority granted to it by the Dodd-Frank Act, the MSRB is proposing the amendments to Rule G-20. Just as the existing rule helps to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized, the MSRB seeks to reduce the potential for conflicts of interest in municipal advisory activities.[9] The proposed amendments to Rule G-20 would help to ensure that

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7 See Section 15B(b)(2)(C) of the Exchange Act.

8 "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act as "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including - (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities."

9 MSRB Rule D-13 defines the term "municipal advisory activities" by reference to Section 15B(e)(4)(A) of the Exchange Act (i.e., (i) providing advice to municipal entities or obligated persons on municipal financial products or the issuance of municipal securities and (ii) solicitations of municipal entities on behalf of others).

Section 15B(e)(9) of the Exchange Act defines the term "solicitation of a municipal entity or obligated person" to mean: "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of

(continued . . .)

engagements of municipal advisors, as well as engagements of dealers, other municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rule G-20 would make the rule applicable to municipal advisors and would:

- prohibit municipal advisors, in connection with their municipal advisory activities, from, directly or indirectly, making a gift or permitting a gift to be made in excess of $100 per year to a natural person other than an employee or partner of the municipal advisor, if such gifts are in relation to the activities of the employer of the recipient of the gift;[10]

(. . . continued)

municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity."

[10] See proposed Rule G-20(a). The "municipal advisory activities" of the municipal advisor covered by the proposed amendments to Rule G-20(a) would include both advice provided to municipal entities and obligated persons and solicitations of municipal entities on behalf of third parties. For example, the proposed rule amendments would apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities and obligated persons for which the municipal advisor is providing advice or seeking to provide advisory services. It would also apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities being solicited by a municipal advisor to award business to a client of the municipal advisor (e.g., employees of a public pension fund who could influence the pension fund's decision award investment advisory business). Even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or obligated person, a gift that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the future also would be covered by the provisions of proposed Rule G-20.

- provide certain exemptions from the above prohibition, including: (i) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the municipal advisor; or (ii) legitimate business functions sponsored by the municipal advisor that are recognized by the Internal Revenue Service as deductible business expenses;[11]

- permit contracts of employment or compensation for services rendered by a person other than an employee of the municipal advisor; provided that there is a written agreement[12] between the municipal advisor and the person who is to perform such services, prior to the time of employment or before the services are rendered;[13]

- remove gifts of reminder advertising as a permissible exemption from the $100 gift limit of Rule G-20(a) for municipal advisors and dealers;[14] and

- clarify that existing FINRA and NASD interpretations of the FINRA and NASD gift rules, respectively,[15] apply to comparable MSRB provisions of Rule G-20

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11 See proposed Rule G-20(b).

12 The written agreement must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

13 See proposed Rule G-20(c).

14 See proposed Rule G-20(b). Those gifts would be addressed, instead, by NASD Notice to Members 06-69 (December 2006), which the proposed rule change would make applicable to municipal advisors ("NASD Notice to Members 06-69").

applicable to municipal advisors, with new FINRA interpretations of its gifts rule made applicable to municipal advisors if the MSRB determines that it is appropriate to do so.

Municipal advisors would not be subject to Rule G-20(d), which relates to non-cash compensation in connection with primary offerings.

Proposed amendments to MSRB Rule G-8 and Rule G-9. The proposed amendments to Rule G-20 would necessitate related amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to the same recordkeeping and record retention requirements to which dealers would be subject under amended Rule G-20. Specifically, the proposed amendments to Rule G-8 would require municipal advisors and dealers to create and maintain records of any gifts referred to in Rule G-20 and all agreements for services referred to in Rule G-20 along with the compensation paid as a result of such agreements. The proposed amendments to Rule G-9 would require municipal advisors to preserve the records required to be made pursuant to the proposed amendments to Rule G-8.

2. Statutory Basis

(. . . continued)

[15] See NASD Notice to Members 06-69; FINRA Interpretive Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts) dated December 17, 2007; FINRA Interpretive Letter to Charles Wiegert, NFP Securities dated March 15, 2001; and Interpretive Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. dated June 10, 1999.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act, which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it would reduce the potential for conflicts of interest in municipal advisory activities. The proposed amendments to Rule G-20 would also help ensure that engagements of municipal advisors, as well as engagements of dealers, municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all municipal advisors and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On February 22, 2011, the MSRB requested comment on draft amendments to Rule G-20.[16] The MSRB received eight comment letters ("Comment Letters") from the following commenters: (1) Catholic Finance Corporation ("CFC"); (2) Robert Fisher ("Mr. Fisher"); (3) Municipal Regulatory Consulting LLC ("MRC"); (4) National Association of Independent Public Finance Advisors ("NAIPFA"); (5) Public Financial Management ("PFM"); (6) Securities Industry and Financial Markets Association ("SIFMA"); and (7) WM Financial Strategies ("WM Financial").

The Comment Letters are summarized by topic as follows:

Comment: The draft amendments to Rule G-20 would prohibit payments for ordinary business expenses of municipal advisors, including, but not limited to, rent and salaries.

Mr. Fisher and PFM stated that a literal reading of the draft amendments to Rule G-20 would restrict payments made by a municipal advisor related to any part of their municipal advisory business, including the payment of rent and the purchasing of supplies. SIFMA noted that it understood why the wording of the gift prohibition for municipal advisors differed from that of the gift prohibition for dealers (i.e., municipal

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16 See MSRB Notice 2011-16 (February 22, 2011) ("Notice").

entities do not have municipal advisory activities), but requested that the MSRB clarify that the municipal advisor provision was intended to be interpreted in the same manner as the dealer provision. NAIPFA stated that the proposed amendments would curtail gifts and gratuities given by municipal advisors for the purpose of soliciting municipal advisory business while leaving the rule for dealers unchanged, which would allow such gift giving related to dealer solicitations of municipal securities business.

MSRB Response: The MSRB did not intend for the draft amendments to Rule G-20 to apply to municipal advisors in a different manner than the rule currently applies to dealers. The difference in wording between draft Rule G-20(a)(ii) (applicable to municipal advisors) and Rule G-20(a)(i) (applicable to dealers) was not substantive. However, the MSRB has determined to revise the draft amendments to Rule G-20 to clarify that dealers and municipal advisors are subject to the same gift limits. Those revisions are reflected in the proposed amendments to Rule G-20(a).

For the avoidance of doubt, the proposed amendments to Rule G-20 that are part of the proposed rule change use the word "gift," rather than "payment" in section (a). Such amendment would clarify that the thing or service of value to be given would have to be an actual gift and not payments and/or costs associated with normal business activities of the municipal advisor or the dealer. Because of the use of the term "gift," the proposed amendments would remove references to the terms "gratuity" and "gratuities," which are subsumed within the term "gift."

Comment: The MSRB should clarify that references to "persons" in the rule mean "natural persons," consistent with previous MSRB interpretive guidance.[17] This change would have the effect of permitting charitable contributions without violation of the rule.

MRC requested that the MSRB speak directly to the issue of charitable contributions by incorporating language addressing such concerns in Rule G-20, or in guidance applicable to either Rule G-20 or Rule G-17, that charitable contributions are not gifts for purposes of Rule G-20 and are not covered by Rule G-20 because Rule G-20 only covers gifts to natural persons. MRC also stated that it is unclear if certain charitable (or similar) contributions might constitute an unfair practice and thereby cause a municipal advisor making the contribution to violate Rule G-17. NAIPFA also requested guidance and clarification regarding charitable contributions that are made either as a result of a solicitation from an employee or elected official of a municipal entity or with a view toward influencing the decision-making of an employee or elected official of a municipal entity.

MSRB Response: The MSRB believes that the concerns raised by MRC will be addressed by amendments to the rule that would change the term "persons" to "natural persons." Such amendment would clarify that Rule G-20 covers gifts to individuals and not organizations. In response to the concerns raised by MRC and NAIPFA, the Board

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[17] The MSRB has previously stated that, for purposes of Rule G-20, the term "person" refers only to a natural person and that Rule G-20 is intended to discourage municipal securities professionals from attempting to induce individual employees from acting in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. See Rule G-20; Interpretive Letter, "Person" (March 19, 1980).

has previously determined that the occasional pay to play problems that might be associated with the solicitation of charitable contributions by issuers do not outweigh the benefits of such contributions and that such restrictions would have a negative impact on charitable giving. The proposed rule change does not address gifts under Rule G-17. The MSRB will take MRC's comment regarding the potential applicability of Rule G-17 to gifts under advisement for when it considers future interpretations of Rule G-17.

Comment: The draft amendments to Rule G-20 should include an exception to the prohibition of gifts, grants, loans, and other financial assistance or services by a section 501(c)(3) organization within its exempt purpose for the benefit of other nonprofit corporations.

CFC stated that the proposed rulemaking should include an exception to the prohibition on payments for any thing of value donated by a municipal advisor that is a nonprofit entity as previously determined by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, so long as such donation is within the exempt purpose of such entity.

MSRB Response: The MSRB has determined to use the term "natural person," which has the effect of permitting gifts to be made to organizations.

Comment: The draft amendments to Rule G-20 should prohibit gift giving and/or provide an annual cap for de minimis gifts in order to prevent pay to play activities under the rule.

Mr. Fisher suggested a general prohibition on gifts under draft Rule G-20(a), subject to a $100 safe harbor for de minimis gifts. NAIPFA recommended a prohibition on occasional gifts and, along with WM Financial, suggested an annual gift or gratuity

maximum of $100 with the aggregate of all gifts, gratuities, and entertainment not to exceed $250 annually.

MSRB Response: Rule G-20 is intended to prevent commercial bribery and certain activities, such as excessive gift giving, from influencing dealer and municipal advisor selection. The purpose of the proposed amendments to Rule G-20 is only to extend the existing rule to municipal advisors. The proposed amendments would not impose more stringent limitations at this time. However, should the MSRB become aware of abusive behavior in this area, it might determine to revisit these comments.

Comment: The draft amendments should apply to gifts to family members of issuer personnel because such gifts can be problematic.

NAIPFA stated that the proposed amendments to Rule G-20 should apply to gifts and gratuities given to family members of issuer personnel.

MSRB Response: The MSRB has previously stated that the intent of the rule is not to restrict social relationships that do not suggest impropriety.[18] The MSRB believes that an expansion of the rule to family members, as suggested by NAIPFA, would unduly burden dealers and municipal advisors. The MSRB notes, however, that both the existing rule and the proposed amendments prohibit indirect, as well as direct, gifts. A gift to a family member of someone in a position to award business to a municipal advisor would violate the rule if it was indirectly a gift to the person awarding the business and it violated the rule's limits.

Comment: The draft amendments to Rule G-8 (on books and records) are burdensome and unnecessary because they would require municipal advisors to

[18] See File No. SR-MSRB-77-12.

collect all third party employment and service agreements of any kind. In addition, the draft amendments to Rule G-8 do not require reporting of gifts made under existing Rule G-20(b) or the draft amendments to Rule G-20(b).

PFM stated that the draft recordkeeping requirements increase the data-collection burden of municipal advisors to collect all third party employment and service agreements of any kind. NAIPFA stated that the fact that existing Rule G-8 and the draft amendments to Rule G-8 do not require the reporting of gifts made under Rule G-20(b) exacerbates the potential for pay to play as it relates to such "occasional gifts" that are permitted under the rule.

MSRB Response: The MSRB has determined not to make changes to Rule G-20 as a result of PFM's comment in order to maintain consistency of the recordkeeping requirements of the rule for dealers and municipal advisors. The MSRB notes that records of employment agreements need only be kept if a municipal advisor is employing some other person's employee, such as an obligated person client's employee. The MSRB also notes that the recordkeeping requirements would facilitate municipal advisor compliance with proposed Rule G-20 and assist enforcement agencies in monitoring compliance with the rule.

The MSRB has considered NAIPFA's comment and has determined to require municipal advisors and dealers to maintain records of all gifts provided under Rule G-20. Rule G-8 does not currently require recordkeeping of gifts that are described in Rule G-20(b) (e.g., tax deductible business meals and entertainment).[19] While gifts provided under Rule G-20(b) must not be so frequent or so extensive as to raise any question of

[19] Records of gifts under Rule G-20(a) are required to be kept.

propriety, the MSRB believes records of such gifts would assist with enforcement efforts. The proposed amendments would likely not be burdensome because, in most cases, records are already kept of such gifts when reimbursement is sought, even if only for federal income tax purposes. Therefore, from a practical standpoint, the amendments would merely add a requirement that records of such gifts be kept even though reimbursement is not sought. Accordingly, the recordation of all gifts that are given or permitted to be given under Rule G-20 would be required under Rule G-8(a)(xvii)(A) as it applies to dealers and proposed Rule G-8(h)(ii) as it applies to municipal advisors.

Comment: The MSRB should confirm that (i) guidance under existing Rule G-20 applies to all provisions of the proposed rulemaking and (ii) relevant FINRA guidance would be applicable to the rule as amended as it has previously applied to the existing rule.

SIFMA requested that the MSRB reiterate its intent to apply relevant FINRA guidance to the proposed amendments. SIFMA also requested that the MSRB confirm that existing guidance under Rule G-20 applies to all provisions of the proposed rule change.

MSRB Response: The MSRB has previously provided that FINRA and NASD interpretations of comparable provisions of their gifts rules will apply to dealers unless otherwise specified by the MSRB.[20] While the MSRB believes that the existing FINRA and NASD interpretations should also be applicable to municipal advisors, new FINRA interpretations of its gifts rule will not automatically be applicable to municipal advisors. The MSRB plans to post links to the existing interpretations on its website. From time to

[20] See File No. SR-MSRB-2005-02.

time, the MSRB may post links to new FINRA interpretations if the MSRB determines that they should be applicable to municipal advisors.

The MSRB intends that existing MSRB interpretive guidance under Rule G-20 would be equally applicable to Rule G-20, as amended by the proposed rule change.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2011-10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities

and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MSRB-2011-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://ww.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2011-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy
Secretary

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[21] 17 CFR 200.30-3(a)(12).

MSRB
Municipal Securities
Rulemaking Board

MSRB NOTICE 2011-16 (FEBRUARY 22, 2011)

REQUEST FOR COMMENT ON GIFTS AND GRATUITIES RULE FOR MUNICIPAL ADVISORS

The Municipal Securities Rulemaking Board ("MSRB") is requesting comment on draft amendments to MSRB Rule G-20 (on gifts and gratuities), which would apply the rule to municipal advisors, as well as associated draft amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The text of the draft amendments is set forth below.

Comments should be submitted no later than April 5, 2011. Comments should be sent via e-mail to CommentLetters@msrb.org. Please indicate the notice number in the subject line of the e-mail. To submit comments via regular mail, please send them to Ronald W. Smith, Corporate Secretary, MSRB, 1900 Duke Street, Alexandria, VA 22314. Written comments will be available for public inspection on the MSRB's web site.

Questions about this notice should be directed to Peg Henry, Deputy General Counsel, or Leslie Carey, Associate General Counsel, at 703-797-6600.

BACKGROUND

Existing MSRB Rule G-20. Rule G-20 was adopted by the MSRB to prevent brokers, dealers, and municipal securities dealers ("dealers") from attempting to induce other organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of the organizations, including but not limited to acts of commercial bribery, [1] and to help to ensure that dealers' municipal securities activities are undertaken in arm's length, merit-based transactions in which conflicts of interest are minimized.

The MSRB has interpreted Rule G-20 to preclude the payment by dealers of "excessive or lavish" entertainment or travel expenses of issuer personnel, as follows:[2]

> Payments of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities.

Dodd-Frank Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") [3] authorized the MSRB to establish a comprehensive body of regulation for all municipal advisors.[4] The Dodd-Frank Act requires the MSRB to adopt rules for municipal advisors that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.[5] It also expands the mission of the MSRB to include the protection of municipal entities[6] and obligated persons in addition to the protection of investors and the public interest.

DRAFT AMENDMENTS TO MSRB RULE G-20

Pursuant to the authority granted to it by the Dodd-Frank Act, the MSRB is requesting comment on draft amendments to Rule G-20. Just as the existing rule helps to ensure that dealers' municipal securities activities are undertaken in arm's length, merit-based transactions in which conflicts of interest are minimized, the MSRB seeks to reduce the potential for conflicts of interest in municipal advisory activities.[7] The draft amendments to Rule G-20 would help to ensure that engagements of municipal advisors, as well as engagements of dealers, municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business.

The draft amendments to Rule G-20 would make the rule applicable to municipal advisors and would:

- prohibit municipal advisors from giving or permitting to be given, directly or indirectly, any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of the municipal advisor, if such payments or services are in relation to the municipal advisory activities of the municipal advisor (including, but not limited to, the solicitation of potential engagements on behalf of the municipal advisor, even if such municipal advisor is not then undertaking any municipal advisory activities with such person);[8]
- provide certain exemptions from the above prohibition, including: (i) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the municipal advisor; (ii) legitimate business functions sponsored by the municipal advisor that are recognized by the Internal Revenue Service as deductible business expenses; or (iii) gifts of reminder advertising, provided that such gifts must not be so frequent or so extensive as to raise a suggestion of unethical conduct; and[9]
- permit contracts of employment or compensation for services rendered by a person other than an employee of the municipal advisor; provided that there is a written agreement[10] between the municipal advisor and the person who is to perform such services, prior to the time of employment or before the services are rendered.[11]

Municipal advisors would not be subject to Rule G-20(d), which relates to non-cash compensation in connection with primary offerings.

The "municipal advisory activities" of the municipal advisor covered by draft Rule G-20(a)(ii) would include both advice provided to municipal entities and obligated persons and solicitations of municipal entities on behalf of third parties. For example, the draft rule would apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities and obligated persons for which the municipal advisor is providing advice or seeking to provide advisory services. It would also apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities being solicited by a municipal advisor to award business to a client of the municipal advisor (*e.g.*, employees of a public pension fund who could influence the pension fund's decision to invest in a private equity fund represented by the municipal advisor). The draft rule language clarifies that, even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or obligated person, a gift or gratuity that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the future also would be covered by the provisions of draft Rule G-20.

DRAFT AMENDMENTS TO MSRB RULES G-8 and G-9

The amendments to Rule G-20 would necessitate conforming amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rule G-8 would require municipal advisors to create and maintain records of any gifts and gratuities referred to in Rule G-20 and all agreements for services referred to in Rule G-20 along with the compensation paid as a result

of such agreements. The proposed amendments to Rule G-9 would require municipal advisors to preserve records required to be made pursuant to the proposed amendments to Rule G-8. The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to the recordkeeping and record retention requirements to which dealers are already subject under existing Rule G-20.

REQUEST FOR COMMENT

The MSRB requests comments on (i) the draft amendments to Rule G-20 and (ii) the associated draft amendments to Rules G-8 and G-9. Commenters should note that the draft amendments to Rule G-20 are based upon the statutory definition of municipal advisor set forth in Dodd-Frank without regard to any interpretation of that term proposed by the SEC in its proposed permanent registration rule for municipal advisors (Exchange Act Release No. 34-63576 (December 20, 2010). If the SEC's permanent registration rule is adopted in its current form, the MSRB may request comment on revisions to the draft amendments.

February 22, 2011

*****

TEXT OF DRAFT AMENDMENTS TO RULE G-20[12]

Rule G-20: Gifts, Gratuities and Non-Cash Compensation

(a) *General Limitation on Value of Gifts and Gratuities.*

> **(i) *Brokers, dealers, and municipal securities dealers.*** No broker, dealer or municipal securities dealer shall, directly or indirectly, give or permit to be given any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of such broker, dealer or municipal securities dealer, if such payments or services are in relation to the municipal securities activities of the employer of the recipient of the payment or service. For purposes of this rule the term "employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.
>
> **(ii) *Municipal advisors.* No municipal advisor shall, directly or indirectly, give or permit to be given any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of such municipal advisor, if such payments or services are in relation to the municipal advisory activities of (including but not limited to solicitation of potential engagements on behalf of) the municipal advisor.**

(b) *Normal Business Dealings.* Notwithstanding the foregoing, the provisions of section (a) of this rule shall not be deemed to prohibit occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the broker, dealer, ~~or~~ municipal securities dealer**, or municipal advisor**; the sponsoring by the broker, dealer, ~~or~~ municipal securities dealer**, or municipal advisor** of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses; or gifts of reminder advertising; provided, that such gifts shall not be so frequent or so extensive as to raise any question of propriety.

(c) *Compensation for Services.* Notwithstanding the foregoing, the provisions of section (a) of this rule shall not apply to contracts of employment with or to compensation for services rendered by another person; provided, that there is in existence prior to the time of employment or before the services are rendered a written agreement between the broker, dealer, ~~or~~ municipal securities dealer**, or municipal advisor** subject to this rule and the person who is to perform such services; and provided, further, that

such agreement shall include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

(d) No change.

* * * * * *

TEXT OF DRAFT AMENDMENTS TO RULES G-8 AND G-9

Rule G-8: Books and Records to be Made by Brokers, Dealers, ~~and~~ Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records Concerning Compliance with Rule G-20.* Each municipal advisor shall maintain:

(i) a separate record of any gift or gratuity referred to in Rule G-20(a); and

(ii) all agreements referred to in Rule G-20(c) and all compensation paid as a result of those agreements.

Such records shall be maintained in the manner described in subsection (b) of this rule.

* * * * * *

Rule G-9: Preservation of Records

(a) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor shall preserve for no less than six years the records regarding information on gifts and gratuities and employment agreements required to be maintained pursuant to Rule G-8(h). Such records shall be accessible and available as required by subsection (d) of this rule and retained in the manner required by subsection (e) of this rule.

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[1] *See* MSRB Notice 2004-17 (June 15, 2004).

[2] *See* Rule G-20 Interpretation -- Dealer Payments in Connection with the Municipal Securities Issuance Process (January 29, 2007); see also *In the Matter of RBC Capital Markets*, SEC Rel. No. 34-59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G-20 and G-17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital, L.L.C.*, SEC Rel. No. 34-60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] "Municipal advisor" is defined in Section 15B(e)(4) of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act (the "Exchange Act"), as "a person (who is not a municipal entity or an employee of a municipal entity) that: (i) provides advice to or on behalf of a municipal entity or obligated

person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity.

[5] *See* Section 15B(b)(2)(C) of the Exchange Act.

[6] "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act as "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities."

[7] MSRB Rule D-13 defines the term "municipal advisory activities" by reference to Section 15B(e)(4)(A) of the Securities Exchange Act of 1934 (the "Exchange Act") (*i.e.*, (i) providing advice to municipal entities or obligated persons on municipal financial products or the issuance of municipal securities and (ii) solicitations of municipal entities on behalf of others).

Section 15B(e)(9) of the Exchange Act defines the term "solicitation of a municipal entity or obligated person" to mean: "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity."

[8] *See* draft Rule G-20(a)(ii).

[9] *See* draft Rule G-20(b).

[10] The written agreement must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

[11] *See* draft Rule G-20(c).

[12] Underlining indicates additions; strikethrough indicates deletions.

Alphabetical List of Comment Letters on MSRB NOTICE 2011-16 (February 22, 2011)

Catholic Finance Corporation: Letter from Michael P. Schaefer, Executive Director, dated April 5, 2011.

Catholic Finance Corporation: Letter from Michael P. Schaefer, Executive Director, dated February 16, 2011.

Fisher, Robert: E-mail dated April 6, 2011.

Municipal Regulatory Consulting: Letter from David Levy, Principal, dated April 1, 2011.

National Association of Independent Public Finance Advisors: Letter from Colette J. Irwin-Knott, dated April 1, 2011.

Public Financial Management: Letter from Joseph J. Connolly, Counsel, dated April 4, 2011.

Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 5, 2011.

WM Financial Strategies: Letter from Joy A. Howard, Principal, dated April 2, 2011.

Catholic Finance
CORPORATION

Financial Advisor to Catholic Institutions

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April 5, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314
Via email: commentletters@msrb.org

Re: MSRB Notice 2011-16 (February 22, 2011) Request For Comment on Gifts and Gratuities Rule for Municipal Advisors

Dear Mr. Smith:

The following comments are submitted by Catholic Finance Corporation ("CFC") to the Municipal Securities Rulemaking Board ("MSRB") relating to MSRB Notice 2011-16 (February 22, 2011) with respect to the proposed amendments to MSRB Rule G-20 (on gifts and gratuities) as they apply to municipal financial advisors, as well as associated draft amendments to MSRB Rule G-08 (on books and records) and to MSRB Rule G-09 (on preservation of records). CFC appreciates the opportunity to respond to the request for comments by the MSRB.

CFC is a nonprofit corporation and has been determined to be an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Tax Code") under the group determination letter of the Internal Revenue Service to the United States Conference of Catholic Bishops by inclusion in the Official Catholic Directory. CFC was formed to provide financial assistance and financial advisory services to other entities within the Catholic Church. Some of the services provided by CFC are municipal advisory services to obligated persons.

This background is presented to provide the context for our comments which relate to nonprofit advisors, advisors created to provide services to a group of related nonprofit entities as obligated persons rather than the actual political subdivision issuing the municipal securities. Additional specificity or clarification in the rules is requested with respect to some unique aspects of municipal advisory activities of the above-described municipal advisors.

CFC has no objection to the regulation of gifts, gratuities and non-cash compensation generally. However, while the proposed rule appears to address only gifts and gratuities commonly described and understood as "business gifts or entertainment" for individuals

involved in a business transaction, some of the prohibitions could extend to practices which should not be covered by this rule.

As part of its tax exempt purpose, CFC, as a nonprofit corporation, provides many services other than those considered to be municipal advisory. In particular, a non-profit advisor may receive donations to be used to provide financial assistance directly to its client group. This assistance can include grants and gifts of cash or services, loans at market or subsidized interest rates, providing additional collateral reserve funds, or other support for third-party loans. In addition, accounting, budgeting, financial modeling, debt management and other consulting services, as well as the municipal advisory services to the obligated person may be provided free of cost or at significantly reduced rates. While these items are arguably gifts, it is not the type of gift that should be included in the proposed rule and can be defined narrowly enough to be a very limited exception to the proposed rule.

We request that gifts, grants, loans and other financial assistance or services given by a 501(c)(3) nonprofit entity within its exempt purpose be expressly excluded from this proposed rule. A specific recognition of an exclusion is requested for such grants, to the extent undertaken within the exempt purpose of an entity described in Section 501(c)(3) of the Tax Code. The difficulty of determining under the proposed rule whether it applies to the recipient of the services or only to its employees or whether such financial assistance or services violate the proposed rules may be sufficient to cause a chilling effect on charitable activities. This is particularly important as the municipal advisory activities are generally a small part of the total services provided to any particular entity.

We are not requesting that all gifts to the recipient of the financial advisory services be excluded. Gifts or pricing arrangements to provide municipal advisory services by for-profit entities not in the course of their normal business dealings and not a principal purpose of the entity may be an appropriate area of regulation.

With respect to the proposed compensation for service provisions, the scope of the rule appears to apply to any person other than the municipal advisory entity itself. The employees of the municipal advisor should be expressly excluded for any work within their scope of employment. There normally would not be a separate written agreement with respect to compensation or work done on any particular engagement of the municipal advisor. Further, within context of a nonprofit municipal advisor which is part of a group of related nonprofit organizations, employees of one nonprofit may undertake some work done by the municipal advisor. So long as the person providing the services is not an employee of the entity receiving the municipal advisory services, but is an employee or has a contract with a related nonprofit entity to the municipal advisor, such person should not fall within the scope of the proposed rule.

We thank you for your thoughtful consideration.

Sincerely,

Michael P. Schaefer
Executive Director

cc Paul Tietz, Briggs and Morgan

Catholic Finance
CORPORATION

Financial Advisor to Catholic Institutions

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February 16, 2011

Municipal Securities Rulemaking Board
1900 Duke Street Suite 600
Alexandria, VA 22314

Re: MSRB Rule G-20 Exemption

Dear MSRB Board of Directors and Staff:

In connection with the recently required registration of municipal financial advisors, there is a proposal to amend MSRB Rule G-20 to include municipal financial advisors within its pay to play proscriptions. While we do not disagree with this proposal generally, the municipal market may have unique features which need to be specifically accommodated.

While existing Rule G-20 does contain exceptions for miscellaneous insignificant payments in the ordinary course of business, which should be extended to municipal financial advisors, we are a nonprofit entity, a principal portion of whose exempt purpose is providing free or below market services as well as cash or tangible property to other nonprofit corporations. Most of the services provided are unrelated to any advice with respect to municipal securities. The acceptability of providing such services and other charitable contributions from another nonprofit entity should be specifically acknowledged as acceptable to avoid any confusion.

Specifically, I represent Catholic Finance Corporation (CFC) which was formed by the Archdiocese of Saint Paul and Minneapolis as a Minnesota nonprofit corporation and determined to be a corporation described in Section 501(c)(3) of the Internal Revenue Code by complying with the procedures under the group ruling to the United States Conference of Catholic Bishops and being included in the Official Catholic Directory.

CFC was established to provide various services and contributions to the over 200 other nonprofit corporations comprising the Archdiocese and to other nonprofit corporations comprising the greater Catholic Church in the United States generally. The services include advice and services with respect to financial planning, modeling and budgeting, as well as with respect to the incurrence, management and restructuring of debt, most of which is taxable private bank lending.

However, CFC does also advise nonprofit entities, as obligated persons, with respect to conduit municipal securities, primarily qualified 501(c)(3) bonds. An example of such services would be advising a separate Archdiocese community charitable nonprofit corporation in connection with financing a new homeless shelter and related shelter housing. Our other work includes accounting,

record keeping and budgeting advice and support to many of the over 200 parishes in the Archdiocese, most of which is done without charge. These facts may not be common in the corporate finance area.

We request that an exception to the prohibition of payments in Rule G-20 be drafted to include anything of value donated by a municipal financial advisor which is a nonprofit entity previously determined to be an entity described in Section 501(c)(3) of the Tax Code so long as such donation is within the exempt purpose of the nonprofit corporation.

Respectfully submitted,

Michael P. Schaefer
Executive Director

From: Robert Fisher
Sent: Wednesday, April 06, 2011 11:00 AM
To: Comment Letters
Subject: MSRB Notice 2011-16: Request for Comment on Gifts and Gratuities Rule for Municipal Advisors

Ladies and Gentlemen:

The thrust of proposed MSRB Rule G-20(a)(ii), the part of the rule that provides the base direction to municipal advisors, is entirely different from that part if the rule directed at brokers, dealers and municipal securities dealers (i.e. Rule G-20(a)(i)). Whereas G-20(a)(i) deals with payments related to the payee's municipal activities, G-20(a)(ii) deals with payments related to the payor's municipal activities, a 180° change in direction. It is difficult to see how a municipal advisor could conduct business at all and comply with the proposed rule as it is now written – purchase supplies, pay rent, consult a lawyer or another municipal advisor for compensation (without a specific contract being entered into prior to the consultation), because payment for all of these would be "in relation to the municipal advisory activities of the municipal advisor" (and could not really be described as "the sponsoring by the … municipal advisor of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses", which most likely refers to sponsored receptions or cocktail parties).

If the purpose of the amendments is help ensure that engagements of municipal advisors are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business, why not simply prohibit such gifts in Rule G-20(a)(ii), and provide a $100 safe harbor for *de minimis* gifts (which would cover the odd working lunch or two)?

I do not plan on bribing anybody and I fully support all reasonable efforts to prevent any unscrupulous competitors from doing so, but I am concerned that, taken literally (and I believe strongly that rules should be written so as to be capable of literal interpretation), the proposed rule as written may be unworkable and may prevent all sorts of necessary payments that have nothing at all to do with bribery.

Yours sincerely,

Robert Fisher

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Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

April 1, 2011

Sent via email to CommentLetters@msrb.org

Re: MSRB Notice No. 2011-16

Dear Mr. Smith:

Thank you for the opportunity to comment on proposed amendments to MSRB Rule G-20. Municipal Regulatory Consulting LLC is a professional consulting firm serving the municipal securities industry. In providing regulatory advice to municipal advisors and broker-dealers, I am sometimes called upon to interpret rules of the MSRB and other agencies or SROs. More to the point, my clients often seek advice about how to apply those rules in the context of their business.

Among the questions I am sometimes asked is whether there is any guidance now (or proposed to be) applicable to municipal advisors that tells them how they (or even if they) should look at charitable and similar contributions. Because there is nothing directly on point, I propose that the MSRB speak directly to the issue by either incorporating into Rule G-20 itself or in guidance applicable to either Rule G-20 or to Rule G-17 that charitable contributions are not gifts for purposes of Rule G-20 or are not covered by Rule G-20 because Rule G-20 covers only gifts to natural persons. Furthermore, the MSRB should directly acknowledge that there is FINRA guidance with respect to charitable contributions and either adopt it, modify it or state that it is not applicable to charitable and similar contributions for purposes of Rule G-20 or Rule G-17.

Discussion

1. Application of Existing Guidance Under Rule G-20

Proposed Rule G-20 would extend to municipal advisors the gift ban that has been applicable to dealer firms, but the MSRB uses different language than that which applies to dealers. The applicable provision reads:

> *No municipal advisor shall, directly or indirectly, give or permit to be given any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of such municipal advisor, if such payments or services are in relation to the municipal advisory activities of (including but not limited to solicitation of potential engagements on behalf of) the municipal advisor.*

Nothing in the existing or amended rule or in the proposing release mentions charitable contributions nor are they addressed directly in any interpretation. Accordingly, one could interpret the Rule to prohibit a municipal advisor from making a charitable contribution to, *e.g.*,

the United Way, that was solicited by the Mayor of a town with which the advisor is seeking to do municipal advisory business on the grounds that it qualifies as "payment . . . in relation to the municipal advisory activities . . . of the municipal advisor."

However, MSRB guidance dating back to 1980 appears to resolve the issue by differentiating gifts to natural persons from gifts to entities.

> *"Person." Your letter regarding rule G-20 has been referred to me. Rule G-20 prohibits a municipal securities professional from giving gifts or providing services to a person in relation to the municipal securities activities of such person's employer, in excess of a specified amount.*
>
> *In your letter, you inquire whether the term "person" in rule G-20 is intended to include "a 'corporate' person as well as a 'real' person." As used in the rule, the term "person" refers only to a natural person. The rule is intended to discourage municipal securities professionals from attempting to induce individual employees from acting in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. MSRB interpretation of March 19, 1980.*

The idea, apparently, is that dealers should not be giving gifts to, for example, the portfolio manager of an institutional investor for fear that it would influence the PM's buying decisions when those decisions ought to be based solely on what is best for the institutional account. Based upon this guidance, it appears that the payment to which I referred in the example set forth above would not qualify as a gift because it was made to an entity (the United Way) and not to an individual. However, because the rationale, *i.e.*, "intended to discourage . . . employees from acting in a manner inconsistent with their obligations to . . . their employers," does not really apply in the context of charitable contributions, the issue is not entirely free from doubt.

For the same reason, contributions or payments to quasi-public but not charitable entities solicited by issuer officials or persons on the board of or employed by an obligated person might raise concerns. For example, an issuer official might solicit a contribution to an association of similar officials, such as a state association of school administrators or a state association of county treasurers. Or the CFO of an obligated person hospital who is also on board of the local Chamber of Commerce might solicit a contribution to support a golf tournament to benefit the town's Little League. In all of these or any number of similar situations, there is the potential that paying – or not paying – could influence (or be perceived to influence) a business decision that is supposed to be based solely on merit.

2. Application of Existing FINRA Guidance

When the MSRB proposed amending Rule G-20 in 2005, in its proposing submission to the SEC it said

> *the MSRB intends generally that the provisions of Rule G-20 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. Thus, relevant NASD interpretations would be presumed to apply to the comparable MSRB provision, subject to the MSRB's right to make distinctions when necessary and*

appropriate in the context of municipal fund securities and other primary offerings of municipal securities.

The NASD and NYSE (now FINRA) jointly issued Notice to Members 06-21 (the "Notice") in May 2006. The Notice addressed the "solicitation of substantial charitable contributions by employees or agents of a customer acting in a fiduciary capacity" and noted that such solicitation "raises potential conflicts of interest that deserve careful consideration by members." The Notice goes on to suggest "some of the policies and procedures that firms should consider adopting to address these conflicts."

By its terms, the Notice clearly does not apply to municipal advisors who are not FINRA members, nor does it refer to or purport to be an interpretation of any existing NYSE, NASD or other rule. Accordingly, the Notice does not seem to qualify as an interpretation of an analogous SRO rule that might apply to Rule G-20 and therefore does not nor or would not apply to municipal advisors.[1]

3. Need for Specific Guidance

I believe the better argument based on the existing guidance is that charitable contributions - even those that appear on their face to be related to the "municipal advisory activities" of a municipal advisor - would not be considered to be gifts for purposes of Rule G-20 because they are not given to natural persons. I also believe that is the correct result even if the stated rationale for drawing the natural person/corporate entity distinction does not really apply. Charitable contributions are simply not gifts just as they are not political contributions for purposes of Rule G-37.[2]

What is unclear is if certain charitable (or similar) contributions – or the circumstances giving rise to them – might constitute an unfair practice and thereby cause the advisor making the contribution to violate Rule G-17. Indeed, even before the MSRB issued specific guidance with regard to certain practices relating to the entertainment of municipal officials, firms were cited for violating either or both of Rules G-20 and G-17 for practices not specifically prohibited by either Rule.[3]

There is no need or reason for any uncertainty in this area. Given the potential that all parties subject to MSRB rules might find that making these payments could subject them to liability for violating the fair dealing standards of Rule G-17, and given that these situations arise routinely in the normal course of business, the MSRB should provide clear guidance to the industry so that all parties know what they may or may not do.

[1] Compare with NASD Guidance on Rule 3060, specifically cited by the MSRB and made applicable to Rule G-20 in January 2007. http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-20.aspx?tab=2

[2] The MSRB has already made clear that charitable contributions are not political contributions for purposes of Rule G-37. See Q&A IV.5, May 1994.

[3] See fn 1, and cases cited therein.

Conclusion

The Board should state as clearly as it did in the context of Rule G-37 that charitable contributions are not gifts for purposes of Rule G-20, and should provide guidance on when and under what circumstances charitable contributions or contributions/payments solicited by issuer officials are or might be a violation of Rule G-17. It can do this either by reference to the existing FINRA guidance, or by issuing guidance of its own under Rule G-20 or under Rule G-17. This guidance should be issued for comment, so that not only dealers and advisors, but charities and issuers, have the opportunity to weigh in on the potential ramifications of any decision that would limit these contributions.

Thank you again for the opportunity to address this issue. If you have any questions, I will be happy to expand upon or clarify my comments.

Very truly yours,

David Levy, Principal

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April 1, 2011

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice No. 2011-16

Dear Mr. Smith:

The National Association of Independent Public Financial Advisors ("NAIPFA") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board ("MSRB") on proposed Rule G-20.

NAIPFA, founded 21 years ago, is an organization comprised of independent public finance advisory firms located across the nation. Our member firms solely and actively represent the interests of issuers of municipal securities.

Comment

In principle, NAIPFA supports any rule that bans or curtails the ability of brokers, dealers, municipal securities dealers ("dealer") and municipal advisors to influence a municipal entity's decision-making process through gifts, political contributions, entertainment or the like. NAIPFA welcomes proposed Rule G-20 (the "Rule") which attempts to limit the practice of gaining influence through the use of gifts and gratuities. However, NAIPFA believes that the Rule does not go far enough and leaves open many opportunities for abuse and, therefore, should be further amended.

Under the Rule, dealers as well as municipal advisors may give gifts and gratuities that have a value under "$100 per year to a person other than an employee or partner".[1] However, the Rule also states that "occasional gifts" of things such as "meals or tickets to theatrical, sporting or other entertainments" are exempt from the $100 per year per person cap.[2] By exempting items such as meals and tickets to theatrical, sporting and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse. Although the Rule limits the meals and tickets that may be provided by the qualifying term "occasional", neither the Rule nor any interpretative guidance define the term. Thus, the possibility exists that at any given time an individual could receive gifts and gratuities well in excess of $100. For example, a $100 item could be given as a gift, while the individuals are sitting down for dinner after having been treated to 18 holes of golf. The aggregate value of the gift, meal and entertainment given to this individual would be well in excess of the $100 limit **but would be acceptable** under the Rule. The potential for pay-to-play is further enhanced by the fact that this individual could be the recipient of additional meals and entertainment throughout the year. The effect of this reality is that dealers and

[1] Current and proposed MSRB Rule G-20(a).
[2] Current and proposed MSRB Rule G-20(b).

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municipal advisors who are willing to provide gifts and gratuities exempt from the $100 per year per person limit, will likely be able influence decisions without violating the Rule.

Further exacerbating the potential for pay-to-play is the fact that both prior Rule G-8 and proposed Rule G-8 do not require reporting of gifts made under section (b) of current and proposed Rule G-20.[3] Historically, the MSRB has taken a hands off, see no evil, hear no evil approach to "occasional gifts" and now seeks to continue this practice. Because the MSRB has chosen not to require reporting of "occasional gifts", the result has been, and under proposed rule G-8 and G-20 will continue to be, that dealers and municipal advisors are allowed to give practically an unlimited amount of "occasional gifts".

NAIPFA agrees with the MSRB that "[p]ayments of excessive or lavish entertainment or travel expenses [...] can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel."[4] Therefore, NAIPFA suggests that the Rule be further amended to reflect NAIPFA's and the MSRB's mutual belief that gifts to family members of issuer personnel can be problematic. To accomplish this, NAIPFA suggests that the Rule specifically state that it applies to gifts and gratuities given to family members of persons not employed by or partners of dealers or municipal advisors.

NAIPFA disagrees with the non-uniform standard put forth by the MSRB regarding the gifts and gratuities given by dealers versus municipal advisors. In drafting the Rule, the MSRB has sought to curtail gifts and gratuities given by municipal advisors for the purpose of soliciting municipal advisory business, while leaving the rule for dealers unchanged. The MSRB has placed no similar limitation on dealers, and therefore we can assume that it is the MSRB's intention to allow gifts and gratuities given by dealers for the purpose of soliciting municipal securities business to be exempt from the Rule.[5] NAIPFA believes that this is an unacceptable double-standard and that gifts and gratuities given by both dealers and municipal advisors for the purpose of soliciting municipal securities/advisory business should be included under section (a) of Rule G-20.

Accordingly, because of the likelihood that pay-to-play has occurred under current Rule G-20 and will continue to occur under proposed Rule G-20, NAIPFA proposes that sections (a) and (b) be amended to read as follows:

> (a) *General Limitations on Value of Gifts and Gratuities.* No broker, dealer, municipal securities dealer, or municipal advisor shall, directly or indirectly, give or permit to be given any single thing or service of value, including but not limited to gratuities and gifts of reminder advertising, meals, and tickets to theatrical, sporting and other entertainments, in excess of $100 with the aggregate value of all such gifts or gratuities given in a year not to exceed $250, to a person, including such person's family, unless the person is an employee or partner of such broker, dealer or municipal securities dealer, if such payments are in relation to the municipal securities or municipal advisory activities (including but not limited to the solicitation

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[3] *See* MSRB Rule G-8(a)(xvii), *Records Concerning Compliance with Rule G-20.*

[4] MSRB Notice 2011-16, *Request for Comment on Gifts and Gratuities Rule for Municipal Advisors* (February 22, 2011).

[5] Nothing in the MSRB's interpretations of G-20 suggests that the term "municipal securities activities", as it is used in Rule G-20, includes the solicitation of municipal securities business. *See, e.g.,* MSRB G-20 Interpretations, *Dealer Payments in Connection With the Municipal Securities Issuance Process* (January 29, 2007); *and* MSRB G-20, *Interpretive Letters* (March 19, 1980 and June 25, 1982).

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or potential engagement of municipal securities or municipal advisory business) of the broker, dealer, municipal securities dealer, or municipal advisor.

(b) *Legitimate Business Functions.* Notwithstanding the foregoing, the provisions of section (a) of this rule shall not be deemed to prohibit the sponsoring by the broker, dealer, municipal securities dealer, or municipal advisor of legitimate business functions, including, but not limited to, educational seminars and conferences, that are recognized by the Internal Revenue Service as deductible business expenses provided, that such legitimate business functions shall not be so frequent or so extensive as to raise any question of propriety.

NAIPFA believes that an aggregate gift and gratuities total of $250 per year per person, without the numerous exceptions currently available under the Rule, will strike the appropriate balance and will address NAIPFA's and the MSRB's desire to limit pay-to-play. In addition, the suggested $250 limit is consistent with the approach taken by the MSRB in drafting Rule G-37, which limits contributions to individuals seeking elected office to $250 if the contributor is able to vote for the individual seeking office. Unlike Rule G-20, which places a low dollar threshold on gifts and gratuities while allowing generous and plentiful exclusions, Rule G-37 places a clear limit of $250 on contributions. The MSRB has determined that a $250 contribution limit is appropriate because it addresses the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. Since the purpose of Rule G-20 and the purpose of G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue influence through gifts and gratuities, or contributions (i.e., pay-to-play), NAIPFA believes that the rules should be written similarly. Therefore, because the MSRB has already determined that a $250 cap is appropriate to curtail abuses relating to political contribution, and because current Rule G-20 allows for gifts and gratuities well in excess of $100 and even $250, proposed Rule G-20 should be amended accordingly.

Further Guidance Requested

NAIPFA respectfully requests that further guidance and clarification be made with regard to charitable contributions that are made either (i) as a result of a solicitation from an employee or elected official of a municipal entity, or (ii) with a view toward influencing the decision-making of an employee or elected official of a municipal entity.

Conclusion

The MSRB acknowledges that its mandate now extends to the "protection of municipal entities".[6] NAIPFA believes that this new mandate is the key to constructing amendments to Rule G-20. If the practices of prior Rule G-20 are allowed to continue (i.e., if firms and individuals are allowed to continue to give an almost limitless amount of gifts and gratuities), the MSRB will fail in its attempt to fulfill its mandate. When employees and elected officials make business decisions that are not based on matters such as qualifications or cost, and instead based on who has given the most lavish gift or gratuity, it is the municipal entity itself that ultimately suffers. Therefore, the MSRB must seek to limit

[6] *See* MSRB Notice 2011-16 (February 22, 2011), *Request for Comment on Gifts and Gratuities Rule for Municipal Advisors.*

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the likelihood that business decisions will be made based on the gifts and gratuities received by employees and elected officials of a municipal entity. To achieve this, NAIPFA respectfully requests that the MSRB eliminate the exclusions found in section (b) of proposed Rule G-20 for "occasional gifts" and put in place a regulatory framework that is consistent with its mandate. To that end, NAIPFA suggests that an annual gift and gratuity cap of $250 would be appropriate and that Rule G-20 be further amended in accordance with the foregoing recommendations.

NAIPFA once again expresses its appreciation for the opportunity to submit its views on the MSRB's proposed Rule G-20. Please feel free to contact me if you have any questions or if further clarification of NAIPFA's comments are necessary.

Sincerely,

Colette Irwin-Knott

Colette J. Irwin-Knott, CIPFA
President, National Association of Independent Public Finance Advisors

cc: The Honorable Mary L. Schapiro, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Michael Coe, Counsel to Commissioner Aguilar
Martha Haines, Assistant Director and Chief, Office of Municipal Securities
Lynnette Hotchkiss, Executive Director, Municipal Securities Rulemaking Board

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April 4, 2011

Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314
Attention: Ronald W. Smith
Corporate Secretary

Re: MSRB Notice 2011-16
(Rules G-20, G-8 and G-9)

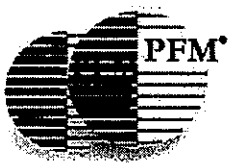
Dear Members:

The Municipal Securities Rulemaking Board ("Board") has requested comments on draft amendments to Rules G-20, G-8 and G-9 as set forth in Notice 2011-16.

I serve as General Counsel to Public Financial Management, Inc. ("PFM"), a municipal advisor registered with the Board. The following comments are submitted on behalf of PFM.

PFM has no comment with respect to the concept that municipal advisors should be obligated to observe the same rules against petty gratuities to obtain or retain clients for their services as are imposed on municipal securities dealers. PFM strenuously objects to the fact that, if the words of the proposed new Rule G-20 provisions mean what they say, the municipal advisory profession can be made to cease to exist, while the securities business of municipal dealers remains unaffected.

We begin with a comparison of Rule G-20(a)(i) with proposed Rule G-20(a)(ii). Under Paragraph G-20(a)(i), applicable to municipal dealers, the dealer is prohibited from providing an impermissible benefit to an individual, not an employee of the dealer, if the benefit is given to an employee of another person "in relation to the municipal securities activities" of the employer of the recipient of the benefit. Thus, without approaching a violation of Rule G-20, a municipal broker may give unlimited payments to affiliate business entities, the employees of affiliates not having municipal securities activities and to a



universe of entities and individuals who could facilitate the broker's municipal business. The fact that Paragraph (i) is not limited to payments without adequate consideration is a drafting omission, but not a crucial defect, because the prohibited payments are only those that are made to the employees of issuers or of other municipal securities businesses. Only as to the employees of issuers of municipal securities or other municipal securities dealers or advisors would the dealer need to resort to Sections (b) or (c) of Rule G-20 to find an exception for the benefit given to the employee.

Proposed Paragraph (ii) of Rule G-20(a), on the other hand, which the Board has created for municipal advisors, would subject to the Rule's limitation of a payment in excess of $100 all payments by a municipal advisor to any person (other than an employee of the advisor) if the payment is in "relation to the municipal advisory activities * * * of the municipal advisor (emphasis added)". As to proposed paragraph (ii) of Rule G-20(a), failure to confine prohibited payments to payments made without adequate consideration, coupled with the fact that the permissibility of the payment is unrelated to the character of the recipient (or, if to an individual, his employer) create a prohibition of such scope that it would shut-down municipal advisors. In the case of an independent municipal advisor, like PFM, everything we do, and every payment we make, can be said to be "in relation to [our] municipal advisory activities." Thus, unlike municipal dealers, a municipal advisor, in compliance with the Board's proposal, could conduct its business only to the extent of expenditures (for market data, or necessary software, or rent, say) in each case under $100 per year or to such as are allowed by Paragraphs (b) or (c) of Rule G-20. Every proper expense of a municipal advisor that is a business entity must be deemed to have been made "in relation to" its advisory activities, because that is what the entity owes to its equity holders. The result described here is not hyperbole. It is not only compelled by the text of the proposed rule, but the Board tells us in the proposing Notice that the future of municipal advisors is in the Board's cross-hairs:

> * * * even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or an obligated person, a gift or gratuity that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the

future also would be covered by the provisions of draft Rule G-20.

It is inconceivable that the Board finds anything in the federal securities laws, including the Dodd-Frank Act, that authorizes the Board to shut-down municipal advisors, and, even if the draconian effect of proposed Rule G-20(a)(ii) is an inadvertent mistake, there is nothing in the federal securities laws, and particularly in the Dodd-Frank Act, which would authorize the Board to impose on municipal advisors a set of restrictions which the Board does not apply to municipal dealers.

In the context of proposed paragraph G-20(a)(ii), the exceptions allowed by Sections G-20(b) and (c) make no sense at all. Even if Sections (b) and (c) operate to relieve the burden of Paragraph G-20(a)(ii), there are a multitude of expenditures of a municipal advisor which have nothing to do with sponsoring educational seminars or employment of third parties or the obtaining of third-party services. More significantly, the proposed addition of Rule G-8(h)(2) would needlessly compound the data-collection burden of municipal advisors to collect all third party employment and service agreements of any kind. That is true because proposed Rule G-8(h)(ii) captures all of the agreements "referred to" in Paragraph G-20(c) without regard to whether any such contracts have any relationship to the substantive provisions of Rule G-20 (although, to be sure, the drafting of a description of such a relationship appears to be nearly impossible). We recognize, of course, that retention of the sort of data required by proposed Rule G-8(h) has been required of municipal securities dealers for some time under Rule G-8(a)(xvii), but in view of the limited scope of present Rule G-20, the burden of collecting agreements which could be exceptions to existing Rule G-20 is insignificant.

There are evident solutions to the manifest failures of the proposals made in Notice 2011-16.

First is that a prohibition applicable to payments by municipal advisors must attach only to gratuitous payments or payments in excess of fair value and must be limited and apply only to payments or furnishing things of value to the personnel of municipal advisory clients of the advisor or of entities of the class which comprehends clients of the advisor, such as municipal entities or obligated persons. In regard to an extension of the concept of Rule G-20 to municipal advisors, the Board has no legitimate interest in payments by a municipal advisor that are in exchange for fair value, and the Board has no

interest in even gratuitous payments by a municipal advisor that are not made to employees or officials of the class described above.

Second, the Board should withdraw proposed Rule G-8(h)(ii). To the extent that a municipal advisor might choose to defend a payment on the basis of a contract for employment or services, that is the registrant's election, not the Board's, and the decision whether to retain such a contract for purposes of evidencing the availability of an exemption under Rule G-20(c) is the Registrant's business, not the Board's. There is no reasonable purpose in the statutorily contemplated regulation of the affairs of a municipal advisor to require the advisor to retain and have available for inspection a document that is not required to be created by the registrant and serves no regulatory purpose other than to evidence the availability of an exemption from a Rule of the Board.

Very truly yours,

Joseph J. Connolly
Counsel

JJC:plj

sifma
Invested in America

April 5, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22134

Re: MSRB Notice 2011-16 Request for Comment on Gifts and Gratuities Rule for Municipal Advisors

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (**"SIFMA"** or **"we"**)[1] welcomes this opportunity to comment on the Municipal Securities Rulemaking Board's (**"MSRB"**) proposed amendments to Rule G-20 (**"proposed amendments"**),[2] which would extend Rule G-20's limitations on gifts and gratuities from brokers, dealers, and municipal securities dealers to gifts from "municipal advisors," a category created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (**"Dodd-Frank Act"**).[3] We commend the MSRB for seeking to adopt a gift limit on municipal advisors that parallels the existing gift limit on brokers, dealers, and municipal securities dealers. In addition, we support the MSRB's decision to adopt a two-stage approach under which it intends to apply Rule G-20 to only those entities and individuals who fit the statutory definition of "municipal advisor" in the Dodd-Frank Act,[4] without regard to the SEC's pending municipal advisor registration rulemaking.[5] As

[1] 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. For more information, visit www.sifma.org.

[2] MSRB Notice 2011-16, Request for Comment on Gifts and Gratuities Rule for Municipal Advisors (Feb. 22, 2011) (**"MSRB Notice 2011-16"**).

[3] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* MSRB Notice 2011-16 at "Request for Comment."

[5] Registration of Municipal Advisors, 76 Fed. Reg. 824, 831-32 (Jan. 6, 2011).

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discussed in our correspondence regarding Proposed Rule G-42,[6] SIFMA believes that this two-stage approach is necessary to give all potentially-regulated parties an adequate opportunity to comment on regulatory changes. Depending upon the SEC's final definition of "municipal advisor," we agree with the MSRB that such a pragmatic approach will provide an opportunity for further comment as needed.

SIFMA supports the MSRB's goal of reducing the risk of conflicts of interest in the award of municipal advisory business by limiting gifts to employees of municipal entities. We write simply to request clarification that the proposed amendments do not exceed the reach of current Rule G-20. We understand that the MSRB intends for the proposed amendments to apply to municipal advisors in the same fashion as Rule G-20 currently does to municipal securities dealers. SIFMA welcomes such an approach, which will promote predictability and consistency across regulatory regimes. To that end, we recommend the MSRB expressly clarify that the proposed amendments to Rule G-20 simply extend the existing Rule G-20 framework, including related Financial Industry Regulatory Authority ("**FINRA**") guidance, to municipal advisors.

I. WE SEEK CONFIRMATION THAT THE DIFFERENCES IN THE TEXT OF THE PROPOSED AMENDMENTS DO NOT BROADEN RULE G-20'S APPLICABILITY

The proposed amendments would create Rule G-20(a)(i)—consisting of the current gift limits on brokers, dealers, and municipal securities dealers—and Rule G-20(a)(ii)—applying the rule's gift limits to municipal advisors. Proposed Rule G-20(a)(ii) on its face differs from the text of current Rule G-20(a), which provides for a $100 gift limit that is triggered when a gift is given "in relation to the municipal securities activities of the employer of the recipient" of the gift.[7] By contrast, proposed Rule G-20(a)(ii) provides that the $100 gift limit for municipal advisors is triggered whenever a gift is given "in relation to the municipal advisory activities of . . . the municipal advisor."[8]

We understand the MSRB proposed this modification to reflect the difference between municipal advisory activities and municipal securities activities. With respect to the latter, a municipal issuer—the "employer of the recipient" of a gift—is itself a market participant engaged in municipal securities

[6] Ltr. from SIFMA to Ronald W. Smith, Corporate Sec'y, MSRB (Feb. 25, 2011) ("**SIFMA G-42 Letter**"), *available at* http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~/media/Files/RFC/2011/2011-04/SIFMA.ashx.

[7] MSRB Rule G-20(a).

[8] Proposed Rule G-20(a)(ii). Of course, the proposed amendments substitutes "municipal advisor" for "broker, dealer or municipal securities dealer" in the text of the existing rule.

activities. Therefore, the gift limit with respect to municipal securities activities can be tied to the activities of the recipient's employer (*e.g.*, the municipal entity). But with respect to municipal advisory activities, the term "municipal advisor" is defined so as to preclude a municipal entity—the employer of the recipient of a gift—from engaging in covered advisory activities.[9] Municipal entities neither advise municipal entities nor solicit municipal advisory business. As a result, the gift limit with respect to municipal advisory activities cannot be tied to the activities of the recipient's employer. Accordingly, we understand that the textual difference between proposed Rule G-20(a)(i) and proposed Rule G-20(a)(ii) is to address the different roles municipal entities play in different markets and that the scope of both provisions is consistent.

SIFMA respectfully requests that the MSRB clarify that the textual difference between proposed Rule G-20(a)(i) and proposed Rule G-20(a)(ii) applies the same scope of coverage to both brokers, dealers, municipal securities dealers and municipal advisors. This clarification would provide regulatory certainty and clear standards for municipal advisors seeking to design appropriately tailored compliance programs.

II. WE SEEK CLARIFICATION THAT EXISTING RULE G-20 AND EXISTING FINRA GUIDANCE APPLY TO THE PROPOSED AMENDMENTS

SIFMA requests that the MSRB confirm that the existing guidance it has issued under Rule G-20 applies to all provisions of the proposed amendments. Most importantly, we ask that the MSRB clarify that its interpretation of "person" to mean only natural persons applies to the proposed amendments to Rule G-20.[10] Under this well-established interpretation under both MSRB and FINRA gift rules, gifts by municipal advisors to individuals would be covered under Rule G-20, but gifts to entities would not be.

We also ask the MSRB to confirm that guidance under the FINRA (and former National Association of Securities Dealers (**"NASD"**)) rules will apply to Rule G-20 wherever relevant. When amending Rule G-20 in 2005, the MSRB stated that it "intends generally that the provisions of Rule G-20 be read consistently with the analogous NASD provisions" and that "relevant NASD interpretations would be presumed to apply to the comparable MSRB provision."[11] We ask the MSRB to reiterate its intent to apply relevant

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[9] *See* MSRB Rule D-13 (defining "municipal advisory activities" as those in 15 U.S.C. §78 o-4(e)(4)(A) (defining "municipal advisor" as an entity which "provides advice to or on behalf of a municipal entity . . . with respect to municipal financial products or the issuance of municipal securities . . . ; or undertakes the solicitation of a municipal entity")).

[10] *See* Rule G-20 Interpretive Letter (Mar. 19, 1980).

[11] *Id.* at 11.

FINRA/NASD guidance to the proposed amendments to Rule G-20, including the guidance to FINRA Rule 3220, which reflects the consolidation of NASD Rule 3060 with NYSE Rule 350.[12]

* * *

SIFMA appreciates this opportunity to comment upon the proposed amendments to Rule G-20. Please do not hesitate to contact me with any questions at (212) 313-1130; or Barbara Stettner and Charles Borden, of O'Melveny & Myers LLP, at (202) 383-5283 and (202) 383-5269, respectively.

Sincerely yours,

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly Hotchkiss, Executive Director
Peg Henry, Deputy General Counsel
Leslie Carey, Associate General Counsel

[12] *See* FINRA Rule 3220.

WM Financial Strategies

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April 2, 2011

Municipal Securities Rulemaking Board
Attention: Ronald W. Smith
Corporate Secretary
1900 Duke Street Suite 600
Alexandria, VA 22314

Re: Request for Comments to Rule G-20

Ladies and Gentlemen:

This letter is in response to the MSRB's request for comments on the amendments to Rule G-20 relating to gifts and gratuities. WM Financial Strategies is fully supportive of limitations on gifts and gratuities for both municipal advisors and broker-dealers. We believe, however, that Rule G-20 permits pay-to-play by failing to impose a ban on the frequency or value of entertainment that may be provided to employees and elected officials of municipal entities.

Accordingly, we are requesting that, in any year the value of any single gift or gratuity given to any employee or elected official of a municipal entity should not exceed $100 and the aggregate of all gifts, gratuities and entertainment should not exceed $250.

Sincerely,

Joy A Howard

Joy A. Howard
Principal