January 30, 2012

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-FINRA-2011-073: Notice of Filing of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC") on the Financial Industry Regulatory Authority's ("FINRA") proposed rule change to create new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) (the "GASB Accounting Support Fee") under Schedule A to the FINRA By-Laws. FINRA's proposal is a result of Section 978 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requiring a funding mechanism for GASB.

While SIFMA supports the mission of the Governmental Accounting Standards Board ("GASB")[2] "to establish and improve standards of state and local governmental accounting and financial reporting that will…result in useful information for users of financial reports…" [3] and appreciates the role that GASB

[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 (GFMA).

[2] The GASB is an independent body created in 1984 pursuant to agreement among the Financial Accounting Foundation ("Foundation"); the American Institute of Certified Public Accountants (AICPA); the Council of State Governments; the Government Finance Officers Association; the International City/County Management Association; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; the National Conference of State Legislatures; the National League of Cities; the National Governors' Association; and the U.S. Conference of Mayors.

[3] *See*, GASB Mission Statement available at http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1175804850352 .

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plays developing separate uniform accounting and reporting standards for governments[4], SIFMA believes that FINRA's proposal[5] is not a fair and equitable manner to assess the GASB Accounting Support Fee and objects to the proposed methodology for assessing the GASB Accounting Support Fee. Accordingly, we urge the SEC to reject or disapprove the proposed rule change.

SIFMA believes that FINRA's proposed methodology for assessing the proposed GASB Accounting Support Fee is not fair and equitable for the following reasons:

- The proposal is an unfair tax on broker dealers and municipal bond investors who should not be mandated to subsidize the entire expense of financially supporting GASB.
- There are many other end users of GASB's accounting and financial reporting standards, such as non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations that get a "free ride" under FINRA's proposed methodology.
- The current proposal provides a blank check for GASB. There is no direct or indirect independent budget oversight – in effect "taxation without representation" with no incentive for transparency or fiscal discipline.
- Many municipal bond obligors are not GASB reporting entities. Many municipal bond obligors are private non-profit corporations, and thus are subject to the rules of The Financial Accounting Standards Board ("FASB")[6], not GASB. This proposal makes no

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[4] *See*, GASB White Paper dated March 16, 2006, "Why Governmental Accounting and Financial Reporting is – and should be – Different", available at http://www.gasb.org/cs/ContentServer?c=GASBContent_C&pagename=GASB%2FGASBContent_C%2FGASBNewsPage&cid=1176156736250

[5] Pursuant to Regulatory Notice 11-28, "under proposed Section 14, the GASB Accounting Support Fee would be allocated among FINRA member firms based on municipal securities transactions reported to the Municipal Securities Rulemaking Board (MSRB). Specifically, each calendar quarter, each member firm would be required to pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the firm's portion of the total par value of municipal securities sales reported by FINRA members to the MSRB under MSRB Rule G-14(b) in the previous calendar quarter." [internal citation to MSRB Rule G-14(b) deleted]

[6] FASB was established in 1973 by the Foundation to establish and improve standards of financial accounting and reporting for nongovernmental entities. FASB does have its own revenue stream legislatively mandated by Section 109 of the Sarbanes-Oxley Act of 2002 through fees collected assessed against and collected from issuers of securities, as those issuers are defined in the Act.

distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards. It would be inappropriate to tax transactions in bonds issued by obligors that do not utilize GASB standards.

- The proposed fee unfairly burdens certain dealers and is not allocated equitably. Any accounting support fee should be business model/operationally neutral, and FINRA's proposal is not. Not all trades reportable to the Municipal Securities Rulemaking Board's (MSRB) Real-Time Transaction Reporting System involve customers. Additionally, as currently proposed by FINRA, under certain circumstances multiple assessments will be due from a single purchase and sale. Supply chains that involve multiple dealer trades will also be more heavily impacted. Finally, bank dealers' municipal securities transactions are not covered by FINRA's proposal, as they are not FINRA members.
- Although existing FINRA member regulation and fees make adding this tax relatively easy for FINRA, such convenience does not outweigh the inequities listed above.

While we recognize that the SEC, and FINRA, is bound by the statutory provisions governing the GASB support fee, we feel that the SEC and FINRA can make significant changes to the proposed fee and still be in compliance with the statute. SIFMA proposes that any GASB support fee should more closely mirror the way FASB is funded and should be structured such that the dealer payors could pass through any GASB support fee to parties that use or benefit from GASB's rules to a greater degree, including municipal bond investors or issuers. In the alternative, the fee could based upon a combination of underwriting and trading volume. If the SEC moves forward with an assessment based upon an underwriting assessment or trades submitted to the MSRB, SIFMA proposes that the MSRB, not FINRA, administer such a support fee as the MSRB regulates both bank dealers' and broker dealers' municipal securities activities; FINRA only regulates broker dealer activities.

I. Unfair Tax on Dealers and Investors

The proposal is an unfair tax on broker dealers who should not be mandated to subsidize the entire expense of financially supporting GASB. The true beneficiaries of GASB's work are the myriad of state and local governments that follow its accounting and reporting standards, investors who benefit from sound financial reporting rules, rating agencies who are consumers of municipal financial statements, and auditors whose work revolves around GASB's generally accepted accounting principles. It is these entities that should directly fund GASB's operations. Because the statute specifies dealers as the collection mechanism, FINRA should structure the fee so that the burden could be ultimately borne by those who more directly use or benefit from GASB's rules.

II. GASB Reporting is used for many purposes, not to solely to access capital markets

There are many end users of GASB's accounting and financial reporting standards other than issuers of municipal securities and the other entities listed above, such as non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, mutual funds, legislative/governmental staff, and taxpayer organizations. It is important to note that some state and local governments rarely or never issue debt. These diverse entities that use GASB generally accepted accounting principles for a variety of purposes get a "free ride" without paying the fare to financially support GASB under the proposed methodology. Financial support of GASB should come from the entire universe of users, not just broker dealers.

III. Many municipal bond issuers do not follow GASB; some follow FASB

Adherence to GASB standards by state and local governments is voluntary and there are numerous states and local governments that do not follow GASB[7]. Two notable examples of non-GASB followers are governments in New Jersey and Texas, where the states produce their own accounting standards. Additionally, municipal bond obligors that are private, nonprofit corporations such as hospitals, universities, and cultural institutions also do not follow GASB, but instead follow the accounting and financial reporting standards of FASB. There is no reasonable basis, nexus, or justification for the bondholders of these entities (or even the entities themselves) to financially support the activities of GASB. If dealers are required to fund GASB, they should enjoy some certainty that GASB's work product will be adhered to.

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[7] *See*, Report of the United States Government Accountability Office (GAO), January 18, 2011, *Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding*, available at http://www.gao.gov/new.items/d11267r.pdf ("GAO Report"). See also W.R. Baber and A.K. Gore, *Consequences of GAAP Disclosure Regulation: Evidence from Municipal Debt Issuances*, (October 2007).

IV. No Independent Budget Oversight – "Taxation without Representation"

Currently, the GASB Chairman is responsible for preparing GASB's annual budget, with the advice of the members of GASB, for approval by the Financial Accounting Foundation's Board of Trustees – a reasonable process when GASB was responsible for funding its own budget. Neither FINRA's GASB Accounting Support Fee proposal or the Securities and Exchange Commission's (SEC) order[8] directing funding for GASB contain a provision for independent direct or indirect oversight of GASB's budget going forward. This is inconsistent with the SEC's oversight and review of the annual budget of FASB, GASB's sister organization. As noted by the GAO Report issued in the course of reviewing the role of GASB in the municipal securities market and its past funding:

- Several stakeholders were concerned with the level and nature of GASB's expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.
- Stakeholders expressed mixed views on whether certain GASB projects and initiatives were redundant with FASB projects or fell outside of what they considered the scope of GASB's mission of promulgating governmental accounting principles. For example, several stakeholders expressed concern regarding GASB's work on accounting for certain retirement benefits, referred to as Other Post-Employment Benefits, while others voiced support for it.[9]

Accordingly, at a minimum, some independent oversight of GASB's budget should be implemented to encourage transparency and fiscal discipline.

V. Disparate Impact on Certain Dealers

The proposed fee unfairly burdens certain dealers. A key component of FINRA's submission to the SEC, as well as Regulatory Notice 11-28, is that FINRA anticipates that firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions. However, many transactions reported to the MSRB pursuant to Rule G-14(b) do not involve customers. Examples of reportable trades which do not involve a customer are dealer to dealer trades and trades involving broker's brokers. *This would result in some dealers being able to pass through the fee to customers and others not.*

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[8] Securities Act of 1933, Release No. 9206/May 11 2001 and Securities and Exchange Act of 1934 Release No. 64462/May 11, 2011 available at http://www.sec.gov/rules/other/2011/33-9206.pdf

[9] See GAO Report, *supra* note 7, at 33.

Additionally, for these types of reportable trades, including supply chains that involve multiple broker dealer trader trades, each counterparty reports the trade under MSRB G-14(b) – resulting in a multiple assessment for a single purchase and sale. Finally, bank dealers' municipal securities transactions are not covered by FINRA's proposal because they are not subject to regulation, examination, or enforcement by FINRA and do not pay any FINRA fees. Accordingly, SIFMA believes the proposed GASB Accounting Support Fee unfairly burdens certain dealers and is not a fair and equitable allocation among participants in the municipal market.

VI. FINRA Administrative Fee is Unwarranted

The proposed $50,000 fee that has been budgeted to pay FINRA[10] to administer the GASB Accounting Support Fee is unwarranted. First of all, FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB Accounting Support Fee[11]. Alternatively, in the event that FINRA moves forward with this assessment based upon an underwriting assessment or trades submitted to the MSRB, the MSRB could also administer the fee for minimal costs as it already has the staffing and information to calculate, assess, and collect underwriting assessments as well as transaction and technology assessments pursuant to MSRB Rule A-13.

ALTERNATIVE FEE PROPOSAL

VII. Mirror FASB Funding Model: Pass Through of Support Fee on Underwriting Assessments

FINRA's submission to the SEC, as well as Regulatory Notice 11-28, anticipates that some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions and provides some guidance on proper disclosure. Principles of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors. This would more closely follow how FASB is funded, which is primarily through an accounting support fee pursuant to the Sarbanes-Oxley Act of 2002. This FASB fee is allocated among securities

[10] See Regulatory Notice 11-28 at Endnote 5.

[11] http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p123850.pdf

issuers based on each issuer's proportional market capitalization. The easiest way to implement this would be to structure a GASB support fee as an underwriting assessment on all municipal securities (or potentially just on bonds with GASB reporting obligors) purchased by a dealer from an issuer as part of a primary offering. The MSRB currently assesses and collects an underwriting assessment to fund its own operations pursuant to MSRB Rule A-13(b). We understand that FINRA is bound to not collect any more or less in any period than the amount GASB states it needs to fund its budget. However, we feel confident that if this methodology is chosen, then the self-regulatory organization that collects the fee can essentially escrow any overages and revise the fee in future period to adjust for the variability in new issue volume.

VIII. Conclusion

SIFMA sincerely appreciates the opportunity to comment on the Proposal. While SIFMA supports the mission of GASB, we object to FINRA's proposed methodology for assessing the proposed GASB Accounting Support Fee because it unfairly burdens certain dealers and is not a fair and equitable manner to assess the fee for the reasons set forth above. SIFMA proposes that the GASB support fee be more closely mirrored on FASB's funding model, allowing dealers to pass through any GASB support fee to those parties who use or benefit from GASB's work to a greater extent than dealers, such as municipal bond investors, issuers, rating agencies, auditors, and others. If FINRA moves forward with an assessment based upon an underwriting assessment, mirrored on MSRB Rule A-13(b) or trades submitted to the MSRB, SIFMA proposes that the MSRB administer such support fee as the MSRB governs all transaction in municipal securities.

Please do not hesitate to call me with any questions at 212-313-1265.

Sincerely yours,

David L. Cohen
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