



December 26, 2014

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549

Re: File No. SR-MSRB-2014-08: Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisor Activities

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) filing with the Securities and Exchange Commission (“SEC”) on the draft proposal for amendments to MSRB Rules G-1, G-2, G-3 and D-13 (“Draft Amendments”)² setting professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB rules.

I. Executive Summary

SIFMA continues to support the MSRB’s efforts to set professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance

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 79 Fed. Reg. 72225 (Dec. 5, 2014).

with MSRB Rules. However, SIFMA has concerns regarding the Draft Amendments,³ which we feel were not adequately addressed by the MSRB. In particular:

- Persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities, if they so choose. After the effective date of the Draft Amendments, the Series 52 qualification examination should be sufficient for municipal securities representatives and municipal advisor representatives alike.
- If the MSRB proceeds with developing a new qualification examination for municipal advisor representatives, then associated persons that currently qualify to perform municipal securities activities should be grandfathered as also qualifying as municipal advisor representatives.
- A full cost-benefit analysis should be completed prior to the approval of the Draft Amendments.

II. Qualification to Perform Municipal Securities Activities Should be Sufficient for Qualification to Perform Municipal Advisor Activities

Four years have already passed since the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” or “the Dodd-Frank Act”)⁴ was passed into law in 2010. A key reason for the passage of Section 975 of the Dodd-Frank Act was to bring previously unregulated municipal advisors under a regulatory regime, which would level the regulatory playing field for all firms providing municipal advice and ensure all associated persons providing advice were registered, tested and subject to similar regulatory standards.⁵ SIFMA and its members are disappointed this requirement has not been implemented yet, and feels time is of essence in its implementation.

As stated in the filing on the Draft Amendments, “The Board maintains there is a need for separate qualification examinations because the content of such an examination will be designed to meet the MSRB’s goal of determining whether a prospective municipal advisor representative meets the minimum level of competency required of a

³ See Letter to Ronald W. Smith, MSRB, from Leslie M. Norwood, SIFMA, dated May 16, 2014, available at <http://www.sifma.org/issues/item.aspx?id=8589949179>.

⁴ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁵ We strongly feel that all municipal advisor representatives should either have passed a qualification exam in the past or pass a qualification examination in the future. If a person has qualified as a municipal securities representative, is not currently at a broker dealer but still within the 2 year period of the validity of their license if they become associated with a firm, we feel that he or she should be able to qualify as a municipal advisor representative.

municipal advisor professional.”⁶ The MSRB summarily dismissed the vast majority of the comments received on this point, including SIFMA’s. SIFMA and its members dispute this conclusion and continue to be very concerned that the development of a new municipal advisor qualification examination, and having associated persons take the qualification examination, will take an additional 2 to 3 years. Dealer municipal advisors have always needed to pass qualification exams, either the Series 7 or now the Series 52.⁷ Additionally, dealer advisors have been subject to regulatory continuing education requirements in order maintain the eligibility of their registrations. Although municipal advisors have a statutory fiduciary duty to their clients, non-dealer municipal advisors are still untested on their basic knowledge of municipal securities. There is a faster, more cost efficient and narrowly tailored alternative than the one proposed in the Draft Amendments.

As a general matter, SIFMA feels that any person who currently, or in the future, qualifies to perform municipal securities activities,⁸ should also automatically qualify to perform municipal advisor activities, if they so desire. The knowledge base for these two functions is largely the same and there is substantial overlap in the subject matters necessary for professionals to master; both require knowledge about the municipal securities market, credit, interest rates, regulation and legal issues related to the municipal securities market.⁹ These topics are already covered by the Series 52 qualification examination, which is a basic competency examination that tests baseline knowledge of municipal securities.¹⁰ Again, the key difference in these two functions, municipal

⁶ 79 Fed. Reg. 72225, 72230 (Dec. 5, 2014).

⁷ Some firms have voluntarily registered as broker dealers and their associated persons are all licensed by having passed the Series 7 or Series 52 qualification exam, even though their only business is as municipal advisors. This election shows a willingness by such firms to hold themselves to the same qualification standards as municipal securities representatives.

⁸ Not all associated persons currently qualified to perform municipal securities activities have taken and passed the Series 52 examination. Some associated persons qualified to perform municipal securities activities as a result of having taken and passed the general securities registered representative examination (the “Series 7”) before November 7, 2011. These municipal securities representatives were grandfathered, and did not need to take the Series 52 Examination when FINRA restructured the Series 7 examination. MSRB Rule G-3(a)(ii)(B).

⁹ It has come to our attention that on December 15, 2014, in a letter addressed to The Honorable Mary Jo White, the National Association of Municipal Advisors petitioned the SEC to grant exemptions to the broker dealer registration rules to municipal advisors. Although we strongly object to this petition, the request does highlight that some municipal advisors have been accepting transaction based compensation and/or acting as a placement agent. If municipal advisors are engaging in broker dealer activities, they should be regulated as broker dealers, and there should be no objection to municipal advisors being required to take the Series 52.

¹⁰ See MSRB Study Outline for Municipal Securities Representative Qualification Examination at: <http://www.msrb.org/Rules-and-Interpretations/~media/Files/Prof-Qualifications/Series52OutlineOct2010Notice.ashx>.

advisor representative and municipal securities representative, is their duty to their clients; a difference which is easily tested by potentially adding questions to the content of the Series 52 qualification examination for professionals who would like to newly qualify as either a municipal securities representative or municipal advisor representative. Alternatively, these types of role and rule changes can be covered by firms' continuing education programs.

As a result of the Dodd-Frank Act, the MSRB now has the authority to protect municipal securities issuers, in addition to municipal securities investors. SIFMA and its members can think of no better way to protect municipal securities issuers than by ensuring that those persons that advise issuers pass a basic qualification test. As the Series 52 qualification examination is the current test for associated persons newly qualifying as a municipal securities representative, if this test is deemed sufficient for municipal advisor representatives as well, then municipal advisor representatives could begin taking the test immediately. The Series 52 qualification examination currently exists and there would be no unnecessary delay in developing test material and administering the test, if it were to be used for municipal advisor representatives, which is not the case if a new qualification examination needs to be created for municipal advisor representatives. The development and creation of this entirely new test will inevitably delay the date when all municipal advisors will be demonstrably qualified for that role. SIFMA believes that issuers would be best served by having their advisors qualify as municipal securities representatives or municipal advisor representatives as soon as practicable. Additionally, having the same process for qualification as a municipal securities representative and municipal advisor representative will particularly aid small dealers, many of whom serve both functions, who are very sensitive to compliance costs.

The creation of another test adds costs for the MSRB to support a separate Professional Qualifications Advisory Committee ("PQAC") to draft questions for the new test, and the Financial Industry and Regulatory Authority ("FINRA") to administer the test. The costs then multiply exponentially as potentially thousands of people or firms who are or will be dually registered as municipal securities representatives and municipal advisor representatives, or will be moving from one classification to another, will not only need to take an additional professional qualifications exam, but will also need to pay for a multitude of expenses. Our detailed cost estimates are set out fully in our previous letter to the MSRB on this issue.

Again, these costs are not insignificant with respect to one representative, but are monumental when aggregated across all the currently registered municipal advisor firms, many of whom are also broker dealers who intend to serve both functions.

It is critical to note that approximately 75 percent of the individual registered municipal advisors are employed by dealer firms,¹¹ and are thus also required to take the Series 52 and potentially the Series 53 exams. Therefore, the MSRB is insisting on moving ahead with an inefficient process tailored to developing an exam that unfairly burdens approximately 75 percent of the regulated municipal advisor community to provide a more narrow examination to the 25 percent of the municipal advisor community that is newly under regulation. SIFMA and its members query why the entire municipal advisor community shouldn't know the basic information on the Series 52 examination? Why shouldn't all municipal securities professionals, including municipal advisors, understand the regulation of municipal market professionals? The types of municipal securities? How the primary market and the secondary market for municipal securities work? Bond math? Municipal securities credit issues? MSRB Rules? Without the knowledge of these issues, a municipal advisor cannot give informed, credible advice regarding municipal securities. Again, the Series 52 is a basic competency exam, and we feel strongly that any professional working in municipal securities should be able to pass this exam.

III. Alternatively, Grandfather Current Municipal Securities Representatives as Municipal Advisor Representatives

If the MSRB decides to continue with the development of a new test for qualification as a municipal advisor representative, then SIFMA and its members feel strongly that associated persons currently qualified as municipal securities representatives should be grandfathered in as municipal advisor representatives, if they so choose. This methodology would be consistent with other major changes to qualifications examinations, including the 2011 restructuring of the Series 7 qualification examination, which grandfathered in as municipal securities representatives those associated persons who took the Series 7 without having taken the Series 52 qualification examination prior to the implementation date of the rule change,¹² and the implementation of the Series 79 qualification examination in 2009.¹³

¹¹ This estimate is based in part on the MA-I filings found on the SEC's EDGAR site, as well as an informal poll of SIFMA members. We are aware that a number of dealer firm's permanent registration filings as municipal advisors with large amounts of MA-I forms are still pending final SEC approval. Therefore, we feel the current number of MA-I filings in EDGAR significantly undercounts the number of registered municipal advisors that are employed by dealer firms.

¹² 76 Fed. Reg 70207 (Nov. 10, 2011); Exchange Act Release No. 34-65679.

¹³ See:
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p119461.pdf>.

IV. Continuing Education Requirement for Municipal Advisor Representatives

The MSRB, in current Rule G-3(h), prescribes requirements regarding the continuing education of certain registered persons with a broker, dealer or municipal securities dealer. Continuing education and day-to-day training are critical parts of the core training of a firm's employees. Regulations change frequently, and firms need to ensure their associated persons are appropriately informed about such changes. SIFMA and its members feel strongly that municipal advisor representatives should be similarly subject to a continuing education requirement. Not only would this requirement level the regulatory playing field for similarly situated groups of regulated persons, but it would also ensure that municipal advisor representatives receive periodic training to stay abreast of issues and changes in the industry. This concern was not addressed in the MSRB's filing on the Draft Amendments.

V. Economic Analysis is Insufficient

SIFMA's members feel strongly that the MSRB's cost-benefit analysis in the SEC filing of the Draft Amendments was inadequate, and a full cost-benefit analysis should be completed prior to the approval of the Draft Amendments. SIFMA briefly outlined some of the costs created by the Draft Amendments in its prior comment letter to the MSRB. SIFMA has also described alternatives to the Draft Amendments that are more cost efficient, quicker to implement and more narrowly tailored; none of these were analyzed in the MSRB's Regulatory Notice and were summarily dismissed in the MSRB's filing of the Draft Amendments with the SEC. While SIFMA applauds the MSRB's new policy on the use of economic analysis in its rulemaking,¹⁴ and its general request for comment in the Regulatory Notice on how an economic analysis should apply to the Draft Amendments, SIFMA is disappointed that the MSRB did not prepare an economic analysis of the Draft Amendments in their original Notice on this issue. The lack of such cost-benefit analysis fails to meet the MSRB's statutory mandate and its own stated policy.

VI. PQAC Nomination Process Should Be Revisited

SIFMA and its members feel that the process for nomination to the MSRB's PQAC should be fully transparent and the members of PQAC listed on the MSRB's website. Currently it is not clear to market participants how they may apply to PQAC, and what the selection process entails. We believe, from anecdotal evidence, that a small percentage of the members of the MSRB's PQAC currently developing the new municipal advisor test are dealer advisors, despite the fact that the vast majority of individuals registered as municipal advisors work at dealer firms. If a new test is

¹⁴ See: <http://msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx>.

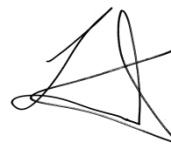
developed, then it is in the best interest of every industry member to ensure that the test questions that are developed are fair, even-handed and suitable for a basic competency examination.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment to the SEC on the MSRB's filing on the Draft Amendments. As discussed previously and above, SIFMA supports the MSRB's efforts to set professional qualification standards for municipal advisor professionals and requiring municipal advisors and their associated persons engaging in municipal advisory activities to be qualified in accordance with MSRB Rules. However, we have serious concerns about certain aspects of the proposal. SIFMA and its members believe that persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities, if they so choose. After the effective date of the Draft Amendments, the Series 52 examination should be sufficient for municipal securities representatives and municipal advisor representatives alike. If the MSRB does proceed with developing a new qualification examination for municipal advisor representatives, then associated persons that currently qualify to perform municipal securities activities should be grandfathered as also qualifying as municipal advisor representatives. Finally, SIFMA feels strongly that the MSRB's cost-benefit analysis was inadequate, and that a full cost-benefit analysis should be completed prior to the approval of the Draft Amendments.

SIFMA members and staff would be happy to meet with the SEC's Office of Municipal Securities or the MSRB to discuss these comments further. Please do not hesitate to contact me with any questions by phone at [REDACTED], or by email at [REDACTED].

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: **MSRB**

Lynnette Kelly, Executive Director
Lawrence P. Sandor, Deputy General Counsel
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