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October 16, 2015

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

**Release No. 34-75932**  
**File No. SR-MSRB-2015-09**

Dear Secretary Fields:

Thank you for the opportunity to comment on proposed amendments to MSRB Rules G-20 and G-8, regarding gifts, gratuities and non cash compensation and the recordkeeping requirements for these items. The National Association of Municipal Advisors (NAMA) represents municipal advisors (MAs) from throughout the country and is dedicated to ensuring that municipal advisors are held to the highest standards of ethics, qualifications, education, training and regulatory compliance.

NAMA has been supportive of the application of Rule G-20 to municipal advisors, and is generally supportive of the MSRB's proposed amendments. We note that the version of Rule G-20 that is before the Commission contains some improvements over the version that was initially proposed by the MSRB, and we are appreciative of the MSRB's responses to our prior comments. However, we believe as currently proposed, the amendments remain unclear in crucial areas, and do not go far enough to prevent abuses by both municipal advisors and broker-dealers.

Specifically, as discussed in NAMA's December 8, 2014 comment letter to the MSRB, we think that the proposed rule would be enhanced by increasing the gift ban limit to \$250, and by clarifying its applicability to staff of municipal entities and obligated persons and to elected officials and governing board members alike. Also, the entertainment and "normal business dealings" exclusions as well as those for bereavement, professional gifts and personal gifts leaves the door open to circumvention of the limit and to the perception of impropriety if not impropriety itself. We again call on regulators to abolish the entertainment exemption and instead, consider the concept of an aggregate \$250 gift limit to include entertainment expenses for both municipal advisors and broker-dealers.

Finally, no matter the dollar limitation, NAMA recommends that recordkeeping requirements are in place for all gifts, whether covered within the limit or that are part of an exclusion.

## **Comments on Specific Aspects of the Proposed Rule**

### *Proposed Rule G-20(c)*

As noted in our prior letter, this general limitation is confusingly written because it purports to apply only to gifts or gratuities that relate to the “municipal securities or municipal advisory activities” of the “employer of the recipient.” For the most part, municipal entities and obligated persons (together, issuers) do not engage in either “municipal advisory activities” as defined by MSRB Rule D-13. Buried deep within their response to comments, but confusingly not in the proposed rule itself, the MSRB asserts that it has made it clear in prior interpretive guidance that issuer personnel are considered to engage in “municipal securities activities.” Since a significant portion of the proposed rule codifies prior interpretive guidance, the MSRB should make explicit in either a definition of municipal securities activities or in supplementary material that municipal securities activities includes the activities of issuers. Regulated entities should not have to hunt down interpretive guidance from 2007 to make sense of the proposed rule – especially when the proposed rule seems to be codifying prior interpretive guidance.

Furthermore, as the SEC is well aware – many municipal officials and governing board members are not “employees” of municipal entities or obligated persons, respectively. Based on the present language, it would appear that G-20 does not apply to gifts given to non-employee officials of municipal entities and obligated persons.

### *Proposed Rule G-20(d)*

Under proposed Rule G-20(c), regulated entities may give gifts and gratuities that have a value up to \$100 per year. However, the proposed Rule G-20(d) allows for many different types of gifts that are not subject to the \$100 limit. Most notably, proposed Rule G-20(i) 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. 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 particularly because the associated books and records requirement does not even require that regulated entities maintain records of gifts provided under proposed Rule G-20(d). Although the proposed Rule limits the meals and tickets that may be provided by the qualifying term “occasional,” and further states that such gifts may not be so “frequent or extensive as to raise any question of propriety or to give rise to any apparent or actual material conflict of interest,” the proposed rule and the associated recordkeeping requirements do not provide any effective mechanism for ensuring that is the case. 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 to an issuer official, while such official is sitting down for an expensive dinner with a regulated entity after having been treated to a round of golf by that regulated entity. 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, and the most expensive items would not even have to be reported nor

would records have to be maintained. 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 regulated entities that 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.

Accordingly, because of the likelihood that pay-to-play has occurred under current Rule G-20 and will continue to occur under the proposed amendments to Rule G-20, NAMA proposes that the MSRB include additional Supplementary Material with respect to proposed Rule G-20(d)(i) which states:

*“Supplementary Material”*

**.03 Normal Business Dealings.** Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, and the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses will be presumed to be so extensive as to raise a question of propriety if they exceed \$250 in any year in conjunction with any gifts or gratuities provided under MSRB Rule G-20(c).”

NAMA continues to believe that an effective aggregate gift and gratuities total of \$250 per year per person, when incorporating gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, will strike the appropriate balance and will address the objective of both NAMA and the MSRB to curtail 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 proposed 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. Because the purpose of Rule G-20 and the purpose of G-37 are united in their attempt to limit a broker dealer’s or a municipal advisor’s ability to gain undue influence through gifts and gratuities or contributions (i.e., pay-to-play), NAMA believes that the rules should be written consistently. In addition, the gifts and gratuities at issue in Rule G-20 do not enjoy the same level of free speech protection as the political contributions that are limited by MSRB Rule G-37. Therefore, because the MSRB has already determined that a \$250 cap is appropriate to curtail abuses relating to political contributions, and because current Rule G- 20 allows for gifts and gratuities well in excess of \$100 and even in excess of \$250, proposed Rule G-20 should be amended accordingly.

*Recordkeeping Requirements*

These rules should be amended to require maintenance of any gift or gratuity referred to in Rule G-20(c) or Rule G-20(d)(i) regardless of whether the MSRB adopts the \$250 limitation proposed by NAMA. NAMA is aware that the SEC’s OCIE is routinely asking independent municipal

advisors to provide expense reports as part of their examination process, even though municipal advisors are generally not required to keep track of such expenses by any rule currently applicable to municipal advisors. In addition, because gifts included in Rule G-20(d)(i) are required to be recognized as legitimate business expenses by the IRS and because certain municipal entities (such as municipal entities in California) require recordkeeping regarding such gifts, the imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest. Again, in order to provide for meaningful enforcement, the MSRB should also require a regulated entity to keep records of any gifts given pursuant to proposed Rule G-20(d)(vi) that were paid for, directly or indirectly, by the regulated entity. Further, we agree with the MSRB that the recordkeeping requirements should be in place for five years, which is the standard requirement in other MSRB recordkeeping rules for municipal advisors.

The MSRB acknowledges that its mandate now extends to the “protection of municipal entities”. NAMA 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 gifts and gratuities far in excess of other monetary limits (\$250) that have been recognized to have a corrupting influence (see MSRB Rule G-37) as long as they are characterized as “normal business dealings”), the MSRB will fail in its attempt to fulfill its mandate. When employees of municipal entities and elected officials make business decisions which 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 and its tax and/or rate payers that ultimately suffer. Therefore, the MSRB must seek to limit the likelihood that business decisions will be made based on the gifts and gratuities received by employees and elected officials of a municipal entity.

NAMA 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 NAMA’s comments is necessary.

Sincerely,

A handwritten signature in black ink that reads "Terri Heaton". The signature is fluid and cursive, with the first letters of "Terri" and "Heaton" being capitalized and prominent.

Terri Heaton, CIPMA  
President, National Association of Municipal Advisors (NAMA)

cc: Jessica Kane, Director, Office of Municipal Securities  
Rebecca Olsen, Deputy Director, Office of Municipal Securities  
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board