

December 5, 2014

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

Re: Proposed Amendments to Rule G-20,
Relating to Gifts and Gratuities

Dear Mr. Smith:

The Investment Company Institute¹ appreciates the opportunity to comment on amendments proposed by the Municipal Securities Rulemaking Board (MSRB) to Rule G-20, which governs gifts, gratuities, and non-cash compensation that may be given or paid by brokers, dealers, and municipal securities dealers.² While the amendments, in large part, are intended to expand the scope of the current rule to include municipal advisors, the proposal also would codify in the rule interpretive guidance and positions previously taken by the MSRB and FINRA.³ As discussed below, we recommend that, prior to adopting this proposal, the MSRB revise it to address concerns relating to promotional gifts to better align the MSRB's rule with FINRA's comparable rule. This approach better

¹ The Investment Company Institute (ICI) is the world's leading association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$17.4 trillion and serve more than 90 million U.S. shareholders.

² See *Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities, and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors*, MSRB Notice 2014-18 (October 23, 2014) ("MSRB Notice").

³ We note that, while the MSRB Notice mentions FINRA Rule 3220, which governs "Influencing or Rewarding the Employees of Others," it fails to mention FINRA Rule 2830(l)(5), which is the FINRA rule governing non-cash compensation arrangements involving investment company securities. Because of the similarity of 529 plan securities and investment company securities, we believe that the MSRB Notice should additionally reflect consideration of the provisions of Rule 2830(l)(5) as discussed more specifically in our letter.

ensures compliance by those persons that are both registered with the MSRB as a municipal securities dealer and with FINRA as a broker-dealer. We also recommend that the MSRB monitor FINRA's ongoing retrospective rule review to determine whether any further revisions to Rule G-20 may become necessary to align Rule G-20 with FINRA's rules where appropriate.

I. RULE G-20'S EXCEPTION FOR PROMOTIONAL GIFTS

A. Value "Substantially Below" \$100

As proposed, Rule G-20(a) would continue to prohibit a regulated entity or its associated persons from giving "any thing or service of value, including gratuities, in excess of \$100 per year to a person . . . if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service." Subsection G-20(d) provides exceptions from this general prohibition, including an exception for "promotional gifts," which is found in subdivision (d)(iv). The MSRB has proposed to limit this exception to those promotional gifts that are valued "*substantially below* the general \$100 limit." [Emphasis added.] We are concerned that the rule's proposed use of the terminology "substantially below" is vague and therefore, if adopted, would create compliance challenges. Of particular concern is that the rule's ambiguity will permit the MSRB, through enforcement and regulatory actions, to second-guess a registrant's good faith compliance efforts to distribute only those promotional items that meet the rule's standard. Such a result seems patently unfair and can be remedied by eliminating the "substantially below" language from the final rule. This approach would also better align the language of the MSRB's rule with FINRA Rule 2930(l)(5), thereby facilitating registrants' compliance with such rules.

B. Logos of Non-Regulated Entities

By its terms, Rule G-20 governs a regulated entity's use of promotional gifts that carry the regulated entity's logo. As such, the rule would not appear to be triggered when a regulated entity utilizes promotional items that do not promote its brand or logo. This seems wholly consistent with the policy behind this provision, which is to place limits on regulated entities giving gifts that promote their brand or business. With respect to 529 plans, however, it is not uncommon for distributors of the plan that are regulated entities to use promotional gifts that display the *plan's logo* and not the regulated entity's logo. To make clear that Rule G-20 does not apply in such instances, we recommend that the MSRB clarify that promotional gifts that contain only the brand or logo of the plan and not that of a regulated entity are not subject to the restrictions of Rule G-20(c) and need not, therefore, rely on the exception in Rule G-20(d)(iv) for promotional gifts.

II. ALIGNMENT WITH FINRA'S RULES

Finally, the Institute continues to support the MSRB's efforts to align its rules, to the extent practicable, with those of FINRA. Such alignment facilitates compliance for those regulated entities that are subject to the jurisdiction of both self-regulatory organizations. Our comments above are intended to better align Rule G-20 with FINRA's comparable rules, including Rule 2830(l)(5), which was not mentioned in the MSRB's Notice. Towards this same end, we recommend that the MSRB monitor FINRA's ongoing retrospective of its rules relating to gift, gratuities, and non-cash compensation.⁴ The Institute has been engaged with FINRA on this initiative, both through filing a comment letter as well as by meeting with the FINRA staff to discuss our members' recommendations and concerns with the current rule. While the timing and next steps of this initiative are unknown, to the extent it results in substantive amendments to FINRA's rules, we recommend that the MSRB review such changes and, where appropriate, consider revising its rules accordingly.

■ ■ ■ ■ ■

We appreciate the opportunity to offer these comments on the MSRB's proposal. If you have any questions concerning them or would like additional information regarding our views, please contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

Regards,

/s/

Tamara K. Salmon
Senior Associate Counsel

⁴ In particular, in April 2014, FINRA published a notice that both announced its retrospective review of the FINRA rules that govern gifts, gratuities, and non-cash compensation and sought comment on such rules. According to FINRA's Notice regarding this initiative, FINRA's review is being conducted "to determine whether a FINRA rule or rule set is meeting its intended investor-protection objectives by reasonably efficient means." This initiative includes "a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules . . . to ensure that [such rules] remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry, and market changes." Included in the rules being reviewed as part of this initiative are FINRA Rules 3220 (Influencing or Rewarding the Employees of Others) and 2830(l)(5), which relates specifically to investment company securities. *See Retrospective Rule Review*, FINRA Notice 14-15 (April 2014) ("FINRA's Notice").