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April 29, 2020

VIA ELECTONIC MAIL

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2020-02

Dear Mr. Smith:

Acacia Financial Group, Inc. (“Acacia”) is an independent, national municipal advisory firm that serves a wide range of municipal clients including high profile issuers, local small issuers and infrequent issuers. We appreciate the opportunity to comment on Municipal Securities Rulemaking Board (MSRB) Notice 2020-02 related to MSRB Rule A-3 in connection with the MSRB’s stated objective to improve Board governance by examining the size and composition of the membership on the Board.

The MSRB presented its rationale for the expanding the Board to 21 members with a minimum of 3 independent municipal advisor representatives in its September 19, 2011 letter to the SEC Re: Response to Comments on File No. SR-MSRB-2011-11. The implementation of a regulatory regime for Municipal Advisors (MAs) was in the forefront of everyone’s thoughts at that time. However, it was also acknowledged by the MSRB that after the initial rules were written there would continue to be the need for rulemaking associated with MAs, just as there was for broker dealers. As the Board stated in its comment letter:

“While the statute requires that there be at least one municipal advisor representative on the Board, it is the view of the Board that no less than 30% of the members representing regulated entities should be municipal advisors that are not associated with broker-dealers or bank dealers, and, therefore, the MSRB does not agree with SIFMA’s comment that this level of representation of municipal advisors is disproportionately large. Although the MSRB has made substantial progress in the development of rules for municipal advisors, its work is not complete. Indeed, over the years, it will continue to write rules that govern the conduct of municipal advisors and provide interpretive guidance on those rules, just as it has over the years for broker-dealers since it was created by Congress in 1975. Just as SIFMA considers it essential that broker-dealers and bank dealers participate in the development of rules that

affect them, the MSRB believes that it is essential that municipal advisors participate in the development of rules that affect them. The MSRB believes that allotting at least 30% of the regulated entity positions to municipal advisors that are not associated with broker-dealers or bank dealers will assist the Board in its rulemaking process and will inform its decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities market."

Since the adoption of the core group of MA rules, the MSRB has continued to issue rules and interpretive guidance which impact the MA community. The MSRB has enacted new rules, established testing procedure and continuing education requirements which directly impact MAs. Additionally, in October 2018, the MSRB elevated the retrospective rule review to a strategic initiative and in 2020, indicated that Rule G-42 on the duties of municipal advisors would be one of the many rules to be re-examined. Additionally, the SEC currently has a proposal for conditional exemptive relief related to the role of MAs with the direct placement of municipal securities. These proposals have generated much debate among municipal finance participants and a review of the comment letters regarding these proposals clearly exposes the significant differences between the broker dealer and MA community.

It is also important to note that of the regulated members, MAs have a fiduciary duty to their clients and this certainly influences the lens thru which rulemaking is examined by the MA representatives. This perspective can be critical in assessing the impact on the execution of a MA's fiduciary duty within the rules and regulations which govern MAs. Therefore, reducing the number of MAs to less than 30% of the regulated members seriously limits that important perspective in the rulemaking process.

With respect to allowing a MA representative to be a broker dealer that does not engage in the underwriting securities, this should be only allowed if and only if, the complement of MAs continue to be 30% or 3 members. Under no conditions should a broker dealer or broker dealer affiliate that engages in underwriting be permitted to fill the MA position. To do so would effectively increase the underwriter representation on the Board at the expense of the MA community.

As the MSRB's letter so accurately predicted in 2011, the rule making process as it impacts the MA community continues. Consequently, MAs should have the same level of representation proposed and defended by the MSRB in 2011. Therefore, we cannot endorse stripping the MA community of the necessary representation to effectively participate in the rule making process by reducing the number of MAs on the Board to 2 representatives. The MSRB's stated desire to have easier and more efficient decision making should not be done at the expense of reducing the voice of the MA community.

Lastly, we would like to echo the remarks made on August 21, 2019 during SIFMAs "View from Washington" with MSRB Chair Gary Hall and President and Chief Executive Officer, Lynnette Kelly regarding the Retrospective Rule Review. Ms. Kelly stated: "When we put a rule in place, it is a living, breathing rule that needs constant care and attention." The municipal advisor community

is a diverse community and it is important to ensure the Board continues to receive input from the full range municipal advisory firms. Consequently, we can see no valid reason to reduce the presence of this vitally important voice on the board and we urge the Board to maintain the MA representation at 30% of the regulated members, regardless of the final decision on the size of the Board.

Thank you for the allowing us to submit our comments as it relates to maintaining the appropriate level of representation by the MA community on the MSRB.

Sincerely:



Kim M. Whelan
Co-President



Noreen P. White
Co-President