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January 15, 2019

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Re: MSRB Notice 2018-29: Request for Comment on Draft Amendments to 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2018-29 (the "Request for Comment")[2] issued by the Municipal Securities Rulemaking Board (the "MSRB"), in which the MSRB seeks comment on draft amendments to the Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012) (the "2012 Guidance")[3]. We refer in this letter to the 2012 Guidance, as amended, as the "Amended Guidance."

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2018-29 (Nov. 16, 2018), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2018-29.ashx??n=1.

[3] Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012), http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2, and originally published in MSRB Notice 2012-25 (May 7, 2012). The 2012 Guidance was approved by the Securities and Exchange Commission (the "SEC") in Release No. 34-66927 (File No. SR-MSRB-2011-09) (May 4, 2012), 77 FR 27509 (May 10, 2012).

We support the MSRB's retrospective review[4] of the 2012 Guidance, and our comments below seek to ensure that the purpose of the review is fully realized. We appreciate that the MSRB has proposed adopting some of the suggestions we made in our comment letter[5] to the MSRB's Initial Request for Comment, including: 1) incorporating the practical considerations of MSRB Notice 2012-38 (July 18, 2012) (the "Implementation Guidance")[6] and MSRB Notice 2013-08 (Mar. 25, 2013) (the "FAQs")[7] into the Amended Guidance; 2) clarifying the applicability of MSRB Rule G-42's two-prong analysis to a recommendation for complex municipal financings; and 3) allowing for an automatic email return receipt as a means to evidence receipt of the underwriter disclosures.[8] These proposed amendments – along with a requirement that syndicate managers provide the standard disclosures on behalf of syndicate participants as well as the clarification that underwriters are not required to make any disclosures on the part of issuer personnel or any other parties to the transaction – provide greater clarity and reduce unnecessary burdens.

SIFMA, however, believes that certain proposed amendments do not satisfy the goal of the retrospective review, that is to move the needle toward more efficient and effective disclosures that benefit issuers and underwriters alike. Any changes to the 2012 Guidance should address the perceived problem of the diminishing utility of increasingly duplicative and lengthy disclosures, not contribute to it. The 2012 Guidance should be amended in a way that reflects a more mature municipal securities market; recognizes that different business models exist, and a one-sized-fits-all approach does not work; reduces costs without impacting the benefits; and results ultimately in more efficient and effective disclosures for the benefit of all market participants.

Our comments below first focus on amendments proposed by the MSRB that we believe are beneficial or would be more beneficial with additional clarifications. We

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[4] As announced in MSRB Notice 2018-10, Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (June 5, 2018), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2018-10.ashx?la=en (the "Initial Request for Comment").

[5] Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB (Aug. 6, 2018), http://msrb.org/RFC/2018-10/SIFMA.pdf (the "Prior SIFMA Letter").

[6] MSRB Notice 2012-38 (July 18, 2012), http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-38.aspx.

[7] MSRB Notice 2013-08 (Mar. 25, 2013), http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-08.aspx.

[8] *Supra* note 2.

then turn to amendments proposed by the MSRB that we find problematic. We attach an appendix with answers to select questions posed by the MSRB.

Given the substantial operational changes that would need to be implemented from any amendments, SIFMA respectfully requests that underwriters be given, at a minimum, six (6) months from the date of SEC approval of the Amended Guidance to implement any changes. This would allow our members enough time to review and revise their policies and procedures and disclosure documents, communicate to and train their employees on the changes, and operationalize the requirements of the Amended Guidance.

1. <u>Proposed Amendments or Clarifications that, if Adopted, would be Beneficial</u>

a. Timing of the required disclosures

Although the MSRB has not requested comment on this particular point, we note that footnote 8 of the Request for Comment creates some confusion, as it states that an underwriting engagement would begin at the time the "first disclosure requirements" are triggered (i.e., at the earliest stages of the relationship between the underwriter and issuer with respect to an issue). In the 2012 Guidance itself, request for proposal ("RFP") responses and promotional materials are stated to be examples of the earliest stages of the relationship between issuer and underwriter. It is certainly contrary to the common understanding of the word "engagement" to state that the underwriter is engaged when it submits an RFP response or a pitch book. An underwriter is engaged when an issuer makes the decision to engage and so engages the underwriter. While the G-17 "arm's-length" disclosures are required to be made "at the earliest stages," as are the virtually identical G-23 disclosures,[9] the other G-17 disclosures are made no earlier than the point of engagement.[10] Footnote 8 is inconsistent with the text of the 2012 Guidance itself. This point should be clarified, as the proposed effective date of the changes turns on it.

b. Clear and Separate Identification of Disclosures

The MSRB proposed that underwriters would be required to clearly identify each category of disclosures and separate them (e.g., by placing the standard disclosures in an appendix or attachment). If the MSRB does not eliminate the need to disclose

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[9] Guidance on the Prohibition of Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 (Nov. 27, 2011), http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-23.aspx?tab=2.

[10] See paragraph 2 under "Timing and Manner of Disclosures" in the August 2, 2012 G-17 notice, *supra* note 3.

potential material conflicts of interest as we strongly believe it should, this separation of actual and non-standard disclosures is a reasonable proposal.

c. Disclosure on the Part of Parties Other than the Underwriter

SIFMA welcomes the MSRB's clarification that would not require underwriters to make any disclosures on the part of issuer personnel or any other parties to the transaction, except possibly for a syndicate manager to make certain disclosures on behalf of other syndicate members. We would find it particularly useful for the MSRB to provide examples of conflicts of other parties that would not need to be disclosed. For example, if a potential underwriter of a school district bond issue contributed to a separate school foundation at the suggestion of a school district official, or contributed to a nonprofit in which an elected official has expressed an interest, would a G-17 conflicts disclosure of the contribution be required?

2. Proposed Amendments that, if adopted, Defeat the Purpose of the Retrospective Review of the 2012 Guidance

a. Potential Material Conflicts of Interest

Recognizing SIFMA's and the Government Finance Officers Association's ("GFOA's") prior statements that certain disclosures have become too complex and lengthy, which may distract from the focus on actual material conflicts, the MSRB proposes to amend the 2012 Guidance to clarify that a potential material conflict of interest must be disclosed if, but only if, it is *reasonably foreseeable* that it will mature into an actual material conflict of interest during the transaction.

SIFMA does not believe a *reasonably foreseeable* standard adequately addresses the recognized problem that, in the intervening six years since the 2012 Guidance was issued, the 2012 Guidance has resulted in some voluminous, generic disclosures with diminishing utility. We again suggest that the disclosure requirement be limited to actual, and not merely potential, material conflicts of interest, or in the very least, a *highly likely*[11] standard.

It is unnecessary, distracting, and does not advance the goal of the retrospective review to require disclosure of merely potential material conflicts.[12] First, it is unnecessary to

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[11] *See* attached appendix for a fuller discussion.

[12] Although the MSRB declined our suggestions to eliminate the disclosure requirements for third-party marketing arrangements and credit default swaps, we still believe that they should be eliminated. Given

require disclosure of potential conflicts. If such potential conflicts become actual material conflicts prior to execution of a bond purchase agreement ("BPA"), they must be disclosed under the 2012 Guidance. It is exceedingly rare for potential conflicts of interest to arise after the BPA is signed, and arguably conflicts arising between BPA and closing are not relevant to the issuer's decision to contract with the underwriter. In any event, such conflicts would be disclosed in the Official Statement, if appropriate. Second, it is not clear that it would demonstrably reduce the volume of disclosures, allowing issuers to focus on ones more closely related to their transaction. In addition to doing little to make disclosures more effective, the proposed standard would be exceedingly difficult to implement and monitor from a compliance standpoint. It is too difficult to ascertain and carries too great a risk of misjudging whether and when a potential conflict becomes material. Consequently, it would not reduce disclosures demonstrably because it is not clear that underwriters would be inclined to reduce their potential conflicts disclosures. In fact, it may result, depending on an underwriter's view, in more disclosures.

Should the MSRB again reject our suggestion, we alternatively suggest that a potential conflict of interest should be disclosed if, but only if, it is *highly likely* that it will mature into an actual material conflict of interest during the transaction. We believe this higher standard may accomplish more than the Request for Comment's proposed standard to reduce disclosures. We also request that the MSRB provide guidance in the form of examples of disclosures that should or should not be made under whatever standard is ultimately adopted.

b. Removal of the "No Hair Trigger" Language

Related to the timing of the required disclosures, SIFMA strongly objects to the MSRB modifying the language in the Implementation Guidance to eliminate the "no hair trigger" language.[13] This language has been an important reassurance to our members who have acted in substantial compliance with the prescribed timeframes despite transactions that have proceeded along unforeseen timelines and pathways. It has prevented hair-trigger tripwires resulting in mere technical rule violations that consume not only firm resources, but also valuable regulator resources. While we understand the MSRB's concerns that the inclusion of such language suggests noncompliance is acceptable as an ordinary course of business, we do not believe that the industry has taken that to mean that routine noncompliance is acceptable. Unless the MSRB can point to prevalent abuses, the current language should be left as-is.

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the MSRB's concerns, though, we suggest that these conflicts be disclosed only if they meet the "material conflicts" standard.

[13] *Supra* note 2 at p. 9 n.11.

c. Plain English

The MSRB proposes to explicitly require plain English in the Amended Guidance. SIFMA also strongly disagrees with this proposal. The words "plain English" are susceptible to different interpretations. For example, the plain English standard articulated by the SEC is very different from how underwriters draft their disclosures currently.[14] Even SEC commissioners have commented that it is difficult to understand and apply in practice.[15] Adopting such a standard would require underwriters to completely redo all manner of their G-17 disclosures, especially those pertaining to complex financings, an expensive and time-consuming effort with increased risk that the meaning of certain disclosures would be lost in the translation to plain English. Rather, we suggest that the MSRB adopt a *"clear and concise"* standard that is more universally understood, results in well-drafted disclosures, and is in line with the MSRB's disclosure principles as well as the goals of the retrospective review of the 2012 Guidance.

d. Underwriter Discouragement of the Use of a Municipal Advisor

The MSRB proposes to amend the 2012 Guidance to state that an underwriter may not discourage an issuer from using a municipal advisor ("MA") or otherwise imply that the hiring of an MA would be redundant of the underwriter's services.

SIFMA does not believe this proposal is necessary and would have unintended consequences. We are concerned that the proposal will limit otherwise permissible advice, such as describing what services can and cannot be provided, between underwriters and their clients for fear of implying that an MA may be redundant. The SEC has made clear in granting the underwriter's exclusion from the MA rule that the services essential to complete an underwriting, including advice on the timing and the terms and structure of an underwriting can be performed by the underwriter without a MA.[16] We fear this proposal implies or creates a bias against underwriter-only transactions that could confuse issuers and discourage an issuer's flexibility to control the cost and scope of its financings in cases where it chooses not to use a MA.

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[14] SEC, *A Plain English Handbook*, https://www.sec.gov/pdf/handbook.pdf.

[15] *See, e.g.,* Robert Jackson, Commissioner, SEC, Remarks at the Municipal Securities Disclosure Conference (Dec. 6, 2018).

[16] In the adopting release to the definition of a municipal advisor, the SEC made clear that "the underwriter exclusion would include advice provided by the underwriter within the scope of the underwriting and would generally include advice with respect to the structure, timing, terms, and other similar matters concerning that issuance of municipal securities." Securities Exchange Act Release No. 34-70462, 78 FR 67468, 67511 (Nov. 12, 2013).

Although MAs are permitted to provide advice beyond essential services to complete an underwriting, such as assisting with political advocacy to help an issuer pass an election or advising on the method of sale (services that underwriters may not provide if acting under the underwriter's exclusion), issuers may not need or want to pay for these services and may prefer to make budget-driven decisions that exclude MAs. The fact that the duties of an MA and an underwriter are meaningfully different is already clearly articulated in the current 2012 Guidance, which requires an underwriter to explicitly explain to issuers and draw the line between its duties of fair dealing and the fiduciary duties owned by an MA.

In lieu of the current proposal, we suggest the MSRB clarify the 2012 Guidance to eliminate any implication of a bias or creation of a competitive advantage of one group over another. SIFMA suggests that the MSRB make it clear in the Amended Guidance that neither MAs nor underwriters may misrepresent the services and duties that the other is permitted to provide, and that MAs may not state or imply that there is a regulatory requirement for an issuer to hire an MA. We believe these clarifications to be a better alternative to Request for Comment's proposal.

e. Optional Alternative Manner of Providing Disclosures

In the Prior SIFMA Letter, we essentially proposed a simplified, annual process of providing original and amended disclosures to repeat issuer clients, aiming to alleviate the burdens on both issuers and underwriters of duplicative and, in some cases, voluminous disclosures.[17] Recognizing the merit of a part of our suggestion, the MRSB proposed an alternative manner of providing the standard disclosures. The Amended Guidance would permit sole underwriters or syndicate manager to "…provide the standard disclosures to an issuer one time and then to provide them subsequently by reference to and reconfirmation of those initial standard disclosures, in writing, unless the issuer requests the disclosures on a transaction-by-transaction basis."[18] To utilize this option, underwriters would have to comply with several additional requirements if the standard disclosures needed to be amended. Those additional requirements would include delivering the amended disclosures, making a reference to when the initial disclosures were made, and making the initial and amended disclosures readily accessible in hard copy or electronic format. Further, a sole underwriter or syndicate manager would be required to maintain originals for the retention period prescribed in MSRB Rule G-9, but the retention period would reset each time this option is utilized.[19] The timing requirements for initial and amended disclosures would remain the same as in the 2012 Guidance.[20]

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[17] *Supra* note 5 at pp. 9-11.

[18] *Supra* note 2 at p. 8.
[19] *Id.* at pp. 8-9.

While we appreciate the MSRB's consideration of our proposal, we believe that the MSRB's proposal complicates matters even further. The requirement to make the original disclosures readily accessible would involve a significant infrastructure build for firms, and the varying record retention requirements are likely to create confusion among underwriters and issuers. Simply put, it would be operationally burdensome for underwriters and do little to reduce the volume and nature of paperwork. Given that the alternative means of providing the standard disclosures are more complex and burdensome, we do not believe our members would avail themselves of this particular alternative method. We believe there are better alternatives, and we reiterate our original suggestion for an annual process, with bring-downs as necessary during the succeeding year, which simplifies recordkeeping.[21]

f. Disclosures Concerning the Underwriter's Compensation

Rather than eliminating this disclosure requirement altogether as SIFMA suggested in our the Prior SIFMA Letter,[22] the MSRB proposes that it be included in the standard disclosures; however, for alternative compensation structures, a dealer must indicate that the standard disclosure does not apply and explain the alternative structure as part of the transaction-specific disclosures to the extent that the alternate structure presents a conflict of interest.

SIFMA believes this proposal is contrary to the goals of this retrospective review because it would invariably result in more standardized and generic disclosures that may distract from more specific ones. Underwriters would, for instance, be required to add additional language to note that the compensation is not contingent. Should the MSRB not reconsider our original proposal, SIFMA would prefer retaining the current method of providing the disclosure, as it would not lead to more standardized and generic disclosures.

g. Syndicate Manager Disclosure of Standard and Transaction-Specific Disclosures on Behalf of Syndicate Members

The MSRB proposal would require, rather than permit, the standard disclosures to be made by a syndicate manager on behalf of syndicate participants. While SIFMA welcomes this proposal to reduce oftentimes duplicative disclosures provided to

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[20] *Id.*

[21] *Supra* note 5 at pp. 9-11.

[22] *Id.* at p. 8.

issuers, it appears that the proposal may require the syndicate manager to affirmatively state the standard disclosures are being provided on behalf of the other syndicate members. If this is the case, it may be problematic because an underwriter may not know if there will be co-managers at the time the Rule G-17 disclosures are sent. For instance, in some cases, Rule G-17 disclosures are made when the underwriter is engaged in order to establish the underwriter exclusion from the municipal advisor rules. The SEC permits that to be done via a preliminary engagement letter, which oftentimes is executed before it is known whether there will be co-managers. Underwriters should not be required to suggest that the issuer might consider appointing co-managers. It should suffice that the senior manager has made the disclosures, without requiring the affirmative statement that the disclosures are being made on behalf of co-managers. This should apply to all disclosures except conflicts disclosures.[23]

h. Classification of Issuers to Create Tiered Disclosure Requirements

As noted in the Prior SIFMA Letter, we believe that tiered disclosure requirements may be beneficial to issuers and underwriters.[24] We also believe that for a tiered disclosure regime to work effectively, clear and objective standards are necessary. We would welcome further discussion on this issue.

i. Trigger for Transaction-specific Disclosures

Finally, in the Prior SIFMA Letter, we suggested that the MSRB adopt one standard based on the standard for routine financings,[25] which the MSRB declined to adopt, arguing that the risk is too great of an underwriter inaccurately determining that complex municipal securities financings disclosures are unnecessary. This is another area where we believe clear, objective standards in the Amended Guidance would be beneficial to issuers and underwriters. We also welcome further discussion on this issue.

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[23] Under the 2012 Guidance, transaction-specific disclosures are only required to be made when the underwriter has recommended the transaction. In many cases, the recommendation is only made by the senior manager, not the co-managers. As such, senior managers should be required to provide copies of its G-17 disclosures to the co-managers once they have been selected.

[24] *See supra* note 5 at p. 17.

[25] *Id.* at pp. 11-12.

SIFMA appreciates this additional opportunity to comment on the proposed amendments to the 2012 Guidance. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact Leslie Norwood at (212) 313-1130.

Sincerely yours,

Leslie M. Norwood
Managing Director and Associate General Counsel

Bernard V. Canepa
Vice President and Assistant General Counsel

cc: Lynnette Kelly, President and Chief Executive Officer
Lanny Schwartz, Chief Regulatory Officer
Michael Post, General Counsel
Carl Tugberk, Assistant General Counsel

Appendix A:

SIFMA Answers to Select Questions Posed in MSRB Notice 2018-29

I.B. Potential Material Conflicts of Interest

1. *Is limiting what constitutes a potential material conflict of interest to only those material conflicts of interest that are reasonably foreseeable to mature into actual material conflicts of interest during the course of the transaction an appropriate standard, and is it sufficiently clear to be implemented by underwriters?*

   No, it is not an appropriate standard, and for the reasons discussed above, is not sufficiently clear to be implemented by underwriters.

2. *Should the standard require a greater likelihood than "reasonable foreseeability" that a potential material conflict of interest will mature into an actual material conflict of interest (e.g., "high probability")?*

   Yes, a higher standard, such as "highly likely," would create a more workable standard to consider whether a potential material conflict will mature into an actual one. This is more likely to reduce the volume of unnecessary disclosures.

4. *Does the ongoing obligation requiring underwriters to provide disclosures of actual material conflicts of interest discovered or arising after the underwriter has been engaged eliminate or reduce the need to disclose potential material conflicts of interest? What if such a material conflict of interest is not discovered or does not arise until after the execution of a contract with the underwriter or otherwise does not allow an issuer official sufficient time to evaluate the underwriter's recommendation?*

   Yes, this would, in the very least, reduce the need to disclose potential conflicts of interest. If a potential conflict materializes into an actual conflict, it would be disclosed, but we believe that the likelihood this will happen after a BPA has been executed and before closing, depriving the issuer enough time to consider the conflict, is de minimis. Furthermore, if the BPA is executed before the conflict arises, the issuer's decision to contract will not have been affected by the after-arising conflict.

I.C. Syndicate Manager Disclosure of Standard and Transaction-specific Disclosures on Behalf of Syndicate Members

1. *If the 2012 Guidance is amended to require a syndicate manager to provide the standard and transaction-specific disclosures on behalf of the syndicate, should the syndicate manager be solely responsible for the content of those disclosures or failing to deliver them, or should the other syndicate members have regulatory liability for any non-compliance? If yes, what would be an effective mechanism or process to help ensure that syndicate members will agree on the content of the standard and transaction-specific disclosures?*

The liability and determination of content should be attributable to the syndicate manager. We do not believe there would be an effective mechanism or process to obtain agreement on the disclosures given how most syndicates are put together over time.

2. *If the 2012 Guidance is amended to require a syndicate manager to provide the standard and transaction-specific disclosures on behalf of a syndicate, should the other syndicate members continue to be required to obtain acknowledgment of receipt from the issuer? Should the other syndicate members be required to make and preserve records of the standard and transaction-specific disclosures provided to, and the acknowledgement of receipt of those disclosures received from, the issuer?*

   This question suggests that there currently is a requirement for other syndicate members to obtain acknowledgment of receipt from the issuer. That would only be the case if other syndicate members were required to send their own disclosures (e.g., the senior manager has made other disclosures on its behalf and syndicate members had their own conflicts). Regarding the MSRB's proposal, the other syndicate members should not be required to retain the issuer's acknowledgment. Most likely, they will keep a record that the syndicate manager provided the disclosures to the issuer or the issuer's acknowledgement of the disclosures.

3. *If the 2012 Guidance is amended to require a syndicate manager to provide the standard and transaction-specific disclosures on behalf of a syndicate, should the MSRB require the syndicate manager to bifurcate its disclosure to provide the standard and transaction-specific disclosures on behalf of the entire syndicate separately from its own dealer-specific disclosures?*

   Bifurcation should be voluntary and according to the recordkeeping processes of the syndicate manager.

I.D. Optional Alternative Manner of Providing Disclosures

1. *Would the alternative manner of providing the standard disclosures…reduce the volume and frequency of disclosures and make the disclosure process more streamlined and efficient as anticipated by the MSRB?*

   Given the complicated nature of the proposal and the expense to operationalize it, we do not believe it would reduce the volume and frequency of disclosures because underwriters would not effectively or economically be able to utilize the approach.

2. *Would there be any unintended consequences to utilizing this alternative to provide the standard disclosures?*

   As we stated in the letter, utilizing this alternative would require a significant infrastructure build for firms and operational concerns with the various requirements that must be met in order to utilize this alternative.

3. *Should the underwriter acting as a sole underwriter or syndicate manager be able to provide the standard disclosures to an issuer by referring back to and reconfirming disclosures made in a previous underwriting with the same issuer when that underwriter was a member of the syndicate for which the syndicate manager that actually provided the disclosures for the previous issuance?*

   Yes, as a general matter, but the approach may be confusing and not particularly practical or operationally workable.

5. *Should the optional alternative manner of providing the standard disclosures also apply to dealer-specific disclosures or transaction-specific disclosures or both?*

   We reiterate our original suggestion that any new or different disclosures, whether they be standard, dealer-specific, or transaction-specific be provided on an annual basis with bring-downs as necessary throughout the year.

I.E. Clear and Separate Identification of Disclosures

1. *Is there any reason why underwriters cannot separate the standard, dealer-specific and transaction-specific disclosures when they are provided within the same document?*

   If the MSRB does not eliminate the need to disclose potential conflicts of interest as SIFMA has suggested, we believe the separation of different types of disclosures is a good proposal, and we do not see any reason why the disclosures cannot be separated within the same document. This may be helpful to issuers.

2. *Would the separation of the standard, dealer-specific and transaction-specific disclosures, when they are provided within the same document, create any challenges for issuer's review of them?*

   No. On the contrary, we believe the separation of disclosures may be beneficial for an issuer's review.

I.F. Disclosure on the Part of Parties Other than the Underwriter

2. *Are there examples of conflicts of interest of issuer personnel that should be required to be disclosed with the dealer-specific disclosures, even if such conflicts are not themselves conflicts of an underwriter?*

   No, we are not aware of any examples of issuer personnel conflicts that should be disclosed with the dealer-specific disclosures.

3. *Are there conflicts of interest of any persons other than issuer personnel and the underwriter (for example, affiliates of the underwriter or swap counterparties or service providers recommended by the underwriter)? If so, should the requirement be limited to*

actual or potential material conflicts of interests that are actually known to the underwriter?

No, we are not aware of any such conflicts of interest.

I.G. Plain English

1. *What types of disclosures have underwriters not provided to issuers in a manner designed to make clear the subject matter of such disclosures and their implications?*

   Any implication that the subject matter of the disclosures and their implications that we provide to issuers were designed to be unclear is untrue. Though certain standard disclosures could be lengthy and contain a significant amount of generic language, they were are made in a manner to address the 2012 Guidance. Addressing our comments above on the standard disclosures and adopting a "clear and concise" standard should address any perceived issuer concerns.

2. *Are there any disclosures that are of such a complex nature that, even when designed by an underwriter to make their subject matter and implications clear, cannot be reduced adequately into plain English?*

   Yes. For example, swaps disclosures and Variable Rate Demand Obligations ("VRDO") disclosures required by MSRB Rule G-17 would be difficult to simplify in a manner required by a plain English standard.

3. *Would any simplification of disclosures to satisfy the plain English standard increase the risk that underwriters imprecisely draft the disclosures that could make it difficult for issuers to fully appreciate the nature of material conflicts of interest and risks of transactions, thereby increasing risk to issuers and/or underwriters?*

   Yes. Given that plain English is susceptible to different approaches, there may be an increased risk that underwriters imprecisely draft the disclosures to address a plain English standard.

II. Issuer Acknowledgment of Receipt of Underwriter Disclosures

2. *How should issuers designate their primary contacts? Should the MSRB specify how this designation should be made?*

   Under the current guidance, underwriters are required to obtain acknowledgment from an official of an issuer who has the authority to bind that issuer by contract. The process generally works well currently and contacts are generally obtainable. We would note however, in certain instances, an issuer may designate a lawyer or other contact that may not have been given the authority to bind the issuer by contract. In these situations, underwriters may need to request another designee or confirm that the designee has the authority to bind the issuer by contract. Ideally, underwriters should be able to send G-17 letters to the individual designated to receive and acknowledge such letters by the issuer whether or not such individual has such authority.

It is not clear that there should be a formal process for designation by issuers or that the MSRB should specify how this designation should be made.

IV. Underwriter Discouragement of the Use of a Municipal Advisor

1. *Do underwriters discourage issuers from engaging municipal advisors? If so, how?*

   We are not aware of any discouragement.

2. *Do other market participants involved in the issuance of municipal securities discourage issuers from engaging municipal advisors? If so, how?*

   We are not aware of any discouragement.

3. *Would the draft amendments sufficiently address the issue or would it allow for certain dealer communications regarding issuer retention of municipal advisors that should be prohibited?*

   As discussed in our letter, the proposed language would have the unintended effect of limiting otherwise permissible communications. We believe our suggestions would sufficiently addresses any concerns while at the same time providing a level playing field for underwriters and municipal advisors.

4. *Should the MSRB require that the standard disclosures include an affirmative statement that the issuer may retain a municipal advisor?*

   No. Inclusion of the affirmative statement would be contrary to the purpose of this retrospective review, increasing standard disclosures. In any case, in the absence of a perfected independent registered municipal advisor exemption, underwriters are limited under the municipal advisor rules from providing advice outside the scope of the underwriter exclusion.

I. Disclosures to Conduit Borrowers

1. *Should the MSRB extend the application of the 2012 Guidance to require underwriters to provide the required disclosures to conduit borrowers? If so, should that application extend to all conduit borrowers or only those with whom the underwriter(s) have engaged directly?*

   SIFMA does not believe the Amended Guidance should require disclosures to conduit borrowers. In some cases – e.g., in engagement letters or letters of intent with conduit borrowers entered into to establish an exclusion from the municipal advisor rules – underwriters provide a conduit borrower with a copy of the disclosures provided to the conduit issuer, but we do not see the benefit of another requirement layered on top of what is already required.[1]

2. *Should the MSRB extend the application of the 2012 Guidance to any other obligated persons beyond conduit borrowers? If so, please specify to whom it should be extended and why?*

   No, there is no reason to extend the 2012 Guidance in this regard.

[1] Note that such disclosures sent pursuant to the SEC's FAQs for the municipal advisor rules do not comprise a G-17 letter under the 2012 Guidance.