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Statement of the Securities Industry and Financial Markets Association
Before the Texas Ethics Commission on HB 1295
February 1, 2016

Good morning, my name is Leslie Norwood and I am a Managing Director and Associate General Counsel of the Securities Industry and Financial Markets Association (SIFMA).

SIFMA is a national trade association which represents hundreds of securities firms, banks and asset managers, many of whom have a strong presence here in Texas. We respectfully seek clarification on HB 1295, a new law that became effective on January 1, 2016.

As you know, HB 1295 creates a new disclosure reporting process for business entity counterparties entering into certain contracts with governmental entities or state agencies. SIFMA supports transparency in the markets and applauds the goal of HB 1295.

Unexpected consequences, however, sometimes become apparent during implementation of new laws. While filling out the forms required under this new law, financial services firms and their counsels have had differing interpretations on a number of terms in the statute and the rules, causing confusion and different levels of disclosure across industry members. SIFMA and its member firms would like to get clarification to ensure that industry members are able to complete their forms correctly, succinctly, and uniformly. We are concerned that in an effort to be complete, as a result of the uncertainty about the definitions of certain terms, firms may be disclosing more information than intended by the statute, creating both an overabundance of information and disclosure forms that obscure the types of information on which the statute was intended to shine light.

To that end, we are pleased that the Commission is considering possible action on the definition of interested party to clarify that it means a controlling person or an intermediary only. The current confusion in the wording is causing some conservative counsels to advise their clients to disclose far more than controlling persons and intermediaries, such as listing any employee remotely involved in executing the contract and tangential service providers, such as bond rating agencies, financial printers and other peripheral entities.

We believe you have the authority to define and clarify the terms in the law, and we appreciate you taking this opportunity to do so, as we feel it will improve the clarity and effectiveness of this law.

There are other issues that have arisen as well.

The statute applies to contracts valued at $1 million or more, but neither the statute nor the rules define how to value a contract. Service contracts, for example, are generally based on remuneration for time at an hourly rate, while contracts for goods are generally inclusive of the price of the goods as well as the remuneration paid. We suggest that Commission expressly authorize the parties to define the "value" of the contract for purposes of HB 1295. Alternatively, we suggest "value" be defined as the remuneration or compensation component of the contract.

We believe you have the authority to define "contract" in this context, and suggest it means a

written agreement involving the provision of goods or services to a governmental entity or state agency by a business entity, including an amended, extended, or renewed contract. This would clarify that disclosure doesn't have to be provided for oral agreements. Currently it is unclear as to whether oral agreements for the purchase or sale of securities in the secondary market for escrow purposes in bond deals, cash management or investment management are covered. Other financial instruments that are entered into in the ordinary course may also be covered. If disclosures are required to be made for these types of transactions, opportunities may be lost by governmental entities due to the time required to do the disclosure.

Regarding contracting parties for syndicate transactions or municipal securities, do all members of the syndicate need to file a disclosure form or only the lead manager that signs the bond purchase contract with the governmental entity or state agency on behalf of the syndicate? For negotiated municipal underwritings, all the syndicate members may be known prior to the signing of the bond purchase contract. However, in competitive bid municipal underwritings, the members of the syndicate may not be known until after the bid is won, which is the contract. Therefore, this law may discourage or disqualify competitive bidders for bonds. We are aware of at least one instance where a firm refused to bid on a transaction due to uncertainty about compliance with the law.

We suggest the definition of "officer" be amended to mean an individual elected, appointed, or designated as a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer by a business entity's governing authority or under a business entity's governing documents. Companies have different corporate structures, and a uniform definition of officer would minimize confusion. For instance, many entities have "ex officio officers" and "non-voting officers." These individuals do not have a controlling interest in the business entity and should be excluded from being identified as such.

Finally, we suggest that a knowledge qualifier be added to the affirmation language. While best efforts continue to be required for providing all known information, many large business entities may not always know if a person was an intermediary somewhere in the process. Also, neither the statute nor the rules make provision for the correction or amendment of Form 1295.

We would appreciate your assistance in clarifying these issues and potentially other issues that may arise.

I thank you for your time and consideration, and am happy to answer any questions you may have.