sifma

*Invested in America*

March 21, 2016

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
P.O. Box 12070
Austin, Texas 78711-2070

Re: Proposed Amendment to 1 TAC § 46.3(d), Relating to the Disclosure of Interested Parties in Certain Contracts with a Governmental Entity or State Agency

Dear Ms. Luna Ashley:

The Securities Industry and Financial Markets Association ("SIFMA")[1] respectfully submits this letter in support of the proposed amendment to 1 TAC § 46.3(d). SIFMA is a national trade association which represents hundreds of securities firms, banks and asset managers, many of whom have a strong presence in Texas. The financial services companies that SIFMA represents are supportive of transparency and effective regulation. To that end, we support this amendment which clarifies the terms "interested party" and "intermediary" in Government Code Section 2252.908.

Texas HB 1295, a new law that became effective on January 1, 2016, creates a new disclosure reporting process for business entity counterparties entering into certain contracts with governmental entities or state agencies. The law applies to contracts with a governmental entity or state agency that either: (1) require an action or vote by the governing body of the entity or agency before the contract may be signed; or (2) have a value of at least $1 million.

We believe the proposed change corrects and clarifies the definitions of "interested party" and "intermediary". As a general matter, the proposed amendment helps to clarify the disclosure requirements by removing repetitive yet conflicting language. However, it would provide even greater certainty if the exception for certain employees from the term "intermediary" were expanded, as shown below.

> (e) "Intermediary," for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who: (1) receives compensation from the business entity for the person's participation; (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and (3) is not an employee of the business

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

> entity, an entity with a controlling interest in the business entity, or an affiliate or subsidiary of the business entity.

We believe this change would clarify that employees of a firm's related business entities would not be included, as this would be very difficult to track across corporate lines.

As the goal of Form 1295 is to identify public officials who may be benefitting from the transaction with the public entity, this change would not detract from that goal. Furthermore, the disclosure requirements should not be lower for employees who work directly for the named business entity as opposed to an affiliate of the named business entity, which is the current situation. Finally, if the proposed definition is not changed, this could possibly permit governmental entities to void their contractual obligations based on a technicality.

While filling out the forms required under the new law, financial services firms and their counsels have had different interpretations on a number of terms in the statute and the guidance, causing confusion and different levels of disclosure across industry members. We are concerned that in an effort to be complete, as a result of the uncertainty about the definitions of the terms below, firms may be disclosing more information than intended by the statute, creating both an overabundance of information and disclosure forms that would obscure the types of information on which the statute was intended to shine light. To ensure that industry members are completing their forms correctly, succinctly and uniformly, in the manner anticipated by the TEC, we ask the Commission consider additional amendments. Those amendments are as follows:

1. Clarify the "value" of a contract. Government Code § 2252.908(b)(2) provides that the disclosure requirement applies to a contract that "has a value of at least $1 million." Consistent with interpretations of similar of Texas laws, "value" should relate to remuneration, and not the entire face value of the contract. It would be helpful if the TEC could reaffirm this definition of "value" with respect to HB 1295.

2. Clarify the term "contract." Government Code § 2252.908(b)(1) suggests that the disclosure requirement only applies to written agreements. We believe that the following amendment would help to clarify that oral agreements, or at a minimum brokerage transactions, were not intended to be included within the scope of the rule. Our suggested changes is as follows:

> "Contract" is a written contract executed by the two or more parties bound to its terms, and includes an amended, extended, or renewed contract.

This change would largely resolve issues related to competitive bid municipal underwritings, whereby the members of the syndicate may not be known until after the bid is won, which is the contract. With this clarification, it would be clear that the lead manager who wins the bid pursuant to a notice of sale, or signs a bond purchase agreement contract with the governmental entity or state agency, would be the party to complete the disclosure.

3. Define "Controlling interest" to mean:

> (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10

> members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers, or its publicly held corporate parent, as disclosed in its public corporate filings.

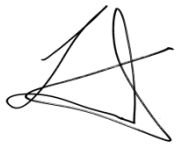
The disclosure of the rapidly changing officers and employees of publicly held companies and their subsidiaries are not the focus of this law, and causes a compliance burden for large public companies and their affiliates. Therefore, we propose that the public corporate filings regarding the officers of publicly held companies and their subsidiaries should be sufficient for compliance with the rule.

4. Define the term "officer." There are a variety of ways to identify the officers that must be counted in disclosing a controlling interest. As an example, many entities have "ex officio officers" and "non-voting officers." Companies have different corporate structures, and a uniform definition of officer would minimize confusion. We suggest that "officers" be defined as those who act in a control or executive capacity.

5. Amend the affirmation, Form 1295, Box 6 (the affidavit), to provide as follows: "I swear, or affirm, under penalty of perjury, that to the best of my knowledge the above disclosure is true and correct." While best efforts continue to be required for providing all known information, many entities may not always know if a person was an intermediary somewhere in the process. This amendment acknowledges that reality. This amendment is also necessary because neither the statute nor the rules make provision for the correction or amendment of Form 1295.

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 the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
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