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Invested in America

January 7, 2025

Austin Gerig
Director/Chief Data Officer
Securities and Exchange Commission
c/o Tanya Ruttenberg
100 F Street NE
Washington, DC 20549

Re: File No. 270-330, OMB Control No. 3235-0372: Proposed Collection; Comment Request; Extension: Municipal Securities Disclosure (Exchange Act Rule 15c2–12)

Dear Mr. Gerig:

SIFMA[1] appreciates the opportunity to comment on the request for comment[2] issued by the Commission on the existing collection of information provided for in Rule 15c2-12 related to municipal securities disclosure (the "Rule"),[3] under the Securities Exchange Act of 1934.[4] SIFMA is concerned that the Commission:

- continues to significantly undercount the amount of time and costs required for broker-dealers acting as underwriters to review the financial and operational disclosures issuers make under the Rule; and

- fails to account for the fact that municipal securities can be sold to underwriters in either a negotiated or competitive bid sale or in a private placement, and non-winning bidders and co-managing syndicate members may also collect information pursuant to the Rule, all of which the Commission conflates for the purposes of its estimates;

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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 one million employees, we advocate on 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). For more information, visit http://www.sifma.org.

[2] 89 FR 88843 (Nov. 8, 2024) (the "Notice"). Any defined terms not defined herein have a meaning as ascribed to them in the Notice.

[3] 17 CFR 240.15c2-12.

[4] 15 U.S.C. 78a *et seq*.

- does not recognize the separate and distinct disclosure review burdens the Rule creates for broker-dealers making recommendations to purchase or sell municipal securities in the secondary market; and

- excludes the burdens of conducting diligence performed in connection with the limited offering exemption of the Rule.

In addition to reviewing its estimates of the Rule's burdens on broker-dealers, SIFMA urges the SEC to take this opportunity to review its existing guidance to Rule 15c2-12, as updates and amendments could be made to account for changes in technology and market dynamics since the last round of changes, and such common-sense updates could reduce the burdens of the Rule on broker-dealers without undermining the Rule's effectiveness.[5] We also urge the Commission to review and update the Rule's limited offering exemption to both reduce the associated information collection requirements and impediments to capital formation.

I. The Commission Grossly Underestimates the Rule's Burden on Broker-Dealers

The Commission's estimates continue to materially and significantly underestimate the burden of the Rule on broker-dealers in their capacity as Participating Underwriters as well as in their capacity facilitating secondary market trading on behalf of customers. Rule 15c2–12 requires Participating Underwriters:

> (1) to obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in noncompetitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with Rule 15c2–12's delivery requirement and the rules of the MSRB; (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or the obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information on a continuing basis to the MSRB in an electronic format as prescribed by the MSRB.[6]

[5] SIFMA Rule 15c2-12 White Paper, April 2016, *available at*: https://www.sifma.org/resources/general/rule-15c2-12-and-potential-updates-to-the-rule/.

[6] 89 FR 88843-44.

In the Notice, the Commission estimates that the total annual burden on broker-dealers to comply with Rule 15c2–12 is 101,454 hours. SIFMA feels this is a gross underestimation of the total annual burden on broker-dealers to comply with the Rule. The Commission's approach to its estimates regarding the burdens on broker-dealers to comply with the Rule is flawed because it fails to account for the range, size, and complexity of issuers and issuances of bonds by creating a single unreasonably low estimate of burden hours for all broker-dealers acting, or seeking to act, as Participating Underwriters. For example, estimating the Rule's burden using the average number of issuances of municipal securities completed in a single year ignores the reality that broker-dealers in a competitive offering spend a significant amount of time reviewing financial and operational disclosures in compliance with the Rule even in those issuances in which they do not ultimately participate. This one-size-fits-all approach also ignores the separate disclosure review burdens imposed on co-managers in addition to lead or sole underwriters in issuances with more than one underwriter.

A. The Notice Underestimates the Rule's Significant Burdens on Potential Participating Underwriters

SIFMA believes the Commission inaccurately estimates the resource burden the Rule imposes on broker-dealers, including the amount of time it takes broker-dealers to complete the steps required to comply with the Rule, which can vary greatly. Specifically, the Commission states in the Notice that approximately 205 broker-dealers could serve as Participating Underwriters in a municipal securities offering, of which there will be an average of approximately 10,968 in each of the next three years. For each of these offerings, the Commission estimates that a broker-dealer acting as a Principal Underwriter will spend 15 minutes "to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB." Therefore, the aggregate total burden of this activity is estimated to be 2,742 hours. SIFMA believes that broker-dealers can spend an hour or more with the issuer or obligated person and underwriter's counsel, not a mere 15 minutes, to ensure the continuing disclosure undertaking of the issuer or obligated person complies with the current rule, as amended. The Commission's estimate of 15 minutes might be reasonable in those instances where a broker-dealer has previously and recently worked with an issuer or obligor that has clearly detailed its written undertaking to provide continuing disclosures to the MSRB. However, there are over 50,000 municipal securities issuers across the 50 states and various U.S. territories and protectorates. Issuers and obligors do not always use the same continuing disclosure agreements, and each must be reviewed to determine not only that the continuing disclosure undertaking exists, but that it is compliant with the current Rule, including the two material events added in 2018.[7] In addition, broker-dealers must review and communicate what operating information the issuer or obligor must provide as part of the undertaking. All of these procedures may require that certain steps be completed and documented for compliance purposes in connection with these reviews and may also require supervisory procedures and/or approval by multiple individuals at a single firm, which

[7] SEC.gov | SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure.

increases the amount of time required to complete the reviews. Therefore, SIFMA believes that at least one hour, and potentially more, is a more accurate estimate of the average amount of time required for underwriters and potential underwriters to comply with this aspect of the Rule.

The Commission further estimates in the Notice that it will take nine hours "*per issuance of municipal securities* to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of Rule 15c2–12."[8] Therefore, the Commission estimates the annual total burden of this activity to be 98,712 hours. In total, the Commission estimates that these two activities (reviewing the current undertaking and reviewing past compliance) will require broker-dealers to spend 101,454 hours per year complying with the Rule (approximately 495 hours per broker-dealer).

Again, SIFMA feels the Commission materially underestimates the burdens of the Rule on broker-dealers to check compliance with prior undertakings of an issuer or obligated person. As a result of the Rule's specific requirements for review of different statements across multiple categories of disclosures regarding financial and operational information, the reviews of prior undertakings for each potential offering involve a significant investment in time and resources for broker-dealers to complete. Firms report needing multiple full-time equivalent professionals to handle these reviews. The time required to conduct the reviews can vary significantly depending on the results of the initial reviews. If a potential Participating Underwriter identifies information that requires further investigation or discussions with the issuer or obligor or other parties, the resulting work to complete the reviews or remediate relevant past disclosure language, or lack of disclosure, will cause the number of individuals involved in the process, and the length of time to complete the reviews, to grow significantly. Many broker-dealers use outside counsel or vendors to conduct primary or supplementary reviews to assist them with their due diligence. Some broker dealers substitute the cost of a vendor report for some of the cost of work that could be done by in-house professionals, both of which are a burden on the broker dealer. Vendors anecdotally report spending approximately eight hours per initial report. Use of a vendor does not eliminate the burdens on broker-dealers because broker-dealers are not relieved of their obligations to review the vendor's product and potentially complete additional required reviews or investigation. Furthermore, broker-dealers have written policies, supervisory procedures, and internal controls requiring firm personnel to take certain steps to not only conduct the reviews required by the Rule but to also document each of those steps.[9] Firm controls may also require that multiple individuals review or approve the diligence and documentation compiled pursuant to the Rule. Therefore, SIFMA estimates that underwriters and potential underwriters completing these reviews could spend

[8] 89 FR at 88844 (emphasis added).

[9] Broker-dealers have adopted or updated these policies, procedures, and internal controls to comply with undertakings consented to as part of the Commission's Municipal Securities Continuing Disclosure Cooperative ("MCDC") Initiative. See Municipal Securities Cases and Materials: MCDC Initiative (Aug. 2020), *available at* https://www.sec.gov/about/divisions-offices/office-municipal-securities/recent-municipal-securities-enforcement-actions/municipal-securities-cases-materials-mcdc-initiative.

from a minimum of 10 hours[10] up to a multiple thereof—depending on a variety of factors, including but not limited to: issuer type; number of their outstanding CUSIP numbers; number of past issuances; complexity of outstanding issuances; public information and statements about the issuer, obligated persons or project; and number of Participating Underwriters—ensuring the various obligations of the Rule are satisfied and documenting that compliance.

In its estimate in the Notice, the Commission assigns the same number of burden hours to all Participating Underwriters. But this approach ignores the fact that underwriters participate in primary issuances of municipal securities, which vary in size and complexity, in different ways, either through negotiated or competitive offerings or through private placements.[11] In addition, regardless of the type of offering, multiple underwriters may participate in a syndicate, and/or as potentially competitive bidders, and each of them may conduct reviews pursuant to obligations to comply with the Rule.

Broker-dealers in both negotiated and competitive offerings also must conduct a review to confirm whether the "prior compliance" disclosure statement (or failures thereof) in the preliminary official statement, which is typically "deemed final," as well as a final official statement, is consistent with the disclosure record on the MSRB's Electronic Municipal Market Access ("EMMA") website. If broker-dealers identify any discrepancies or areas of concern through any of these various reviews, they must spend additional time investigating the issues through discussions with the issuer, its financial advisor, or counsel prior to underwriting the transaction or submitting a bid.

In a negotiated offering, Participating Underwriters spend a considerable amount of time working closely with the issuer and other members of the deal team to draft and review the accuracy of the issuer or obligor's representations in the disclosure compliance statements in the offering documents. Underwriters also conduct a review of these statements and distribute them to potential and actual customers. Since the Rule imposes minimum content requirements for these documents and requires that underwriters receive and review them, that provision of the Rule also necessarily imposes a "collection of information" burden on underwriters. In total, these requirements could add at least five extra hours in the aggregate to a deal team's (which can include the issuer, underwriter, municipal advisor, and each party's counsel) development and review of an official statement to ensure Rule compliance, over and above the time required for underwriters to review the issuer's past compliance with continuing disclosure undertakings. However, the Commission's estimates do not include the time required for broker-dealers to complete these additional content review requirements and do not appear to account for the significant increase in burden hours in offerings being purchased by

[10] This ten-hour estimate is composed of an average initial review of approximately eight hours by the broker-dealer or outside vendor and two hours of additional reviews, investigation and supervisory procedures.

[11] In addition, the Commission also does not acknowledge that some broker-dealers may also act as municipal advisors in securities offerings, and that these firms would incur additional diligence and documentation burdens as a result of the Rule.

syndicates with more than one underwriter, as each co-manager commonly conducts its own review.

In competitive offerings, broker-dealers review an issuer's financial and operational documents as they prepare to submit a bid to act as a Participating Underwriter. Although pre-bid initial reviews may not be as extensive (or even possible) as the reviews conducted after becoming Participating Underwriters (including potentially other syndicate members) due to the limited amount of time pre-bid, bid preparation still involves several steps relevant to compliance with the Rule. For example, a broker-dealer must review the disclosure compliance statement in the deemed final preliminary official statement, or offering document, for accuracy against publicly available financial information and industry news. The broker-dealer also must review the offering document's description of the security for the bonds as well as statements regarding any outstanding litigation that could impair the bonds' validity or the ability of the issuer or obligor to make the interest and principal payments.

Instead of updating its estimates to account for the reality of the Rule's actual burdens on broker-dealers competitively bidding to act as underwriters, the Commission continues to only account for time spent on transactions actually underwritten, despite the fact that this diligence needs to be completed by all broker-dealers competitively bidding to underwrite a transaction, not just by the one broker-dealer that wins the bid. In 2023, approximately 43% of municipal securities issues, or nearly 4,000 of the more than 9,000 total offerings, were sold by competitive bid. For example, according to previous anecdotal estimates, in small transactions, there were on average two bidding underwriters and in large transactions there were on average seven bidding underwriters, each of which conducts similar reviews for compliance with the Rule. Consequently, the per offering burden to review the financial and operational disclosures in competitive offerings could range from two to seven times the estimated average per underwriter review time in the Notice. And this number is likely even larger given that multiple underwriters often participate in competitive syndicates. By including a single estimate of the burden hours involved for broker-dealers acting as Participating Underwriters in a primary offering, rather than addressing the nuances of Rule compliance separately for negotiated and competitive offerings, as well as for the size and complexity of the offering, and not acknowledging that multiple underwriters may participate in a syndicate, SIFMA believes the Commission significantly underestimates the amount of time broker-dealers that act or bid to act as underwriters spend on Rule compliance.

B. The Notice Underestimates the Rule's Burdens on Broker-Dealers that Recommend Municipal Securities Transactions in the Secondary Market

The Commission does not include in its estimates the work broker-dealers must undertake to comply with paragraph (c) of the Rule[12] with respect to recommendations to buy

[12] The Rule specifically requires that broker-dealers making recommendations in municipal securities have "procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of this section with respect to that security."

or sell municipal securities. In its supporting statement in 2022, the Commission stated its belief that the Rule does not "contain[] 'collection of information requirements' within the meaning of the [Paperwork Reduction Act] on broker-dealers effecting transaction in the secondary market." The Commission also stated that "[t]o the extent that broker-dealers effecting transactions in the secondary market review and disclose material to customers, those associated burdens stem from antifraud provisions in the securities laws and MSRB rules that are not subject to this PRA analysis." While the Commission is correct that broker-dealers have separate obligations to comply with the general anti-fraud provisions of the federal securities laws and MSRB rules, the Rule does impose prescriptive requirements for broker-dealers making recommendations in municipal securities to have systems in place to obtain and review the financial and operational data contained in paragraph (b)(5) of the Rule. SIFMA feels that MSRB Rule G-47's required time of trade disclosures regarding an issuer's failure to make continuing disclosure filings as required by any agreement to satisfy paragraph (c) of the Rule highlights the burdens on broker-dealers to continue to monitor an issuer's compliance with Rule, and thus serves as an additional burden of the Rule itself.

The Paperwork Reduction Act defines "collection of information" to "include[] any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information."[13] Absent the Rule's prescriptive requirements, broker-dealers making recommendations to buy or sell municipal securities in the secondary market would be free to create any reasonably designed supervisory system to comply with the antifraud provisions of the federal securities laws and MSRB rules. Instead, the Rule explicitly requires that broker-dealers recommending municipal securities collect and review the information identified in the Rule. Any broker-dealer examined for compliance with the Rule would be asked for evidence that it had procedures in place to "obtain, maintain, [and] retain" the specific financial and operational information in paragraph (b)(5) of the Rule. Therefore, the Rule creates significant compliance burdens for broker-dealers making recommendations in the secondary market, yet the Commission's estimates completely ignore these burdens.

C. The Commission Should Have Included the Burdens on Broker-Dealers Participating in Limited Exempt Offerings

As the Commission notes, municipal offerings issued in large denominations sold to no more than 35 persons who have "knowledge and experience in financial and business matters" are exempt from the Rule.[14]

The limited offering exemption imposes diligence requirements on broker-dealers acting as Participating Underwriters, which are required to conduct reasonable reviews to confirm that offerings claiming limited exemptive status meet the required elements. In

[13] 5 CFR 1320.3(c).

[14] 17 CFR 240.15c2-12(d)(1).

addition, the Commission, by way of its enforcement actions,[15] seems to have imposed an additional implicit requirement that broker-dealers document compliance with the limited offering exemption of the Rule. For example, before participating in a potentially exempt limited offering, broker-dealers face the risk of an enforcement action if they do not form a reasonable basis to determine that the offering complies with the requirements of the exemption *and* document this diligence. The additional step of documenting compliance with the offering exemptions, although not explicitly included in the Rule, may entail paperwork beyond that included in the diligence conducted to ensure an offering meets the requirements of the limited exemption. Such diligence and related documentation may include obtaining signed investor letters, from up to 35 persons each, to support the broker-dealer's reasonable belief that the municipal securities are being sold only to investors that have the knowledge and experience in financial and business matters that are capable of evaluating the merits and risks of the prospective investment and are not purchasing for more than one account or with a view to distributing the securities.[16] The steps to conduct and document this diligence in an exempt offering can be significant, and failure to do so may be considered a violation of the Rule.[17] Anecdotally, broker-dealers report that this task can take a minimum of five aggregate staff hours per transaction. Despite the Commission's recent focus on documentation in connection with exemptive offerings, the Commission failed to include the burdens of this aspect of the Rule on broker-dealers in its estimates.

SIFMA also believes that the Rule's limited offering exemption could be streamlined and amended to reduce impediments to capital formation. SIFMA urges the Commission to consider such amendments.

II. The Commission Should Consider Ways to Minimize the Burden of Collection and Analysis

SIFMA supports the Rule's underlying goals of enhancing disclosure and transparency for investors in the municipal securities market, thereby reducing fraudulent, deceptive, or manipulative acts or practices. It is important to acknowledge that the SEC's 1994 Interpretive Release[18] to Rule 15c2-12 is now over 30 years old. SIFMA again urges the SEC to take this

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[15] See: https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25505.

[16] As noted, because the documentation requirement is not included in the Rule, there is no requirement for broker-dealers to obtain an investor letter to support its reasonable belief that the investor meets the exemption.

[17] See, e.g., A Teachable Moment: Latest SEC Enforcement Actions Remind Underwriters of Limited Offering Exemption's "Reasonable Belief" Requirements, Orrick, Herrington & Sutcliffe LLP (Sept. 20, 2022) (noting that "[t]he SEC alleges that the underwriters did not take the steps necessary to satisfy the exemption's criteria."), *available at* https://www.orrick.com/en/Insights/2022/09/A-Teachable-Moment-Latest-SEC-Enforcement-Actions-Remind-Underwriters.

[18] 59 Fed. Reg. 12748 (Mar. 17, 1994), *available at*: https://www.sec.gov/files/rules/interp/1994/33-7049.pdf.

opportunity to review the existing guidance to Rule 15c2-12, as we believe that updates and amendments could be made to reduce the burdens of the Rule.[19]

For example, both the initial Rule and its continuing disclosure amendments were adopted prior to the existence of easily accessible public information about issuers of municipal securities. Most states, large cities and counties, and other municipal securities issuers have publicly available websites on which they maintain the same financial disclosures required by the Rule, plus other useful information. Issuers also often update this public information more frequently than required by the Rule. For these issuers, the Rule's duplicative disclosure provisions may not provide much additional benefit in reducing securities fraud. In these circumstances, the more limited amount of benefit should be weighed against the burdens imposed on issuers, underwriters, and the MSRB.

SIFMA also reiterates its position that automated collection techniques or other forms of information technology can be used to reduce the burden on filers and increase the certainty that filings are made. EMMA currently collects and disseminates ratings from all the principal rating agencies. Ratings feeds are sent directly to EMMA from the relevant nationally recognized statistical rating organizations and displayed for use by all municipal securities market participants for free. Therefore, we see no reason why issuers would continue to need to be contractually bound to provide material event notices of ratings changes, and the broker-dealer community would be required to conduct due diligence to ensure that issuers are compliant with that part of their undertakings. We believe the SEC or its staff should conclude publicly that these rating agency feeds satisfy issuer filing obligations or, at a minimum, that any issuer failure to file a duplicative notice is not material.

III. Conclusion

SIFMA appreciates the opportunity to comment on the existing collection of information provided for in the Rule. SIFMA members and staff would welcome the opportunity to meet with the Commission to discuss these comments. Please do not hesitate to contact Leslie Norwood with any questions by phone at (212) 313-1130, or by email at

[19] See SIFMA White Paper, supra n. 5.

lnorwood@sifma.org or Gerald O'Hara by phone at (202) 962-7343, or by email at gohara@sifma.org.

Sincerely,

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