Siebert Williams Shank
A SHANK WILLIAMS CISNEROS COMPANY
100 Wall Street, 18th Floor
New York, New York 10005
(646) 775-4850

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VIA ELECTRONIC SUBMISSION

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

Dear Mr. Smith:

Siebert Williams Shank & Co., LLC (the "Firm") appreciates this opportunity to comment on an interpretation of regulatory requirements that will result in undue and unintended burdens on smaller firms such as ours. During the course of a routine cycle examination, staff of the Financial Industry Regulatory Authority, Inc. ("FINRA") took a position regarding Rule 15c3-1 (the "Net Capital Rule") of the U.S. Securities and Exchange Commission (the "SEC") that is without basis in the rule's text or in related guidance. We bring it to your attention because the Staff's interpretation could have a negative impact on firms' underwriting capacity and, as a result, the vibrancy and depth of the primary market for securities—including the municipal market.

The Net Capital Rule requires firms participating in a firm commitment underwriting to take an open contractual commitment (an "OCC") charge "on each net long and each net short position" contemplated by any OCC in their accounts.[1] Recently, the Staff took the position that, under no circumstances, may a co-managing underwriter in an offering of new issue securities reduce its OCC charge to zero prior to the settlement date unless it has "adequate supporting documentation ***from the lead underwriter*** to evidence that the Firm no longer had any exposure to the underwriting deals." The Staff further contends that such evidence is required (i) even if there are no unsold securities, and (ii) if there are unsold securities, even if the bookrunning lead underwriter (the "Bookrunning Manager") has not allocated any unsold securities to the co-manager.

Historically, syndicate members in primary offerings of municipal securities that have not been allocated any unsold securities reduce their OCC charges the day after pricing based on the implied representation by the Bookrunning Manager that no securities are to be allocated to the syndicate, which is reflected in communications such as balance wires, IPREO allocation and/or retention wires, and free to trade wires. Notwithstanding this widespread and longstanding practice among industry participants, the Staff asserted that these communications are insufficient bases for a co-

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[1] Rule 15c3-1(c)(2)(viii); 15c3-1(c)(4).

manager to reduce its OCC charge under the Net Capital Rule. Instead, the Staff suggest that a firm that does not retain other supporting documentation from the Bookrunning Manager evidencing that the co-manager "no longer had any exposure to the underwriting deals as of the close of business" on the pricing date and/or trade date will have violated SEC Rules 17a-3(a)(11) and 17a-5(a) and FINRA Rules 3110(a) and (b). As a matter of practice, Bookrunning Managers do not issue the type of communication the Staff demands; in fact, because neither FINRA nor the SEC have published guidance regarding this new interpretation, most market participants simply do not know that there is any reason to do so. Absent formal guidance from the SEC or FINRA, longstanding industry practice in the determination of OCC charges, and the timing thereof, should be respected, or the Staff's interpretation should otherwise be put out for comment by the industry.

The imposition of this new purported requirement under the Net Capital Rule has a disproportionate adverse effect on small and diverse firms such as ours, with no corresponding reduction in risk. In addition, because FINRA appears to raise this issue only with smaller firms, larger firms that also frequently serve as co-managers are unaware that they may be deemed by FINRA to be misstating their net capital. Thus, the imposition of this new requirement holds market participants to different standards depending on whether they have received "private" guidance from FINRA. It also results in the incongruity that Bookrunning Managers, with access to the full syndicate order book, may reduce their OCC charges to zero while each co-manager in the syndicate must continue to take the OCC charge—through settlement—for its entire underwriting liability, simply because the Bookrunning Manager has not communicated to the co-manager, in explicit terms, that it has no continuing underwriting commitment. The broad application of this interpretation could cause disruption to the municipal securities market if frequent co-managers are forced to decline syndicate appointments on primary offerings because FINRA improperly deems them to have insufficient net capital.

We hope the MSRB will exercise its traditional market leadership role to encourage FINRA exam staff to take a reasonable approach in determining when co-managers can cease to take OCC charges. The MSRB should also consider guidance under MSRB Rule G-11 to make clear that, absent the Bookrunning Manager's allocation of securities that remain unsold, the free to trade wire is evidence that syndicate members have no continuing open contractual commitment.

Sincerely,

/s/ Suzanne Shank

Suzanne Shank
President & Chief Executive Officer

/s/ Gary Hall

Gary Hall
President of Infrastructure & Public Finance