

September 21, 2012

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: MSRB Notice: 2012-41: Request for Comment on Concept Proposal to
Strengthen Account Opening and Supervisory Practices of Dealers Effecting
Online Municipal Securities Transactions with Individual Investors

Dear Mr. Smith:

Bond Dealers of America (BDA) is pleased to submit this letter in response to the Municipal Securities Rulemaking Board's (MSRB) Notice: 2012-41 (the "Proposal"), which solicits comments on a concept proposal relating to potential additional protections for individual investors effecting transactions through electronic brokerages, including reminding dealers of their fair dealing and fair pricing obligations to customers under MSRB Rules G-17, G-18 and G-30, respectively, as well as their suitability obligations under MSRB Rule G-19 when recommending municipal securities transactions to individual investors. BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA supports the MSRB's efforts in the Proposal to remind dealers that operate as electronic brokerages of their fair dealing and fair pricing obligations and suitability obligations when making recommendations about municipal securities, as well as the MSRB's objective to protect individual investors. While the BDA supports the MSRB's goals of protecting individual investors and reminding firms that operate as electronic brokerages of their fair dealing and fair pricing obligations as well as their suitability obligations if making recommendations, the BDA believes that certain of the provisions in the Proposal may create additional and unnecessary burdens on electronic brokerages, without commensurate benefits in the form of protections for investors in municipal securities.

Delivery of Educational Materials within Ten Days; Online Training

The MSRB should not require delivery of educational materials containing important information about the common features and risks of municipal securities to each new individual investor within ten days of an account opening. Only a very small percentage of individual investors who open accounts with electronic brokerages may actually purchase municipal securities online. By requiring delivery of such information to all new individual investors, firms

would bear the costs of sending educational materials to investors who may never purchase a municipal security and who do not want to receive such materials resulting in increased costs for all investors. If the MSRB were to require educational materials to be delivered to individual investors, then the BDA would suggest that the MSRB allow firms to meet this obligation by providing investors electronic access to information currently provided by the MSRB through the Electronic Municipal Markets Access (EMMA®) website (such as the Online Investor Toolkit). The BDA also suggests that firms be permitted to use the notice and access delivery model developed by the Securities and Exchange Commission (SEC).

The MSRB also should not require electronic brokerages to provide mandatory training to individual investors who may purchase municipal securities online. Although firms may offer optional resources to clients to educate them on the municipal securities markets, mandatory training is not currently required to be provided with respect to any other category of securities and should not be required for municipal securities. If, after a thorough analysis, the MSRB determines that training would inform and protect individual investors who choose to purchase securities online, then the BDA believes that the MSRB itself should develop and make such a training program available to ensure that the content and scope of such educational materials for such investors is consistent and accurate.

MSRB-Generated E-mail Alerts

The BDA agrees with the MSRB that it would be helpful if individual investors who purchase municipal securities online were made aware of the ability to subscribe to MSRB-generated email alerts of continuing disclosure materials submitted to the MSRB's EMMA system. Since many individual investors may be unaware of the availability of such information, the BDA believes that firms should be required to inform investors of the availability of such information through the EMMA system. Requiring electronic brokerages to enroll individual investors in the EMMA system is impractical, however. If individuals investors were to subscribe directly to the information available on EMMA, this would reduce the risk of enrollment errors and need on the part of dealers to monitor and update information (incorrect e-mail addresses, changes in email addresses, changes in alert preferences, etc.) which would be necessary if such process were to be conducted through a third-party rather than directly with EMMA. Additionally, the increased costs for each electronic brokerage firm to develop and administer its own MSRB-alert enrollment program would be burdensome and the efforts, at best, would duplicate what EMMA is already doing directly. If the electronic brokerages were to direct individual investors directly to EMMA it would enable each investor to take full advantage of the customizable enrollment options for alerts that are available on EMMA as well as help to educate municipal securities investors about the EMMA system and the increasing amount of information being made available to the municipal market.

Review and Approval of New Individual Investor Accounts

While the online trading of municipal securities by individual investors has grown, it is the BDA's belief that the proposal to have a municipal securities principal approve new accounts of individual investors in advance of their first municipal securities transaction would be an inefficient and unnecessary requirement that would not achieve the MSRB's goal of protecting investors who purchase municipal securities. Given that municipal securities may be

purchased at any time by an individual investor who transacts online, firms would be required to review and approve all new accounts, the great majority of which will not engage in online municipal securities transactions. Further, under the MSRB's current proposal, the municipal securities principal would be required to determine whether the firm has delivered the necessary educational materials and collected the relevant profile information. These items that the MSRB proposes would be verified by a municipal securities principal (delivery of educational materials and collection of suitability information) do not require any specialized knowledge of the municipal securities markets. Instead, such tasks are well within the purview of things that a general securities principal is capable of verifying. Firms already have an obligation under the MSRB Rules¹ to review and approve the opening of each customer account promptly and the BDA does not believe that this new requirement would provide enough of a benefit for individual investors to justify the burden on dealers of having to review and approve each account prior to trades being effected.

Written Supervisory Procedures

The BDA is generally supportive of the proposal that firms should have written supervisory procedures to delineate under what circumstances municipal securities transactions would be considered recommendations, how they fulfill their obligation to deliver material information about municipal securities transactions to individual investors under MSRB Rule G-17, and how they fulfill their fair pricing obligations under MSRB Rules G-18 and G-30. When assessing their electronic brokerage business under any new procedure, electronic brokerages would be guided by the standards set forth in MSRB Notice 2002-30 (the "2002 Notice").² Accordingly, firms would be required to perform a facts and circumstances analysis under the MSRB's proposed procedure that analyzes the content, context and manner of presentation of their online communications.

In particular, the BDA's members agree that firms should assess their use of automated trading systems (ATSS) under the facts and circumstances test articulated in the 2002 Notice. The BDA understands the MSRB's position that the concept of a "wide universe of securities" is not applicable in the context of offering municipal securities through an online trading platform. However, the BDA believes, as the SEC recently noted in its Report on the Municipal Securities Market (the "Report")³, ATSS have come to play an important role in the municipal bond market by aggregating liquidity. In addition, as the SEC notes in the Report, ATSS account for a substantial portion of municipal securities transactions but represent only a small percentage of the dollar volume, which supports the premise that they are used primarily for smaller, retail-size orders.⁴ In fact, the SEC staff posited that the SEC and the MSRB could improve pre-trade price transparency in the municipal securities markets by issuing a rule requiring municipal bond dealers "to affirmatively offer retail customers the option of exposing

¹ MSRB Rule G-27(c)(i)(g)(1).

² MSRB Notice 2002-30 (September 25, 2002).

³ See Securities Exchange Commission Report on Municipal Securities Market at 45, July 31, 2012, available at <http://sec.gov/news/studies/2012/munireport073112.pdf>.

⁴ *Id.* at 118.

their orders on one or more ATSs that widely disseminate quotes and provide fair access.”⁵

The use of ATSs by electronic brokerages, in many circumstances, allows customers to make meaningful and informed choices when selecting municipal securities to purchase or sell. The BDA believes that, in such a circumstance and based on current MSRB guidance, it is not a foregone conclusion that a recommendation has been made by a firm merely by offering a retail client access to an ATS through the firm’s electronic brokerage. In other words, the employment of an ATS in a firm’s electronic brokerage is not, standing alone, dispositive of whether the firm has made a recommendation to a retail client. Therefore, the BDA continues to believe that the use of ATSs by electronic brokerages should be subject to the facts and circumstances test articulated in the 2002 Notice.

The BDA urges the MSRB to consider the recommendations of the BDA and encourages the MSRB to conduct a cost benefit analysis in the event it intends to pursue formal rulemaking for any of the provisions outlined in the Proposal.

Thank you again for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink that reads "Michael Nicholas".

Michael Nicholas
Chief Executive Officer

⁵ *Id.* at 146.