

June 12, 2013

VIA ELECTRONIC MAIL

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

*RE: MSRB Notice 2013-10 (May 1, 2013) – Request for Comment on Proposed
Sophisticated Municipal Market Professional Rules*

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board (“MSRB”) Notice 2013-10 seeking comments on proposed Sophisticated Municipal Market Professional Rules (the “Proposed Rule”) that would create a new definitional rule, Rule D-15 (“Proposed Rule D-15”), defining a sophisticated municipal market professional (“SMMP”) and a new general rule, Rule G-48 (“Proposed Rule G-48”), regarding the regulatory obligations of brokers, dealers and municipal securities dealers (“dealers”) to SMMPs. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets.

The BDA believes that any revisions to the MSRB rules, whether to harmonize such rules with those of other regulatory authorities or to streamline and codify existing guidance, should be written with an eye towards achieving a consistent interpretation and application of each rule. While we are supportive of the Proposed Rule, we seek clarity on some items.

Customer Affirmations Should Allow for Flexibility

With regard to Proposed Rule D-15 Supplementary Material, .02 Customer Affirmation, we appreciate the flexibility the MSRB has provided with regard to obtaining customer affirmations. However, we respectfully request that the MSRB consider permitting alternate methods of affirming SMMP status in lieu of specifically obtaining customer affirmations under the Proposed Rule. As an example, a dealer who has a process for and conducts a regular credit review of its SMMP customers should be able to use such credit review instead of obtaining an affirmation by the SMMP as long as the dealer determines there has been no change in the status of the SMMP based upon the internal review of the customer’s portfolio or other similar evaluation. Current practice by firms already

indicates this is a process which is accepted and which does not take away from the evaluation process that the MSRB is seeking to ensure protection for customers. Therefore, we would ask that the MSRB consider including language in the Proposed Rule which permits such alternate methods of assessing an SMMP.

The Asset Threshold Language Should be Consistent with FINRA's Rule

Although we are comfortable with the \$50 million asset threshold set forth in the Proposed Rule, especially as it is consistent with FINRA Rule 4512(c), Customer Account Information, we are concerned by the more stringent requirement in the Supplementary Material .01 of the Proposed Rule, which goes beyond FINRA Rules 4512 and 2111 and states that a "...dealer should consider the amount *and type of municipal securities* owned or under management by the customer" (*emphasis added*).¹ FINRA Rule 2111 does not require a consideration of the type of securities held by the customer for qualification under FINRA's institutional investor exemption. We are unaware of any feature unique to the municipal securities market that would justify the more burdensome requirement in the Proposed Rule of consideration by a dealer of both the amount AND type of municipal securities owned or under management by the customer.

Furthermore, we believe this requirement might confuse examiners and allow for an uneven application of the Proposed Rule by examiners depending on how familiar or unfamiliar they are with the municipal markets and the differences between the FINRA and MSRB rules. We believe that it might be difficult for examiners and compliance officers at firms to set appropriate and objective parameters to meet the rule's requirements for consideration of the *type* of municipal securities. As an example, if a dealer's written supervisory procedures states a customer's holdings of all types of municipal bonds should be considered, but an examiner determines that since the customer has only a few revenue bonds and mostly general obligation bonds in their portfolio and therefore the revenue bonds should not be considered, then there is a difference in opinion which could cause the firm to have to reassess its entire methodology or risk being in violation of the rule as a result of differences in interpretation. We believe a determination by the dealer that the customer has total assets of at least \$50 million and that the dealer has a reasonable basis to believe the customer is capable of evaluating investment risk and market value independently are important for whether or not the customer's account meets the requirements to be designated as an SMMP and that deference should be given to the evaluation process conducted by the dealer.

Technical Corrections

Proposed Rule G-48(b) provides that a broker, dealer, or municipal securities dealer does not have an obligation under MSRB Rule G-18 to take action to ensure that transactions meeting certain conditions are effected at fair and reasonable prices.² Under Proposed

¹ MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.

² See MSRB Notice 2013-10 (May 1, 2013).

Rule G-48(b)(1), one of the conditions is if the transaction is a “non-recommended secondary market agency transaction.”³ We would like further clarification as to how the MSRB defines “agency transactions” for purposes of this provision. The MSRB’s Restated Interpretative Notice regarding the Application of the MSRB Rules to Transactions with Sophisticated Municipal Market Professionals dated July 9, 2012 (the “July 2012 Notice”) included guidance that was particularly relevant to dealers operating alternative trading systems. Since the July 2012 Notice will be superseded by the Proposed Rules, we respectfully request the MSRB to consider the application of this provision in the context of alternative trading systems (“ATS”) and whether it would be appropriate to expand this exemption for transaction pricing under Proposed Rule G-48 (b)(1) to include an ATS which functions on a riskless principal basis disclosing all commissions in the same manner as it would if it were acting as agent.

Finally, Proposed Rule G-48(d), Bona Fide Quotations, provides that a “[...] broker, dealer, or municipal securities dealer disseminating an SMMP’s ‘quotation’ as defined in Rule G-13, *which is labeled as such*, shall apply the same standards....” (emphasis added).⁴ We are unclear as to whether the MSRB intends that a quotation from an SMMP needs to be labeled as an “SMMP quotation” or if the MSRB is simply referring to a quotation that meets the requirements set forth under MSRB Rule G-13. Under the July 2012 Notice, it was very clear that if an SMMP makes a “quotation” *and* it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer and the disseminating dealer’s responsibility with respect to such quotation is reduced and the disseminating dealer is held to the same standard as if it were disseminating a quotation made by another dealer. If Proposed Rule G-48(d) is intended to codify the language from the July 2012 Notice, then we respectfully request that the MSRB consider modifying the language in Proposed Rule G-48(d) to clarify that the clause “which is labeled as such” does not require the quotation to be specifically labeled as an SMMP quotation.

Thank you for the opportunity to submit these comments on the Proposed Rule.

Sincerely,



Michael Nicholas

Chief Executive Officer

³ See MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.

⁴ MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.