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VIA ELECTRONIC MAIL

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

RE: MSRB Regulatory Notice 2016-25: MSRB Seeks Input on Strategic Priorities (October 12, 2016)

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Regulatory Notice 2016-25 (the "Notice"), requesting input from market participants on strategic priorities to guide the MSRB as it conducts its annual assessment of its priorities and resource allocations to help guide the strategic direction of the organization. BDA is the only DC based group representing the interests of middle-market securities dealers and banks focused on the United States fixed income markets and we welcome this opportunity to present our comments on this Notice.

MSRB Priorities should acknowledge the significant increase in regulatory and compliance burdens over the past few years.

In fashioning its priorities, the BDA believes that the MSRB should take into consideration the impact that the last five years of cumulative regulatory changes has had on dealers and other market participants in the municipal securities market. In the last five years, dealers in the municipal securities market have seen much-heightened enforcement activity from the SEC, the adoption of the municipal advisor rule by the SEC, the creation and adoption by the MSRB of the regulatory regime for municipal advisors, the adoption by the MSRB of the best execution rule, the implementation of Rule G-17 disclosures by underwriters, and expect the retail confirmation disclosure rule to soon be finalized by the SEC, and a host of other regulatory changes. Dealers have needed to effect fundamental changes within their own organizations to absorb all of these new regulatory burdens. Dealers have implemented sweeping changes in their due diligence policies and procedures as underwriters, they have implemented new policies and procedures to ensure compliance with the municipal advisor rule, and they have implemented new compliance regimes and trading-desk procedures to respond to the new best execution rule. These changes have been costly and time consuming.

We believe that the MSRB is entering into a new regulatory phase in which fewer large and sweeping reforms should be necessary or required. Over the last five years, the most important priorities of the MSRB were to implement the municipal advisor regulatory regime, a requirement of the Dodd-Frank Act, and to implement the market structure recommendations of the SEC, a significant priority of the SEC. While there are some final elements of both which remain unimplemented, on the whole,

those two major priorities, which have largely defined the MSRB's regulatory mission in recent years, are coming to an end.

As a consequence of both the widespread regulatory changes of the last five years and the start of a new board term at the MSRB, we believe that this is the time for the MSRB to focus on ways to improve the municipal securities market that do not involve the types of sweeping and burdensome rulemakings that the MSRB has worked to adopt in recent years. Here are some ideas that the BDA suggests along these lines.

Technology solutions

The organization of information in the municipal securities market lags far behind that of the corporate securities market. For all of the rhetoric of the need of the municipal securities market to parallel the corporate securities market, the most obvious difference between the two markets remains the antiquated technological infrastructure of the municipal securities market. Here are some key technological differences:

- *The issues in the corporate securities market are far better organized*. The corporate securities market has long been organized along industry categories, but the municipal securities market remains almost exclusively organized by CUSIP number. This provides no organization to the types of issuers within the market and reduces the value of pricing disclosures for investors. Take the SEC's recent enforcement action related to underwriters and pricing-related fraud as an example. An investor in the new-issue municipal security who wanted to evaluate its pricing relative to the prices that other investors paid would need to pass through several steps to identify other CUSIP numbers, and comparable pricing. While the market remains organized around CUSIP numbers, market participants will struggle to identify other key information beneficial to investors. Such an unorganized system lends itself to the creation of additional lack of clarity and inability to compare/contrast and use valuable information in a way that makes sense to the investing public. Adding to this problem is the MSRB's new initiative to permit voluntary postings of bank loans and private placements to EMMA, both of which may not have CUSIP numbers. While we agree that more transparency in the marketplace is better, it is just simply not the case that more disclosure equals better information, especially if there is not a clear way to file and find all of this information.

- *Disclosure filings by issuers are organized by issuer, not by issue or CUSIP number.* Currently, issuer's post their disclosure to EMMA by inputting relevant CUSIP numbers. In addition, investors can obtain filings and notices when the issuer elects to file those filings and notices using the CUSIP numbers of bonds they hold. However, what EMMA does not allow is for an issuer-based disclosure system. For example, an investor currently has no manner by which to be aware that the issuer of bonds it owns has just published a preliminary official statement relating to the same credit as those bonds. That preliminary official statement may contain critical new disclosures that may inform investment decisions in those bonds in the future—and, worse, institutional investors may have the proprietary technology or resources to easily obtain that information and use it to trade against less-sophisticated retail investors.

The MSRB has evaluated over the last several years how to harmonize the rules in the municipal securities market with the rules in the corporate securities market. But many of the rules in the corporate securities market benefit from a better technological platform. We believe the MSRB

should focus the next several years to align the technology in the municipal securities market to the corporate securities market.

For example, the BDA believes it would be useful to remove the reference to credit ratings from MSRB Rule G-15 to harmonize the requirements of G-15 with recently adopted changes to SEC Rule 10b-10. The SEC amended 10b-10 due to the requirements of section 939A of the Dodd-Frank Act. The Commission removed references to Nationally Recognized Statistical Rating Organizations (NRSRO) credit ratings from the confirmation rule. The fact that MSRB and SEC rules for confirmations differ in this respect creates an unnecessary misalignment that forces dealers to have separate systems and processes for fixed-income confirmations. BDA believes this a good example of a simple, but meaningful regulatory change that would benefit dealers. Additionally, 10b-10 was amended to remove the requirement that a dealer disclose on a confirmation that an NRSRO had not rated the security. Therefore, amending G-15 in a similar way would not require any re-programming for dealers.

Nevertheless, the list above are just a few of the ways the MSRB can explore how technological solutions can solve market problems. The recent minimum denominations rule is a good example of another manner in which the MSRB can make smart changes to arcane rules and systems. The BDA believes that the primary reason why dealers had instances of non-compliance with the minimum denomination rule is that the new issue form required under Rule G-32 does not require the level of the minimum denominations to be included so that it easily appears on EMMA. We believe that a thorough evaluation of the problems of the market, and how technology can assist in solving those problems without material increases in rulemaking, can result in key win-win solutions that benefit all municipal market participants and impose minimal additional regulatory and cost burdens.

The BDA believes that retrospective regulatory cost-benefit analysis would improve the quality of the regulatory process and ensure that competition is not unnecessarily harmed by new regulations.

Dealers in the municipal securities market have been required to absorb an unprecedented level of regulatory changes in the last five years and the MSRB should evaluate those changes on both an after-the-fact and cumulative basis. Many dealers have seen their compliance departments dramatically increase in size, a significant increase in the number of hours that management or supervisors dedicate to compliance matters, and a dramatic increase in financial resources dedicated to managing regulatory changes. We believe that there needs to be a deeper review of the cost-benefit analysis of all of these changes. Usually with regulatory changes, the cost-benefit analysis is only done at the time of the rulemaking with ultimate reliance only on the basis of regulatory assumptions. We are not aware of efforts to evaluate whether the assumptions at the time of the rulemaking were accurate or not. In other words, were the assumptive costs of the new rule realized, underestimated, or over estimated. In addition, cost-benefit analyses are usually done with respect to a specific rulemaking proposal and not in conjunction with other new or ongoing rulemaking efforts. Given the dramatic shifts in the regulatory landscape in the last five years, we believe that the MSRB should conduct a study to consider how the cumulative regulatory changes have resulted in increased costs, burdens, and inefficiencies, and suggest changes it would recommend as a result of the study. The MSRB is ideally positioned to conduct this kind of study.

Increased issuer educational efforts

One of the most challenging areas in the municipal securities market is the lack of effective educational efforts to ensure that all issuers have opportunities to understand their disclosure responsibilities under the Federal securities laws and the ways in which recent regulatory changes may affect them. The municipal securities market is geographically dispersed and many issuers simply do not receive effective education concerning their disclosure responsibilities. This is an area where the MSRB is ideally situated to address the issue. The MSRB could work with other organizations, the SEC, state governments and others to provide educational opportunities for issuers in venues throughout the country.

Encourage the voluntary filing of bank loan information by recognizing and mitigating disclosure liability concerns.

Notwithstanding the MSRB's significant outreach efforts, there has not been a discernible increase in the voluntary disclosure of bank loans. One of the primary reasons for the reluctance of parties to file voluntary disclosures is their understandable concern that such voluntary filings would subject the filing parties to potential 10b-5 liability. The BDA believes that the MSRB should work with the SEC and with industry members to craft appropriate disclaimer language which, when accompanying a voluntary bank loan filing, would provide protection for those parties wishing to provide notice of a bank loan, but not wanting to subject themselves potentially to 10b-5 liability for providing either redacted documents or a summary of terms. Of course, patently untrue statements would not be afforded this protection, but a notice that an entity entered into a variable rate direct purchase instrument with a bank which matures on a date certain accompanied by the debt service schedule and a bond counsel opinion should accomplish the purpose of providing notice to the market that additional debt has been issued.

Conclusion

In short, we believe that this is a time for the MSRB to allow the market to absorb the enormous amount of regulatory change that has occurred in the last five years and work on other solutions. An intermediate lull in rulemaking will be good for everyone as it will afford the MSRB the time to work on the key technological improvements that are necessary, study the cumulative regulatory impact on dealers, and help educate issuers of their disclosure responsibilities.

Sincerely,

Mike Nicholas, CEO
Bond Dealers of America