

May 6, 2013

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2013-07 (March 11, 2013) – Request for Comment on Revisions to Suitability Rule

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 2013-07 seeking comment on the proposed revisions to MSRB Rule G-19, on suitability (“Proposed Rule G-19”), that would harmonize MSRB Rule G-19 with the Financial Industry Regulatory Authority’s (“FINRA”) Rule 2111 on Suitability (“FINRA’s Suitability Rule”).¹ 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 is pleased to have this opportunity to comment on Proposed Rule G-19.

The BDA believes that any revisions to the MSRB rules to harmonize such rules with those of other regulators should be written with an eye towards achieving a consistent interpretation and application of each rule. While we are encouraged by many of the changes in Proposed Rule G-19 that would harmonize MSRB Rule G-19 with FINRA’s Suitability Rule 2111, we are concerned that the differences in the Proposed Rule G-19 from FINRA’s Suitability Rule are not necessarily justified, particularly with respect to the treatment of institutional investor accounts.

MSRB Should More Clearly Identify What Constitutes a Hold Recommendation

In connection with any proposed rule that attempts to harmonize the rules across the fixed income markets, there needs to be some recognition that many of the unique qualities of the municipal bond market, such as the large number of outstanding bonds, prevalence of buy and hold investors and infrequent secondary market trading for many issues, among others, may require additional guidance to help municipal market participants transition to the new rules. For example, the BDA is concerned that there is the potential for confusion to exist with respect to explicit versus passive hold recommendations. Specifically, under Proposed Rule G-19’s supplementary material .03, Recommended

¹ See FINRA Rule 2111 (Suitability)

Strategies, Proposed Rule G-19 would apply the suitability obligation to investment strategies that include “an explicit recommendation to hold a municipal security or municipal securities.”

The BDA is concerned that this might lead to unnecessary and burdensome compliance documentation in certain instances. For example, consider a situation where a customer approaches his or her financial advisor (“FA”) with a desire to liquidate a portion of their portfolio for cash. The FA discovers the client requires what amounts to the liquidation of \$25,000 from their entire portfolio, which consists of many items amounting to a much larger total amount. The FA and customer then decide to put out for bid, three similar items from the larger portfolio in order to make a better informed decision about which of the three to act upon after quotes from the market come in. The FA and the customer receive bids on all three and then need to decide to sell which of the three securities, taking into account all potential relevant factors, and making the best decision on the customer’s behalf. We assume the recommendation to go through with the sale of that one item would require documentation that the suitability requirements of Proposed Rule G-19 have been met. Furthermore, we believe that the other two items not acted upon would not constitute an affirmative “hold recommendation” as Proposed Rule G-19 is written and therefore would not require documentation as such. Therefore, we would encourage the MSRB to provide further guidance as to what constitutes a “hold recommendation” for purposes of Proposed Rule G-19. Specifically, we believe MSRB guidance should make clear that the suitability obligation applies only to the recommendation to sell the designated bond or bonds and that the remaining bonds would not be the subject of an “explicit” recommendation to hold. We believe the MSRB should incorporate guidance language, as FINRA does in Regulatory Notice 12-55, that “implicit” hold recommendations are not within the scope of its suitability rule.

Proposed Rule G-19 Should Include an Exception for Sophisticated Municipal Market Professionals (“SMMP”) Similar to FINRA’s Exception for Institutional Investor Accounts

As it relates to Proposed Rule G-19 and the MSRB’s effort to harmonize its suitability rule with FINRA’s Suitability Rule, the BDA would suggest the MSRB maintain an SMMP exemption. While the BDA intends to submit more substantial comments on MSRB Notice 2013-10², Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, we do believe it is worth mentioning in this letter why an SMMP exemption should be included in Proposed Rule G-19. The BDA believes that omitting any reference to the SMMP exemption in Rule G-19 in favor of moving that exemption from being an interpretation under MSRB Rule G-17 to its own stand-alone Rule G-48 and companion definitional rule D-15 under MSRB Notice 2013-10, undermines the goal of harmonizing the Proposed Rule G-19 with FINRA’s Suitability Rule and runs counter to the MSRB’s stated objective. In fact, in MSRB Notice 2012-16³, the MSRB revised the definition of SMMP indicating that they revised this “definition so that it is consistent with the new FINRA suitability rule for institutional

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

³ See MSRB Notice 2012-16 (March 26, 2012)

customers.” Our concern with the omission of an SMMP exemption in Proposed Rule G-19 is that FINRA examiners will not be able to consistently apply the FINRA Suitability Rule as contrasted with the MSRB’s suitability rule, potentially causing confusion for application of the rules by FINRA examiners. If the definition of SMMP is not clearly defined and exempted in MSRB’s suitability rule, like it is in FINRA Rule 2111(b), it will be difficult for FINRA examiners to know how to apply the language of MSRB’s rule as separate and apart from FINRA’s rule. As we have stated in the past with other rules, the BDA believes rules should be written consistently among the different regulators with an eye toward facilitating the interpretation and application of each rule with objective standards that broker dealers and FINRA examiners alike can interpret and apply the rules in a consistent manner. Since we do believe harmonization will be beneficial for enforcement of both MSRB and FINRA rules, we would encourage the MSRB to consider inserting a definition of SMMP in Proposed Rule G-19 before it submits this proposal to the SEC.

Supplementary Material for Proposed Rule G-19 Should be Updated

Should the MSRB include an exemption for SMMPs in Proposed Rule G-19, the MSRB should also consider updating supplementary material .02, Disclaimers, to include language such as “when providing services to retail clients” or “when providing services for non-SMMP clients” so that all supplementary material acknowledges the exception for SMMPs in the Proposed Rule G-19.

Additionally, another consideration for changes to supplementary material would be to strike the word “retirement” from supplementary material .03, Recommended Strategies, item (iv). We would suggest that the Section be rewritten to read “estimates of future income needs.” The BDA believes this would better align to FINRA’s “liquidity needs” criteria to recognize that when purchasing a position, one might be looking for a period to help bridge income needs until they reach retirement and not solely for “retirement income needs.”

Thank you for the opportunity to submit these comments.

Sincerely,



Michael Nicholas

Chief Executive Officer