

**SUBMITTED ELECTRONICALLY**

June 2, 2021

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1300 I Street NW, Suite 1000  
Washington, D.C. 20005**RE: Municipal Securities Rulemaking Board Requests for Comment on Application of Regulation Best Interest to Bank-Dealers (Notice 2021-06)**

The American Bankers Association<sup>1</sup> (ABA) appreciates the opportunity to provide comments to the Municipal Securities Rulemaking Board (MSRB or Board) on the draft amendment to MSRB Rule G-19, on the suitability of recommendation on transactions that would require bank dealers to comply with Rule 15/-1 of the Securities Exchange Act of 1934 when making recommendations on securities transactions or investment strategies involving municipal securities to retail customers.<sup>2</sup> Specifically, the Board is requesting input from stakeholders to harmonize the municipal market regulations to include bank dealers in the SEC's Regulation Best Interest.

The draft amendment would impose a standard of conduct on bank dealers when recommending to retail customers in the municipal securities market. Many ABA members provide services as regulated municipal securities dealers through separately identifiable

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$22.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$18 trillion in deposits, and extend nearly \$11 trillion in loans. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> See MSRB Notice 2021-06.

departments in commercial banks or through broker-dealer affiliates of commercial banks. These services and products are frequently offered under various regulatory and legal regimes, which are governed by state and federal laws, and supervised by multiple regulatory agencies. The Request for Comment, while directed at bank dealers, is also of interest to our broker-dealer and bank members. Our comments herein will be focused on these various perspectives.

### **General Comments**

While ABA has long supported the notion that financial professionals offering investment advice to retail customers should be subject to a best interest standard, we urge the Board to consider the compliance costs imposed by such a rule on bank dealers in relation to their limited amount of retail customer activity. Board data has shown that the overwhelming amount of retail-sized (< \$100K par value) bank dealer-to-customer trades were concentrated among seven (7) of the 21 existing bank dealers and four (4) of the 21 bank dealers did not execute any retail-sized trades.<sup>3</sup> Ultimately, bank dealers in municipal securities do not have a significant retail customer base to warrant a new regulatory compliance regime in this manner.

### **Specific Comments on the Proposed Amendment**

#### *Costs*

Among the chief concerns of ABA members are the expected costs associated with establishing the revised policies and procedures to comply with Regulation Best Interest's requirements and the expected ongoing compliance costs. The Board believes these costs would be proportionate to each bank dealer's limited retail activity. Most dealer banks do not engage in trades with retail customers nor typically in amounts less than \$100,000 par value. Nonetheless, these institutions may find themselves potentially in a transaction with a retail customer through no effort on the part of the bank. The Request for Comment acknowledges that because a trade is

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<sup>3</sup> See MSRB Notice 2021-06 pg. 13

less than \$100K, it does not imply that these trades are conducted with only retail customers and could be executed for institutional trades.<sup>4</sup> Per the example above, we would encourage the MSRB to consider a thoughtful and tailored approach to this rulemaking so the bank dealer would not incur any additional cost or require additional documentation if the trades were not subject to Regulation Best Interest.

Further, if a bank dealer has to track or report this type of activity, there would be a cost to doing so only to prove the bank is complying with Regulation Best Interest even though the bank dealer does not offer any sales to retail clients. The MSRB should consider the burden on the bank dealer to establish revised policies and procedures related to the compliance of Regulation Best Interest and allow for those bank dealers who do not participate in retail transactions or recommendations to “opt-out” of Regulation Best Interest.

#### *Disclosure of Fees*

The disclosure of fees and conflicts of interest required for broker-dealer activity with retail customers is another concern for ABA’s bank dealer members. There is a possibility that if bank dealers are required to comply with Regulation Best Interest with retail transactions, it could open up similar compliance related to their institutional businesses. In light of the higher costs associated with the implementation of the proposed requirements and in all likelihood, the ongoing costs, the Board should take this into consideration given the small number of bank dealers practicing in the market today.

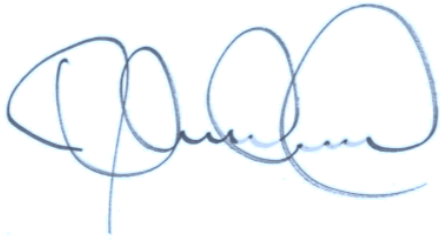
#### **Conclusion**

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<sup>4</sup> See MSRB Notice 2021-06 pg. 14

ABA appreciates this opportunity to provide the perspective of our bank dealers and banks. We offer our suggestions intending to improve the effectiveness of the proposed amendment and ensure compliance costs and burden are proportional to their activities.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin M. Underwood". The signature is stylized with large loops and a long horizontal stroke at the end.

Justin M. Underwood  
Executive Director – ABASA  
Vice President, Banking Policy  
American Bankers Association



May 27, 2021

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

**Re: Request for Comment on Application of Regulation Best Interest to Bank-Dealers (2021-06)**

Dear Mr. Smith:

The American Securities Association (ASA)<sup>1</sup> appreciates this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to amend MSRB rules to harmonize standards of conduct for bank dealers with the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI), which went into effect on June 30, 2020 (Proposal).

The ASA has strongly supported Reg BI, which was finalized by the Securities and Exchange Commission in June 2019. Reg BI is a strong national standard that includes significant investor protections and establishes clear rules for broker-dealers, without crippling business models that have served investors well for years. Having a national standard has become increasingly important given efforts by certain states to undermine Reg BI by adopting their own conflicting standards which confuse investors, increase costs, and reduce access to advice.

Reg BI requires broker-dealers to consider several factors when providing advice and making recommendations to retail investors. This includes considering the potential risks, rewards, and costs associated with recommendations, and a prohibition against a broker putting their own interest ahead of their clients. Reg BI raises the bar for the entire broker-dealer industry and will prevent bad actors from taking advantage of vulnerable investors.

The adoption of Reg BI requires MSRB to align its rules with the new national standard. In 2020, the SEC approved a number of MSRB proposals to align rules G-8, G-19, G-20, and G-48 for broker-dealers when interacting with retail customers.<sup>2</sup> The Proposal would further amend MSRB Rule G-19 regarding suitability to align Reg BI with standards that apply to bank dealers (defined as a municipal dealer that is a bank or a separate department or division of a bank). While technical in nature, the Proposal will reduce regulatory confusion for municipal dealers and further establish Reg BI as the national standard for broker-dealers and bank dealers.

<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

<sup>2</sup> Approval Order for the MSRB Broker-Dealer Filing (June 25, 2020)





**american securities association**

*America's Voice for Main Street's Investors*

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The ASA appreciates the work by the MSRB in the Proposal to align their rules with the SEC and Financial Industry Regulatory Authority's (FINRA) when possible so that broker-dealers are not subject to multiple standards. We thank the MSRB for advancing this Proposal and look forward to working with the Board to ensure that Reg BI meets its intended goals.

Sincerely,

Christopher A. Iacovella  
Chief Executive Officer  
American Securities Association



**American Securities Association**  
1455 Pennsylvania Ave. NW, Suite 400  
Washington, D.C. 20004



**AmericanSecurities.org**  
@amersecurities



**202.621.1784**

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1000 Walnut St.  
Kansas City, MO 64106

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

Re: Notice 2021- 06, Request for Comment on Application of Regulation Best Interest to Bank-Dealers

Dear Mr. Smith,

The Capital Markets Group of Commerce Bank (“CMG”) respectfully submits these comments in response to MSRB Notice 2021-06. The Capital Markets Group is a department of Commerce Bank (“Commerce”) and is a registered bank-dealer. Commerce Bank, a subsidiary of Commerce Bancshares, Inc., is a Federal Reserve Member, Missouri Trust Company operating full service banking facilities across the Midwest including the St. Louis and Kansas City metropolitan areas, Springfield, Central Missouri, Central Illinois, Wichita, Tulsa, Oklahoma City, and Denver. We appreciate the opportunity to share our observations and comments in regard to the potential impact and effect of the proposed application of Regulation Best Interest on bank-dealers.

The Request for Comment invites market participants to provide comments in response to several questions and topics posed in regard to Regulation Best Interest. As noted by the MSRB, the terms of Regulation Best Interest (“Regulation BI”) do not currently apply to bank dealers. Specifically, the MSRB is seeking comment on a draft amendment to MSRB Rule G-19, requiring bank dealers to comply with Regulation Best Interest when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers.

Our comments with the corresponding Item Number from the Notice are as follows:

*2. Are the municipal securities activities of bank dealers significantly distinct from those of broker-dealers to warrant a different standard of conduct? If so, can you provide a more detailed explanation about how or why bank dealers’ municipal securities activities are so dissimilar?*

Although we cannot speak with direct knowledge of other bank dealers, we can provide applicable details about the activities of CMG. The majority of CMG’s customers and related activity are institutional in nature, comprising over 91% of open accounts, and with many of the institutional customers designated as SMMPs. CMG does not actively market or seek to obtain new retail customer accounts. Many of our retail clients are related parties to the institutions we serve. For example, many CMG retail customers are typically more sophisticated and are familiar with fixed income products and securities markets. Also, as a bank dealer, CMG is generally only permitted to offer fixed income type products. Our retail customers are aware of this product constraint and utilize CMG services for only a portion of their overall personal portfolios.



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Kansas City, MO 64106

*4. If bank dealers are subject to the requirements associated with Regulation Best Interest, to better assess the compliance costs, what portion of a bank dealer's municipal securities business would be impacted? In general, how much of a bank dealer's municipal securities business relates to retail customers? How much of a bank dealer's retail customer business involves a recommendation?*

For CMG, retail customers comprise approximately 9% of CMG's total open account customer base. Further, only a portion of these retail accounts actually executed transactions in the last 12 months, comprising approximately 3% of CMG's total customers. As discussed above, the majority of CMG's customers are institutional in nature. In general, most CMG customers may currently be provided recommendations. Given the potential applicability of Regulation BI, internal consideration and assessments will now need to be performed to determine whether recommendations would continue for any CMG retail customers.

*5. Would amending the existing regulatory scheme to extend the application of the requirements associated with Regulation Best Interest to bank dealers incentivize bank dealers to eliminate certain municipal securities activities with retail customers? Please provide any specifics available in support of your answer.*

Given the significant existing suitability and documentation requirements applicable to CMG's current retail customers, the additional increased requirements, risks, and costs associated with Regulation BI will continue to be assessed. As a result of this review, consideration will most likely be given to the potential removal of retail customers from the CMG platform. In addition, CMG may also consider the elimination of providing recommendations for securities or strategies to retail customers.

*6. If Regulation Best Interest's General Obligation and its Component Obligations were made applicable to bank dealers, should the MSRB omit, supplement, or otherwise modify any of the requirements associated with Regulation Best Interest to account for the municipal securities activities of bank dealers? Why or why not? If so, specifically how should the obligations be omitted, supplemented, or modified?*

As previously outlined in our response to Question 2, important distinctions exist for retail customers of CMG when compared to a general securities broker-dealer model. For example, the sophistication level of the customers, as well as the regulatory limitations that govern the products permitted to be provided by bank dealers. Given these distinctions and the costs associated with developing a robust program to comply with Regulation BI, we propose the MSRB consider the possibility of omitting or modifying the requirements applicable to bank dealers. As previously stated, the number of retail accounts that comprise CMG's customer base is relatively small, when compared to the number of institutional customers. As currently proposed, the full requirements of Regulation BI would apply to a bank dealer in the absence of any consideration for the number of retail accounts. We propose the MSRB consider a threshold for applicability of Regulation BI, such as the percentage of retail customers that comprise a bank dealers customer base.





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*13. If bank dealers become subject to Regulation Best Interest, what impact would that have on the municipal securities market? How would it affect capital formation? How would it affect competition?*

Assuming the amendments are approved as adopted and bank dealers begin to move away from providing services to retail customers, bank dealers that underwrite municipal bonds would need controls in place to ensure underwritings or related commitments are appropriate for any retail order periods required by an issuer. The potential impact may be a smaller number of underwriting firms available or willing to work with smaller issuers and public entities in the market, limiting the number of competitors available for either competitive or negotiated deals. This may negatively impact a municipality's cost to borrow.

Thank you for the consideration of perspectives and information from the industry. We are certainly available to provide further details or aspects of this proposal for bank dealers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "EAS", with a long horizontal flourish extending to the right.

Erik Swanson  
Managing Director  
Capital Markets Group of Commerce Bank

A handwritten signature in black ink, appearing to read "Joe R", with a long horizontal flourish extending to the right.

Joseph Reece  
Chief Compliance Officer - CMG  
Capital Markets Group of Commerce Bank



June 2, 2021

**VIA ELECTRONIC SUBMISSION**

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

**Re: MSRB Notice 2021-06 – Application of Regulation Best Interest to Bank Dealers**

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Notice 2021-06 (the “Notice”),<sup>2</sup> which proposes an amendment to MSRB Rule G-19 that would require bank dealers to comply with Securities Exchange Act Rule 15/-1 (“Regulation Best Interest”) when making recommendations of securities transactions or investment strategies involving municipal securities to retail customers.<sup>3</sup> SIFMA supports the proposed amendment to extend

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> MSRB Notice 2021-06 (March 4, 2021).

<sup>3</sup> SIFMA notes that per SEC No-Action relief, "Institutional Family Offices" are not subject to Reg BI. The no-action relief defines "Institutional Family Office" as:

- 1) one or more experienced securities or financial service professionals;
- 2) total assets of \$50 million or more;
- 3) independent of the BD; and
- 4) supervision, i.e., policies and procedures/records to comply/demonstrate compliance with the relief.

See: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/sifma-122320-regbi.pdf>

SIFMA subsequently released two related forms: 1) an affirmative confirmation of status, and 2) a negative consent confirmation of status of Institutional Family Office. Both forms are available at <https://www.sifma.org/resources/general/cross-product/#isc>.

Regulation Best Interest to bank dealers, as defined in the Notice. Although our members do not normally conduct retail activity through their affiliated banks that would implicate this rule, we believe that regulatory parity among regulated entities, which this amendment achieves, is a worthwhile goal.

If any questions regarding the foregoing, please contact me at (212) 313-1130 or [lnorwood@sifma.org](mailto:lnorwood@sifma.org).

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood  
Managing Director  
and Associate General Counsel