

April 17, 2023

Ronald W. Smith, Corporate Secretary  
MSRB  
1300 I Street NW  
Washington DC 20005

Dear Mr. Smith,

The Bond Dealers of America (“BDA”) is pleased to provide comments on MSRB Notice 2023-02, “Request for Comment Regarding a Retrospective Review of the MSRB’s Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals” (the “Proposal”). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Proposal describes contemplated changes to MSRB Rules G-47 and D-15 and related guidance as part of the Board’s retrospective rule review. Many of the amendments in the Proposal are consolidations or reorganizations of existing policy documents, including incorporating guidance into rule text and consolidating and retiring some guidance. The Proposal would also add three data items that “may be material and require time of trade disclosure to a customer.” These are whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. The Proposal would also specify that dealers do not need “to disclose to their customers material information that, pursuant to the dealer’s policies and procedures regarding insider trading and related securities laws, is intentionally withheld from the dealer’s registered representatives who are engaged in sales to and purchases from a customer.”

Proposed amendments to Rule D-15 would remove the requirement with respect to a SEC-Registered Investment Advisor (“RIA”) for a dealer to obtain an attestation from the customer as a condition of that investor having the status of Sophisticated Municipal Market Professional (“SMMP”).

BDA is generally not opposed to the Proposal as it relates to Rule G-47. Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens<sup>1</sup>. The exceptions to this are the three additional data items not currently referenced as “information that may be material in specific scenarios and require time of trade disclosures to a customer” in Supplementary Material .03 of Rule G-47—whether the issue has no Official Statement or the OS is available only through the underwriter; whether the issuer has committed to making continuing disclosures related to the issue; and the yield to worst for the issue. While some dealers likely incorporate these disclosures currently, not all do. For those who do not, these amendments

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<sup>1</sup> To ensure the descriptions and explanations contained in the soon-to-be-archived guidance remain easily accessible, we recommend adding a link to “Archived Interpretive Guidance” ([www.msrb.org/MSRB-Archived-Interpretive-Guidance](http://www.msrb.org/MSRB-Archived-Interpretive-Guidance)) to the MSRB’s “Regulatory Documents for the Municipal Market” landing page ([msrb.org/Regulatory-Documents](http://msrb.org/Regulatory-Documents)).

would impose costs on dealers to update written supervisory procedures and obtain additional sources for this information, likely from vendors.

As the Proposal recognizes, “dealers could incur costs as a result of the proposed actions.” As the Proposal also recognizes, this is especially “true for the three proposed specified time of trade disclosure obligations to be codified in Rule G-47.” Compliance costs are not borne equally across the industry. Smaller dealers tend to bear a great burden because fixed compliance costs are spread over a smaller base of revenue. While the marginal compliance costs associated with the Proposal may be relatively small, they would come at a time when the industry is digesting major regulatory initiatives, including the transition to T+1 clearing and settlement as well as pending proposals related to shortening the Real-time Trade Reporting System trade report deadline to one minute and a third best execution rule. Together, these initiatives would impose significant new compliance costs on MSRB-regulated dealers. We urge the MSRB to be mindful of the combined effects of the Board’s initiatives as well as regulations promulgated by the SEC, especially the effects on small and mid-size dealers.

BDA supports the proposed changes to MSRB Rule D-15. We agree with the Proposal that SEC-registered RIAs “are typically very sophisticated” and “the burdens associated with obtaining an attestation from these professionals” are not supported “by the protections afforded to them.”

The Proposal states “one alternative the MSRB considered was for Rule D-15 on SMMPs to exempt state regulated investment advisers from the attestation in addition to advisers registered with the Commission.” Apparently the Board rejected this provision because “investment advisers registered with the Commission are typically much larger than state-registered advisers.” We do not believe the size of the RIA is a driving factor in the RIA’s sophistication or their ability to otherwise meet the requirements of SMMPs. State-registered RIAs generally bear a fiduciary duty to their customers comparable to the fiduciary duty imposed by SEC RIA rules. We urge the Board to reconsider the D-15 proposal and include state-registered RIAs in the proposed exemption from the requirement to obtain a SMMP attestation.

BDA is again pleased to provide comments on the Proposal. We are generally not opposed to the proposed changes to Rule G-47, and we fully support the proposed changes to Rule D-15. Please call or write if you have any questions.

Sincerely,



Michael Decker  
Senior Vice President