

February 26, 2024

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

Dear Mr. Smith,

The Bond Dealers of America (BDA) is pleased to respond to MSRB Notice 2023-11, "Request for Information on Impacts of MSRB Rules on Small Firms" (the "Notice"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

BDA's membership includes broker-dealers of all sizes. A preponderance of our members are mid-size BDs. This gives BDA a distinct perspective in relation to the questions posed in the Notice. We welcome the opportunity to respond.

Q. What factors make a regulated entity a small, mid-sized or large regulated entity: revenue; level of business activity; number of associated persons; type of regulated entity; or other factors?

A. All those characteristics are relevant to segmenting the industry by size. For BDs, another key factor is capital. The SEC's Net Capital Rule requires that firms hold enough capital to support all the firms' BD activities, including underwriting and market making. Without sufficient capital, firms cannot participate actively in the market. More capital generally means the firm can engage in a higher level of market activity. Capital drives a firm's ability to compete and grow.

Q. What, if any, MSRB rules or other MSRB activity, and what market practices impacted by MSRB rules or activities, have an unintended negative impact on or unfairly burden smaller regulated entities?

A. Burdens associated with MSRB rules or practices faced by smaller BDs are generally focused around resources available for compliance-related activities. At the smallest firms, the compliance "team" is a solo chief compliance officer, and even mid size firms have limited resources. Changes to MSRB rules generally require updating compliance practices, and depending on the nature of the rule change, could involve technology acquisition and implementation, staff training, and other resource-intensive activities. These challenges are magnified when faced with a final rulemaking with a short implementation period.

Q. Are there circumstances where the application of an MSRB rule has led to an unintended disproportionate impact on the growth of smaller regulated entities?

A. MSRB Rule G-27 applies to supervision. Paragraph (b)(iv) of the Rule requires that all Offices of Municipal Supervisory Jurisdiction (OMSJs) have a registered principal on site and branch offices have a person with “authority to carry out the supervisory responsibilities with respect to municipal securities assigned to that office by the dealer.” These requirements can raise the cost for firms seeking to grow through opening new offices. For firms with limited resources seeking to grow and expand, this can be a limitation.

Q. Are there circumstances where the application of an MSRB rule has required smaller regulated entities to spend resources or retain the services of third-party vendors at costs that have a disproportionate impact on smaller regulated entities?

A. Many MSRB rules effectively require firms to build or buy technology solutions which automate some of or all the compliance process. This is necessary because compliance with certain MSRB rules requires calculation or processing activities which can only be accomplished at scale with technology. While pricing for some technological compliance solutions varies with volume, some expenses are fixed. While all dealers face this burden, smaller BDs must spread the cost of acquiring and using technology solutions over a smaller base of revenue.

Q. What, if any, MSRB rules would benefit from a different or tiered approach to regulation or interpretations, according to size, that would support greater efficiency without the loss of investor, municipal entity or obligated person protection?

A. BDA does not believe smaller firms should face relaxed or different regulations or compliance standards than larger firms. There is no justification for a reduced standard for investor or issuer protection for some but not all BDs active in the market. Instead, we urge the Board to consider how its potential rule changes would affect all market participants, including smaller BDs, and to write rules which do not impose unreasonable compliance standards on any market participant, big or small. This is especially important with respect to implementation periods for regulatory changes. In many cases, it may reasonably take smaller firms more time to implement rule changes than larger firms due to fewer resources available for the task. We urge the Board to consider the effects of its rule amendments on those firms that would be particularly challenged and to gauge implementation times to ensure all firms are able to be fully compliant on a rule’s effective date.

Q. Are there changes that could be made to MSRB rules to provide meaningful and appropriate exceptions based on regulated entities’ sizes?

A. We do not believe smaller firms should be excepted from any of the Board’s regulatory requirements. In some cases exceptions to certain regulatory requirements may be justified based on level of market activity, not size of firm. For example, the Board currently has a proposal pending before the Commission to shorten the time dealers have under MSRB Rule G-14 to report trades to the Real-time Trade Reporting System. The proposal includes an exception to the expedited reporting time not based on the size of a firm but on a firm’s level of municipal

securities trading activity. Exceptions like that may be appropriate for certain MSRB regulations and may benefit smaller firms seeking to comply.

Q. Are there changes the MSRB can make to any of its own processes that could address specific challenges faced by smaller regulated entities?

A. The MSRB should ensure that members of the Board represent a broad cross-section of the municipal dealer industry, including small firms. Small firms have a unique market perspective that would enhance the Board's deliberations.

Q. Are there compliance resources or guidance the MSRB could produce that would be useful if tailored for different-sized regulated entities?

A. The Board may wish to consider a training and education program tailored to small firms, including content geared towards professionals new to the industry. The MSRB's current suite of educational content is helpful, but a quality program specific to small BDs could be valuable.

Q. Are there any MSRB rules that have an unintended negative impact on or unfairly burden mid-sized and/or large firms, or do any of the questions posed above with respect to smaller regulated entities give rise to concerns about unintended negative impact or unfair burdens on mid-sized and/or large firms?

A. Other than what we have already stated, especially concerns around resources available for compliance activities, small firms appropriately face similar compliance burdens as larger firms. One area of MSRB practice that fails to acknowledge the burdens of regulation on small firms is the Board's economic analysis that generally accompanies SEC rule filings. We recognize that projecting compliance costs for rulemakings that have not yet even been approved is a challenge. However, the MSRB's cost-benefit analyses consistently underestimate the cost of compliance with rulemakings. They often do not reflect the reality faced by smaller firms once rule changes are fully approved, especially manpower costs associated with preparing for compliance and opportunity costs associated with small firm employees focused on compliance with new rules and not on growing the business.

We appreciate the opportunity to present our responses to the questions posed by the Board. Please call or write if you have any questions.

Sincerely,



Michael Decker  
Senior Vice President