

# Comment on Notice 2025-08

From: Mark Conner, Second Chair LLC

On: November 03, 2025

Comment:

From the RFC: "The MSRB stated in the February 2023 RFC that it understood that Commission-registered investment advisers are typically very sophisticated and, as a result, some market participants have questioned whether the burdens associated with obtaining an attestation from these professionals is sufficiently outweighed by the protections afforded to them." Absolutely not. In the last decade, there has been a proliferation of smaller registered investment advisers (RIAs), both SEC and state registered, that employ client-facing RIA agents that are woefully unsophisticated, untrained, and uninformed about municipal bonds. They lack requisite sophisticated resources for conducting both market and municipal credit research, and generally do not understand the salient yet peculiar aspects of how the municipal bond market operates. As an expert witness at FINRA arbitration, I am receiving more and more inquiries from claimant attorneys related to losses and/or unsuitable municipal bond recommendations from RIA firms and their agents. As I review email communications, broker (agent) notes, trade execution patterns, and audit trial testimony, it's clear that as a class, many RIAs are as far from SMMPs as one can get, including their customers. These firms have responded to the explosive growth in independent RIAs that clear though larger firms (mostly because it doubles their commission payouts), yet have no staff or employees responsible for conducting true independent research, due diligence, analysis that is comprehended by the definition of SMMP. Further, if an RIA becomes exempted from the SMMP affirmation requirement, it exposes their customers to the risks arising from the condition that the agent is, in fact, not an SMMP. The language that the MSRB chose to include in its RFC fails to protect the RIA's customer, the very party that will suffer from any risk exposure or outright losses that may arise from unsuitable recommendations made by an RIA and its agent. These RIAs very often hold themselves out to be "fixed-income experts" or even "municipal bond experts" when in fact they do not even meet the requirements for SMMP status as it currently defined. As for describing the solicitation of an affirmation as "burdensome", it seems the MSRB has adopted the language often used by respondent attorneys at arbitration, that it's just too much work. It's not. If an RIA is willing to claim to its customers that is expert, it should have no issue with declaring that they meet the definition for SMMP. because, very simply, an SMMP should prima facie be deemed an expert. This pending undermining of investor protection is dangerous and is sure to give rise to ever more unsuitable recommendations enabled by a rule that allows dealers to simply assume that their RIA customers that hold a expressed fiduciary duty are capable of independent risk analysis, price discovery, and general market reconnaissance. In addition to this, exempting members from the affirmation requirement degrades the vertical integrity of a market that is already regarded with skepticism by retail investors. As is often the case, the MSRB has failed to look beyond member dealers as its constituents in leaving ultimate municipal bond investors unprotected with these proposed changes.