

Via Electronic Submission

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

January 30, 2026

RE: MSRB 2025-08 Request for Comment on MSRB Rule D-15 (Defining the Term Sophisticated Municipal Market Professional)

To Whom it May Concern:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by both state and federal securities regulators relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

The MSRB is an organization that is ultimately in the business of "establishing rules, generally subject to SEC approval, that are designed to protect municipal securities investors, issuers and the public interest."¹ The current proposed amendments are inconsistent to the organization's mission.

A municipal securities dealer has fair practice obligations to an institutional customer. There are three considerations in this regard:

- Whether the institutional customer has timely access to all publicly available material facts concerning a municipal securities transaction;
- Whether the institutional customer is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and
- Whether the institutional customer is making independent investment decisions about its investments in municipals securities.²

¹ <https://www.msrb.org/sites/default/files/MSRB-Investor-Protections-in-Municipal-Securities-Market.pdf>, p. 7.

² MSRB Notice 2002-16.

An SMMP is an institutional customer, an entity (not a natural person), with total invested assets of \$50 million that the dealer has a reasonable basis to believe is “(i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion.”³ As part of the reasonable basis analysis, a dealer “should consider the amount and type of municipal securities owned or under management by the institutional customer.”⁴ And an SMMP must affirmatively indicate that it is exercising independent judgment in evaluating the recommendations of the dealer.⁵

While the stated goal of the proposal is to modernize and clarify the SMMP framework, from an investor-protection perspective, it risks materially weakening core safeguards embedded in the municipal securities regulatory structure. The proposal expands the circumstances under which dealers may treat institutional customers as “sophisticated” and therefore exempt from key protections without sufficient guardrails to ensure that they truly possess the expertise, independence, and bargaining power that the SMMP designation presumes.

I. The SMMP Designation Was Intended to Be Narrow and Exceptional

The SMMP concept was originally designed as a limited exception to MSRB rules for a small class of institutional market participants who (1) possess deep and demonstrable municipal securities expertise; (2) act independently of dealers; and (3) have the resources and systems necessary to evaluate risk without reliance on dealer disclosures or protections.

From the investor perspective, any expansion or dilution of the SMMP definition undermines the foundational principle that municipal securities regulation is built to address, i.e., information asymmetry and conflicts of interest inherent in dealer-customer relationships. By expanding the SMMP definition, the regulatory risk is effectively shifted away from dealers and onto investors. Reducing protections for the investors frustrates and undermines the MSRB’s fundamental goal and mandate. This reallocation of risk is unjustified absent clear and compelling evidence that the existing framework is materially flawed, unnecessarily over-protective, significantly impedes market efficiency.

II. Commission Registered Investment Advisors (“RIAs”)

Notice 2025-08 says that the MSRB understands that “Commission-registered investment advisors 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.” This assumption is fundamentally flawed and overlooks the substantial variability in RIA expertise, particularly with respect to municipal securities.

³ *Id.*

⁴ MSRB Notice 2025-08.

⁵ *Id.*

RIAs are not inherently sophisticated with regard to municipal securities. The barriers to becoming an RIA are relatively modest: (1) one exam (the Series 65), (2) incorporating a company, (3) registering with the SEC or state depending on assets under management, (4) filing a Form ADV, and (5) setting up a custodian for a client's securities.⁶ Notably, none of these requirements mandate any knowledge or experience specific to municipal securities: their unique risks, complex structures, tax considerations, or credit analysis methodologies.

RIAs operate across a diverse spectrum of investment strategies and asset classes. Many RIAs specialize in areas wholly unrelated to municipal securities, such as equity portfolios, alternative investments, or retirement planning. An RIA focused on technology stocks or venture capital has no more inherent sophistication in evaluating municipal bond credit risk than any other institutional investor. Yet under the proposed amendments, such an RIA could be presumed sophisticated in municipal securities without ever demonstrating relevant knowledge or experience.

Cerulli Associates recently reported that 83% of RIAs cite limited resources and advisor time constraints as a challenge to growth.⁷ Smaller RIAs, which constitute a substantial portion of the industry, often lack dedicated research staff, credit analysis capabilities, or the infrastructure necessary to independently evaluate complex municipal securities transactions.

The attestation requirement currently serves a critical gatekeeping function: it forces RIAs to affirmatively confirm that they possess the specific capabilities required for SMMP status—timely access to material facts, independent evaluation capacity, and independent decision-making. Eliminating this requirement would allow automatic SMMP classification of RIAs regardless of their actual municipal securities expertise, resources, or track record in this asset class.

The reality, as many PIABA members who represent investors harmed by misconduct or negligence of RIAs, is that RIAs are often small firms with more limited resources, have certain inexperienced representatives, have limited compliance resources, and lack specialized municipal securities expertise. If the MSRB enacts the proposed amendments, RIAs will essentially become shoe-ins as SMMPs without having to really meet any meaningful criteria. The ultimate harm will fall on their individual customers, who will be exposed to higher risks of losses from unsuitable municipal securities recommendations made by RIAs and their agents who may lack the expertise to adequately conduct the required due diligence on these complex instruments.

III. Assets Under Management

The issues described above regarding RIAs are also valid reasons to keep the threshold for AUM to \$100 million for everyone, not just municipal entities, to ensure that any institutional customer attempting to qualify is, in fact, sophisticated enough as intended by the rule. The lower threshold is particularly problematic for investors.

⁶ <https://www.investmentnews.com/goria/practice-management/how-to-become-a-registered-investment-adviser/248981>.

⁷ <https://etfdb.com/news/2026/01/20/newly-independent-rias-face-hidden-growth-crisis/>.

AUM thresholds serve an essential gatekeeping function. They are not arbitrary figures but proxies for an institutional customer's ability to maintain internal expertise, independent analytical capacity, and risk-management infrastructure. Leaving this threshold lowered from \$100 million to \$50 million increases the likelihood that entities without sufficient scale, staffing, or financial resilience will be treated as "sophisticated" possibly depriving both institutional customers, and in turn individual investors, of important regulatory protections.

Lower AUM thresholds heighten the risk that institutional customers will be misclassified as SMMPs and, as a result receive less robust disclosure, be excluded from suitability-related protections, and be expected to independently evaluate complex and opaque municipal products. Once this harm occurs, the consequences will most often be borne by individual investors and, in some cases, by public beneficiaries such as taxpayers, retirees, or municipal service recipients. These risks far outweigh any marginal gains cited in support of the proposal.

IV. Conclusion

From an investor-protection perspective, the municipal securities market must be viewed as an interconnected ecosystem. Relaxing protections at the SMMP level does not isolate risk – it redistributes and amplifies it downstream. Lower thresholds and broader SMMP classifications increase the likelihood that municipal securities reach individual investors having passed through at least one transaction layer where regulatory safeguards were reduced or eliminated entirely. The MSRB should recognize that protecting institutional customers at the point of initial distribution is a necessary condition for protecting retail investors at the point of ultimate ownership.

Thus, we respectfully request that MSRB keep the affirmation requirement for all SMMPs and increase the threshold to \$100 million in asserts for all classes of customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Bixby".

Michael Bixby, President
Public Investors Advocate Bar Association