



February 2, 2026

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

Re: MSRB Request for Comment on MSRB Rule D-15 – Definition of “Sophisticated Municipal Market Professional” (Notice 2025-08)

Dear Mr. Smith:

The American Securities Association¹ (ASA) appreciates the opportunity to provide comments on the Municipal Securities Rulemaking Board’s (MSRB) request for comment on amendments to MSRB Rule D-15 defining the term “Sophisticated Municipal Market Professional” (SMMP). Properly calibrated, the SMMP definition can promote efficient execution and liquidity for institutional investors while preserving meaningful protections for municipal entities and other customers that do not function as sophisticated market participants.

Municipal entity threshold

ASA understands the MSRB’s concern that some municipal entities may meet the current 50 million dollar “total assets” test primarily through ownership of infrastructure and other non-financial assets and therefore may not function as sophisticated municipal market investors. At the same time, ASA believes the proposed 100 million dollar “in municipal securities investments” standard for municipal entities is too narrow and risks excluding entities that do have the sophistication, governance, and advisory support to function as SMMPs.

Regardless of whether the numeric threshold is set at 50 million or 100 million, limiting the test to municipal securities investments for municipal entities is problematic because it is exceedingly difficult to track in practice and diverges from the general net-worth or total-assets concepts that firms already use across markets. This mismatch with existing MSRB and FINRA institutional standards will make compliance more complicated and costly for dealers, particularly where firms must maintain divergent customer categorizations and documentation across rule sets.

¹ 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. 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. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





If the proposal is adopted in its current form, some municipal entities that today transact as institutional SMMPs could effectively be reclassified as “retail,” disrupting their access to institutional-style execution, liquidity, and more tailored structures. Treating these entities as retail for regulatory purposes would do them a disservice by subjecting them to a framework that does not reflect their actual sophistication, governance structures, or reliance on professional advisors.

Supervisory perspective and uniform definitions

From a supervisory standpoint, ASA member firms consistently indicate that uniform definitions of “institutional” or “sophisticated” status are preferable and should be established on a customer basis rather than transaction-by-transaction. A customer-level framework provides regulatory clarity, reduces compliance friction, and allows firms to maintain consistent customer profiles and documentation across business lines.

Evaluating sophistication on a transaction-by-transaction basis introduces uncertainty, operational complexity, and costs that are not justified by commensurate investor protection benefits. Aligning the SMMP construct with broader institutional frameworks used in other fixed-income markets would support more consistent supervisory practices and lower the risk of inadvertent regulatory misclassification.

In light of these considerations, ASA supports SMMP and institutional definitions that incorporate the following criteria:

- An asset threshold of 50 million dollars in total assets.
- Inclusion of SEC-registered investment advisers and state-registered investment advisers, consistent with FINRA Rule 4451(c) standards.
- A reasonableness standard that permits firms to determine status based on a reasonable analysis, with an optional MSRB affirmation requirement that many firms already incorporate into standard due diligence procedures.

Asset composition and municipal entity sophistication

ASA recognizes that the amount and composition of assets serve as important mitigating factors in assessing the sophistication of municipal entities. Municipal entities—particularly public entities—typically rely on formal investment policies and professional municipal advisors for asset allocation decisions, risk management, and portfolio construction.

The existence or absence of an SMMP designation does not fundamentally alter a municipal entity’s ability to transact or its obligation to follow established investment policy guidelines. In practice, ASA member firms often accept SMMP designations when municipalities voluntarily





provide them but still maintain suitability analyses grounded in the entity's investment policy regardless of SMMP status.

This approach ensures that municipal entities receive protections consistent with their actual investment sophistication and governance framework, rather than solely on the presence of an SMMP form. It also reinforces the primacy of investment policy documents as the controlling standard for suitability determinations, with SMMP status functioning as a transparency mechanism rather than a substitute for customary supervisory and advisory practices.

Recommended alternatives to the proposal

ASA encourages the MSRB to consider alternatives to the proposed 100 million dollar "in municipal securities investments" threshold that would better balance investor protection, market access, and operational feasibility.

In particular, ASA recommends that the MSRB:

- Retain the existing 50 million dollar "total assets" threshold while strengthening or clarifying the Rule D-15(b) sophistication analysis for municipal entities, with explicit attention to asset composition, prior investment experience, and the use of professional advisers.
- Implement a more flexible test that combines a total-asset measure with qualitative sophistication review, rather than relying on a single bright-line requirement limited to municipal securities investments.

A flexible framework of this kind would enable dealers to apply a principled, risk-based analysis that recognizes both the diversity of municipal entities and the sophistication of those that actively participate in the municipal securities markets. It would also better align the SMMP construct with institutional categorizations used in other markets, reducing fragmentation and unnecessary compliance burdens.

Market impacts and rule harmonization

ASA is concerned that overly restricting SMMP eligibility for municipal entities will have adverse consequences for market structure and municipal financing costs. Limiting SMMP status as proposed could reduce municipal entities' access to institutional-style execution, liquidity, and customized structures that support efficient capital formation and risk management.

In addition, the MSRB itself has acknowledged that some dealers that currently transact only with SMMPs may reduce or discontinue business with certain municipal entities rather than build separate non-SMMP compliance frameworks. Fragmenting the market in this way would





be counterproductive for issuers and investors, particularly in less liquid segments of the municipal market.

ASA is also concerned that a lack of alignment between the MSRB's SMMP framework and parallel FINRA institutional standards will make it more complicated for firms to apply and supervise rules across product lines. Divergent definitions increase the risk of error, raise supervisory costs, and ultimately may reduce the availability of services for municipal entities that fall into ambiguous categories under the proposal.

Investment adviser affirmation

ASA supports eliminating the Rule D-15(c) affirmation requirement for Commission-registered investment advisers, given their fiduciary duties, regulatory oversight, and typical scale. For these advisers, the current affirmation requirement adds paperwork and friction without meaningfully enhancing investor protection, because their advisory relationships already operate under a robust regulatory and supervisory regime.

Dealer sophistication determinations and costs

ASA strongly supports keeping the dealer's "reasonable basis" sophistication determination at the center of the SMMP analysis, with any refinements framed in principles-based terms that can scale across firms and client types. Dealers are best positioned to evaluate their customers' sophistication in light of the customer's overall profile, governance, and advisory relationships.

By contrast, approaches that require intensive transaction-by-transaction or entity-by-entity documentation akin to some of the more costly alternatives discussed in the MSRB's economic analysis would impose significant operational burdens. The resulting costs would be borne by municipal entities and investors through reduced access to liquidity providers and higher transaction costs.

Overall position

In sum, ASA supports the MSRB's goal of tailoring protections for municipal entities while reducing unnecessary burdens for clearly sophisticated investors. However, ASA believes the proposed 100 million dollar "in municipal securities investments" threshold is too rigid and too narrow a basis on which to define municipal entity sophistication.

ASA therefore recommends that the MSRB:

- Adopt a more flexible approach to municipal entity eligibility that retains a total-assets concept (for example, 50 million dollars), supplemented by a clarified qualitative sophistication analysis under Rule D-15(b).





- Emphasize customer-level, uniform sophistication determinations using criteria such as asset thresholds, firm type (including SEC- and state-registered investment advisers), and a reasonable basis analysis, rather than a transaction-by-transaction approach.
- Recognize asset composition and reliance on professional advisers as mitigating factors in municipal entity sophistication assessments.
- Finalize the proposed affirmation exemption for SEC-registered investment advisers and consider whether a subset of state-registered advisers should be treated similarly, subject to appropriate safeguards.
- Maintain investment policy as the controlling standard for suitability determinations, with SMMP status serving as a supplemental transparency tool rather than a replacement for sound supervisory practices.

ASA appreciates the MSRB's engagement with stakeholders on these important issues and welcomes the opportunity to discuss these recommendations further.

Sincerely,

Jessica Giroux

Jessica R. Giroux
Chief Legal Officer
American Securities Association



February 2, 2026

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

Comments on MSRB Notice 2025-08

Dear Mr. Smith,

The Bond Dealers of America (BDA) is pleased to provide comments on MSRB Notice 2025-08, “Request for Comment on MSRB Rule D-15 Defining the Term Sophisticated Municipal Market Professional” (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.

We believe Rule D-15 has worked well in providing a means to distinguish sophisticated, mostly institutional, largely professional municipal market investors from the rest of the market. As the MSRB rulebook provides, these sophisticated investors do not require the same level of attention as those who may have less market knowledge and are often individual, retail investors. We agree with the Board’s proposal to exempt Sophisticated Municipal Market Professionals (SMMPs) who are Investment Advisors (IAs) registered with the SEC from the current requirement to provide an affirmation of their status as SMMPs as a condition of the Rule. We disagree with the proposal to raise the threshold for treatment as SMMPs for state and local governments—not as issuers but as investors in municipal securities—from the current \$50 million to \$100 million and apply it not to total assets but to municipal securities holdings.

Registered Investment Advisers

Under Rule D-15, three categories of investors potentially qualify for treatment as SMMPs. These are (1) banks, savings and loan associations, insurance companies, or registered investment companies, (2) IAs registered with the SEC or a state securities commission, or (3) any other person or entity with total assets of at least \$50 million. In addition to ensuring a customer is in one of those categories, a dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently in order to consider them a SMMP. Finally, the customer must affirmatively indicate that they are using independent judgement in making municipal securities investment decisions and have access to market information.

The Proposal states “investment advisers registered with the Commission generally maintain over \$100 million in regulatory assets under management and owe a fiduciary duty to their clients, with investment advisers not meeting such threshold generally being subject to state registration” and “Commission-registered investment advisers are typically very sophisticated.” We fully agree. RIAs are virtually always sophisticated and have the capability to make independent investment decisions. They are professionals who bear a fiduciary duty to their customers and often have access to more market information than the dealers they trade with. The fact that they are RIAs by itself speaks to their sophistication.

State-registered IAs are also by their nature sophisticated even though they tend to be smaller than SEC-registered IAs. As we stated in our 2023 letter on treatment of IAs under Rule D-15, “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. A separate affirmation requirement is superfluous.”

We agree with the Board’s proposal to eliminate the requirement for SEC-registered IAs to provide an affirmation in order for a customer to be a SMMP and we believe this treatment should be applied to state-registered IAs as well.

Portfolio threshold for state and local government SMMPs

Under Rule D-15, one of the definitional categories of SMMP is “any other person or entity with total assets of at least \$50 million.” The Proposal seeks to “change the threshold for municipal entity customers to \$100 million in municipal securities investments.” This would be an unnecessary change that would be difficult to administer and comply with and which would severely limit municipal entity choice.

Status as a SMMP investor is 100% voluntary. Investors may provide or rescind SMMP affirmations at will at any time. This applies to all categories of investors, including municipal entities that are SMMPs. If any state or local government entity wants to be treated as a retail account and not a SMMP, they can simply decline to complete an SMMP affirmation or, if they have already completed one, inform their dealer that they wish to rescind it. SMMP status is designed as “opt in”.

Sound rulemaking should be grounded in demonstrated investor harm or market failure. The Board has not provided good a reason for changing the definitional threshold solely for municipal entity customers. We are not aware of any specific enforcement cases, for example, where a municipal entity with a municipal securities portfolio of less than \$100 million was taken advantage of in a municipal securities trade, much less market-wide issues with the definition. The only reasoning in the Proposal for this change is “the MSRB has heard concerns from some industry participants that the threshold of total assets of at least \$50 million might not account for municipal entities that would easily meet this threshold by way of owning assets such as schools, bridges or fire stations.” Has the board attempted to estimate the number of municipal entities with total assets greater than \$50 million and municipal portfolios less than \$50 million that regularly buy municipal securities and need the protection of the Proposal? We believe that is a very small universe and is not a sufficient basis for amending the Rule.

Beyond the lack of a demonstrated problem, the Proposal fails to account for its practical effect. It appears that the Board has also not attempted to estimate the number of municipal entities that would be negatively affected by this proposal. From our experience, very few municipal entities have municipal securities portfolios of at least \$100 million. Under the proposal, the MSRB would be effectively restricting municipal entity choice and forcing all or nearly all state and local government entities into retail municipal accounts whether they like it or not. A rule change of this breadth and scope is not justified by any of the support the Board has provided for the amendment. And before implementing a change of this type, the Board should have a better idea of the specific scope of its effect.

The Proposal would create a further discrepancy between how sophisticated investors are defined in FINRA and MSRB rules. FINRA has no separate requirement in Rule 4512—the FINRA rule which defines

“institutional account,” roughly the equivalent of SMMP in the FINRA rulebook—related to municipal entity customers. They are appropriately regarded like everybody else. FINRA Rule 4512 applies to a much broader universe of investments than MSRB Rule D-15, and the FINRA Rule applies to US Treasury securities, federal agency securities, taxable corporate bonds, and other taxable investments that municipal entities regularly invest in. State and local government generally do not even typically buy municipal securities in large volume because municipal entities mostly have no need for tax-exempt interest. So even if the Board amends Rule D-15, municipal entities with assets greater than \$50 million will continue to be treated as institutional accounts for the vast majority of their investments under FINRA rules. And having unnecessarily divergent FINRA and MSRB regulations governing similar functions is inefficient and contributes to inadvertent noncompliance.

Defining municipal entity customers with municipal securities portfolios of less than \$100 million as non-SMMPs would subject their accounts to the full panoply of MSRB regulatory requirements that are designed to protect retail investors. These include time of trade disclosures, suitability and best execution requirements, Rule G-30 pricing requirements, Rule G-13 quotation requirements, and Rule G-10 annual notification requirements. Complying with these regulatory requirements is expensive, and this expense is reflected in trade costs borne by customers. If the proposal to raise the SMMP threshold for municipal entities is adopted, the additional costs associated with servicing affected customer accounts would ultimately be borne by the municipal entities themselves.

Moreover, the \$100 million threshold would be difficult to administer. It may not be possible to determine the size of a municipal entity’s municipal securities portfolio, and officials of the entity may not even know. The inability to readily and accurately determine the size of a municipal entity’s municipal portfolio calls into question the administrability of the proposal.

We believe state and local officials entrusted with investing public funds should be, and largely are, capable of evaluating investment risks and market value independently, both in general and with regard to municipal securities. They are professional investors, even if investments comprise only a portion of their job, and they owe a duty to their tax- and rate-payers to fully understand their investment decisions. Municipal entities with assets greater than \$50 million should be and in our observation are sophisticated market participants and should be treated as such under MSRB rules.

We appreciate the MSRB’s attention to amending Rule D-15. We believe the proposal to eliminate the attestation requirement for SEC-registered IAs is sound and should be extended to state-registered IAs as well. Indeed, we urge the Board to go even further and consider eliminating the attestation requirement altogether in order to bring Rule D-15 more in line with FINRA Rule 4512. And we believe raising the SMMP threshold for municipal entities from \$50 million of assets to \$100 million of municipal securities would introduce needless complexity and costs for both dealers and customers. Please call or write if you have any questions.

Sincerely,



Michael Decker
Senior Vice President, Research and Public Policy

Customer Affirmation for Commission-Registered Investment Advisers

Rule D-15(c) allows customer affirmation to be provided either orally or in writing. When a customer provides written attestation, they formally document that they have exercised independent judgment, reviewed the trade recommendations, and discussed the associated investment risks with their dealer. This written record can be used during compliance reviews, financial audits, and other oversight processes as evidence supporting the trading activity conducted in the investment portfolio.

Municipalities are required to undergo annual financial audits, and auditors generally prefer written support over oral statements because written documents create a verifiable paper trail. This enhances transparency, provides a durable record, and supports greater accountability—benefits that oral confirmations cannot offer. Written documentation also provides assurance to investment committees and aligns with the guiding principles of the Public Funds Investment Act.

Allowing oral confirmation introduces additional risks, including the possibility that a trade may not meet required standards or established best practices. It may also place a greater burden on the entity to demonstrate to management and auditors that the trade complies with the organization’s investment policy.

Threshold for SMMP Qualification for Municipal Entity Customers

Under Rule D-15(a), no distinction is made regarding whether the \$50 million asset threshold is based solely on governmental activities or includes business-type activities. Many municipalities would not meet the \$50 million threshold when considering only their governmental activity assets; however, when business-type activities are included, they may easily surpass this reduced threshold. While this may satisfy the literal guideline, it does not necessarily meet the underlying intent of determining whether a municipality qualifies as a sophisticated municipal market professional (SMMP).

Another relevant consideration is the number of municipalities across the United States experiencing rapid growth and significant annual infrastructure demands. These needs are often financed through increased debt issuance. As of October 2025, Electronic Municipal Market Access (“EMMA”) reports 9,826 new municipal issuances for the year, with an average issue size of \$53.4 million. Although these figures exceed the \$50 million asset threshold, they do not inherently align with the spirit or purpose of the SMMP designation.

Moreover, introducing alternative standards or imposing additional criteria on dealers acknowledges that such requirements generate added compliance and operational costs. These costs would ultimately be passed on to municipal clients, thereby increasing the financial burden on the very entities the rule is intended to serve.



Government Finance Officers Association
660 North Capitol Street, NW Suite 410
Washington, DC 20001
(202) 393-8467

February 2, 2026

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

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

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) appreciates the opportunity to comment on MSRB Notice 2025-08. The GFOA represents over 30,000 public finance professionals across the United States. Our members serve in state and local governments and entities and engage in all matters related to public finance, treasury, accounting and other governmental operations.

This letter dovetails well with many of the key themes in GFOA's December 2025 letter on the MSRB's Strategic Plan and the importance of protecting state and local governments as issuers of municipal securities and investors of municipal securities.

Generally, we support the MSRB's proposed change to Rule D-15(a)(3) that speaks specifically to the SMMP definition for municipal entities that invest in municipal securities. Our comments do NOT extend past this investor population, nor do we have positions on broader issues that the proposed rule addresses.

GFOA has sought changes to the SMMP defining threshold of \$50 million in assets in our July 2023 letter and subsequent conversations with the MSRB. As previously stated, many municipal entities, including small governments, may meet this requirement due to the value of their capital infrastructure, which is unrelated to government investing. Indeed, many governments may not have dedicated investment staff, yet meet the asset threshold and (sometimes unbeknownst to them) are designated as SMMPs. By establishing the threshold on total assets rather than an investable assets basis for our sector, the result is diluted investor protections for many municipal entities.

Dealer compliance with Rule D-15 is also a particular concern. GFOA members have noted being unaware of the designation and recalling no discussions with dealers about the designation. Additionally, when taken along with other requirements dealers have to comply with in Rule D-15 - including having a reasonable basis to believe that the customer can evaluate investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities - many members question how their entities could be designated as SMMP. Thus, in addition to changing the definitional threshold for municipal entities and ensuring other technical matters are addressed, the MSRB should consider doing more to provide investors with greater awareness of SMMP standards and meaning.

Below is a summary of the questions asked in the Notice, and GFOA's responses to those matters of interest to our members.

1&2. Changing the threshold term from “\$50 million in assets” to “\$100 million of investments in municipal securities” for municipal entities.

GFOA supports changing the term from assets to investments in municipal securities and the amount threshold from \$50 million to \$100 million. The change from assets to investments is especially important and the proposed language in this section is an appropriate delineation as one of the considerations for a municipal entity to be considered a SMMP.

3. Fully excluding municipal entities from being SMMP eligible.

GFOA does not support fully excluding municipal entities from the SMMP designation. There are large and appropriately sophisticated governments with dedicated investment programs and staff that should be afforded the designation.

4. Importance of qualification and treated as an SMMP.

Some municipal entities do find the SMMP qualification to be important, including being able to purchase municipal securities not available at the retail level.

5-8. Impact on dealers if SMMP status is not as prevalent in the public investing sector.

GFOA is interested, as is the MSRB, in knowing how often dealers designate municipal entities as SMMPs, whether this is a condition for these firms to engage in business with state and local governments, and how dealers would adjust to some clients no longer being SMMP designated.

9. Products and services that would be absent if SMMP status is not as prevalent in the public investing sector.

It is important to note that in most cases state law determines if and what municipal securities state and local governments can purchase. The MSRB may also wish to inquire about whether there was an undue burden or an uncompetitive market for dealer services in the public sector prior to 2013, when the SMMP threshold was based on municipal securities investments.

10. Harmonization with FINRA Rules.

We are aware that state and local governments invest in products that are not regulated by the MSRB, but instead by FINRA. In order to protect state and local governments, harmonization and efforts to implement parallel changes to FINRA rules should be sought in the future.

12. Does Rule D-15, Supplementary Material .01 provide enough guidance for dealers to make a determination of a client's sophistication?

Currently, .01 states - *Reasonable Basis Analysis. As part of the reasonable basis analysis, the broker, dealer or municipal securities dealer should consider the amount and type of municipal securities owned or under management by the client.* This standard is vague, especially if the Rule is updated to require a \$100 million municipal securities investment threshold. Additional information on how “reasonable” is determined and other factors dealers should include in their analysis should be proposed for comment by the MSRB.

13. Are customers sufficiently aware of the customer protections they are giving up when completing Rule D-15(c)'s customer affirmation for qualification as an SMMP?

From our research, municipal entities are unaware of the customer protections they are giving up when designated as an SMMP. Typically, the SMMP documentation is part of a packet of documents that are signed at the beginning of a relationship. Entities are not provided information that explains what the designation means to make an informed decision if it should be signed. A more concerted effort to explain the designation and a specific choice to opt in or not, would be helpful for both municipal entities to understand the designation and determine if it should apply, and for dealers to comply with Rule D-15.

This could all be part of strengthening the current standard under Supplementary Material .2, *The customer affirmation may be given either orally or in writing, and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (e.g., general obligation, revenue, variable rate), or an account-wide basis*, which is not sufficient. First, the affirmation requirement should be to opt in or out – and in writing – of an application of the SMMP status based on trade-by-trade, type-of-transaction, type-of-municipal-security, or account wide basis. Additionally, this requirement should necessitate documentation signed by the municipal entity and dealers acknowledging the loss of specific investor protections resulting from the SMMP designation.

14. Are dealers taking proper steps to ensure that the appropriate individual is completing the affirmation under Rule D-15(c) when the customer is a municipal entity?

Government personnel responsible for investment duties vary in title and responsibilities. It would be difficult to have a workable one size fits all definition in this area. Dealers should have the flexibility to determine the appropriate municipal entity personnel that manages the investment program and makes investment decisions, and would sign the affirmation. The MSRB may wish to include a requirement that the affirmation statement notes that the person signing the affirmation has authority to do so.

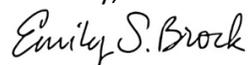
In addition to the input above, we also want to raise the following issues for further discussion that should be addressed by the MSRB in rulemaking, guidance and/or other resources.

- SMMP designations noted on dealer account statements provided to clients. This will help municipal entity customers readily know if they have this designation.
- Annual reaffirmation of SMMP status.
- Instructions on how a municipal entity customer can relinquish their SMMP status.

In summary, GFOA supports changing the Rule D-15 SMMP definition for municipal entity customers to “\$100 million of investments in municipal securities.” However, we believe more should be done to protect public sector investors. This includes increased affirmation requirements and specific disclosures that both parties attest to the D-15 requirements being met, and the client being aware of the investor protections that are not in place with this designation.

We welcome the opportunity to discuss these matters with the MSRB Board and staff in the future.

Sincerely,



Emily S. Brock
Director, Federal Liaison Center

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,



Michael Bixby, President
Public Investors Advocate Bar Association

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.



Second Chair

SECURITIES EXPERTS
DISCOVERY · ANALYSIS · TESTIMONY

Submitted by Mark O. Conner, Principal

The Municipal Securities Rulemaking Board (MSRB) is proposing to change requirements under its Rule D-15 regarding Sophisticated Municipal Market Professionals (SMMP.) One specific change would allow municipal bond dealers transacting with small- to medium-sized Registered Investment Advisor firms to assume that such RIAs are *de facto* SMMPs. This is a fallacious assumption that the SEC and the MSRB seem ready to accept as valid, largely because dealers say it's valid. It is not.

Small- to medium-sized RIAs have customers for which an RIA may invest in municipal bonds. In doing so, the RIA will transact with municipal bond dealer firms to buy and sell bonds on their customers' behalf. These counterparty dealers must determine if they have a lesser degree of disclosure obligation to a RIA customer if they are deemed to be a SMMP. If these dealers are simply allowed to presume SMMP status of their RIA customers when they are in fact not sophisticated, it jeopardizes the RIA's customers.

Let's look at the rule and assess whether RIAs with assets under management (AUM) of <\$1 billion qualify (emphases added):

MSRB Rule D-15

The term "sophisticated municipal market professional" or "SMMP" is defined by three essential requirements: the nature of the customer; a determination of sophistication **by the broker, dealer or municipal securities dealer ("dealer")**; and an affirmation by the customer; as specified below.

Second Chair Note: The weakness of the rule in relying on a dealer determination is that RIAs are typically serviced by dealers through institutional salespeople who are eager to execute trades and collect a commission – no trade, no commission, so salespeople are prone to removing obstacles to getting paid, i.e., ignoring non-sophistication. Alternatively, and more commonly, RIAs often simply trade off a screen without any interaction with a dealer representative who could make any assessment. The RIA looks at the investment quality rating of a bond displayed on their screen, that's the extent of their credit research, and there is no sophistication assessment.

(a) Nature of the Customer. The customer must be:

(1) a bank, savings and loan association, insurance company, or registered investment company;

(2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

Second Chair Note: This proscribes all small- and medium-sized RIAs.

(3) any other person or entity with total assets of at least \$50 million.

Second Chair Note: This standard is both vague and archaic, though is not addressed in any proposed changes by the MSRB.



(b) Dealer Determination of Customer Sophistication. The dealer must have a reasonable basis to believe that ***the customer is capable of evaluating investment risks and market value independently***, both in general and with regard to particular transactions and investment strategies in municipal securities.

Second Chair Note: Evaluating investment risks associated with municipal bonds is very challenging and few if any small- to medium-sized RIAs have the resources or personnel required.

1. Small- to medium-sized RIAs lack credit research capabilities. This is in contrast to large RIA complexes that employ a staff of municipal credit research analysts whose sole duty is to *independently* keep apprised of any changes in the creditworthiness of issuers and inform their portfolio managers of such changes. Small- to medium-sized RIAs have no such personnel or capability and typically rely on ratings agencies assessments which themselves are not as informative as on-going, independent research conducted by trained and experienced analysts using sophisticated technology and research resources.
2. RIAs lack the knowledge to conduct appropriate price-discovery, required under MSRB Rule G-18, Best Execution. RIAs often simply look at a bond's rating and its yield to maturity but fail to seek the best price. This is a common practice among small- to medium-sized RIAs. It is evidenced in transaction history in the MSRB's EMMA facility wherein a dealer selling to an RIA is *simultaneously* buying from another dealer, marking up the price, and selling to the RIA, while the RIA makes no effort to identify and access directly the original dealer offering. (The MSRB even acknowledges that this is a problematic custom in the market for new issues of municipal bonds.) Large-scale asset managers employ staff to handle trade execution and they do so in an auction-like, competitive manner. Not so for small- to medium-sized RIAs, most often they simply buy third-party dealer offerings displayed on their clearing firm's platform.
3. Nearly all small- to medium-sized RIAs lack the training, knowledge, and experience to employ municipal bond investment strategies used by truly sophisticated asset managers (e.g., BlackRock, Nuveen, and large-scale municipal bond mutual funds.) These strategies can include sector-swaps, rolling-down-the-yield-curve, barbell maturity distributions, immunizing, and simple bond swaps (selling and buying equal dollar values without diminishing portfolio performance.)
4. Sophisticated capability to assess risks associated with municipal bonds and bonds in general calls for robust and specialized technology commonly not available to small- to medium-sized RIAs. Most notably, these include portfolio management software programs that can perform important *fixed-income* portfolio management tasks such as instantaneous swap analyses, valuation effect of portfolio duration change, and concentration limitations compliant with the Investment Company Act of 1940. Nearly all small- to medium-sized RIAs rely on their clearing firms' platforms for analyzing portfolios and these clearing firms have very unsophisticated software modules for doing so.

(c) Customer Affirmation. The customer must affirmatively indicate that it:

(1) is exercising independent judgment in evaluating:

(A) the recommendations of the dealer;

(B) the **quality of execution of the customer's transactions by the dealer**;

Second Chair Note: Most small- to medium-sized RIAs execute purchases and sales without any assessment of quality of execution by dealer counterparties. As many RIAs are former wire-house brokers and do not employ dedicated municipal bond traders, they are simply not knowledgeable enough about the nuances of the municipal bond market and other bond markets generally (i.e., treasury and corporate bonds) to make such evaluations. This awareness is critical in making comparisons not only to similar and close-in-time municipal bond transactions, but also taxable bond alternatives. Additionally, because small- to medium-sized RIAs lack research capabilities, they may not be aware of certain information known to the larger market, such as published notices from ratings organizations that signal possible changes in rating. The summary danger for the customers of RIAs is that an RIA may simply affirm sophistication in order to get the trade done.

and

(C) **the transaction price** for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and

Second Chair Note: See above note.

(2) has **timely access to material information** that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

Second Chair Note: A simple example of this is when small- to medium-sized RIAs are simply unaware of the potential for investment quality downgrades and upgrades. If an RIA is acting with discretion in managing a client portfolio, this is critical information. Because a RIA's clearing firm will most likely be the source for such information, there are often time lapses before the RIA is aware of a change, impeding their ability to take timely action on behalf of a customer.

Supplementary Material

.01 Reasonable Basis Analysis. As part of the reasonable basis analysis, the broker, dealer or municipal securities dealer should consider the amount and type of municipal securities owned or under management by the customer.

.02 Customer Affirmation. The customer affirmation may be given either orally or in writing, and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (e.g., general obligation, revenue, variable rate), or an account-wide basis.

(End of Rule D-15)



February 2, 2026

VIA ELECTRONIC SUBMISSION

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

Re: MSRB Notice 2025-08 –Request for Comment on MSRB Rule D-15 Defining the Term Sophisticated Municipal Market Professional (“SMMP”)

Dear Mr. Smith,

SIFMA¹ appreciates this opportunity to provide input on MSRB Notice 2025-08², and applauds the MSRB’s goal to modernize the rules while continuing to provide appropriate municipal entity and investor protections without placing undue compliance burdens on regulated entities. In furtherance of this goal:

- Qualifying municipal entities can determine whether to certify as an SMMP to take advantage of certain broker-dealer trading services and are not required to do so.
- MSRB should reject the proposed new threshold for SMMP qualification for municipal entity customers.
- MSRB should approve the removal of the customer affirmation requirement to qualify for SMMP status for all Registered Investment Advisers (“RIAs”).

¹ 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).

² MSRB Notice 2025-08 (Nov. 3, 2025).

I. Qualifying Municipal Entities Can Determine Whether to Certify as an SMMP to Take Advantage of Certain Broker-Dealer Trading Services and Are Not Required to Do So

Currently, all qualifying municipal entities have a choice whether to be treated as an SMMP. SMMP status may have benefits for the municipal marketplace (i.e., additional liquidity) and for the municipal entity investor's activities as part of that marketplace. SMMPs may have access to securities a broker-dealer may not offer to their less sophisticated investors and potentially lower trading costs associated with larger institutional-sized transactions provided from a broker-dealer's institutional trading desk.

As noted, there is no regulatory requirement for a municipal entity to sign an SMMP certificate in order to trade municipal securities with a broker-dealer. However, should a municipal entity that qualifies as an SMMP under MSRB Rule D-15 choose to opt-in to SMMP status with a broker-dealer, it must affirmatively indicate that it:

- (1) is exercising independent judgment in evaluating:
 - (A) the recommendations of the dealer;
 - (B) the quality of execution of the customer's transactions by the dealer; and
 - (C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and
- (2) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

Rule D-15(d) further requires broker-dealers to have a reasonable basis to believe that the municipal entity investor is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities.

Importantly, a municipal entity representative should not sign an SMMP certificate if they do not clearly understand or are uncomfortable with the certifications therein or implications of that status. Municipal entities may also contact their broker-dealer and withdraw their SMMP status at any time.

SIFMA members believe that any potential or seemingly isolated issues related to compliance with MSRB Rule D-15 should be addressed through routine examination and enforcement, not with a wholesale rule change impacting the industry broadly.

II. MSRB Should Reject the Proposed New Threshold for SMMP Qualification for Municipal Entity Customers

It is of utmost importance that there should be no separate category for municipal entities in Rule D-15(a)(3). As the MSRB has routinely and appropriately prioritized the value of harmonization

of their rule set with that of FINRA, for the benefit of increased regulatory clarity for all, SIMFA urges the MSRB to not move forward with the changes to the thresholds for municipal entity customers unless there is a clear and impactful reason for these respective rules to differ. On the contrary, the proposed changes to Rule D-15 would create a break with applicable FINRA rules and may negatively impact municipal entity customers. The MSRB should make all efforts to harmonize Rule D-15 with FINRA Rules 2111 and 4512.

Further, the MSRB's concern with municipal entity customer sophistication is already addressed by MSRB Rule D-15(b). Raising the threshold to qualify as an SMMP to \$100 million in municipal securities investments effectively limits the availability of SMMP status to a mere handful of municipal entities. The vast majority of municipal entities do not hold \$100 million in municipal securities investments.³ It is not clear that the MSRB has considered the effect on municipal entities that rely on their SMMP status to transact.

We would also note that it is almost impossible for a broker-dealer to perform reasonable independent diligence on any entity's portion of their investment portfolio dedicated to municipal securities currently or on an ongoing basis, as financial statement reporting does not require that level of granularity. Broker-dealers would be required to either implement very costly monitoring for those limited municipal entity clients bordering the threshold minimum, or they would be required to set an internal minimum threshold well in excess of the rule to ensure they do not have a client dropping below the regulatory minimum. Some firms have noted that they may not be able to cover any municipal entity customer who does not meet the new definition of SMMP due to the compliance costs associated with supporting such clients on their institutional platform. Therefore, many municipal entities may be negatively impacted by the proposed changes to Rule D-15 because it could limit and disadvantage a municipal entity's access to transaction executions in the municipal securities market.

Many firms have chosen not to service clients who do not sign an SMMP form because of the compliance costs associated with non-SMMP institutional clients (e.g., best execution, suitability, time of trade disclosures, etc.) or retail clients (adding Reg BI, mark-up or mark-down disclosure, etc.). Municipal entities do not need particularized and enhanced protection in this area. If the MSRB goes back to the prior definition of SMMP, it could be harmful because hundreds of municipal entity clients may no longer be able to be served by dealers' institutional trading desks.

Many municipal entities request to have access to dealers' institutional trading desks for a variety of reasons, including specialized sales coverage, broad investment options, and ease of

³ Many municipal entities have investment policies designed to provide guidelines and protections against risky investment strategies. These internal investment policies commonly include concentration limits by asset class and limitations on products, and are given to broker-dealers in order to guide what securities the municipal entity is offered and may hold. A typical asset class concentration limit of 20% would mean that to hold \$100 million in municipal securities investments, a municipal entity would need to have a \$500 million investment portfolio. As stated above, this could limit the availability of the SMMP designation to a small fraction of municipal entities that currently could qualify. It is estimated that well over 90% of municipal accounts at broker-dealers could be disqualified from SMMP status if the amendments are approved, and even the largest municipal entities may not be able to consistently comply with the new threshold.

transactions. In order to set up workable compliance regimes, dealers may choose to only transact with SMMPs on their institutional trading desks, because their institutional trading desks are not designed to provide the protections required to be given to non-SMMP customers. However, these types of protections are built into dealers' compliance systems when trading with customers from their retail desks.

As a matter of practicality, many broker-dealer firms operate a separate municipal trading desk for their retail or non-SMMP customers. This practice helps firms manage certain regulatory requirements by automating certain controls applicable to retail investors. Some firms indicate that their retail desk usually carries a limited amount, if any at all, of inventory of suitable securities for these types of customers in comparison to their institutional trading desk. Instead, traders on the retail desk commonly source bonds for their clients from the street, which may result in higher costs. Institutional trading desks commonly have a higher level of specialization and offerings across the full breadth and depth of the market, as well as carrying an inventory, making it easier and potentially more cost effective to trade in larger blocks of bonds, to which retail trading desks typically do not have access. By increasing the threshold for municipal entities to qualify for the SMMP designation, the MSRB may remove the ability for municipal entities to choose whichever trading desk that works best for them.

Setting a higher threshold for SMMP status than for similar treatment under FINRA 2111 effectively means that a municipal entity may not be able to be treated as an SMMP for purchasing municipal securities but could still qualify under FINRA 2111 to buy other securities with similar reduced protections. In practical effect, because of the different thresholds, a broker-dealer may opt to service a municipal entity from a retail desk for the purpose of transacting in municipal bonds, but that same municipal entity could be serviced by an institutional trading desk for the purpose of transacting in any other securities. This may encourage municipal entities to prefer to buy non-municipal securities, despite municipal securities having an average default rate that is lower than most other security classes.

To level-set, there are definitions in both the MSRB and FINRA Rules for retail customers (or "non-institutional customers"), institutional customers, and a class of institutional investors to whom fewer duties are owed.⁴

⁴ A "non-institutional" customer is a customer with an account that is not an "institutional account," as defined in FINRA Rule 4512(c) or MSRB Rule G-8(a)(xi), as applicable. For the purposes of books and records, MSRB Rule G-8 states as follows:

For purposes of this subparagraph, the term "institutional account" shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

As described herein, SMMPs as defined in MSRB Rule D-15 are a limited subset of institutional customers that have voluntarily opted-in to that regime⁵ which includes, but is not limited to, providing the broker-dealer the required attestations.⁶

It is important to recognize that since the MSRB first harmonized Rule D-15 with FINRA Rule 2111 in 2012, there have been a significant number of regulatory changes, including Regulation BI, that have contributed to the rising cost of servicing retail investors.⁷ Due to these rule changes, some firms have found it to be more costly to service these types of customers. If Rule D-15 were to revert back to thresholds set prior to the MSRB's 2012 amendments, it would be in a market with a very different regulatory landscape; one with added protections for retail and non-SMMP institutional customers that require costly and burdensome compliance regimes for broker-dealers.

III. MSRB Should Approve the Removal of the Customer Affirmation Requirement to Qualify for SMMP Status for All RIAs

SIFMA's position remains that all SEC and state registered investment advisers should be exempt from the Rule D-15 attestation requirement. Investment advisers are fiduciaries, subject to comprehensive federal or state law and regulatory oversight and are charged with making independent investment decisions on behalf of their clients. It is important that the MSRB rules be consistent with rules adopted under the Investment Advisers Act of 1940 (the "Advisers Act"). RIAs registered with the SEC are subject to the requirements of the Advisers Act and the rules thereunder, including a robust fiduciary duty extending to all services undertaken on behalf of clients. The investor protections provided by the regulatory regime under the Advisers Act obviate the need for the similar investor protections provided in the MSRB rules, such as customer-specific suitability, best execution, and time of trade disclosures. State registered investment advisers have essentially the same duties as federally registered investment advisers and are subject to state oversight. For these reasons, we highly encourage the MSRB to extend the attestation exemption to state-registered investment advisers as well. If the RIA or state-registered investment adviser does not comply with these obligations, they are not fulfilling their fiduciary duties. The remedy should be examination and enforcement proceedings against that

⁵ See MSRB Rule G-48 for the explicit list of modified dealer regulatory obligations under other MSRB rules when transacting with SMMPs.

⁶ For completeness, we note that the attestations that institutional customers provide to broker-dealers pursuant to FINRA 2111, which are similar to the SMMP attestations, relate to suitability. FINRA does not have a parallel rule to MSRB Rule G-48 but does otherwise have different standards for best execution for institutional versus non-institutional customers. FINRA does not have a rule addressing time of trade disclosures similar to MSRB Rule G-47.

⁷ In July of 2014, the MSRB's Rule G-19 on suitability was amended to harmonize with FINRA Rule 2111, and Rule G-47 consolidated and codified required time of trade disclosures. In March of 2016, MSRB Rule G-18 was implemented to establish the first best-execution rule for transactions in municipal securities and beginning in May of 2018, dealers were required to disclose mark-up/mark-down details on retail customer confirmations. In March of 2025, the MSRB added additional time of trade disclosures pursuant to MSRB Rule G-47. Also, the SEC's Municipal Advisor Registration Rule became effective in July of 2014 and Regulation Best Interest was implemented in June of 2020.

RIA or state-registered investment adviser, not for the MSRB to layer on additional and duplicative investor protections for municipal securities.

SIFMA also strongly believes that the burdens associated with obtaining an attestation from RIAs and state-registered investment advisers strongly outweigh the protections afforded by such attestation. Imposing an attestation obligation would require most dealers to build new systems to track RIA and state-registered investment advisers, which would include assessing changes in advisory authority, thereby introducing execution delays and potential liquidity impacts in the municipal market. Accordingly, an SMMP attestation requirement for RIA and state-registered investment adviser clients for the purposes of this rule would be costly, and operationally complex.⁸ Moreover, such an approach would inappropriately shift and duplicate fiduciary responsibilities of RIAs and state-registered investment advisers onto broker-dealers, notwithstanding that RIAs are already subject to fiduciary duties and comprehensive compliance oversight under the Advisers Act and applicable state laws, respectively.⁹

The MSRB has appropriately recognized that a dealer trading with an RIA who has been granted full investment discretion is not required to obtain a customer affirmation from the ultimate investor for purposes of qualifying the person, separately, as an SMMP under MSRB Rule D-15.¹⁰ When an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for regulatory purposes when engaging in transactions with the dealer. For example, when an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, the identities of individual account holders often are not given to the delivering dealer. RIAs typically are given discretion to trade on behalf of their clients, who may not want to be informed of the details of each trade or may be forbidden from knowing the details of trades in their account.¹¹ Therefore, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes. Accordingly, the dealer does not have any customer obligations to the underlying investors, including, importantly under MSRB Rule G-47.¹² The MSRB should codify this guidance.

It is important to note that the SEC's rules create a paradigm where RIAs are viewed to be the appropriately regulated party to provide municipal entities with investment advice. Since 2014,

⁸ For the purposes of other rule compliance, broker-dealers currently obtain these affirmations from both SEC and state-registered RIAs. If the MSRB does not agree to relieve both types of RIAs from the attestation requirement, then broker-dealers may need to build out separate new systems to distinguish between the two and apply the rule differently to each.

¹⁰ See, Application of MSRB Rules to Transactions in Managed Accounts (Dec. 1, 2016), <https://www.msrb.org/Application-MSRB-Rules-Transactions-Managed-Accounts>.

¹¹ Examples of investors being forbidden from knowing the details of trading in their account include members of Congress, persons in financial services with access to material non-public information, etc.

¹² See, SIFMA letters on MSRB Notice 2023-02 (Apr. 17, 2023) The MSRB should codify the guidance related to transactions in managed accounts as it relates to Rule G-47. It is important to make clear that a dealer trading with an RIA is not required to provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (i.e., the RIA's client).

when the SEC's Municipal Advisor Rule became effective, dealers have been prohibited from providing investment advice or recommendations to a municipal entity, absent an exemption or exclusion, if their account contained municipal securities proceeds.¹³ Under this Rule, RIAs are notably exempt from the registration requirements, and therefore exempting them from the attestation requirement is logical and appropriate given the prohibition on dealers from providing recommendations or investment advice to municipal entities.

* * *

As described above, municipal entities have a number of protections built into Rule D-15. They also should have written investment policies which have been approved by their governing body and shared with the broker-dealer during the onboarding process. Therefore, should a municipal entity elect to sign the SMMP certificate, there still remains multiple layers of protection for that municipal entity, including their own investment policies, the SEC's Municipal Advisor Registration Rule, and the protections currently built into the existing language in Rule D-15.

Thank you for considering SIFMA's comments. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,



Leslie M. Norwood
Managing Director and Associate General Counsel
Head of Municipal Securities

cc: ***Municipal Securities Rulemaking Board***
Ernie Lanza, Chief Regulatory and Policy Officer

¹³ Section 15B of the Securities Exchange Act of 1934; 15 U.S. Code § 78o-4. One such exemption is for the municipal entity to engage an Independent Registered Municipal Advisor ("IRMA") and provide a letter to the broker broker-dealer confirming they have engaged an IRMA. This is the regime that is already in place to ensure the municipal entity is obtaining recommendations from a fiduciary.

Without receipt of a municipal entity's IRMA letter, or other exemption from the SEC Municipal Advisor Registration Rule, a broker-dealer cannot provide trading recommendations to a municipal entity without acting unlawfully as an unregistered municipal advisor. A broker-dealer may only offer a municipal entity all of the bonds that fit the criteria in the issuer's investment policy.

APPENDIX A
QUESTIONS

Nature of the Customer

1. Should the asset threshold in current Rule D-15(a)(3), as applied to municipal entities for SMMP qualification, be “assets” or “investments in municipal securities?” If the current language should be changed from “assets” to “investments in municipal securities,” should that change be limited to municipal entities or should it apply to some or all other categories of investors? In addition, what should be the appropriate threshold amount, and should a changed threshold amount be applicable solely to municipal entities or to some or all other categories of investors?

FINRA Rule 4512 (c) uses assets instead of investments and states that:

“For purposes of this Rule, the term "institutional account" shall mean the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

SIFMA members believe that the MSRB should maintain harmonization with FINRA’s threshold of categorizing institutional customers/SMMPs as having total assets of at least \$50 million in assets. SIFMA does not believe that municipal entities should be carved out to have a stricter threshold applied to them, requiring over \$100 million in municipal securities investments. As stated in our letter, even if a municipal entity voluntarily elects to certify they are an SMMP, there are already a variety of municipal entity protections including those currently built into Rule D-15, the SEC’s Municipal Advisor rules, and the municipal entity’s own investment policy.

2. Would the adoption of an asset threshold in current Rule D-15(a)(3) of \$100 million invested in municipal securities preclude most municipal entity customers from SMMP qualification? Please describe any potential positive or negative consequences to municipal entities that could result from such a change in asset threshold. If the MSRB were to adopt such a threshold for municipal entities, should such heightened threshold apply to any other categories of investors, or should it be raised for all types of investors?

Yes, SIFMA members believe the adoption of an asset threshold in Rule D-15(a)(3) of \$100 million invested in municipal securities could preclude many municipal entity customers from SMMP qualification, and thus access to execute trades from BD institutional trading desks, which do not offer the protections required to be given to non-SMMP investors.

3. Should municipal entity customers be wholly excluded from qualifying as SMMPs?

No. There are hundreds of municipal entity customers of broker-dealers that choose to and benefit from access to broker-dealers' institutional trading desks.

4. How important is it for municipal entity customers to qualify and be treated as an SMMP?

Some municipal entity customers actively seek to be treated as an SMMP, as it gives them access to a dealer's institutional desk. SIFMA members believe that there are a few hundred municipal entities that have signed SMMP certifications.

5. If a dealer cannot treat a municipal entity customer as an SMMP, how, if at all, would that impact the dealer's ability to serve, or the dealer's manner of serving, such customers?

If a dealer cannot treat a municipal entity customer as an SMMP, dealers could only then service that municipal entity client from their retail platform. Dealers' institutional desks are set up for SMMPs, and it may be an unworkable compliance burden for a dealer to offer the protections due to non-SMMP investors for those trading on the institutional trading desk. Typically, municipal entities do not want to be serviced from a dealer's retail trading desk due to the pace of transactions, offerings, and level of required compliance, including Reg BI. Anecdotally, dealers report that retail trading desks also are unlikely to trade directly with municipal entities.

6. For dealers that only work with SMMPs, what would these dealers choose to do if some of their municipal entity customers no longer qualify as SMMPs?

If a dealer only worked with SMMPs, and those municipal entity customers no longer qualify as SMMPs, the municipal entities could lose access to those dealers, as the compliance burden of allowing a non-SMMP to trade off the institutional desk is an unworkable hurdle and moving the client to the retail desk may not be appropriate.

7. Would dealers that only work with SMMPs potentially forfeit business with some municipal entity customers because the cost of implementing a compliance framework for non-SMMPs would be too high?

Absolutely, yes. Dealers that only work with SMMPs could potentially forfeit business with some municipal entity customers because the cost of implementing a compliance framework for non-SMMPs on their institutional trading desks may be too high and retail desks may also not be an appropriate platform to service these clients.

8. If the answer to Question 7 is yes, would this significantly impact the number of dealers a municipal entity customer can choose from?

Again, yes. SIFMA does not believe there are many, if any, firms that permit non-SMMP customers to directly trade with its institutional trading desks or its retail trading desks.

9. Are there specific products or services that would no longer be available to municipal entity customers, or are there other consequences that could result, if they were not able to qualify for SMMP status?

Municipal entity customers would lose direct access to dealers' institutional trading and likely retail trading desks as well.

10. How important is it to dealers for Rule D-15 to be harmonized with analogous FINRA rules, such as FINRA Rule 4512(c)(3) on customer account information, which contains a provision allowing a customer with total assets of at least \$50 million to be considered an institutional account? Please describe any other potential positive or negative consequences, other than any described in response to the questions above, to dealers, municipal entities and/or the marketplace as a whole that could result from such lack of harmonization.

It is very important to the dealers that MSRB Rule D-15 be harmonized with FINRA 2111 and FINRA Rule 4512. The compliance burden of having different rules for different products cannot be overstated. SIFMA believes that the current threshold of \$50 million in assets is appropriate as a baseline requirement for any customer to be treated as an SMMP. Customers are not required to opt-in to be treated as SMMPs, and there is no requirement that customers provide the attestations to be treated as an SMMP. To the extent a customer does not feel they have this level of sophistication, they should simply decline to provide the affirmation. The customer affirmation requirement is designed to ensure that SMMPs have affirmatively and knowingly agreed to forgo certain protections under MSRB rules. As noted in our letter, an assets test tied to the value of municipal bond holdings would be extremely difficult if not impossible to monitor, and firms would be required to either implement very costly monitoring for those limited clients bordering the threshold minimum, or they would be required to set an internal minimum threshold well in excess of the rule to ensure they do not have a client dropping below the regulatory minimum.

Determination of Sophistication

11. Do commenters believe that dealers are properly determining customer sophistication, as required under Rule D-15(b), on a case-by-case basis?

Yes, we believe that dealers are properly determining customer sophistications, as required under Rule D-15(b), on a case-by-case basis.

12. Do commenters believe that Rule D-15 Supplementary Material .01 provides enough guidance for dealers when conducting a reasonable basis analysis of customer sophistication? If not, should there be a more exacting standard of review for determining a customer's level of sophistication when the customer is a municipal entity?

Rule D-15 Supplementary Material .01 does provide enough guidance for dealers when conducting a reasonable basis analysis of customer sophistication.

Customer Affirmation

13. Are customers sufficiently aware of the customer protections they are giving up when completing Rule D-15(c)'s customer affirmation for qualification as an SMMP?

Customers should be sufficiently aware of the customer protections that they are giving up when completing Rule D-15(c)'s customer affirmation for qualification as an SMMP. The certifications set forth are clear and explicit. If there are instances where a customer is not aware of the protections they are giving up, or not aware that they have signed an SMMP certificate, then the dealer has not satisfied Rule D-15(d), wherein "[t]he dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities." Such situations should be a matter for targeted examination and enforcement, and not a wholesale change in regulation which could impact many municipal entities' access to institutional trading desks. All dealer activity is also covered by Rule G-17 on fair dealing.

SIFMA feels that the content of the customer affirmation requirement described in Rule D-15(c) is appropriately harmonized with the content of customer affirmations referenced in the rules of other regulators (e.g., FINRA Rule 2111(b)) given the differences between the markets and respective rule sets, as SIFMA sees no material reason for the MSRB to impose additional costs on the broker-dealer community by de-harmonizing the rulesets

14. Are dealers taking proper steps to ensure that the appropriate individual is completing the affirmation under Rule D-15(c) when the customer is a municipal entity?

Dealers do take proper steps to ensure that the appropriate individual is completing the affirmation under Rule D-15(c) when the customer is a municipal entity. Again, if an appropriate municipal entity official is not the one completing the SMMP certificate, then the dealer has not satisfied Rule D-15(d), wherein "[t]he dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities." Again, such situations should be a matter for targeted examination and enforcement, and not a wholesale change in regulation which could impact many municipal entities' access to institutional trading desks. Also, all dealer activity is also covered by Rule G-17 on fair dealing.

15. Should investment advisers registered with the Commission be exempt from Rule D-15(c)'s customer affirmation requirement? Would such an exemption be consistent with current requirements under FINRA Rule 2111(b), on which the customer affirmation requirement was partially based? Why or why not?

Yes, investment advisers registered with the Commission should be exempt from Rule D-15(c)'s customer affirmation requirement, and such an exemption should be consistent with current requirements under FINRA Rule 2111(b). FINRA Rule 2111(b) states, "Where an institutional customer has delegated decision making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent." Also, FINRA Rule 4512 specifically includes in the definition of institutional accounts "(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions)." SEC-registered investment advisers undergo regular and routing risk-based examination and enforcement by the SEC, and state investment advisers undergo state-level examination and enforcement.

16. If the exemption for investment advisers registered with the Commission is adopted, should it be extended to state-registered investment advisers? Why or why not? Would such an extension be consistent with FINRA Rule 2111(b)?

Yes, the exemption for investment advisers registered with the SEC should be adopted, and it should be extended to state-registered investment advisers. As you know, all these advisers are subject to comprehensive federal and state regulations such that the MSRB does not need to unnecessarily layer on duplicative regulations. There is no regulatory gap to solve for.

Harmonization of MSRB rules with FINRA rules, wherein possible and absent clear reasons for treating municipal securities transactions differently, reduces the cost of compliance for dealers to maintain consistency. Again, FINRA Rule 2111(b) states, "Where an institutional customer has delegated decision making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent," and FINRA Rule 4512 specifically includes in the definition of institutional accounts "(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions)." There is no bona fide reason to treat state-registered investment advisers differently.

Other

17. Would the Draft Amendments result in a disproportionate and/or undue burden for small dealers?

SIFMA members feel that the amendments would not result in a disproportionate or undue burden for small dealers; rather, all dealers would experience the same burdens.



Gary A. Varnavides, Esq.
Direct: (310) 367-3654
gary@varnavideslaw.com

February 2, 2026

Electronically Filed via www.msrb.org
The Municipal Securities Rulemaking Board
1301 I Street NW, Ste. 1000
Washington, DC 20005

Re: Comment on Proposed Amendments to MSRB Rule D-15

To the MSRB:

I write to express my opposition to the proposed amendments to MSRB Rule D-15, which would exempt SEC-registered investment advisers from customer affirmation requirements and effectively presume that small- to medium-sized registered investment advisers (RIAs) qualify as Sophisticated Municipal Market Professionals (SMMPs).¹

These proposed changes rest upon a fundamentally flawed premise—that SEC registration status correlates with municipal securities sophistication. They do not. Moreover, the proposed amendments would strip away critical investor protections precisely when the municipal securities market faces unprecedented risks from the proliferation of speculative-grade debt issued by joint powers authorities and similar conduit issuers. This letter describes these issues and proposes possible alternative approaches for the MSRB.

I. SEC Registration Does Not Equal Municipal Securities Sophistication

Notice 2025-08 reflects the MSRB's understanding that SEC-registered investment advisers are "typically very sophisticated." This characterization is flawed for two primary reasons: (i) it conflates mere SEC registration with municipal market sophistication; and (ii) it fails to account for the vast disparity in resources and sophistication amongst RIAs.

A. SEC Registration is a Relatively Low Barrier to Entry that Imposes No Municipal Securities Expertise Standards

Registration with the SEC under the Investment Advisers Act of 1940 establishes that a

¹ I am an attorney who regularly represents public investors in securities disputes and arbitrations and am an active member of the Public Investors Advocate Bar Association (PIABA). The views expressed in this letter, however, are my own.

firm manages more than \$100 million in regulatory assets under management (AUM) and satisfies certain operational and disclosure requirements. However, these regulatory barriers to entry are modest, particularly with respect to the \$100 million AUM minimum. Given the long and steady appreciation in asset values across virtually all asset classes, \$100 million in AUM simply does not signify what it may have in past decades.

Critically, and as the Public Investors Advocate Bar Association (PIABA) rightfully points out in its comment letter, SEC registration does not require an RIA to undertake any specialized training or demonstrate any accreditation with respect to municipal securities. Moreover, the MSRB's position fails to appreciate that RIAs encompass a vast spectrum of professionals who focus on diverse arrays of securities and investment products. In my experience representing public investors, even RIAs that proclaim purported expertise regarding municipal bonds often lack a fundamental understanding of how to evaluate municipal bonds for their clients.²

The notion that an RIA qualifies as an SMMP merely because of its SEC registration is akin to the proposition that a psychiatrist possesses the same expertise as their cardiologist colleague to perform cardiac surgery merely because both physicians are licensed by the same state medical board. While both professionals meet the same general licensing standards, those standards say nothing about their specialized competencies in distinct areas of practice.

The MSRB need look no further than the dramatic rise in the number of SEC-registered RIAs in recent years to understand that SEC registration status has become an increasingly unreliable proxy for any form of specialized sophistication. In 2024, the number of SEC-registered advisers hit a record high according to an annual report from the Investment Adviser Association.³ The report further noted that the number of SEC-registered advisers had more than doubled since 2000—underscoring that SEC registration has become far more commonplace and therefore far less indicative of specialized expertise in any particular asset class.

B. Most RIAs are Small Businesses that Lack Critical Municipal Securities Evaluation Infrastructure

The existing SMMP framework properly assumes that qualifying entities possess: (i) timely access to material information; (ii) independent capacity to evaluate investment risks and

² Anecdotally, I represented a client in a matter where the client's RIA advised on the suitability of certain municipal bonds backed by California multi-family housing apartments based primarily on a single criterion: the physical distance of the apartment complexes from the Pacific Ocean. The RIA failed to perform any actual credit analysis of occupancy rates, debt service coverage ratios, property management quality, or local rental market conditions.

³ Investment Adviser Association, *Evolution Revolution: The Continued Growth and Transformation of the Investment Advisory Profession (2025 Annual Report)*, available at <https://www.investmentadviser.org/wp-content/uploads/2025/05/Snapshot2025.pdf> (last accessed February 2, 2026). The report further noted that the number of SEC-registered advisers had more than doubled since 2000.

market values; and (iii) ability to exercise truly independent judgment. These are not mere technicalities—they represent the foundational capabilities necessary to function as a sophisticated market participant.

Most SEC-registered RIAs with less than \$1 billion in assets under management lack all three capabilities with respect to municipal securities. Indeed, nearly 90% of RIAs operate as small businesses with fewer than 50 employees.⁴ Furthermore, RIAs that focus on individuals as their clients have an average of just eight (8) employees.⁵ While many smaller RIAs have certainly evolved from the “mom and pop” operations of decades past, they remain small businesses without the vast infrastructure and resources of major institutional firms such as BlackRock, Nuveen, or Franklin Templeton.

The following sections detail the critical infrastructure gaps that render most small-to-medium RIAs unsuitable for SMMP classification.

1. Absence of Dedicated Credit Research

Large institutional asset managers employ dedicated municipal credit research teams that continuously monitor issuer financial statements, track tax base changes, analyze complex revenue bond structures, maintain direct relationships with issuer officials, and subscribe to specialized research services such as Municipal Market Analytics (MMA), Bloomberg Municipal Research, and specialized legal opinions services.

Small-to-medium RIAs generally do not have this infrastructure. They typically rely exclusively on credit ratings from Moody’s, S&P, or Fitch—ratings that (i) lag material developments in issuer financial condition, often by months or quarters; (ii) fail to capture risks embedded in complex revenue bond structures, particularly those involving special-purpose entities; and (iii) provide no coverage whatsoever for the significant and growing segment of non-rated municipal debt.

The inadequacy of passive reliance on third-party ratings became evident during the 2008 financial crisis, when rating agencies systematically failed to identify risks in structured finance products. Municipal securities, while generally safer than mortgage-backed securities, nevertheless present complex credit risks that require active, specialized analysis—particularly for the types of special-purpose entity debt discussed in Section IV below.

2. Deficient Price Discovery and Best Execution Capabilities

MSRB Rule G-18 requires dealers to execute transactions at prices as favorable as possible under prevailing market conditions. However, this obligation substantially diminishes

⁴ *See id.*

⁵ *See id.*

for SMMP transactions, based on assumptions that sophisticated participants conduct comprehensive price discovery and can protect themselves through market knowledge.

Most small-to-medium RIAs lack any meaningful price discovery capabilities. They execute trades either: (i) through institutional sales representatives offering limited inventory from a single dealer's holdings, or (ii) through online custodian platforms (such as Charles Schwab or Fidelity) displaying available securities from the custodian's affiliated dealers—in both cases making no attempt to compare dealer offerings against alternative sources, obtain competitive bids from multiple dealers, or verify that prices reflect fair market value based on recent comparable transactions.

This deficiency is particularly acute in the municipal securities market, which lacks the transparency and liquidity of equity markets. Municipal bonds trade infrequently, with some securities experiencing zero trading activity for extended periods. Without active price discovery—requiring access to multiple dealer inventories, recent trade data, and sophisticated analytical tools—small RIAs cannot determine whether offered prices reflect fair value or include excessive dealer markups.

The MSRB's own EMMA (Electronic Municipal Market Access) system, while providing post-trade transparency, does not cure this deficiency. EMMA reports transactions after they occur; it does not provide the real-time competitive pricing information necessary for effective pre-trade price discovery. Small RIAs typically lack even the basic capability to use EMMA data to challenge potentially unfavorable pricing in real time.

3. Absence of Specialized Technology Infrastructure

Sophisticated municipal portfolio management requires specialized systems capable of: calculating duration, convexity, and interest rate sensitivity across the portfolio; monitoring diversification and concentration limits against regulatory or internal mandates; enabling instant swap analysis to compare existing holdings against potential replacements; generating real-time credit event alerts; and computing tax-equivalent yields across different investor tax brackets.

Small-to-medium RIAs typically rely on basic portfolio accounting systems provided by custodian broker-dealers (such as Schwab Advisor Center or Fidelity Wealth Central) that offer rudimentary reporting but lack sophisticated fixed-income analytics. RIAs using these systems cannot perform real-time swap analyses, adequately monitor duration exposure as interest rates change, or model interest rate scenarios—fundamental capabilities for sophisticated municipal portfolio management.

By contrast, major institutional municipal bond managers subscribe to specialized systems such as Bloomberg Port, BlackRock Aladdin, or FactSet's fixed-income analytics modules—platforms costing hundreds of thousands of dollars annually and requiring dedicated staff to operate effectively. These systems provide the analytical capabilities necessary to manage municipal portfolios with genuine sophistication. Their significant cost, however, make them prohibitively expensive for many RIAs.

II. Today's Heightened Risks in the Municipal Bond Market and Disparate Impact on Retail Investors

Historically, municipal bonds were viewed as conservative, “plain vanilla” investments prized for their tax-exempt income and relative safety. Retail investors—particularly retirees in high-tax states—sought municipal securities because they were generally backed by the taxing power and revenue streams of established governmental entities through general obligation or revenue bonds. This traditional view of municipal securities as low-risk investments persists in the minds of many retail investors and, unfortunately, many small-to-medium RIAs. For this reason, the popularity of municipal bond amongst retail investors has continued through today, with retail investors directly holding an estimated 40 to 45% of municipal bonds.

However, the municipal securities market has undergone dramatic structural changes in recent years. These changes have introduced new and substantial risks that require specialized expertise to evaluate—precisely the type of expertise that small-to-medium RIAs lack.

A. The Proliferation of Speculative-Grade Debt Issued by Joint Powers Authorities and other Conduit Issuers

The proposed rule changes arrive at a particularly inopportune time. The municipal market is experiencing rapid growth in debt issued by joint powers authorities (“JPAs”), community facilities districts, and similar special-purpose entities that lack traditional tax bases, general governmental backing, or established operating histories.

Many municipalities throughout the United States—smaller cities and towns, in particular—do not issue bonds directly because, among other reasons, they lack the financial expertise, staff resources, or market access necessary to complete complex securities offerings. Instead, local municipalities often join to create quasi-governmental agencies known as Joint Powers Authorities (“JPAs”).⁶ In essence, participating municipalities outsource and delegate their bond-issuing powers to JPAs, which are generally staffed by a small number of individuals—sometimes as few as three to five employees—and operate with limited oversight from the participating municipalities.⁷

JPAs frequently act as “conduit” issuers, meaning they issue bonds on behalf of private entities or special-purpose projects rather than to fund traditional governmental operations or infrastructure. These conduit bonds are typically secured not by the JPA’s taxing authority (which it generally lacks) nor by the general credit of participating municipalities (which rarely provide

⁶ Municipalities create JPAs pursuant to state laws commonly known as Joint Exercise of Powers Acts.

⁷ Matt Schiffrin and Isabel Contreras, *California Scheming*, FORBES (December 2, 2021), available at <https://www.forbes.com/sites/schiffrin/2021/12/02/california-scheming-municipal-bonds-workforce-housing-crisis-luxury-apartments/?sh=4e785e643001> (last accessed February 2, 2026). The Forbes investigation described certain JPAs as operating essentially as “shell companies” with minimal staff and oversight.

guarantees), but rather by revenues from specific projects or facilities—often newly constructed developments with no operating history.⁸

JPAs frequently act as “conduit” issuers, meaning they issue bonds on behalf of private entities or special-purpose projects rather than to fund traditional governmental operations or infrastructure. These conduit bonds are typically secured not by the JPA’s taxing authority (which it generally lacks) nor by the general credit of participating municipalities (which rarely provide guarantees), but rather by revenues from specific projects or facilities—often newly constructed developments with no operating history.

Common structures include housing bonds, charter school facilities bonds, or other non-profit facilities bonds. These structures share common characteristics that distinguish them from traditional municipal securities: i) absence of governmental backing; ii) concentration risk; projections-based underwriting; iii) limited or no operating history; and iv) opaque legal structures. Such structures have produced significant defaults in recent years. In a comprehensive Forbes investigation, journalists documented numerous examples of JPA-issued workforce housing bonds that experienced severe financial distress or outright default, leaving retail investors with substantial losses.⁹ The Forbes investigation described certain JPAs as operating essentially as “shell companies” with minimal staff and limited oversight.

B. Regulatory Warnings and Recent Defaults

More significantly, SEC officials have recently sounded the alarm on these types of JPA bond issuances. In December 2023, the Director of the SEC’s Office of Municipal Securities, Dave A. Sanchez, stated he was “very concerned” about the proliferation of JPAs serving as conduit entities.¹⁰ Director Sanchez further stated:

Recently, the market has also seen the emergence and reemergence of certain deal structures including housing deals for essential workers and students...that have come under scrutiny because of questionable economics or other issues. We have seen certain

⁸ California is for JPA bond issuances, with some of the most prolific JPAs in the United States operating within the state. This includes an alphabet soup of entities such as the California Statewide Communities Development Authority (“CSCDA”), the California Community Housing Agency (“CalCHA”), and the California Public Finance Authority (“CalPFA”). CSCDA is perhaps the country’s largest JPA in terms of issuances—its website boasts that it counts over 350 California municipalities as participants and that it has issued over \$75 billion in bonds. California Statewide Communities Development Authority, About CSCDA, available at <https://cscda.org/about/> (last accessed February 2, 2026).

⁹ Schifrin and Contreras, *supra* note 7.

¹⁰ Dave A. Sanchez, Director, SEC Office of Municipal Securities, *Closing Remarks*, Compliance Conference, Washington, D.C. (December 7, 2023) (transcript available at <https://www.sec.gov/newsroom/speeches-statements/sanchez-remarks-compliance-conference-120723>) (last accessed February 2, 2026).

municipal entities cede authority for issuing conduit bonds to privately-run entities that are the leading issuers of defaulted bonds.¹¹

Many of these structures receive investment-grade ratings based on optimistic assumptions about future growth, development success, or private obligor performance. However, rating agencies—paid by issuers and underwriters—face inherent conflicts of interest that can lead to rating inflation, particularly for complex, structured transactions where historical default data is limited.

Moreover, a significant and growing portion of JPA-issued conduit debt carries no rating whatsoever. For these non-rated securities, investors must rely entirely on their own credit analysis—precisely the capability that small-to-medium RIAs lack. This lack of rating further led to significant underreporting of municipal bond defaults according to a study done by New York Fed economists.¹²

As described above, smaller RIAs are entirely unequipped to analyze the risks inherent in JPA-issued conduit debt. Instead, small RIAs rely on precisely the two sources that prove inadequate for these securities: (i) credit ratings that may be inflated, absent entirely, or based on overly optimistic assumptions; and (ii) dealer representations that dealers will have limited incentive to provide once SMMP status eliminates their heightened disclosure obligations. This is precisely the scenario the SMMP framework was designed to prevent: unsophisticated investors operating under the presumption of sophistication, exposed to complex and risky securities they cannot properly evaluate, with reduced dealer protections based on a false premise of capability.

The risks of municipal bonds were underscored by the June 2025 collapse of the Easterly ROCMuni High Income Municipal Bond Fund, which lost half its value and was comprised largely of non-rated conduit or JPA-type bonds that were not backed by a municipality.¹³

III. ALTERNATIVE APPROACHES BETTER SERVE THE MARKET

We recognize the MSRB's legitimate interest in reducing unnecessary regulatory burden and enabling efficient market operations. However, those goals can be achieved through more targeted reforms that do not sacrifice investor protection.

¹¹ *Id.* (emphasis added). Director Sanchez reiterated these concerns in subsequent remarks. See Dave A. Sanchez, Director, SEC Office of Municipal Securities, *Issues Revisited: Titles, Amendments to Rule 15c2-12 Undertakings and Voluntary Disclosure*, Washington, D.C. (June 30, 2025) (transcript available at <https://www.sec.gov/newsroom/speeches-statements/sanchez-speech-ghoa-06302025-issues-revisited-titles-amendments-rule-15c2-12-undertakings-voluntary-disclosure> (last accessed February 2, 2026)).

¹² <https://libertystreeteconomics.newyorkfed.org/2012/08/the-untold-story-of-municipal-bond-defaults/>

¹³ <https://www.investmentnews.com/independent-broker-dealers/after-muni-bond-fund-blow-up-broker-dealers-face-questions/261636>

A. Asset-Based Thresholds Should Be Raised, Not Eliminated

If the MSRB believes current thresholds for SMMP status are too low, the appropriate response is to raise them significantly rather than eliminate affirmation requirements. We would support:

1. Increasing the investment adviser threshold from \$100 million in regulatory assets under management to \$250 million or more, recognizing that only larger advisory firms have the infrastructure to support genuine sophistication in specialized areas like municipal credit analysis;
2. Requiring that a specified minimum dollar amount or percentage of the RIA's assets under management be allocated to municipal securities, demonstrating actual market focus rather than incidental participation; and
3. Maintaining affirmation requirements at all asset levels to ensure customers understand what protections they are waiving.

B. Streamlined Affirmations Can Reduce Burden Without Sacrificing Protection

If the burden of obtaining affirmations is the concern, the MSRB could allow one-time affirmations that remain valid for extended periods (e.g., three years) absent material changes in circumstances, rather than requiring transaction-by-transaction or even annual reaffirmations. This would reduce administrative burden while preserving the critical function of informed customer consent.

C. Enhanced Guidance on Sophistication Assessments

Rather than weakening standards, the MSRB should strengthen Rule D-15(b) by providing more detailed guidance on what constitutes a reasonable basis for believing a customer is capable of independent evaluation. Such guidance could include the following considerations for dealers:

1. Whether the customer employs dedicated fixed-income research analysts or relies on third-party ratings;
2. Whether the customer has access to alternative trading platforms and regularly solicits competitive quotes;
3. Whether the customer actively monitors execution quality and challenges pricing when appropriate;

4. Whether the customer reviews official statements, continuing disclosure, and other material information before making investment decisions; and
5. Whether the customer employs portfolio management tools capable of analyzing duration, convexity, and other fixed-income risk metrics.

Such guidance would give substance to the reasonable basis standard and help dealers make appropriate determinations even without affirmation requirements. However, we continue to believe that affirmations serve an irreplaceable function and should not be eliminated.

IV. Conclusion

The proposed amendments to Rule D-15 would strip away critical investor protections based on a demonstrably false premise: that SEC registration status correlates with municipal securities sophistication. As detailed in this letter, most SEC-registered investment advisers lack the dedicated credit research capabilities, price discovery mechanisms, and specialized technology infrastructure essential for sophisticated municipal securities analysis.

These deficiencies would expose retail investors to significant risks precisely when the municipal securities market is experiencing rapid growth in speculative-grade conduit debt issued by joint powers authorities and similar special-purpose entities. Small-to-medium RIAs are wholly unequipped to analyze the complex risks inherent in these securities, yet the proposed amendments would eliminate dealer protections based on a regulatory presumption of sophistication that does not reflect market reality.

The MSRB's legitimate interest in reducing regulatory burden can be achieved through more targeted reforms described herein that do not sacrifice fundamental investor protections.

Respectfully submitted,

/s Gary Varnavides
Gary Varnavides