



**Government Finance Officers Association**  
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March 5, 2013

Mr. Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Alexandria, VA 22314

**RE: MSRB Notice 2012-63**

Dear Mr. Smith:

Thank you for the opportunity to comment on the MSRB's review of the Board's rules and interpretive guidance. The Government Finance Officers Association represents over 17,000 members across the United States, many of whom issue municipal securities. The GFOA has commented on numerous MSRB proposed rulemaking and interpretive guidance, and continues to be very interested in the MSRB's activities as they relate to regulations over broker/dealers and municipal advisors.

Below are some general comments about the MSRB's mission and areas where we believe the Board could have a positive impact through its rulemaking on the market, and for state and local governments.

#### MSRB Mission

Since 2010, the GFOA has commented that the MSRB's expanded mission to protect issuers in addition to investors of municipal securities, should be limited in its interpretation. Specifically, we have commented – and continue to – that the reason for the having the MSRB protect issuers is directly related to its expanded jurisdiction to regulate municipal advisors – who have a fiduciary responsibility to issuers. Therefore, we view the MSRB's mission to protect issuers to mean that they must take into account how issuers will be affected both due to new regulations over municipal advisors and continuing regulations over broker/dealers. Revised rulemaking over the past few years over broker/dealers has been positive for issuers. We would ask that the MSRB continue to consider how their rulemaking affects issuers, and protect them from practices that could adversely impact state and local governments.

We do not believe that the MSRB should view its revised mission to directly or indirectly develop best practices or rulemaking for issuers, or interfere with the work of state and local governments related to bond issuance or other practices that are related to the financial information governments provide to investors.

## General Rulemaking

We are pleased with the MSRB's continued efforts to propose and revise rulemaking in a manner that benefits the overall market. As the MSRB continues its work, we think it is important for the Board to develop appropriate rules, but to also ensure that these rules work well in practice – which is something that may not be known until the rules are in place for some time. Therefore, we suggest that the MSRB look at its current rulemaking to ensure that it works as well in practice as it is intended to do so on paper. For instance, the revisions to Rule G-17 in August 2012 had the intent, which GFOA supports, to have underwriters implement practices in order to appropriately disclose their role in a transaction to issuers. As we have seen in practice, the way that the rule has been implemented has varied. Issuers have commented about their diverse experience with the implementation of the Rule, including - that they are not receiving adequate and timely disclosures; that they are overwhelmed with paperwork that seems to dilute the intent of providing forthright disclosures; and some have commented that they are receiving relevant and timely disclosures. We suggest that the MSRB consider some type of review to determine if the intent of the rules in place are actually being practiced in the market.

## Rulemaking Parity

The MSRB has done considerable work related to its jurisdiction over broker/dealers. We know that the MSRB is waiting for final SEC rulemaking related to the definition of municipal advisor before moving forward with new rules over these professionals. We have stated previously and strongly believe that the certain types of rulemaking (e.g., pay-to-play, role disclosure to issuers, disclosure of third party relationships, professional standards, etc.) are developed, adopted and enforced in the same manner between broker/dealers and municipal advisors. While there are obviously some differences that will be embedded in the rulemaking, the overall requirements should be the same for all professionals.

We fully understand – and sympathize - that the MSRB's hands have been tied in its ability to develop proper rulemaking for municipal advisors, and are hopeful that the SEC will soon act in order to allow the MSRB to move forward accordingly.

## Specific Rulemaking

We are very pleased with the MSRB's activities to alter its rulemaking in numerous areas, including NRO status, large trade information, retail order periods, and other efforts. GFOA has also been keenly interested in the changes the MSRB made to Rule G-23, which no longer allows an advisor to resign from the transaction and become the underwriter in the same transaction. For many years GFOA had asked for the Rule to be changed in this manner and believe the revised rule meets the goal of eliminating the conflict that existed prior to 2012.

## Suitability

GFOA has suggested that a suitability standard on underwriters in their recommendations to issuers may prove useful within the MSRB's rulemaking book. We suggest that the MSRB convene a group of stakeholders to discuss the topic and possible benefits that would be seen by incorporating this type of standard on underwriters. It should also be reiterated that a municipal advisor's fiduciary duty maintains an even higher standard than suitability related to the financial products that they may recommend to issuers.

## Derivatives

In 2010, GFOA suggested that the MSRB look at building a derivatives database that would be helpful to issuers. The Dodd Frank Act specifically provided the MSRB with additional authority to develop databases and information systems related to derivatives, and we suggest that the MSRB look to include this in its long term work plan.

## EMMA

We continue to applaud the MSRB's work to enhance EMMA, making it easier for issuers and investors to use and providing new variables to add and organize information. We would suggest that the MSRB continue to work with GFOA and allow a forum for our members to review and discuss the way the current system works, and how new platforms should be developed to ensure their use by issuers.

Thank you again for allowing us to comment on the MSRB's rulemaking efforts. We will provide additional comments as warranted, both on specific rulemaking and on the MSRB's general body of work, and appreciate the MSRB's continued outreach to the issuer community.

Sincerely,

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Dustin McDonald  
Director, Federal Liaison Center