

August 25, 2014

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2014-12 (July 23, 2014) – Request for Comment on Revised MSRB Rule G-42

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board (“MSRB”) Notice 2014-12 (“Notice”) seeking comment on revised draft MSRB Rule G-42 (the “Revised Draft”) on duties of non-solicitor municipal advisors. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. Accordingly, we believe that we uniquely offer insight into how the Revised Draft would impact middle-market securities dealers.

Principal Transactions. The BDA supports the MSRB’s approach in the Revised Draft with respect to when municipal advisors are prohibited from engaging in a principal transaction with a client. We believe that it is very important that any such prohibition operate on a transaction-by-transaction basis rather than more broadly restricting a person from acting as a principal on a transaction that is unrelated to the municipal advisory relationship. In that light, section (e)(ii) seems to create confusion relative to this principal when it states, “A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction **directly related to** [emphasis added] the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice.” We feel the term “directly related to” is vague and open to interpretation. It is not clear to us exactly what transactions would be considered “directly related to” other transactions. For example, would selling securities, as a principal after winning a competitive bid for an open market refunding escrow, on a refunding bond issue for which the firm was a municipal advisor be “directly related to” the bond issue? Would acting as a municipal advisor for a swap while acting as the underwriter on a related series of variable rate bonds be too “directly related”? Would underwriting a refunding issue years after serving as a municipal advisor for the initial issue be a transaction that is considered “directly related to” the initial issue?

We would propose that the MSRB use the following language instead:

“A municipal advisor, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction with a municipal entity client if the

structure, timing or terms of such principal transaction was established on the advice of the municipal advisor in connection with a municipal advisory relationship with such municipal entity client.”

We believe that this re-phrased language addresses the core concern of the MSRB, which is to prohibit situations in which a municipal advisor structures a transaction and then creates a potential conflict of interest by participating as a principal in that transaction or a related transaction on which it has rendered advice.

Review of Recommendations. Under paragraph (d) of the Revised Draft, in any recommendation by a municipal advisor or a review by a municipal advisor of a recommendation of another party, the municipal advisor is required to determine that the related municipal securities transaction or municipal financial product is suitable for the client. In addition, the municipal advisor is required to inform the client of the matters described in subparagraphs (i) through (iii) of paragraph (d). While the BDA supports these requirements, our members have been reading these requirements with a view to future FINRA examinations and do not understand exactly how examiners will test a dealer’s compliance with these requirements when serving as a municipal advisor. The BDA would propose that the MSRB provide specific language within Rule G-42 that permits municipal advisors to develop reasonable policies and procedures regarding when and how they communicate any of the requirements of paragraph (d) to clients orally or in writing.

Reference to Rule G-23. In note .07 under supplemental materials, the Revised Draft includes a new, second sentence. The last clause of that sentence reads, “provided, that the municipal advisor complies with all of the provisions of Rule G-23.” The new language makes it no clearer than the language in the original proposed regulation, which mentioned Rule G-23, as to when it is possible for a municipal advisor to act as a principal on the same transaction on which they are providing advice.

Acting as Underwriter for Conduit Issuer and Municipal Advisor for Obligated Person. The Revised Draft does not explicitly address a fact pattern that occurs in the municipal market. The BDA believes that there is (and should be) no prohibition on a dealer serving as an underwriter for a conduit issuer and a municipal advisor for an obligated person, even with respect to related matters. We would propose that the MSRB add a clarification in note .07 under the supplemental materials that there is nothing in Rule G-42 that prevents a dealer from acting as an underwriter for the conduit issuer and as a municipal advisor for an obligated person.

Thank you for the opportunity to submit these comments on the Revised Draft.

Sincerely,



Michael Nicholas

Chief Executive Officer