

September 14, 2018

Submitted Electronically

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

RE: Request for Comment on Draft Frequently Asked Questions Regarding Use of Social Media under MSRB Advertising Rules

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am submitting this letter to provide comments to the MSRB’s Regulatory Notice 2018-19 (Request for Comment on Draft Frequently Asked Questions (“Draft FAQs”) Regarding Use of Social Media under MSRB Advertising Rules) (the “Notice”). BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA believes that the Draft FAQs should draw the distinction between interactive and static websites, as does FINRA guidance.

The Draft FAQs recognize the importance of consistency in guidance across regulatory bodies, stating that the MSRB has endeavored to align the FAQs with social media guidance of the SEC and FINRA. However, the Draft FAQs are inconsistent with FINRA’s social media guidance in at least one significant respect. In its guidance on social media¹, FINRA draws a distinction between static websites, on which information is posted on a long-term basis and does not represent an interactive conversation, and interactive websites, on which statements are posted within the context of interactive conversations. Consistent with FINRA’s view, as expressed in its guidance, the BDA believes posts on interactive websites that are in the nature of interactive conversations should be construed as communications but not advertisements. The Draft FAQs draw no distinction between static and interactive postings. The BDA believes that the FAQs should state that posts on interactive websites should be treated as communications and subject to the rules and supervisory requirements of the MSRB’s rules on communications and not advertisements. Conversely, when a dealer or municipal advisor posts on a static website, that post could be construed as an advertisement if the facts and circumstances described in the Draft FAQs are present. Such an approach would be consistent with FINRA’s well-established guidance on social media.

¹ See <http://www.finra.org/industry/social-media>.

The BDA believes that recordkeeping and record retention rules should apply to posts by third parties on an associated person's personal social networking page only in extremely limited circumstances.

Draft FAQ 11 states that third-party posts on an associated person's personal social networking page are subject to the MSRB's recordkeeping and record retention rules if they relate to the associated person's municipal securities or municipal advisory activities. By taking this position, the MSRB would be effectively mandating an extraordinary intrusion by registrants into the personal activities of associated persons. Subjecting an associated person's own posts regarding the registrant's business on a social networking site to the recordkeeping and record retention rules is reasonable. However, third-party posts should not be subject to those rules unless solicited or adopted by the associated person.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer