

January 13, 2014

VIA ELECTRONIC MAIL

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

*RE: MSRB Notice 2013-22 (December 13, 2013)*

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to MSRB Notice 2013-22, regarding proposed amendments to Rule G-3 to require all associated persons primarily engaged in municipal securities activities to participate in a minimum of one hour of Firm Element continuing education on municipal securities topics annually and the harmonization of Rule G-3(a)(ii)(C) with FINRA Rule 1032(b) (the “Proposed Rule”). We welcome this opportunity to state our position and provide these comments from a platform of tremendous support for any measures that will improve the municipal securities market and, in particular, any improvements that will provide better market transparency and efficiency for all market participants.

### **Support for Increased Municipal Securities Education**

The BDA generally supports the MSRB’s concept to require all professionals primarily engaged in municipal market activities to participate in meaningful, municipal securities industry-specific Firm Element continuing education in an effort to ensure that these individuals have a certain level of competency regarding municipal securities. We believe requiring all professionals primarily engaged in municipal market activities to complete at least one-hour of Firm Element training annually would also help keep these professionals abreast of emerging regulatory developments and industry trends, without having to include additional municipal securities content on such general securities

qualification examinations or impose a specific examination requirements for registered representatives engaged in municipal securities activities. While the MSRB does not want this one-hour requirement to be seen as the sole training criteria for “covered persons” as defined in the Proposed Rule, this may well be an unintended result. To help prevent this unintended result, the BDA would suggest that rather than imposing an arbitrary one hour training requirement, the MSRB instead consider developing and publishing an annual municipal training topic list focused on regulatory developments and industry trends and require firms to develop their enhanced municipal training component of the Firm Element continuing education to include at least one topic from the MSRB content list. With one of the reasons given for the proposed change to the scope of the Firm Element component of continuing education the unique nature of the municipal securities market and its distinct regulatory scheme, this would ensure that regulatory updates are presented in an accurate and complete manner and would be consistent across all industry professionals who are primarily engaged in municipal securities activities. The remaining scope of the Firm Element component would remain within the discretion of each firm and tailored to each firm’s individual business model based upon the ongoing internal assessment of each firm. The BDA believes this would discourage the potentially unintended consequence of the proposed one-hour minimum requirement being used as the sole training criteria for covered persons and ensure that covered persons are receiving the same information about the most important regulatory trends and developments in the municipal securities markets on an annual basis.

### **Competency and Continuing Education Standards for Municipal Securities**

#### **Activities Should be Collaborative and Consistent**

One of the reasons given by the MSRB for the proposed change to the scope of the Firm Element component of continuing education is the unique nature of the municipal securities market and its distinct regulatory scheme. Because the current scope of Firm Element component of continuing education is within the discretion of each firm, each firm tailors its programs to its particular business model and each firm’s annual training program differs from one firm to another. To best understand current practices, the BDA would suggest the MSRB work with industry professionals, such as a subset of BDA

member firms, who would be willing to have both formal and informal dialogue with MSRB staff about their current continuing education procedures and how the proposed changes to current procedures may positively or negatively impact such firm(s) and how such changes may be better tailored in order to achieve the desired results. Therefore, the BDA would suggest the MSRB reconsider a formal rulemaking and instead convene a subset of the industry in an effort to work on guidelines and/or best practices for all firms to utilize so that the continuing education process would be more streamlined and consistent across the entire industry. Additionally, this informal discussion would help our firms better understand precisely what the MSRB sees as the perceived risk, thereby further positioning our firms to assist the MSRB toward their efforts in addressing the stated concern.

### **Evidence of Compliance with Minimum Firm Element Continuing Education Requirements**

The BDA is concerned about how compliance with the one-hour minimum Firm Element component would be evidenced and what standard would be used in determining who qualifies as a “covered person” for purposes of Rule G-3. Standards for determining who needs to participate in the Firm Element component of continuing education would need to be developed by each firm and would be subject to scrutiny by the regulators.

Additional recordkeeping is likely to be required possibly in the form of a certificate for each professional who has completed the continuing education requirement. The BDA would suggest the MSRB consider how to minimize the effects of demonstrating compliance with new continuing education requirements.

### **Support for Harmonization with FINRA Rule 1032(b)**

The BDA supports the MSRB’s effort in harmonizing MSRB Rule G-3(a)(ii)(C) with FINRA Rule 1032(b) so that both sets of rules are as straightforward, understandable and manageable by compliance and enforcement staff at the same time. As proposed, the amended rule would preclude a Limited Representative from engaging in activities other than sales and those sales would be further limited to municipal securities. We would caution that even though the result would be to make MSRB Rule G-3(a)(ii)(C)

consistent with FINRA Rule 1032(b), this is still a change to an established industry practice, and we would anticipate associated costs related to updating, redrafting and establishing written supervisory procedures. In addition, if Limited Representatives are no longer able to perform activities such as underwriting, sales, research or any other activities which involve communication, directly or indirectly, with public investors in municipal fund securities, additional personnel will need to be hired to perform these activities. Additionally, the phrase “primarily engaged” is not defined, and there is no guidance in the MSRB commentary that sheds any light as to how this standard is to be applied. This lack of information will lead to disparate interpretation as to what “primarily engaged” means by various dealers. While the release points to the use of this “primarily engaged” concept in other MSRB rules, the fact remains that the MSRB has never given any guidance as to how to apply that standard in any of their other rules, either. MSRB needs to set forth a bright line definition of what “primarily engaged” means in order to ensure that the reps they intend to be covered by this new training requirement are captured uniformly across the industry.

Finally, we would caution that with any new or enhanced regulatory requirement, there are associated compliance costs borne by the staff at our member firms. These additional burdens, which may be manageable, but which are worth noting, range from the initial reading and interpretation of a new proposal to drafting for approval any updated written supervisory procedures culminating finally with the implementation and documentation of such compliance. Therefore, we would also encourage the MSRB pay close attention to the potential associated costs for dealers, which may be borne as a result of these proposed regulatory changes.

Thank you again for the opportunity to submit these comments.

Sincerely,



Michael Nicholas

Chief Executive Officer