

February 19, 2013

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2012-63 (December 18, 2012)

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to the MSRB Notice 2012-63, a review of its rules and related interpretive guidance for brokers, dealers, municipal securities dealers and municipal advisors in the context of the MSRB’s obligation to protect investors, municipal entities and obligated persons, and the public interest (“the Notice”). BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets. We welcome this opportunity to state our position.

Market Transparency

As the BDA has expressed in the past, one of our most important policy priorities is to improve transparency within the municipal markets. We continue to urge the MSRB to place market transparency initiatives at the forefront of its priorities and commend recent proposed rulemakings for placing the interests of the broad universe of potential investors at the forefront of its policymaking initiatives. An example of this is MSRB’s proposed amendments to its Rules G-32 and G-34 to streamline new issue information submission requirements. These efforts that enhance transparency within the municipal markets are essential to their ongoing efficiency and fairness and we urge the MSRB to place its market transparency efforts at the top of its priority list. We believe that the key to market transparency will be the continued expansion and improvement of EMMA.

EMMA has already drastically improved transparency within the municipal markets but more work needs to be done. Right now, pricing information is spread among a number of different sources within municipal markets and the timeliness of that information is inconsistent. In addition, as the MSRB has indicated in its recent proposal, preliminary official statements are not currently posted to EMMA. Further, information on EMMA can, at times, be very difficult to find and our members have had complaints about trying to use EMMA to locate issuer disclosures. When an individual is looking for information about an issuer and not about a specific CUSIP number, it can be very difficult to locate all of the information that the issuer has posted. All of these concerns point to the need for improvements in EMMA and changes by the MSRB to require more and more of the data needed in municipal security trades to be posted on EMMA. As a consequence, we believe that rulemaking that requires all material information that investors need to make decisions to be posted and operational changes to EMMA to improve its usability should be the MSRB's highest priority.

MSRB Rules G-17 and G-23 Overlap

The BDA believes that the MSRB should harmonize its Rule G-17 interpretative notice concerning disclosures to issuers with its Rule G-23, activities of financial advisors. Under Rule G-23, the underwriter must simply make the disclosures concerning its role and relationship with the issuer at the earliest stages of the relationship whereas Rule G-17 goes on to require delivery to, and written acknowledgement from, an issuer official authorized to bind the issuer and underwriter as well. We believe that the MSRB should harmonize these requirements so that the disclosures that the underwriter is required to make at the earliest stages of the relationship concerning the role of the underwriter and the nature of its relationship with the issuer should be merely written disclosures and the acknowledgement by the issuer should be permissible to obtain later in the process when the underwriter sends additional disclosures regarding the underwriter's role, compensation, conflicts of interest and complex financing risks. We continue to believe that the requirements of the Rule G-17 interpretative notice are not clear as to when the underwriter should deliver its disclosures.

Clarification of MSRB Rule G-17 Disclosure Requirements

As we have stated to MSRB representatives in the past, we continue to believe that the requirements of what the underwriter must disclose to issuers concerning material risks and financial characteristics remain unclear. We believe the MSRB's goal in drafting Rule G-17 and its interpretive guidance was to provide a manner to inform issuers of the risks associated with their deals and to disclose material conflicts. We do not believe that the MSRB is asking for (or would even like for) underwriters to prepare voluminous disclosures to describe these matters. Rather, we believe that the MSRB wants the underwriter to highlight the major features of the structure that would not be intuitive to the issuer; however, the interpretative notice simply does not say that right now. As an example of the practical negative implications of this rule, underwriters, as advised by their lawyers, are including in their G-17 disclosures, any and all possible risks that could arise from even the most basic of transactions. Furthermore, when it comes to complex financial products, a literal disclosure of all material considerations could entail dozens of pages of disclosures. This results in the issuers, even if they have to acknowledge the disclosure, either not reading the full letter or, in the alternative, not coming away with a true understanding of the relevance of the volumes of disclosures contained therein. Therefore, we believe further clarification of what the MSRB is looking for in G-17 disclosures is needed and we would encourage the MSRB to do so with an eye toward focusing on the true goal, which is ensuring that the underwriter provide meaningful disclosures to the issuer, outlining the unique risks relating to products they recommend and incentives that they have in those products, so as to ensure that the underwriter is dealing fairly with the issuer.

MSRB Rule Language Should be More Objective

We remain concerned with the disconnect between the language contained within MSRB rules focused on the principles that underscore the policy which the MSRB wants to implement versus the lack of language sufficient to provide guidance as to how those rules should be enforced. We believe that the MSRB should focus some of their rules better so that they anticipate the reality the enforcement of those rules will require.

According to our members, the most chronic and consistent disconnect in this regard is with Rule G-30, Prices and Commissions. Our members believe that it is very difficult to predict what data points FINRA examiners will look at in determining what is a fair price. We have heard of instances in which FINRA examiners have used what the market would consider stale or irrelevant data (in some instances extremely stale or irrelevant data) to establish the fairness of a price. The municipal markets remain among the most illiquid of the capital markets and FINRA examiners struggle to objectively determine what is fair. This results in highly inconsistent positions by various FINRA examiners and also an environment where dealers cannot effectively comply with the rule. Ultimately, only the MSRB can fix this problem and that can only happen through concrete clarification of Rule G-30. It is incredibly important that dealers not only understand the policy decisions of the MSRB but also know exactly what operational changes are necessary so that they know they can comply with those decisions.

In the end, Rule G-30 is just an example. We encourage the MSRB to not just focus its rulemaking on the policy aspects of the rules it is promulgating but also on the concrete places where FINRA examiners will be enforcing those rules. We believe the solution to this problem would be to more precisely define a rule, thus creating more uniformity among examiners so that the result is that consistent objective standards are used when applying the rule. We acknowledge that sometimes that objectivity is difficult to develop and not catch within the rule all of the behavior that the MSRB wants to change. But when the MSRB rules are not adequately clear, the result is frequently even worse than when there was no rule in the first place.

Thank you again for the opportunity to submit these comments.

Sincerely,



Michael Nicholas
Chief Executive Officer

