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July 30, 2012

VIA ELECTRONIC MAIL

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

RE: MSRB Notice: 2012-28: Request for Comment on Concept Proposal to Provide for Public Disclosure of Financial Incentives Paid or Received by Dealers and Municipal Advisors Representing Potential Conflicts of Interest

Dear Mr. Smith:

Bond Dealers of America (BDA) is pleased to submit this letter in response to the Municipal Securities Rulemaking Board's (MSRB) Notice: 2012-28 (Notice), which solicits comments on a concept proposal relating to the potential public disclosure on the MSRB's Electronic Municipal Market Access (EMMA) system of certain payments and receipts by brokers, dealers and municipal securities dealers (dealers) and municipal advisors in connection with their respective municipal securities activities and municipal advisory activities that could potentially represent conflicts of interest. 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 present our comments.

One of the BDA's most important policy priorities, as we have expressed to the MSRB in the past, is to improve transparency within the municipal markets. However, the BDA has concerns about this Notice and whether the public disclosure by posting on EMMA of *all* payments, receipts or potential financial incentives made or received by dealers that may represent conflicts of interest will improve transparency given the broad scope and potentially large amounts of information that would be required to be disclosed under the Notice. Disclosure would be required of both payments or receipts made in the ordinary course of business as well as payments received or made in connection with a new issue transaction without regard to the amount of such payments or the nature of such payments. As a reason for the Notice, certain criminal and civil cases are referenced involving alleged fraudulent activities relating to municipal securities offerings where undisclosed third-party payments played a role in carrying out the allegedly fraudulent activities.<sup>1</sup> While the BDA understands the need to prevent fraudulent activities, we question whether requiring disclosure of all third-party payments and receipts on EMMA will prevent such occurrences when a firm engaged in such behavior simply would not disclose a fraudulent third-party payment from the outset. If a firm is going to avoid disclosure of a third-party payment, regardless of whether the payment or activity is considered a

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<sup>1</sup> See MSRB Notice 2012-25, Securities and Exchange Commission Approves Interpretive Notice on the Duties of Underwriters to State and Local Government Issuers, May 7, 2012.

prohibited financial incentive or fraudulent activity, it is difficult to see how disclosure of *all* third-party payments on EMMA will make transparent something that would not be made available for discovery in the first place. Furthermore, without objective standards or threshold amounts to determine when certain payments and receipts by dealers in connection with the municipal securities activities could potentially represent conflicts of interest or be at risk of unduly influencing the award of business by a particular municipal issuer, the broad nature of the payments disclosures may be subject to misinterpretation which could lead to irreparable harm to municipal market participants, issuers and dealers alike, and undermine public confidence in the municipal market.

Existing MSRB rules already prohibit certain types of third-party payments that create actual and potential conflicts of interest and that threaten the integrity of the municipal markets. MSRB Rule G-37 prohibits dealers from engaging in municipal securities business with issuers if certain types of political contributions have been made to officials of the issuers and requires dealers to publicly disclose such political contributions. MSRB Rule G-38 prohibits dealers from paying persons not affiliated with the dealers for soliciting municipal securities business on their behalf. The MSRB has previously stated that it views the failure of an underwriter to disclose to an issuer “the existence of payments, values, or credits received by the underwriter in connection with its underwriting of the new issue from parties other than the issuer, and payments made by the underwriter in connection with such new issue to parties other than the issuer (in either case including payments, values or credits that relate directly or indirectly to collateral transactions integrally related to the issue being underwritten), to be a violation of the underwriter’s obligation to the issuer under G-17”.<sup>2</sup> In addition, dealers will be required to disclose directly to municipal issuers incentives and material conflicts of interest when the MSRB Rule G-17 guidance takes effect.

Because dealers will be required to make individualized, detailed disclosures to issuers starting in August under the MSRB Rule G-17 guidance, including disclosure of payments to or from third parties, it is unclear what additional benefit will be gained by having the information of the type described in the Notice publicly available on EMMA. Issuers will not be likely to wade through the massive amounts of information that will become available if disclosure of all third-party payments and receipts is required in order to find the payment that may represent a potential conflict of interest that affects that issuer. In addition, information will be filed regarding payments made in connection with the execution of transactions, such as payments to financial printers, rating agencies and analytic services, that may be made by the dealers to parties selected by the municipal entity through a valid procurement process or payments that are simply customary and commercially reasonable and in no way taint the integrity of the market.

Any disclosures of third-party payments and receipts required by the MSRB to identify actual or potential conflicts of interest should be limited to those payments or receipts that have a direct connection to the activity the MSRB is trying to prevent. The Notice is silent on providing any objective standards or threshold amounts that a dealer might use to determine when certain third party payments and receipts in connection with its municipal securities activities could potentially represent a conflict of interest. Given the public nature of the disclosures, too much

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<sup>2</sup> See MSRB Notice 2012-25, Securities and Exchange Commission Approves Interpretive Notice on the Duties of Underwriters to State and Local Government Issuers, May 7, 2012.

or too little information about the nature or reason for each payment may result in inferences or wrong conclusions being drawn which could lead to irreparable harm to municipal market participants, issuers and dealers alike, and undermine public confidence and additional protections the MSRB is seeking in the municipal market. Either of these outcomes could unintentionally adversely impact the municipal marketplace. We urge the MSRB to consider the minute incremental value, if any, of public disclosure of ALL third-party payments made or received by dealers in connection with their municipal securities activities and recommend that if such disclosures are still required to be made that the MSRB take an approach that focuses on identifying the relationship a payment may have to the municipal securities activity at hand. We encourage the MSRB to provide additional guidance that requires disclosure of only that information with a material relationship to the municipal activity at issue.

While the BDA continues to support protecting the integrity and the fair and efficient operation of the municipal markets, we do not believe the broad scope and large amount of information required to be publicly disclosed by dealers under the Notice will protect against fraudulent activity and restore taxpayer confidence in the services provided by financial professionals. If public disclosures of third-party payments and financial incentives would have a beneficial impact on the substantial and long-term commitments undertaken by a municipal issuer as suggested by the MSRB, then it is the view of the BDA that it is the issuer that would be in the best position to make such determination. The MSRB should explore whether issuers would support and voluntarily post on EMMA the information regarding financial incentives and material conflicts of interest they will be receiving directly from dealers once the MSRB Rule G-17 guidance takes effect.

Thank you again for the opportunity to submit these comments.

Sincerely,



Michael Nicholas

Chief Executive Officer