

March 12, 2013

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2013-04 (February 11, 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 2013-04, a proposed rule (the “Proposed Rule”) that would codify the time-of-trade disclosure obligation of brokers, dealers, and municipal securities dealers (“dealers”) currently described in interpretive guidance to MSRB Rule G-17. 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.

The BDA appreciates the MSRB’s effort to codify its multiple interpretive guidance notices of these time-of-trade disclosure obligations under MSRB Rule G-17 and any continued efforts to clarify the practical real-world steps that these disclosure obligations impose on dealers. The incorporation of interpretive notices into rules themselves should help provide much desired clarity to market participants such as dealers, investors and regulatory examiners. We would like to outline some outstanding concerns, described below.

1. Reference the Sophisticated Municipal Market Participant Exception

The BDA believes a reference to the exception provided in the MSRB’s sophisticated

municipal market professional (“SMMP”¹) interpretation pursuant to Rule G-17 is warranted in the new proposed rule. This exception is predicated on the fact that SMMPs are deemed able to make their own independent investment decisions and investigate all material facts concerning a municipal security and as such, should not require the time-of-trade disclosures as retail customers do. Although the MSRB is codifying these obligations in a new rule, the rule originates from fair dealing principles that sought to protect retail customers from purchasing municipal securities, the terms of which they may not understand. As the MSRB recognizes through exceptions in Rule G-17, we would encourage the MSRB to revise proposed Rule G-47 to incorporate similar exceptions which would apply to SMMPs, who by definition are considered to be as sophisticated as dealers and are capable of obtaining all of the information concerning the municipal security just like the dealer. Further, treating SMMPs the same as retail customers results in practical real-world problems that impose costs and burdens that clearly outweigh any benefits. For example, it would be impossible for a dealer to meet proposed rule G-47 requirements for an SMMP who places trades directly on an Alternative Trading System (“ATS”) because ATS subscribers are typically institutional investors, broker-dealers, and market-makers and are protected under Regulation ATS. At a minimum, the SMMP interpretation should be revised to exempt transactions with SMMPs from proposed Rule G-47.

2. The Proposed Rule Is Still Too Ambiguous.

Dealers have now made many significant efforts in changing their sales and trading operations to comply with the existing interpretative guidance notices. But the Proposed Rule, like the interpretative guidance notices, are unnecessarily ambiguous. Does a dealer comply with the Proposed Rule by sending an e-mail to the customer with material

¹ MSRB Glossary of Municipal Securities Terms defines a Sophisticated Municipal Market Participant as, “An entity with respect to which a broker-dealer has reasonable grounds to conclude (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion. An SMMP may not be a natural person and must have total assets of at least \$100 million invested in municipal securities in its portfolio and/or under management. Certain disclosure, suitability and fair pricing obligations of a broker-dealer under MSRB rules may be deemed fulfilled in connection with a transaction between the broker-dealer and an investor that constitutes an SMMP with respect to such transaction.”

terms and a link to all material event notices? What industry data sources are the dealers supposed to consult? In the end, there are a small number of ways that representatives can communicate with their customers and a small number of industry data sources that dealers can draw upon to obtain information. Conversely, dealers can be effecting thousands of trades a day with hundreds of representatives. As just a mere practicality, the MSRB will either present a clear, practical and mechanical method by which dealers will comply or the dealers will develop policies that do the same, because dealers are left with no other practical alternative. We strongly believe that there should be at least a safe harbor or some sort of clarity that allows dealers to comply with concrete rules rather than broad-based principles.

3. The Proposed Rule Needs to Provide Clarity and Certainty with respect to Online Trading.

We would encourage the MSRB needs to establish an entire separate section of the Proposed Rule that tells Dealers exactly what needs to be done with online trading. Our dealers believe that with online trading, access is equal to disclosure. Our dealers believe that providing the customers who are directing themselves to purchases and sales of municipal securities with links and access to the industry data currently available suffices. Per the initiative and preference of the customers themselves, there is likely to be no direct interaction between a representative and a customer with online trading. The MSRB should provide specific clarity that allows dealers to put in place the mechanical processes to comply with the Proposed Rule.

4. The Proposed Rule Should Have Limited Application to Sales by a Customer.

The whole idea behind the time-of-trade disclosures is that customers understand the municipal securities they are purchasing. Customers who are selling a municipal security are already familiar with the terms of the municipal security enough to know they want to sell the municipal security. The burden of applying this rule to sales simply outweighs any tangential value to customers. Dealers are already obligated under Rule G-30 to ensure that the meet fair pricing duties that would address that vast majority of concerns that purchases from customers would entail. Thus, we urge the MSRB to take a practical

approach that weighs costs with benefits and only apply the Proposed Rule to sales by customers in a very narrow set of instances, such as when an issuer has made a tender offer for the bonds in question at a price that is higher than a dealer is offering.

5. Revise the Definition of “Material Information”

The BDA would ask the MSRB to consider revising the definition of material information in section (b)(ii) of the proposed rule to clarify that non-public information that may be in a dealer’s possession is not included in the scope of that definition. We do not believe it was the MSRB’s intent that proposed rule G-47(a) would require a dealer to disclose to an investor material non-public information that a dealer may have about the issuer or the securities, such as information that may be in the possession of the dealer’s public finance investment banking department. Sharing of material non-public information that is subject to information walls designed to restrict access to such information by trading / sales groups would be inconsistent with SEC insider trading principles.

5. Harmonizing FINRA Regulatory Notice 10-41

In Regulatory Notice, 10-41, FINRA reminds firms of their sales practice and due diligence obligations when selling municipal securities in the secondary market. As the BDA reads proposed rule G-47, we understand it to supersede certain MSRB interpretive guidance as described by the MSRB in footnote 6. The BDA would like for the MSRB to reconcile how the new proposed rule will be harmonized with FINRA Regulatory Notice 10-41 and exactly how the market should read the two in conjunction with one another. Specifically, as FINRA examiners continue to interpret MSRB rules, we believe it should be clear to all market participants the relevance of proposed rule G-47 requirements as they relate to the current FINRA 10-41 in light of the fact that FINRA 10-41 was developed in conjunction with the MSRB and taking into consideration at the time, rules which may now be superseded by proposed rule G-47. In addition to the points we raise above, we remind the MSRB that FINRA has told us time and time again, that FINRA can only be as effective in its enforcement of MSRB rules, as the MSRB is in drafting the rules themselves. As we have urged in prior comment letters, we once again ask the

MSRB to provide a clear time-of-trade disclosure rule that empowers FINRA to clearly and effectively enforce it, and to allow dealers to clearly and effectively comply with it.

Thank you again for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Nicholas", is positioned above the typed name.

Michael Nicholas

Chief Executive Officer