

April 28, 2014

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2014-04 (February 25, 2014): Request for Comment on Draft MSRB Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board (“MSRB”) Notice 2014-04, regarding Draft Rule G-44 (“Draft Rule G-44”).¹ Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)², Congress, among other things, amended Section 15B of the Securities Exchange Act of 1934 (“Exchange Act”) to provide for the regulation by the Securities and Exchange Commission (“SEC”) and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons. The Dodd-Frank Act accordingly grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities. Among other rules published and soon-to-be published by the MSRB, Draft Rule G-44 is an important component of the regulatory framework for municipal advisors and we welcome this opportunity to provide our comments on Draft Rule G-44.

Supply Minimum Standards for Municipal Advisors of All Sizes

While we appreciate the MSRB’s attempt to draw from aspects of existing supervision

¹ See MSRB Notice 2014-04 (February 25, 2014).

² Pub. Law No. 111-203, 124 Stat. 1376 (2010).

and compliance regulation under other regimes, we are concerned that Draft Rule G-44 is too flexible in allowing for market participants to determine and carve out for themselves an accommodation if they are small advisor firms. The MSRB states in Draft Rule G-44 that for the subset of municipal advisors that are municipal securities dealers, the existing supervisory requirements of MSRB Rule G-27 serve as a baseline and the draft Rule G-44 supervisory requirements are no more stringent than the baseline Rule G-27 requirements. While this is true, the BDA believes that this sets a lower baseline and that some of the requirements imposed on municipal securities dealers in Rule G-27 should also be extended to municipal advisors under Draft Rule G-44. It is reasonable as stated by the MSRB in its request for comment “to conclude that Congress, in subjecting municipal advisors to regulation in the Dodd-Frank Act, contemplated a regulatory regime comparable to the regulatory regimes for other entities and persons in the financial services industry, at least to the fundamental extent of requiring reasonable supervisory and compliance functions to be performed.”³ Therefore, we would suggest that the MSRB set forth minimum standards for which all municipal advisory firms must meet when establishing supervisory and compliance procedures, but allow firms to then decide how they will implement these supervisory and compliance procedures to fit within their particular business model. The BDA understands and appreciates that there exists various types of business models making up the industry but we caution against using the size of a firm as a reason to make allowances if such allowances would in any way diminish the regulatory parameters the MSRB is attempting to put in place under a municipal advisor regulatory regime. Small or one-man shops should not be permitted the opportunity, purposefully or otherwise, to diminish their obligation toward meeting the demands of the rule and this regulatory regime should in fact be comparable to the regulatory regimes for other entities and persons in the financial services industry. We believe firms of all sizes and business models should be held to the same standard of service and should be required to meet the requirements of the law.

Outsourcing of the CCO Role

While the BDA agrees with the MSRB’s decision to permit the outsourcing of the Chief

³ See MSRB Notice 2014-04 (February 25, 2014), pg. 7.

Compliance Officer (CCO) role in Draft Rule G-44, we would like to ask that the MSRB also make clear within the language of Draft Rule G-44 itself that the firm itself remains ultimately responsible for any decisions made or affected by the CCO, whether this position is outsourced or not. We believe this is especially important when it comes to having a clear understanding of the rule's requirements for both FINRA examiners and municipal advisors. As we have said in previous letters on various topics, the BDA believes a critical component of crafting workable rules is in the MSRB's ability to draft a rule that can be read and interpreted similarly by examiners and firm employees alike. While the model of requiring written supervisory procedures complemented by the designation of a CCO to be responsible for compliance processes is a widely accepted regulatory model across the financial services industry, the language in Paragraph .05 of the Supplementary Material should be included in the rule and make it clear that the CCO can be a principal of the firm or a person external to the firm though in either case the municipal advisor retains ultimate responsibility for its compliance obligations.

Self-Certification

The BDA believes Draft Rule G-44 should require all municipal advisors to complete a periodic self-certification regarding the meeting of professional qualification standards by its associated persons as well as to certify to the municipal advisor's ability to comply, and history of complying, with all applicable regulatory requirements. It is critical for municipal advisors to self-certify that they are meeting the same professional qualification standards as those already established by those affiliated with broker-dealer firms. The MSRB should also recognize that self-certification is already required of broker-dealer firms and so municipal advisors who are also broker-dealers should not be unduly burdened by having to double up on their self-certification but that current practices and procedures need only be updated (and not duplicated) in order to reflect the incorporation of the additional requirements of the municipal advisor function. We are understanding of your concern not to place smaller municipal advisory firms at a competitive disadvantage but these regulations need to apply to all municipal advisors without regard to size much like the rules for broker-dealers. We believe that it is in the public interest and necessary for the protection of investors, municipal entities, and

obligated persons that Draft Rule G-44 be applied to all municipal advisors regardless of their size or organizational structure.

Delay in Implementation

Given the interaction and interdependence of each rule and regulation required to construct a complete regulatory framework for municipal advisors, the BDA believes the MSRB should delay implementation of all of its rules and regulations falling under the municipal advisor regulatory regime and wait until all rules and regulations have gone through the following steps before it moves to formalize the implementation deadline: publication for comment, revised to reflect changes received as a result of the comment period and subsequently approved by the SEC. Additionally, we believe an implementation date of six months following the approval of the last of the rules in the regulatory regime by the SEC is fair, given the complexity of the entirety of the municipal advisor regulatory regime. This is particularly important for a rule like Draft Rule G-44, which relies on the information forthcoming in other rules falling under the municipal advisor regulatory regime that is not yet available in order to establish complete supervisory procedures and compliance obligations. Since the regulations and regulatory framework governing municipal advisors and municipal advisory activities by the MSRB is so important to the industry, it is that much more important to allow for the appropriate time frame for all municipal advisors to understand their obligations and the requirements of the new regulatory environment in which they operate in order to put forth complete supervisory procedures that will comply with the all the rules and regulations from the outset. Therefore, we ask that you consider delaying the implementation of Draft Rule G-44, and any and all other municipal advisor rules, until at least six months after all the rules that will comprise the MSRB's entire regulatory framework have been finalized and approved by the SEC.

Thank you for the opportunity to present our views on Draft Rule G-44.

Sincerely,

A handwritten signature in blue ink, reading "Nicholas". The signature is fluid and cursive, with the first letter being a large, stylized "N".

Michael Nicholas

Chief Executive Officer