

November 16, 2017

**Submitted Electronically**

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1300 I Street NW  
Washington, DC 20005

**RE: Request for Comment on a Concept Proposal (the “Proposal”) Regarding  
Amendments to Primary Offering Practices of Brokers, Dealers and  
Municipal Securities Dealers**

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Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to the MSRB’s request for comment on the Proposal. While we provide our specific responses below, in general, we believe that the existing MSRB rules adequately protect primary offering practices and we do not see the need for a wide array of new rules to govern primary offering practices. In recent SEC actions relating to primary offering practices, the existing regulatory and enforcement framework provided sufficient regulation to prohibit the actions that the SEC concluded were taken.

We have organized our responses in order of the categories set forth in the proposal.

**Rule G-11 Primary Offering Practices**

- *Bona Fide Public Offering*

The BDA recommends that the MSRB not adopt a specific rule requiring a *bona fide* public offering in all municipal securities offerings. The BDA believes that the existing provisions of BPAs and AAUs, together with the application of MSRB Rule G-17, sufficiently protect issuers and borrowers in the municipal securities market (like they did in recent SEC actions concerning primary offering practices). Further, we believe that this should remain the subject of a voluntary contractual arrangement which the parties can tailor to their specific transaction. We do think that, if the MSRB does adopt a rule, it needs to define the term *bona fide* public offering for purposes of that

Rule. Currently, the requirement of *bona fide* public offering is understood in light of the duty of fair dealing under Rule G-17. If any rule were to prescribe something more specific than that, it would be important for the rule to define the term.

- *Free-to-Trade Wire*

The BDA believes that the MSRB should require all senior syndicate managers to send a free-to-trade wire to all syndicate members. Our members have experienced instances where the senior syndicate manager either does not send a free-to-trade wire or sends a wire to some but not all syndicate members. Thus, for fairness and consistency in the market, we think that the MSRB should require the senior syndicate manager to send the wire. As far as the content of such a rule, we suggest that the rule provide that, once formal award has been assigned, the senior syndicate manager be required send out a notification to all syndicate members at the same time. Any rule would need to permit the senior syndicate manager to use Ipreo or other customarily used platform as the means by which the senior syndicate manager transmits the free-to-trade wire. Further, any rule would need to contemplate that the senior syndicate manager could send the free-to-trade wire maturity by maturity as the issuance is sold. In addition, any rule should serve the purpose of removing restrictions on syndicate members and thus any rule should exclude any issuance of municipal securities that is a sole managed transaction, and any rule should not require the senior syndicate manager to send any notification to market participants beyond the syndicate members.

- *Additional Information for the Issuer*

In our members' experience, not all issuers have access to detailed information about their securities, and the BDA recommends that the MSRB require syndicate managers to send this information to issuers upon request. In addition to the information the MSRB describes, the BDA also recommends that the syndicate manager should be required to send the underwriting spread breakdown to the issuer, upon request. As to the MSRB's question concerning whether the issuer should be required to approve designations or allocations, the BDA recommends that the MSRB not require this approval because it would likely create timing problems where the senior syndicate manager would be forced to violate the rule in circumstances (which could be frequent) where the issuer is not available to provide that approval.

While the MSRB's request for comment addresses whether information should be sent to issuers, the BDA would like to observe that, in practice, much of the information that the MSRB discusses is frequently not sent to syndicate members. The BDA observes that there are privacy concerns that complicate the information being sent to syndicate members. But our members' experience is that frequently much of this information is not sent to syndicate members.

- *Alignment of the Payment of Sales Credits for Group Net Orders with the Payment of Sales Credits for Net Designated Orders and Shortened Timeframe*

The BDA recommends that the MSRB align the overall time period for both Rule G-11(i) and (j) at 10 business days.

- *Priority of Orders and Allocation of Bonds*

The BDA recommends that, in negotiated sales, the MSRB should require senior syndicate managers to allocate retail priority orders up to the amount of priority set by the issuer before allocating to a lower priority orders (unless the issuer provides its approval). Our members had previously thought that Rule G-11 was sufficiently clear on this point but have found instances where this has not occurred and thus a rule is appropriate. In addition, the experience of our members is that the discretion of syndicate members is exercised in a manner that orders submitted by senior managers are afforded more weight than orders by co-managers. Thus, at times, our members believe that the discretion results in an unfair allotment of bonds. The BDA also believes that it is important that MSRB rules continue to contemplate that any retail priorities are established by the issuer of the municipal securities.

### **Rule G-32 – Disclosures in Connection with Primary Offerings**

- *Disclosure of the CUSIPs Refunded and the Percentages Thereof*

The BDA recommends that the MSRB require the senior syndicate manager or sole manager to disclose the CUSIPs refunded and the percentages thereof within a short period following the pricing of the refunding bonds, if available. In our experience, this information almost always needs to be available at the pricing of the refunding bonds or the savings of a refunding would be uncertain. The current requirement can allow for several weeks to elapse before the market learns of this information. Our members have experienced circumstances where bonds trade with some participants knowing that some of the CUSIPs are subject to a refunding and other participants not knowing. We do think it is important for the MSRB's rule to contemplate scenarios where the CUSIP numbers are not available at pricing – which could at least in theory be the case in refundings where the objective is not merely cost savings.

- *Submission of Preliminary Official Statements to EMMA*

The BDA recommends that the MSRB not adopt a rule requiring the posting of preliminary official statements to EMMA. There would be numerous problems with such a rule, including an unnecessary proscription of a time requirement between posting and pricing, and managing supplements to preliminary official statements. In particular, now,

issuers use printers to distribute preliminary official statements and follow a process to ensure that anyone who downloads the preliminary official statement has access to supplements so that deal participants know that supplements are properly disseminated. If preliminary official statements were posted to EMMA, the MSRB would also need to develop a mechanism to ensure that everyone who views the POS on EMMA receives supplements. In addition, the BDA encourages the MSRB to ensure that any preliminary official statements prepared in connection with limited offerings not be required to be posted to EMMA as one of the objectives of a limited offering is to not generally market the bonds.

While the BDA is opposed to a rule requiring underwriters or municipal advisors to post preliminary official statements, our members have had experiences in competitive bid offerings where the municipal advisor does not send preliminary official statements to all potential bidding dealers at the same time. Sometimes, the delay in the receipt of the preliminary official statement increases the challenges to the dealers in performing all of the necessary due diligence.

- *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution*

The BDA recommends that the MSRB amend Rule G-32(c) to extend the requirement to make the official statement available to the senior managing underwriter or sole underwriter to non-dealer municipal advisors.

- *Whether the MSRB Should Auto-Populate into Form G-32 Certain Information that is Submitted into NIIDS but is Not Currently Required to be Provided on Form G-32*

The BDA does recommend that the MSRB auto-populate information from NIIDS into Form G-32.

- *Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?*

Other than items we mention below, the BDA recommends that the MSRB not include all of the suggested items in the Proposal. The two items of information that the BDA does recommend that the MSRB include on the Form G-32 are (1) call information (including extraordinary call information) and (2) minimum denominations (including events that change the minimum denominations). We recommend that the MSRB not include the other items discussed in the Proposal.

In addition, in the experience of our members, not all market participants have an LEI number.

### **Other Questions**

The experience of our members, the recent issue price regulations have not changed primary offering practices.

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Thank you for the opportunity to provide these comments.

Sincerely,



Mike Nicholas  
Chief Executive Officer