

January 15, 2019

Submitted Electronically

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

**RE: Request for Comment on Draft Amendments to 2012 Interpretive Notice
Concerning the Application of MSRB Rule G-17 to Underwriters of
Municipal Securities**

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 Notice 2018-29 (the “Notice”): Request for Comment on Draft Amendments (the “Draft Amendments”) to 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities. BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA believes that the Draft Amendments contain several unnecessary inclusions, which can make compliance with the Draft Amendments more burdensome.

The Draft Amendments include some unnecessary additions to existing statements that were clear on their own. Our members are concerned that, in the context of an examination, those unnecessary additions will be construed as imposing new compliance expectations as opposed to clarifications of existing requirements, which we believe is the MSRB’s intent. Here are three examples:

- In the new paragraph at the top of page 35 of the Notice¹, the BDA believes that this new language is not necessary, is fully encompassed in existing

¹ The following is the new paragraph: “The fair practice duties outlined in this notice are those duties that a dealer owes to a municipal entity when the dealer underwrites its new issue of municipal securities. This notice does not set out the underwriter’s fair-practice duties to other parties to a municipal securities financing (e.g., conduit borrowers). The MSRB notes, however, that Rule G-17 does require that an underwriter deal fairly with all persons. What actions are considered fair will, of necessity, be dependent on the nature of the relationship

application of Rule G-17, is outside of the scope of the disclosures and the MSRB should not include it.

- In the last paragraph on page 36 of the Notice², the Draft Amendments add additional sentence to the effect that an underwriter may not discourage the issuer from retaining a municipal advisor. The BDA believes that the additional sentence is entirely covered by the existing sentence that precedes the new sentence. Any underwriter who discourages an issuer from retaining a municipal advisor for any reasons would be making already a prohibited recommendation to do so.
- In the new paragraph at the top of page 41 of the Notice³, the BDA believes that all of this is already covered in the existing language. A dealer who does not make reasonable assumptions in its representations cannot have a reasonable basis for its representations.

While the BDA believes this text is unnecessary, dealers will still need to determine how to establish that they comply with the new statements. Our members are concerned that these additions will look differently in the context of an examination than what the MSRB intends. Accordingly, the BDA believes that the existing language sufficed and the additions in the Draft Amendments should be deleted.

The BDA believes that the MSRB should re-phrase new language on page 43 of the Notice.

On page 43 of the Notice, the Draft Amendments state that if less-sophisticated personnel of an issuer replaces more sophisticated personnel, then the “level of transaction-specific disclosure...would likely increase.” The BDA believes that the language should state that an underwriter should take into consideration changes in sophistication of an issuer when determining the level of transaction-specific disclosures. In the abstract, there is no way to determine whether the level should increase or not because it will depend on many factors.

between a dealer and such other parties, the particular actions undertaken, and all other relevant facts and circumstances. Although this notice does not address what an underwriter’s fair-dealing duties may be with respect to other parties, it may serve as one of many bases for an underwriter to consider how to establish appropriate policies and procedures for ensuring that they meet such fair practice obligations, in light of their relationship with such other participants and their particular roles.”

2 The following is the new language: “In addition, the underwriter may not discourage the issuer from using a municipal advisor or otherwise imply that the hiring of a municipal advisor would be redundant because the underwriter can provide the same services that a municipal advisor would.”

3 The following is the new language: “The need for underwriters to have a reasonable basis for representations and other material information provided to issuers extends to the reasonableness of assumptions underlying the material information being provided. The less certain an underwriter is of the validity of underlying assumptions, the more cautious it should be in using such assumptions and the more important it will be that the underwriter disclose to the issuer the degree and nature of any uncertainties arising from the potential for such assumptions not being valid. If an underwriter would not rely on any statements made or information provided for its own purposes, it should refrain from making the statement or providing the information to the issuer, or should provide any appropriate disclosures or other information that would allow the issuer to adequately assess the reliability of the statement or information before relying upon it. Further, underwriters should be careful to distinguish statements made to issuers that represent opinion rather than factual information and to ensure that the issuer is aware of this distinction.”

The BDA does not believe that the MSRB's approach to disclosures by co-managers will materially reduce the number of disclosures.

The Draft Amendments continue to require dealers who serve as co-managers to provide "dealer-specific" conflicts of interest. As a practical matter, conflicts of interest tend to be specific to dealers in that each dealer has specific arrangements that create the conflict. As a practical matter, though, the role of co-manager does not entail the kind of active discussions with an issuer to merit disclosure by all co-managers of their specific conflicts. The BDA believes that the disclosures from the senior manager are sufficient to inform issuers of the various matters they discuss, including conflicts. In the end, the if co-managers are required to deliver these disclosures, it will result in a roughly the same number of disclosures to issuers as currently is the case.

The BDA believes that the MSRB should clarify the timing of a syndicate manager's delivery of disclosures.

The Draft Amendments clarify that only a syndicate manager is required to deliver the standard disclosures and transaction-specific disclosures, but the Draft Amendments do not clarify that those disclosures can be delivered earlier than the time when a syndicate is formed. Frequently, an underwriter that later becomes a syndicate manager begins its discussions with an issuer either as a sole manager or as an underwriter without clarity of whether a syndicate will be formed. In these instances, the underwriter may deliver the standard disclosures and transaction-specific disclosures well before a syndicate is formed. The Draft Amendments should clarify that standard disclosures and transaction-specific disclosures delivered by a syndicate manager can be delivered before a syndicate is formed and that the syndicate manager is not required to deliver new disclosures after a syndicate is formed or new syndicate members are added.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink that reads "Mike Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer