

SUBMITTED ELECTRONICALLY

June 2, 2021

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, D.C. 20005**RE: Municipal Securities Rulemaking Board Requests for Comment on Application of Regulation Best Interest to Bank-Dealers (Notice 2021-06)**

The American Bankers Association¹ (ABA) appreciates the opportunity to provide comments to the Municipal Securities Rulemaking Board (MSRB or Board) on the draft amendment to MSRB Rule G-19, on the suitability of recommendation on transactions that would require bank dealers to comply with Rule 15/-1 of the Securities Exchange Act of 1934 when making recommendations on securities transactions or investment strategies involving municipal securities to retail customers.² Specifically, the Board is requesting input from stakeholders to harmonize the municipal market regulations to include bank dealers in the SEC's Regulation Best Interest.

The draft amendment would impose a standard of conduct on bank dealers when recommending to retail customers in the municipal securities market. Many ABA members provide services as regulated municipal securities dealers through separately identifiable

¹ The American Bankers Association is the voice of the nation's \$22.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$18 trillion in deposits, and extend nearly \$11 trillion in loans. Learn more at www.aba.com.

² See MSRB Notice 2021-06.

departments in commercial banks or through broker-dealer affiliates of commercial banks. These services and products are frequently offered under various regulatory and legal regimes, which are governed by state and federal laws, and supervised by multiple regulatory agencies. The Request for Comment, while directed at bank dealers, is also of interest to our broker-dealer and bank members. Our comments herein will be focused on these various perspectives.

General Comments

While ABA has long supported the notion that financial professionals offering investment advice to retail customers should be subject to a best interest standard, we urge the Board to consider the compliance costs imposed by such a rule on bank dealers in relation to their limited amount of retail customer activity. Board data has shown that the overwhelming amount of retail-sized (< \$100K par value) bank dealer-to-customer trades were concentrated among seven (7) of the 21 existing bank dealers and four (4) of the 21 bank dealers did not execute any retail-sized trades.³ Ultimately, bank dealers in municipal securities do not have a significant retail customer base to warrant a new regulatory compliance regime in this manner.

Specific Comments on the Proposed Amendment

Costs

Among the chief concerns of ABA members are the expected costs associated with establishing the revised policies and procedures to comply with Regulation Best Interest's requirements and the expected ongoing compliance costs. The Board believes these costs would be proportionate to each bank dealer's limited retail activity. Most dealer banks do not engage in trades with retail customers nor typically in amounts less than \$100,000 par value. Nonetheless, these institutions may find themselves potentially in a transaction with a retail customer through no effort on the part of the bank. The Request for Comment acknowledges that because a trade is

³ See MSRB Notice 2021-06 pg. 13

less than \$100K, it does not imply that these trades are conducted with only retail customers and could be executed for institutional trades.⁴ Per the example above, we would encourage the MSRB to consider a thoughtful and tailored approach to this rulemaking so the bank dealer would not incur any additional cost or require additional documentation if the trades were not subject to Regulation Best Interest.

Further, if a bank dealer has to track or report this type of activity, there would be a cost to doing so only to prove the bank is complying with Regulation Best Interest even though the bank dealer does not offer any sales to retail clients. The MSRB should consider the burden on the bank dealer to establish revised policies and procedures related to the compliance of Regulation Best Interest and allow for those bank dealers who do not participate in retail transactions or recommendations to “opt-out” of Regulation Best Interest.

Disclosure of Fees

The disclosure of fees and conflicts of interest required for broker-dealer activity with retail customers is another concern for ABA’s bank dealer members. There is a possibility that if bank dealers are required to comply with Regulation Best Interest with retail transactions, it could open up similar compliance related to their institutional businesses. In light of the higher costs associated with the implementation of the proposed requirements and in all likelihood, the ongoing costs, the Board should take this into consideration given the small number of bank dealers practicing in the market today.

Conclusion

⁴ See MSRB Notice 2021-06 pg. 14

ABA appreciates this opportunity to provide the perspective of our bank dealers and banks. We offer our suggestions intending to improve the effectiveness of the proposed amendment and ensure compliance costs and burden are proportional to their activities.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin M. Underwood". The signature is fluid and cursive, with a large initial "J" and "U".

Justin M. Underwood
Executive Director – ABASA
Vice President, Banking Policy
American Bankers Association