

January 19, 2022

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

Transmitted electronically

Comments on MSRB Notice 2021-12

Dear Mr. Smith,

The Bond Dealers of America is pleased to provide comments on MSRB Notice 2021-12, “Request for Input on Draft Compliance Resources for Dealers and Municipal Advisors Concerning New Issue Pricing” (the “DCR”). BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

BDA generally believes the DCR is a useful resource for underwriters and MAs with respect to compliance with relevant MSRB rules related to new issue pricing. The document generally lays out an overview of relevant rule requirements in a well-organized manner.

We agree with the MSRB’s assertion that compliance resources in general should “not create new legal or regulatory requirements or new interpretations of existing requirements,” and we do not believe the DCR would create new or different compliance standards for the rules it addresses. Some of our recommendations in this letter focused on the issues raised in the DCR would create new compliance standards and for that reason would not be appropriate for inclusion in the document, and we do not intend for those recommendations to be included in the final version of the DCR. Rather, those recommendations would be better implemented through rule amendments or interpretive guidance as appropriate.

### ***Flexibility***

It is vitally important that MSRB rules and compliance resources provide the maximum flexibility for underwriting firms in designing and implementing written supervisory procedures (WSPs) around the activity of pricing new issues. There is a wide range of firms of all sizes and business models among municipal underwriters. There are dealers who underwrite just a handful of deals per year, and there are dealers who underwrite multiple deals every week. Firms have different degrees of resources and different organizational structures. At some firms, the underwriter—the person at the dealer firm principally responsible for establishing new issue prices—is also the supervisor. Smaller dealers in particular face challenges in developing and implementing robust supervisory procedures with limited resources and personnel. For these reasons we ask the MSRB to maintain maximum flexibility with respect to WSPs associated with pricing to facilitate compliance for firms of all types and sizes.

### ***Documentation issues***

MSRB Rule G-8, “Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors,” is the MSRB’s rule governing maintenance of books and records. As a general matter, BDA believes that all documentation requirements associated with any rule in the MSRB’s rulebook should be specified in Rule G-8. This is the rule firms look to when developing WSPs related to books and records retention.

The DCR states “the MSRB does not expect firms to be able to fully document and recreate every aspect of the pricing process for supervisory and examination purposes,” and we agree fully with this approach. Documentation related to pricing should be sufficient for a supervisor, auditor, or examiner to review the underwriter’s process in determining a price, but it is not necessary for a supervisor or examiner after the fact to come to their own opinion as to what a fair price should have been. Documentation standards should reflect this approach.

The DCR for MAs states that “Rule G-42 does not preclude a municipal advisor from excluding advice related to pricing a new issuance from its scope of services with a client” as long as the limitations on the MA’s scope of services to the issuer are documented in the MA’s relationship documentation required under Rule G-42, and the MA acts, depending on all of the facts and circumstances, in a course of conduct consistent with such limitation. We believe this is a useful reminder as MAs assess their applicable policies and procedures.

Some BDA underwriter members have stated that their comfort with meeting their fair pricing obligations would be helped by knowing affirmatively whether there is a MA engaged in the transaction and whether that MA has limited the scope of its engagement to exclude advice on pricing per MSRB Rule G-42 Supplementary Material .04. The MSRB may want to examine the question of an appropriate means to inform the entire deal team about the scope of engagement of the MA. This is not an issue which could be addressed through a compliance resource.

The DCR states “the duty of fair dealing under Rule G-17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced.” “Fair and reasonable” is also the pricing standard in MSRB Rule G-30, “Prices and Commissions.” We believe fair and reasonable is an appropriate regulatory standard for defining dealer pricing duties.

### ***Examinations***

Dealers are periodically examined by both FINRA and the SEC for compliance with MSRB rules. While the MSRB’s pricing-related rules for underwriters are generally clear and specific, our members frequently report that FINRA and SEC examiners expect to see levels of detail in pricing-related documentation that exceeds the requirements of MSRB rules. Some examiners seem to believe that they should be able to fully recreate the pricing process and come to the same conclusion as the underwriter did when the transaction was priced in the market, while the MSRB appropriately recognizes in the DCR that the realities of the pricing process make it impossible to recreate or fully document this process. We urge the Board to work closely with FINRA and the SEC to ensure that examiners fully understand the compliance requirements related to pricing, especially documentation standards.

BDA believes the DCR is in general a useful tool to underwriters and MAs seeking to comply with MSRB rules related to new issue pricing. The DCR generally reflects requirements imposed in the MSRB's rulebook and does not suggest any new or different compliance standards than what are reflected in the rules. In that respect the DCR is a welcome document, and we urge the MSRB to finalize its publication.

As always, please call or write if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Decker". The signature is fluid and cursive, written on a light-colored background.

Michael Decker  
Senior Vice President