

February 8, 2013

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2012-61 (December 12, 2012)

Dear Mr. Smith:

On behalf of the Bond Dealers of America (BDA), I am pleased to submit this letter in response to request for comments on Municipal Securities Rulemaking Board (the “MSRB”) Notice 2012-61, Request For Comment On Concept Proposal To Require Underwriters To Submit Preliminary Official Statements To The MSRB’s Electronic Municipal Market Access (EMMA[®]) System (the “Proposal”), a proposal to require brokers, dealers and municipal securities dealers (“dealers”), acting as underwriters (“underwriters”) of new issues of municipal securities, to submit an issuer’s preliminary official statement relating to such new issue and all supplements thereto, if any such documents have been prepared by or on behalf of the issuer, to the MSRB’s Electronic Municipal Market Access (EMMA[®]) system. BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets. We welcome this opportunity to state our position.

As the BDA has expressed in the past, one of our most important policy priorities is to improve transparency within the municipal markets and we believe this Proposal aims to improve transparency as well as market access by providing investors with increased availability to information about municipal securities and their issuers. Although we are generally supportive of this Proposal, the BDA is concerned that there are a number of potential unintended consequences that may result should this Proposal move forward in its current form and prior to the adoption of a definition of municipal advisor.

Furthermore, the Proposal does not identify any major concerns stemming from current practices in the market regarding the preliminary official statements other than a lack of voluntary submission to EMMA by issuers and the BDA believes we would be in a better position to specifically respond if the MSRB would provide a clearer description of the objectives and/or concerns the Proposal seeks to address.

Safe Harbor for Submission of Preliminary Official Statements

While the BDA supports the concept of increased transparency, we are concerned because the preliminary official statement is only considered to be “current” for a limited period of time, unlike an official statement. A preliminary official statement plays a unique role in the marketing of municipal bond securities and is often supplemented and then ultimately replaced by the final official statement, at which time access to the preliminary official statement is no longer permitted. In addition, there are situations where access to a preliminary official statement posted on EMMA may have to be withdrawn. This may occur because market conditions have changed, an issuer’s financing needs have changed or the preliminary official statement goes stale. The BDA is concerned that what seems to be a simple filing requirement -- posting the preliminary official statement -- may inadvertently lead to the imposition of additional responsibilities and the potential creation of further regulations with which underwriters will need to comply. Therefore, BDA’s support is contingent upon there being no new or additional requirements with respect to the posting of the preliminary official statement by the underwriters that go above and beyond the current requirements for producing and posting of the final official statement without a better understanding of the problem in the municipal marketplace that the posting of a preliminary official statement is seeking to solve.

Timing for Posting and Requirement for Updating the Preliminary Official Statement

Under current MSRB Rule G-32, an underwriter is required to post to EMMA a final official statement within one business day of receipt from the issuer, but no later than the closing date. In contrast, the Proposal suggests that an underwriter file a preliminary

official statement on the day that it receives such document from the issuer of the securities. We believe that the timing requirement in the Proposal for posting the preliminary official statement on EMMA by the end of the same day on which the underwriter receives such preliminary official statement is overly burdensome as compared to the requirement for posting the final official statement, which is within one business day of receipt from the issuer. Similarly, the requirement of Securities and Exchange Commission Rule 15c2-12(b)(2) is that an underwriter in a negotiated offering send a copy of the most recent preliminary official statement, if any, to a potential customer no later than the next business day. The BDA believes that if the posting of a preliminary official statement were to be required, then the timing requirement of MSRB Rule G-32 should also apply to the posting of the preliminary official statement and that an underwriter not be required to post such document to EMMA sooner than one business day after receipt of a deemed final preliminary official statement from an issuer.

Furthermore, SEC Rule 15c2-12 does not require that a preliminary official statement be prepared in connection with every offering nor is there any requirement under Rule 15c2-12 relating to the timing and release of a preliminary official statement to investors prior to a bond sale. Consequently, there is currently no clear standard established for the timing or the “point of receipt “ by an underwriter of the preliminary official statement from the issuer. The process and responsibility for preparing and distributing the preliminary official statement for a negotiated offering varies among issuers with such document prepared by any of the parties to the transaction including the issuer, the financial advisor, bond counsel or underwriter’s counsel. Any Proposal requiring an underwriter to post a deemed final preliminary official statement received from the issuer that would trigger the requirement to post on EMMA must include a clearly defined point of receipt by an underwriter of such document that would determine the timeline for the posting on EMMA.

The BDA is also concerned that creating a requirement to post all preliminary official statements on EMMA would encourage the preparation of a preliminary official statement where one may not have been prepared under the existing rules and result in

the creation of an additional filing requirement imposed upon the underwriter in the event that a preliminary official statement is not prepared or in the event an issuer chooses to restrict the posting of the preliminary official statement altogether.

The BDA would also like to clarify that the Proposal will not result in a change in the type of information which may be omitted from a preliminary official statement or the information required to be updated by the filing of a supplement to a preliminary official statement. For example, CUSIP numbers are typically not included in the preliminary official statement and only included in the final official statement. CUSIP numbers are one of the key items used when searching for information relating to a particular security or to an issuer. However, requiring the use of CUSIP numbers to be included in the preliminary official statement would be impractical because there is usually not a set structure in place until the time of pricing a transaction. Therefore, although it is customary to include a CUSIP number in the final official statement, the same is not true for the preliminary official statement even though CUSIP information may be the one piece of information that an investor or dealer may rely on when searching for documents on EMMA. If the Proposal were to be considered as a proposed rule, the BDA encourages the MSRB to consider a way that the preliminary official statement may be easily searched for on EMMA without the use of a CUSIP number. It also follows that the replacement of the preliminary official statement with the final official statement is critical so as to ensure the final updated document is publically available to the entirety of the market at the same time and to avoid any advantage or disadvantage to one investor or another.

Clarify Posting Requirements for Competitive versus Negotiated Sales

The role of a preliminary official statement is different in a negotiated offering than a competitive offering and the preparation of a preliminary official statement varies. The MSRB should explore further how the Proposal would need to address who is being requiring to post the preliminary official statement in a competitive sale versus a negotiated sale and whether there should be separate and different rules designed for each type of offering. Similarly, the roles of the municipal advisors and the underwriters may

be different in competitive versus negotiated sales. Since MSRB will have regulatory authority over municipal advisors, and since there is typically a municipal advisor involved in a competitive offering, the BDA believes that it should consider making the municipal advisor responsible for filing of the preliminary official Statement for competitive transactions. Consequently, the BDA suggests that until a final definition of municipal advisor is released by the SEC which articulates the separate responsibilities of financial advisors from underwriters, the decision to assign responsibility for the posting of the preliminary official statement to the underwriters is premature.

Consider Additional Permissions, Controls and Alerts on the EMMA System

While the BDA recognizes the MSRB's goal of making information available to all participants through a centralized, internet based repository, we would recommend that certain additional controls and search parameters be considered to make EMMA more user friendly, not only for industry professionals, but for the retail investor specifically. The ability to access an issuer's preliminary official statement on EMMA will undoubtedly mean that more and more investors will have access to these documents, but depending on the sophistication of the investor, they might not know how to find such documents or that they need to return periodically to check for any updated information or supplements that are posted. If this Proposal were to be implemented in any form, the BDA would suggest that the EMMA system be modified to include that an investor or dealer register prior to downloading a preliminary official statement so that notice of any subsequent updates or supplemental information, as well as that access to such document is longer available and the reason why, will be automatically sent to such investor by either text message or electronic mail. Further, if the investor, after downloading and reviewing the preliminary official statement, does not want to purchase such securities or no longer has an interest in such issuer or such securities, there should exist an ability for such investor to affirmatively opt out of the notice provisions. We would also suggest that the MSRB consider establishing an alert system for both investors and traders alike so that they may register for alerts containing links pertaining to their interest in certain types of municipal bonds or certain issuers, thus helping to eliminate the need to search for updates to a particular document and facilitate access to information available on the

EMMA system.

Thank you again for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael Nicholas

Chief Executive Officer