

January 13, 2014

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

Subject: Municipal Securities Rulemaking Board Rule Proposal 2013-22

Dear Mr. Smith:

We appreciate the opportunity to comment on Rule Proposal 2013-22 (the "Proposal") as it relates to proposed changes in the Firm Element training requirements for a Municipal Securities Rulemaking Board ("MSRB") member's continuing education program. As the current and former Chairpersons of the Securities Industry Council on Continuing Education (the "CE Council"), we believe that in its current form, the Proposal addresses a purported regulatory training deficiency that has not been publically documented with examination findings or enforcement activity and further creates discordant regulatory requirements among the Self Regulatory Organizations ("SROs"), unnecessarily adding to the complexity of each Firm's regulatory burden while compromising each Firm's ability to develop Firm Element training suitably addressing the needs of each Firm. We therefore suggest that this proposal be tabled and that the MSRB open a dialog with the CE Council to discuss whether industry-wide changes should be considered.

#### **THE SECURITIES INDUSTRY COUNCIL ON CONTINUING EDUCATION**

The CE Council was established as a result of the work of an industry task force created under the sponsorship of various Self Regulatory Organizations (the "SROs"), including the MSRB, to study the issue of continuing education in the securities industry and develop recommendations for action by the SROs. Those recommendations included the creation of a "Two Element Structure" for continuing education which introduced the concepts of regulatory element and firm element training that today comprise the substance of the securities industry's continuing education requirements.

The report of the task force also recommended the creation of a permanent Securities Industry/Regulatory Council on Continuing Education to ensure "that the [Continuing Education Program] content is current and relevant to changes in the industry's products and legal/regulatory standards". Among the proposed purposes of the recommended Council is to "mandate specific minimum core curricula for inclusion in appropriate sections of the Firm

Element.” The CE Council was established in November 1993 when the SROs endorsed the recommendations of the task force.

Despite the language of the task force recommendations, the CE Council as it exists today performs an advisory role to the SROs in the implementation and enforcement of each SRO’s respective rules. In that capacity, it brings together the collective experience and expertise of its industry members, its SRO members, and its SEC and NASAA liaisons to help identify the changing continuing education needs of a diverse and dynamic industry while offering practical solutions to address those problems. Importantly, the CE Council, indeed the history of the development of continuing education in our industry, recognizes the value of creating and managing regulatory programs that effectively address a regulatory need while promoting consistency in approach among the SROs. The result is of which is the delivery of effective training without the expense of overly burdensome or inconsistent regulatory requirements. In our view, the CE Council is an aggressive, engaged association of professionals whose input over the years has been instrumental in achieving that result.

### **THE RULE PROPOSAL**

The Proposal makes two significant changes to the Firm Element training requirements for MSRB members firms. In the first case, it mandates one hour, annually, of training on municipal securities for covered persons primarily engaged in activities described in Rule G-3(a)(i). In the second, it expands the coverage of the Firm Element requirement to those associated persons who are not client facing. Both of these proposed requirements are inconsistent with current rules of the other SROs, introduce regulatory inefficiency and lead to only speculative benefits in industry training as further discussed below.

### **Summary of the Current Firm Element Training Requirements**

The CE Council has succinctly described the requirements for Firms in its *Guide to Firm Element Needs Analysis and Training Plan Development* available on the CE Council website. In pertinent part it states:

“Self-regulatory organization (“SRO”) rules, including NASD Rule 1120 (Continuing Education Requirements) require each broker-dealer to maintain a continuing and current education program for its “covered registered persons” to enhance their securities knowledge, skills and professionalism. A “covered registered person” includes any person registered with a member who has direct contact with customers in the conduct of the member’s securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and the immediate supervisors of such persons. Pursuant to NASD Rule 1120, FINRA’s continuing education requirements consist of a Regulatory Element and a Firm Element.

The Firm Element requires each firm to evaluate and prioritize its training needs and develop a written training plan on an annual basis. The annual training plan developed and administered by

the firm for purposes of the Firm Element requirement must update and inform covered registered persons of job- and product-related subjects relevant to the firm's business. The firm must annually evaluate and prioritize training needs by conducting a Needs Analysis, and then develop a written Training Plan.

In planning, developing, and implementing a Firm Element plan, a firm must consider its size, structure, and the scope of its business activities, as well as any regulatory developments, and the performance of its registered employees in the Regulatory Element program(s). Outlined below are several issues and concepts that firms should incorporate as part of completing and documenting their Firm Element program, including the two main components of the Firm Element: the Needs Analysis and the Written Training Plan."

### **Discussion on the Mandated One Hour Training Requirement**

We believe Firms following the CE Council's guidelines can adequately and demonstrably create, implement and document a relevant continuing education program for its associated persons covering all regulated areas. SROs acting with common purpose and directives in implementing this program have provided an immeasurable benefit for firms who are required to comply with these mandates. The requirements are clear, each Firm's efforts are centrally documented and the training can easily be oversights and reviewed by regulatory auditors. This is one of the few areas where SROs have acted in concert for the benefit of Firms, creating a consistent process that can more readily and easily undergo regulatory review. Truly a "win-win" for all involved. It seems likely to us that if SROs individually mandate separate and distinct standards for the Firm Element, it will create an enormous burden on firms to comply with each mandate and on regulators to oversight review.

### **Discussion on the Expansion of Associated Persons Subject to Firm Element Training**

From our review of the Proposal, the primary concern of the MSRB is the definition of "covered person" in that the MSRB believes the definition is not sufficiently broad to encompass all persons they feel should receive annual training. If, in fact, the current training requirements are insufficient in terms of associated person coverage or if expanding coverage would enhance the value of the Firm Element training, we would suggest that these questions merit consideration on an industry-wide basis and that the MSRB work with the CE Council to review the issue and propose an industry-wide response, rather than begin a parsing process that could easily become a slippery slope of fragmented regulation.

### **Summary**

We believe the current regulatory requirements for Firm Element continuing education are fully developed and adequately address all areas of the securities industry. The coordinated effort of the various SROs, NASAA, the SEC and member firms has been of inordinate benefit to the implementation of a relevant continuing education program. To the extent that the MSRB feels the need to make changes to the current requirements, we would strongly encourage beginning a

dialog with the CE Council, rather than go forward with this proposal as stated, both for the good of firms and regulatory efforts alike.

Thank you for the opportunity to comment.

Respectfully submitted:



Patricia E. Bartholomew  
2014 Chair  
Securities Industry Council on Continuing Education



William E. Bartol  
2013 Chair  
Securities Industry Council on Continuing Education