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VIA ELECTRONIC MAIL: rule-comments@sec.gov

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: *(Release No. 34–72956; File No. SR–MSRB–2014–07) Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change (the "Proposed Rule Change") Consisting of Rule G–18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G–48, on Transactions With Sophisticated Municipal Market Professionals (''SMMP''), and Rule D– 15, on the Definition of SMMP (the "Notice")*

Dear Secretary:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the Notice seeking comment on the Proposed Rule Change. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. Accordingly, we believe that we uniquely offer insight into how a best execution rule would impact the middle-market securities dealers who provide essential liquidity to the municipal securities market through their specialization of regional and unique credits.

While we agree with MSRB's conceptual approach, Proposed Rule G-18 is flawed on a technical level. We agree that the MSRB has taken the correct approach in seeking to craft an execution diligence rule for the municipal market that imposes on dealers the same kind of duties that they would have in the trading of debt securities in the corporate market under FINRA 5310; but we will reiterate our concern that, as we read Proposed Rule G-18, this is not what the MSRB has done as a technical matter.

While Proposed Rule G-18 uses similar operative language as FINRA Rule 5310, Proposed Rule G-18 has a much more expansive and almost unknowable application when compared to FINRA Rule 5310. Proposed Rule G-18(a) states that "a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market…." FINRA Rule 5310 uses almost identical language. What the similarity of this language does not reveal, however, is that the term "market" is defined very differently in the two rules. FINRA Rule 5310 states "the term "market" or "markets" is to be construed broadly, and it encompasses a variety of different venues,

including, but not limited to, market centers that are trading a particular security." The key to this definition is the concept of a "venue" or "market center" – that is, a forum in which particular securities are traded. By contrast, MSRB Rule G-18 states that: "The term "market" or "markets," for the purposes of this rule…encompasses a variety of different venues, including but not limited to broker's brokers, alternative trading systems or platforms, ***or other counterparties, which may include the dealer itself as principal.***" [emphasis added] MSRB Rule G-18 broadens the concept of "market" well beyond FINRA Rule 5310. In Proposed Rule G-18, there is no concept at all of limiting the market to market centers or what FINRA Rule 5310 would consider venues. Literally, any dealer or other counterparty in the country can potentially constitute the "market" that needs to be considered. So, with FINRA Rule 5310, the dealer would need to be responsible for knowing those "centers" where securities of the type are being traded and use reasonable diligence. With MSRB Rule G-18 that same responsibility is extended without limitation to potentially countless counterparties.

FINRA Rule 5310 primarily applies to transactions in which there is accessibility to price quotations, such as is usually the case in the trading of equity securities. That assumption is then carried through to the definition of "market" in which market centers constitute the market and the dealer's accessibility to quotations is the trigger to make the operative provisions of FINRA Rule 5310 function. When, as FINRA Rule 5310 provides in Note .03, a dealer does not have accessibility to quotations, the rule does not exclude the transaction from coverage, but rather states, "In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders." To sum up, if a dealer were trading securities which are traded in a market center and for which there was an accessible quotation, the text of FINRA Rule 5310 would require reasonable diligence to determine the correct venue or market center. But if there were no such venues or market centers or no accessible market quotations, then the dealer is required to take "reasonable steps" to achieve best execution. In the experience of our members, when they are trading corporate debt securities that are not frequently traded in any centralized trading exchange, the practical responsibility of the dealer is to maintain reasonable policies and procedures to make sure that they are checking with the right kinds of dealers and counterparties to ensure that they are obtaining the best pricing.

Proposed Rule G-18 works differently. A dealer is required to use "reasonable diligence" in ascertaining the best "market." But "market" does not now mean market center or even just a venue, but literally can mean every potential counterparty in the market. Now dealers do not have to just look for the best market centers, they have to use their reasonable diligence to locate the one counterparty that will pay the best price. We believe that such a duty is far too burdensome to impose on dealers (in fact, as we explain below, our members are not sure exactly what it requires them to do). Regardless of the burden, it is unquestionably a different and far more expansive duty than the one that dealers have in the trading of corporate debt securities under FINRA Rule 5310.

Our members are trying to understand what Proposed Rule G-18 is obligating them to do differently than would be the case with trading corporate debt securities. Right now, for comparable corporate debt securities, our members know that they need to

have a reasonable policy in place that dictates how they trade with the market. Our members, though, look at Rule G-18 and simply do not understand what it is requiring them to do. We believe that the MSRB needs to provide specific guidance as to just how one goes about "ascertain[ing]" the best market" for any given municipal security and what is acceptable documentation to evidence to a regulator that the dealer has effectively discharged this responsibility; as well as what would be acceptable procedures for making execution determinations with respect to securities for which there is limited pricing information or quotations available (as per supplementary material .06).

The BDA supports a rule that imposes dealers in the municipal securities market a duty similar to what they would have with corporate debt securities. As a practical matter, that means that dealers need to have good policies and procedures that ensure that they are looking for the right kinds of counterparties who will trade at market prices. But we do not support the technical approach to Proposed Rule G-18 because it (we think unintentionally) greatly expands that duty.

Use of "Best Execution." We also remain very uncomfortable with the use of the phrase "best execution" in multiple instances in in Proposed Rule G-18 (including in the title of the proposed rule itself); notwithstanding the MSRB's statement in the last sentence of Supplementary Material .01, where "the most favorable price possible" can be equated with the term "best execution." We are concerned that regulatory examiners and enforcement staff will use the multiple references to "best execution" to enforce standards that are not applicable to the municipal securities market and are inconsistent with the MSRB's stated intent. In our view, this can be solved by removing the word "best" in certain instances, and replacing "best execution" with "execution diligence" in others. Use of a term borrowed from standards applicable to other markets that operate very differently from the municipal securities market is inappropriate.

SMMP Approach. We do not see the value in expanding the customer affirmation under Rule D-15. The MSRB should keep in mind that SMMPs are frequently larger and have more resources than many of our member dealers that are being regulated. Under current Rule D-15, the customer already needs to affirm it is using its independent judgment. We do not believe that there is value to now requiring an expanded and prescriptive list of exactly what it exercising independent judgment in evaluating. The MSRB has not provided any evidence that institutional customers have been, or would be, harmed under the current construct of Rule D-15 which has served the industry, including the institutional customers, well for several years; and as such should retain Rule D-15 in its current form.

Furthermore, the MSRB's change in Rule G-15 (without any meaningful industry input) will impose a significant burden on dealers for little if any benefit. In its commentary on Proposed Rule G-18, the MSRB states that "a dealer could not treat any customer as an SMMP after the proposed best-execution rule is implemented unless the dealer reasonably determined (as required by Rule G-48) that the customer had given the broader affirmation required under the proposed amendments to Rule D-15." This means that as of the effective date of the rule change, all existing SMMP designations are invalidated, and dealers must re-qualify all SMMPs, which they just did slightly over two

years ago when the MSRB revised the SMMP standards. Moreover, given that the rule changes will de-harmonize the SMMP designation from the institutional customer designation in FINRA Rule 2111 (which, incidentally, harmonizing with FINRA Rule 2111, and the ability to use FINRA Rule 2111 certifications, was a stated goal of the MSRB when it revised the SMMP standards in 2012), dealers will no longer be able to rely on a FINRA Rule 2111 certification as valid for SMMP designation; we will have to have a separate certification for SMMP status. While we do not want to jeopardize the exemption for SMMPs built into Rule G-48(e) by taking issue with complaining about having to do separate certifications, the SEC and MSRB should realize that this will be a significant and unnecessary undertaking. A better solution would be to allow dealers to use a negative consent type of notification to existing SMMPs with respect to the items listed in D-15(c), where the customer would be given the opportunity to respond if any of the affirmations are not correct, effectively opting-out of SMMP status. This would allow the possibility for existing SMMP designations to remain in effect, while minimizing the compliance burden on dealers (and the nuisance impact to investors). New SMMP designations could follow the revised Rule D-15 process as drafted, if it were different.

Similar Securities. BDA appreciates the MSRB's recognition of the fact that for some municipal bonds, more than one quotation may not be available. We believe that an approach based upon having policies and procedures is needed in that instance. Responding to the structure of the MSRB proposed rule, however, if the use of "similar securities" as a measure of the market is to be proposed, BDA recommends that the MSRB place a better definition around the term "similar securities" as used in paragraph (a)(4) of the Draft Rule. We believe that the term is not clear and lends itself to varying interpretation by regulators. In addition, given the wide array of factors that could be weighed to determine what constitutes a "similar" security – such as, geographical region, credit type and quality, terms and conditions, maturity, and position size – any definition of "similar securities" should incorporate as an overriding factor the judgment of the dealer in determining the factors that are most relevant in determining whether a given security is similar.

Thank you for the opportunity to submit these comments on the Draft Rule.

Sincerely,

Michael Nicholas

Chief Executive Officer