

November 4, 2015

VIA ELECTRONIC MAIL

Michael Post  
General Counsel-Regulatory Affairs  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

*RE: MSRB Proposed Rule G-42*

Dear Mr. Post:

This letter addresses in more detail some of the issues the Bond Dealers of America (“BDA”) discussed with you and senior staff of the Municipal Securities Rulemaking Board (“MSRB”) at our meeting on October 5, 2015, regarding proposed Rule G-42 (the “Proposed Rule”). The meeting discussion primarily focused on paragraph (e)(ii) of the Proposed Rule, otherwise known as the “principal transaction ban,” to which the BDA also raised concerns via comment letter to the SEC dated September 11, 2015. In that letter and at our meeting, we raised specific concerns with the design of the principal transaction ban and how it is crafted to operate differently from other fiduciary duty regimes, including fiduciary duty regimes involving self-dealing concerns as serious as those confronted in the Proposed Rule, such as the regimes governing self-dealing transactions with directors of corporations. This letter focuses on just this one concern and we refer the MSRB to our earlier comment letters for our other concerns which still remain.

BDA appreciates that the MSRB is endeavoring to formulate a conflicts of interest regime that mitigates the risks to issuers and the marketplace associated with the potential for self-dealing—self-dealing transactions can present serious concerns to issuers that need to be appropriately addressed. However, we believe that the potential for abuse should be principally addressed through the design of a framework and a rigorous, transparent, and accountable process and not through an outright ban. We continue to be concerned that an outright ban will have unintended consequences and that the Proposed Rule needs to permit a process for mitigating the conflicts that arise with principal transactions between a municipal advisor and its municipal entity client. In our discussions with our members, we think that the following process will address the concerns of interested parties.

First, for most principal transactions the municipal advisor should only be permitted to enter into a principal transaction if that transaction is approved by the

“Governing Body” (as we discuss in more detail below) of the municipal entity. We think that this recommended framework is a highly rigorous process that will ensure that potentially abusive principal transactions are not pursued, while establishing a reasonable and accountable process that would allow a municipal entity to enter into principal transactions that are in the best interest of the municipal entity.

In our recommended framework, in order for a municipal entity to enter into a principal transaction, the members of the municipal entity’s Governing Body are required to approve the transaction only after the Governing Body has been fully informed about any actual or potential conflicts of interest associated with the principal transaction. Conflicts of interest are among the most sensitive issues facing state and local governments and Governing Bodies will be naturally averse to approving conflicts of interest unless there is meritorious reason for the municipal entity to enter into the transaction.

We think that the following would be a workable definition of “Governing Body”:

*A “Governing Body” of a municipal entity means the elected or appointed legislative body of a municipal entity, or the board of the municipal entity responsible for the governance of the municipal entity. With respect to municipal entities that are states or territories, the “Governing Body” shall mean the elected or appointed constitutional officer or department or agency authorized to issue bonds on behalf of the municipal entity.*

As we discussed in our meeting, we also think that a separate conflict resolution process needs to be developed for the narrow context of dealers who form a municipal advisory relationship in connection with the trading of securities. As discussed, some dealers form very narrow municipal advisory relationship in connection with the trading of securities so that the municipal entity or obligated person may obtain recommendations concerning how to invest proceeds from issuances of municipal securities or escrow investments. This kind of relationship is a very different relationship than the typical financial advisory relationship in bond transactions, and is much more closely aligned with the kinds of relationships and conflicts encountered by investment advisers. While the applicability of the municipal advisor rule has made the trading relationships between dealers and municipal entities very challenging, the principal transaction ban would essentially cut off the last remaining path for municipal entities to obtain advice from their brokers concerning how best to invest proceeds from their issuances of municipal securities and escrow investments. As we discussed in our meeting, we have found these provisions of the municipal advisor rule that have disturbed long-standing trading relationships between dealers and municipal entities have been the ones that have most frustrated the issuer community with very little added benefit or protection. We think that both the principal transaction ban and even a governing body conflict resolution process would be much more rigid than the process currently followed under the investment advisors regulatory regime, which we do not believe is appropriate. Accordingly, we think that a very simple disclosure and consent process will be sufficient. Right now, dealers need to develop a procedure to determine whether the monies to be invested constitute proceeds from the issuance of municipal securities or escrow

investments. We think that the MSRB should fashion a disclosure and consent process that integrates with the process of determining whether the monies implicate the municipal advisor rule.

Thank you for the opportunity to submit these comments on the Proposed Rule and we are happy to have further discussions with you on this topic.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive, flowing style.

Michael Nicholas

Chief Executive Officer