

December 9, 2016

Submitted Electronically

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Notice of Filing of a Proposed Rule Change to Extend the MSRB's Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and to Modernize Those Rules (SR-MSRB-2016-15)

Dear Mr. Fields:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit these comments in response to (SR-MSRB-2016-15), a proposal to amend MSRB rules G-8, G-9, G-10 to apply existing complaint rules, which were designed for investors, to municipal advisory clients, and to update and establish recordkeeping requirements related to those rules. Additionally, the proposal would apply the 1998 G-32 interpretative guidance for dealers sending electronic communications to municipal advisors.

BDA believes that MSRB should have published these rule changes as a request for comment and not as a proposed rule change with the SEC.

From a process standpoint, the MSRB is essentially stating that its 2012 general request for comment on all of its rules and interpretative guidance documents provided the opportunity for public comment (MSRB 2012-63) on these amendments. However, these specific proposed rule changes have not been seen or published for comment until this rule filing with the SEC. While many of the proposed changes, especially those applicable to investors, are not controversial, the proposed rules that would be applicable to municipal advisory activities are more complicated and should have been published for public comment prior to filing them with the SEC. Additionally, in 2012, there was no effective regulatory regime for municipal advisors because the Commission did not publish a final rule until 2013. Therefore, BDA believes that, with respect to the proposed changes applicable to municipal advisors, the MSRB is proceeding with unnecessary

haste and should have proposed the changes in an MSRB request-for-comment so that it could have received feedback and tailored these rule amendments to the activities of municipal advisors, as opposed to taking an investor-based complaint system and applying that system to the municipal advisory business—a wholly different business relationship than the investor-dealer relationship.

BDA does not believe that applying a complaint and record keeping system that is designed for investor complaints is necessary or appropriate for municipal advisory clients due to the nature of the municipal advisory business.

BDA believes that the complaint and recordkeeping rules are well designed for investors, especially retail investors. Providing a recordkeeping system that tracks the complaints, and complaint subjects, for retail-investor complaints in municipal securities should make examinations more efficient and should provide useful information for understanding trends in potential municipal-securities related violations. Further, that system would be critical in effective supervision of retail investor operations. However, BDA does not believe that the MSRB has demonstrated why this particular style of complaint or record keeping system is appropriate for tracking municipal advisory client complaints.

The typical municipal advisory relationship involves advice within working groups in transactions that is much more comparable to the attorney-client relationship than the broker-customer relationship. To that end, the nature of the municipal advisory relationship involves very different feedback than broker-customer feedback. In a municipal advisory relationship, the feedback can be like any other professional feedback, which can range from simple complaints based on interpersonal interactions to serious conduct concerns. BDA believes that the MSRB and the SEC (through the SEC Office of Investor Education and Advocacy) have existing independent reporting systems that allow municipal entities or obligated persons to file complaints directly to a regulator. These existing systems are more appropriate systems to monitor complaints than developing an expansive set of problem codes because they allow potentially serious complaints to be appropriately addressed and do not attempt to overregulate the ebbs and flows of on-going interpersonal municipal advisory relationships.

If the MSRB developed a distinct and limited set of standards for what constitutes a recordable material complaint by a municipal advisor that should be adequate. The MSRB could develop several categories that would obligate the municipal advisor to log specific types of material complaints in its own records and to also pass along certain material complaints to the MSRB or the SEC. These categories could include the following: material complaints relating to the competency of the municipal advisor, material complaints relating to conflicts of interest, and material complaints relating to

the advice a municipal advisor provided on a prior transaction. This would allow the municipal advisor to separate ordinary feedback from the serious complaints that could call into question the competency and culture of the municipal advisor.

BDA urges the MSRB to design an entirely new brochure specifically for municipal advisory clients.

The current MSRB investor brochure is designed to provide information to investors to inform them of investor protection rules and how to file a complaint. The brochure is not designed for municipal advisory clients. Although the proposed rule text does refer to a ‘municipal advisory client brochure,’ the Notice does not state explicitly that the MSRB intends to develop a new brochure specifically for municipal advisory clients or specifically what would be stated in that brochure. As stated above, BDA believes that the types of complaints that would be brought by a municipal advisory client are not analogous to investor complaints and would urge the MSRB to disclose more information about the proposed contents of the municipal advisory client brochure as part of this rulemaking.

BDA believes that the MSRB should not apply the 1998 interpretative release to all municipal advisory relationships.

As we discuss above, most municipal advisory relationships are very different than broker-customer relationships. Electronic communications are the standard in all working groups and all working groups distribute drafts of documents, communicate about issues, and conduct much of the work of a transaction through electronic communications. To subject municipal advisors to the same rules as brokers in their relationships with customers results in an unnecessary regulation of municipal advisory relationships. As with attorney-client relationships and other professional relationships, municipal entities and obligated persons know exactly how they prefer to communicate and there is no need for a Federal regulator to regulate electronic communications in those relationships.

BDA urges the MSRB to publish the municipal securities problem codes prior to finalizing the amendment to MSRB Rule G-8 for dealers.

BDA believes that having municipal securities problem codes for dealer complaints is a good improvement, especially if it results in more efficient overall examinations. BDA urges MSRB to publish the proposed Rule G-8 problem codes for comment so that dealer technology staff, who may already work with existing FINRA Rule 4530 problem codes, can provide feedback in order to ensure that the

implementation of the new municipal securities problem codes is as efficient and effective as possible.

BDA urges the MSRB to work with FINRA to establish a uniform series of problem codes and to harmonize complaint and recordkeeping rules to the greatest extent possible.

BDA urges MSRB and FINRA to develop a harmonized set of problem codes that the two regulators could update in cooperation with each other. For municipal securities dealers that are also FINRA members it would be very beneficial to have the problem codes be harmonized to the greatest extent possible. It will be extremely burdensome from a systems and technology standpoint to be required to establish one set of MSRB problem codes for municipal securities when a well-understood code already exists in the FINRA problem code list. BDA urges regulators to make every possible effort to enable dealers to use their existing systems and problem codes. If achieved, this will greatly reduce the regulatory burden of this rule.

BDA urges the MSRB to work with FINRA to ensure that the requirements of the rule are not divergent.

Furthermore, BDA urges MSRB and FINRA to ensure that they do not adopt requirements that are divergent. In the Notice, MSRB states, “*the Board may require that all products and problems be coded in the electronic customer or municipal advisory client complaint log*” as opposed to the current FINRA requirement to use the code of the most prominent product and the egregious problem.

BDA would urge MSRB to require and maintain the same processes as FINRA. There is no compelling reason why MSRB would adopt a complaint and recordkeeping-rule process that is divergent from FINRA’s for complaints of an essentially identical nature.

BDA does not believe delivering the investor brochure to institutional investors under MSRB Rule G-10 is valuable to those investors.

BDA does not believe that the investor brochure is necessary or valuable for institutional investors. Institutional investors are sophisticated and do not need the same type of investor educational information that retail investors receive. If the MSRB is committed to requiring dealers to send the investor brochure to institutional investors, BDA recommends that MSRB provide clarity on ‘customer’ for the purposes of G-10. Specifically, it would be overly burdensome for a dealer that has multiple municipal securities trading relationships with subaccounts of one investment manager to be required to send more than one investor brochure to that investment manager annually.

BDA requests clarity with when a municipal advisor should send the G-10 brochure to a municipal advisory client.

Proposed Rule G-10 states that a municipal advisor should send the investor brochure, ‘promptly but no less than once a year’. BDA urges MSRB to clarify that promptly is relative to the start of the municipal advisory relationship.

BDA urges MSRB to provide at least 12 months for dealers to make the required technological changes.

As stated above, BDA does not think this type of complaint and recordkeeping system is valuable for municipal advisory clients. For dealers, the system should align with existing FINRA requirements. However, dealers will need one year—as opposed to the proposed six-month period—to allow for adequate time for implementation, especially given the other regulatory initiatives that are currently ongoing, including the transition to T+2, that will require significant attention from dealer compliance and technology staff.

Thank you for the opportunity to provide these comments.

Sincerely,



Mike Nicholas
Chief Executive Officer