BDA Bond Dealers of America

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Submitted Electronically

Mr. Eduardo A. Aleman
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-025

RE: Proposed Rule Change Consisting of Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors (SR-MSRB- 2018-01) (the "Proposed Rule Change")

Dear Mr. Aleman:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the Proposed Rule Change. The BDA is opposed to several elements of the Proposed Rule Change and urges the SEC to reject the Proposed Rule Change unless the MSRB makes the necessary changes.

The BDA submitted several critical comments to the Proposed Rule Change when the MSRB originally requested comments and the BDA believed then and believes now that our comments are necessary to align the Proposed Rule Change with the reality of dealer and municipal advisory operations. In essence, the Proposed Rule Change suffers from two problems: the MSRB did not appropriately harmonize the Proposed Rule Change with FINRA rules, and the MSRB has not responded to key requests for changes and clarifications that dealers and municipal advisors need in order to integrate the Proposed Rule Change in the reality of their businesses.

The BDA disagrees with several aspects of the harmonization of the MSRB Rules and FINRA Rules.

Approach to Harmonization. We disagree with the order of priority that the MSRB places on harmonization. The MSRB has chosen to prioritize the harmonization of MSRB G-21, applicable to broker-dealers, with MSRB G-40, which is applicable to municipal advisors. MSRB Rule G-40 contains some elements of SEC rules applicable to investment advisers. These elements, including the prohibition on testimonials, are not found in FINRA 2210, the existing broker-dealer rule for communication with the public

applicable to the corporate securities market. This has led to the odd result that dealers in the municipal securities market will need to live under a different regime than dealers in the corporate securities market with respect to the same kind of communications.

BDA members believe that proper harmonization of the two broker-dealer regimes is essential. However, when MSRB rules applicable to dealers do not harmonize with FINRA rules, it imposes a significant compliance burden on dealers to create two regulatory regimes that become easy to confuse and time consuming to implement and enforce. The BDA believes that the MSRB needs to harmonize Rule G-21 with FINRA 2210.

Harmonization of MSRB Rule G-21. In regard to MSRB Rule G-21, the BDA is most concerned that the rule is more harmonized with proposed Rule G-40 instead of FINRA 2210, which governs a wide range of communications with the public, including advertisements. For BDA members, there are two essential parts of harmonization with FINRA 2210.

1. FINRA 2210 is focused on three discrete categories of communication with the public as outlined by FINRA 12-29.[1] These categories are: institutional communication, retail communication and correspondence.
2. The requirements of the FINRA 2210 rules are dependent on who, in terms of retail versus institutional, receives the communication. Additionally, with respect to rules applicable to correspondence, the applicability of the rule is dependent on how many ***retail*** investors receive the correspondence within a 30 calendar-day period.

In order for harmonization of MSRB rules with FINRA rules to be successful, MSRB must follow this general framework for MSRB Rule G-21. If MSRB has a rule that applies different definitions and different sets of responsibilities to municipal securities and does not differentiate between communications sent to retail and institutional customers, it will have created a new and unnecessarily increased regulatory burden along with considerable confusion for broker-dealers.

BDA notes that the definition of "advertisement" only exists in MSRB Rule G-21 and that the MSRB's definition of "form letter" differs in crucial ways from FINRA's definition of "correspondence". BDA believes, as part of harmonization, that the MSRB should take the following actions as it tailors its communication rules to focus on the three categories of communication in FINRA 2210: retail, institutional and correspondence.

[1] http://www.finra.org/sites/default/files/NoticeDocument/p127014.pdf

1. Strike the definition of "Advertisement": MSRB should pursue harmonization with FINRA 2210 and the materials that are included and excluded from the scope of the rule should be addressed in the section of the rule specifically dealing with what retail communications should be required to be pre-approved by a principal.
2. The definition of "Form Letter" should be amended to focus exclusively on retail communications.
3. The definitions of standards for "Product Advertisement" and "Professional Advertisement" are made redundant by the inclusion of the proposed general and content standards of proposed G-21 and G-40. These provisions should be deleted to signify that these types of communications are covered by the general and content standards of the proposed rule.

The BDA does not think MSRB's inclusion of a principal approval requirement in Rule G-40 makes sense given the context of the municipal advisory relationship. By definition, all clients of municipal advisors are institutions and do not need many of the mechanistic protections applicable to dealer relationships with retail investors. The BDA does not believe that a principal needs to approve every municipal advisor advertisement given the audience of advertisements by municipal advisors. However, should the MSRB maintain the requirement for principal approval in Rule G-40, the MSRB should allow either a municipal advisor principal or a general securities principal to approve advertisements, consistent with Rule G-21.

Specific Points of Concern.

The BDA believes that correspondence and institutional communications should be exempt from the pre-approval requirement. BDA members strongly urge the SEC to disapprove the Proposed Rule Change unless the MSRB closely follows the existing framework of FINRA 2210. FINRA requires pre-approval by a principal or supervisory analyst only for retail communications prior to first use, and does not apply the same standard to institutional communications.

In our prior comments, the BDA urged the MSRB to harmonize its institutional standards with the existing framework of FINRA 2210, which requires a firm to have written supervisory procedures that establish guidelines for the review of institutional communications designed to ensure compliance with applicable standards. Furthermore, FINRA 2210 requires that documented and supervised personnel education policies are in place to ensure member firm personnel are informed of the communication standards when pre-review of institutional communications is not required by the firm. The Proposed Rule Change represents a fundamental departure from dealer responsibilities under FINRA 2210 and imposes completely unnecessary burdens on dealers.

The BDA believes that investor roadshows, responses to RFPs/RFQs and similar materials not intended as advertisements should be excluded from the scope of Rule G-21. As a part of its harmonization effort, the MSRB should exclude materials that are comparable to offering materials that accompany preliminary official statements as well as other similar materials as outlined below. As a part of its harmonization effort, the MSRB should exclude materials that are comparable to offering materials that accompany preliminary official statements, such as investor roadshow presentations and other similar materials information. In addition, there are several other materials that should be excluded.

First, private placement memorandum and limited offering memorandum are frequently used as offering memoranda and thus should be excluded alongside preliminary official statements. In its submission to the SEC, the MSRB has made this matter even more confusing. Any argument that private placement memoranda and limited offering memoranda are covered by the advertisement rules is untenable – they are the documents of the issuer or borrower and the responsibilities of underwriters with respect to those materials are clearly outlined in the Federal antifraud interpretative releases of the SEC.

Second, both underwriters and municipal advisors respond to RFPs and RFQs and those responses may be made public and could fall into the current definition of "form letter". BDA does not believe it is appropriate to regulate responses to RFPs and RFQs in the same way as retail communications, requiring principal approval for each RFP and RFQ response that is sent to an issuer. The MSRB should follow the framework of FINRA 2210, which defines "correspondence" as a communication to 25 or more retail investors. The MSRB notes in the request for comment that if 25 or more persons receive the response, it would meet the definition of "form letter". BDA does not believe that is appropriate. Responses to RFQs and RFPs should be explicitly excluded from the coverage of both Rule G-21 and Rule G-40. In the MSRB's submission of the Proposed Rule Change, it appears to agree that RFQs and RFPs are not included – but we do not understand why the MSRB did not make that explicit in the text of the Proposed Rule Change.

If the MSRB choses to not harmonize the definition of "form letter" with the FINRA 2210 definition of "correspondence", the BDA recommends that the MSRB clearly define that a response to an RFP or RFQ sent to one issuer is not a "form letter" irrespective of how many employees of that one issuer, including 25 or more employees, subsequently receive the response.

The MSRB's prohibition on testimonials in both Rule G-21 and Rule G-40 is not warranted. FINRA 2210 does not prohibit testimonials and BDA members do not see any broad-based investor protection rationale to prohibit testimonials for municipal securities.

Prohibiting testimonials under Rule G-21 is inconsistent with FINRA 2210 and is unclear to the BDA why the MSRB would pursue an approach more appropriate for investment advisors. It is confusing and naturally inconsistent to pursue a patchwork approach that takes portions of FINRA rules applicable to broker-dealers along with SEC rules applicable to investment advisers and label that approach harmonization.

The MSRB should include the same disclosure provisions as FINRA 2210, which rely on disclosure of potential conflicts related to testimonials. Furthermore, BDA does not believe that because the average age of a municipal bond investor is 61, as MSRB notes in footnote 14, that means that the average municipal bond investor lacks the cognitive ability to understand a testimonial or its associated disclosures.

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The BDA urges that these comments are really not a question of cost-benefit of regulatory burden but a question of the Proposed Rule Change failing to comport with the reality of the municipal securities market, the needs of investors and avoiding unnecessary regulatory burdens. We underscore that the Proposed Rule Changes will require dealers to develop a completely different regime for investor communications involving municipal securities than for corporate securities. With the lack of harmonization with FINRA Rule 2210, we underscore that the Proposed Rule Change will require unnecessary and significant regulatory burdens for both dealers and municipal advisors alike.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer