

June 10, 2024

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

Transmitted electronically

File No. SR-MSRB-2024-04

Dear Madam Secretary,

The Bond Dealers of America (BDA) is pleased to provide comments on SEC Release No. 34-100131 (File No. SR-MSRB-2024-04), the Municipal Securities Rulemaking Board's (MSRB) "Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule G-27, on Dealer Supervision, To Adopt a New Residential Supervisory Location Classification" (the "Release"). BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The Release announces amendments the MSRB has made to MSRB Rule G-27 related to dealer supervision. The amendments are designed bring MSRB supervision rules into line with FINRA Rule 3110, which was amended earlier this year. In that respect, we recognize that the MSRB's efforts around this rulemaking were limited by the scope of the FINRA Rule and we appreciate the commitment to provide regulatory harmony between FINRA and MSRB rules. We also recognize that the amendments in the Release took effect upon filing and that no additional amendments to MSRB or FINRA supervision rules are under consideration.<sup>1</sup> In that regard, we offer these comments as our views on both the MSRB's amendments to Rule G-27 as well as FINRA's amendments earlier this year to Rule 3110. The changes we suggest to MSRB and FINRA remote supervision policies would be appropriate for future rulemakings.

The COVID-19 pandemic was a watershed for how the industry works. For the first time, a large number of supervised employees were routinely working remotely. The temporary, emergency relief from supervision rules FINRA and the MSRB provided worked well. And even though the pandemic is gratefully behind us, the experience changed forever how dealers and their employees think about remote work and supervision. The way we work today is different than before the pandemic. The technology we use to supervise employees is different, and our employees expect to work in different, more flexible ways. The industry has proven that employees working remotely can be effectively supervised. In that regard, regulations should provide maximum flexibility to firms to design supervisory programs that accommodate remote work without sacrificing effective supervision.

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<sup>1</sup> On May 30, 2024 the MSRB filed with the Commission additional changes to Rule G-27 to create a pilot program to allow certain dealers to satisfy their inspection requirements of RSLs remotely. These changes are designed to comport Rule G-27 with the RSL remote inspection pilot program embodied in FINRA Rule 3110

The Residential Supervisory Location (RSL) concept provides insufficient flexibility to support remote work because it applies only to supervisory functions within the firm. There are two significant shortcomings in the rule changes embodied in the Release:

- The Residential Supervisory Location (RSL) concept does not apply to investment bankers involved in structuring public offerings or private placements nor to traders involved in order execution or market making; and
- Changes to MSRB Rule G-27 leave a competitive disadvantage between dealers, who are subject to location-based supervision requirements, and non-dealer Municipal Advisors, who are not.

Outside of direct handling of customer funds and securities, the entire notion of location-based, on-site supervision is antiquated and quickly becoming obsolete. The industry's experience during the COVID-19 pandemic demonstrated that the systems and practices dealers use to supervise employees work equally well whether a supervised employee is working at home or in the office. Regardless of where their employees work, dealers use the same means to monitor and supervise their activity. Regulations should reflect this. Location-based supervision like the RSL concept generally does not account for the means dealer firms use to supervise their employees.

#### RSLs, bankers, and traders

Supplementary Material .19 of FINRA Rule 3110 establishes FINRA's concept of RSLs, and this concept is mirrored by the MSRB rule changes in the Release. Rule 3110 allows firms to designate certain employees' residences as RSLs subject to certain conditions and restrictions. An employee working from their home designated as a RSL is subject to supervision in much the same manner as if they were working in a Branch Office or Office of Supervisory Jurisdiction (OSJ). They are assigned a licensed supervisor, their activities and communications are monitored, they remain fully subject to all regulatory requirements, etc.

Being able to designate an employee's home as a RSL provides numerous benefits. RSLs do not require an onsite, licensed supervisor. Rather, employees in RSLs are covered by supervisors assigned to Branch Offices or OSJs. Most important, the RSL notion recognizes the success firms have had over the last four years in establishing remote supervision practices and provides flexibility to employees.

FINRA's RSL model, and necessarily the MSRB's RSL model as well, apply to four of the seven supervised functions referenced in FINRA Rule 3110(f)(1). Two supervised functions, "order execution or market making"—traders—and "structuring of public offerings or private placements"—investment bankers—are excluded from eligibility for a residence/workplace designated as a RSL for no good reason.

Bond traders and bankers have been working remotely on a regular basis since the pandemic started in early 2020 without any widespread hiccups. Most bankers who structure public offerings or private placements travel extensively to visit clients and they work remotely when they do. Why is it in compliance for a banker to structure public offerings or private placements when she is working from a hotel room or a client's office but not when she is working at her residence? It makes no sense. The entire concepts of Branch Office and OSJ are outdated and provide insufficient flexibility in supporting remote work and supervision.

Traders working remotely do the same job and use the same systems for trading and supervision that they do when they are working in a Branch Office. There is no difference between how traders are

regulated when they are in the office or working from home. Regulators have failed to explain why traders cannot be supervised remotely.

### Bankers versus Municipal Advisors

MSRB Rule G-44 establishes a supervisory scheme for non-dealer Municipal Advisors. The supervisory structure of Rule G-44 is very different from and much less prescriptive than Rule G-27. Rule G-44 does not include the concepts of Branch Office or Office of Municipal Supervisory Jurisdiction (OMSJ), for example. Non-dealer MAs can work and be supervised remotely as long as the firm's Written Supervisory Procedures accommodate it. Why is it in compliance for MAs to structure public offerings or private placements while being supervised remotely but not investment bankers? Again it is a senseless distinction.

Some firms are dually registered as both broker-dealers and MAs, and some bankers are dually licensed as both Municipal Securities Representatives (MSR) and Municipal Advisor Representatives (MAR). Conceivably, supervision of these dually licensed individuals is subject to Rule G-27 when the individual is working as a banker and to Rule G-44 when working as a MA. However, a dually licensed banker's work days are generally not separated into "banker days" and "MA days." The banker may work for MA clients in the morning and BD clients in the afternoon. There is effectively no way for a dealer firm to take advantage of the less restrictive Rule G-44 remote supervision requirements for employees who are dually licensed MSRs/MARs.

Moreover, the differences between how bankers and MAs may be supervised will create competitive advantages in favor of non-dealer MAs relative to dealers. This will be especially evident in hiring. Municipal dealer and MA firms often compete for the same banking talent. It is an advantage that MA firms are able to offer potential hires more flexible working arrangements because Rule G-44 permits remote supervision of MAs, but Rule G-27 does not permit the remote supervision of bankers who structure public offerings or private placements, even though structuring transactions is a key element of both jobs.

BDs have the option of establishing a remote employee's residence as an OMSJ rather than a RSL. Because an OMSJ must have an on-site supervisor, this effectively requires the remote employee to hold a Municipal Securities Principal license in addition to being a MSR even though they may not supervise anyone but themselves. It also requires the firm to register the employee's home as an OMSJ, conduct annual physical inspections of the home, and other mandates. It is not a ready alternative to a RSL designation. The whole motivation behind establishing the RSL model in the first place was to avoid having to register homes as OSJs. It is expensive and time consuming, and most important, it does not provide any additional protection or safety relative to a RSL designation. If a rogue employee was intent on violating regulations under a RSL designation, they would be just as intent under a OMSJ designation.

With the RSL designation now established in regulation, we believe it is time to take an across-the-board look at the supervisory scheme in Rules 3110, G-27, and G-44. These rules are ripe for the kind of retrospective rule review that the Board has undertaken with other dated MSRB regulations. This would provide regulators with the opportunity to move beyond location-based supervision that is rooted in the technology and practices of the previous century. At least it would provide regulators with the opportunity to rethink the exclusion of bankers who structure public offerings or private placements and traders who execute orders and make markets from the RSL scheme and provide a more flexible means

to supervise remote work. We look forward to working with FINRA and the Board on these issues going forward.

Sincerely,

Michael Decker

A handwritten signature in dark ink, appearing to read "Michael Decker", written in a cursive style.

SVP, Research and Public Policy

cc: Robert Cook, CEO, FINRA  
Mark Kim, CEO, MSRB