

# BDA ADVOCACY PRIORITIES

## Second Quarter 2017

### Regulatory Issues

#### **FINRA and MSRB's Retail Confirmation Markup Disclosure Rules**

In November, the SEC approved the MSRB's and FINRA's retail confirmation disclosure proposals that will require dealers to disclose a markup for certain retail trades. The rules are effective on May 14, 2018. BDA member firms will discuss the cost and complexity of automating the "waterfall" concept for corporate and municipal securities trades with retail investors in meetings with the SEC in April 2017.

#### **MSRB's Minimum Denomination Rule Filing with the SEC**

BDA submitted two comment letters to the MSRB stating that the proposed MSRB Rule G-49 should be focused on issuances with 'minimum authorized denominations' of \$100,000 or greater. The MSRB filed its minimum denomination rule with the SEC in February 2017. The BDA submitted a comment letter in March that, again, argued that the MSRB's approach would impair liquidity for investors and that the rule should focus on minimum authorized denominations for which the issuer has established a minimum authorized denomination of \$100,000 or greater in order to explicitly limit the number of beneficial owners of the securities. The BDA continues to discuss the rulemaking with the MSRB and will advocate for regulatory alternatives that will meet the MSRB's policy objectives and improve liquidity in the municipal securities market.

#### **SEC's Proposed Amendments to Rule 15c2-12**

In February 2017, the SEC proposed two new amendments to Rule 15c2-12. The amendments propose to add two new events to the existing material events that would be required to be disclosed under an issuer or obligated persons continuing disclosure agreement. Specifically, the SEC proposes to add the incurrence of a material "financial obligation" or agreement to a material debt covenant or debt provision that would modify the priority rights of the issuers or obligated persons existing debt holders as a material event under 15c2-12. The BDA will hold multiple internal BDA committee calls and will submit a comment letter to the SEC in May 2017. In the past few years, the BDA has submitted multiple comment letters to the SEC and the MSRB recommending several specific policy changes with respect to SEC Rule 15c2-12 and the disclosure of bank loans.

#### **The Department of Labor's Fiduciary Duty Rule**

In April 2016, the Department of Labor (DOL) approved a rule to expand the definition

of 'fiduciary' under ERISA. The new rule applies a fiduciary duty to those providing investment advice to retirement investors. In response to the DOL's April 2015 rule proposal, BDA submitted a comment letter to the DOL and testified at a DOL public hearing where we advocated for a rules-based approach and a coordinated effort with the SEC. In 2016, BDA held a Fiduciary Duty Roundtable to assist BDA members with compliance efforts under the final rule. In January 2017, the Trump Administration issued a Presidential Memorandum and the Trump Department of Labor issued a proposed rule to delay the April 2017 applicability date for the new rule by 60 days. BDA submitted a comment letter in March 2017 that strongly supported the delay of the rule. In April 2017, the BDA will submit an additional comment letter on the policy issues raised by the Presidential Memorandum, including how the rule will impact investor choice.

### **Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers**

BDA submitted a comment letter on March 31, 2017 that disagrees with how the MSRB has fashioned their proposal. We suggest instead that the MSRB should not craft a rule that requires CUSIP numbers in transactions where the issuer and purchasing investors strongly do not want a CUSIP number and doing so will have substantial unintended consequences that will hurt the entire market.

### **MSRB's Request for Comment on Customer Account Transfers**

In February 2017, BDA submitted a comment letter in response to the MSRB's request for comment on amendments to MSRB Rule G-26 on Customer Account Transfers. BDA communicated to the MSRB that the definition of "non-transferable asset" needed to be modified to account for current dealer systems. BDA will continue to discuss making customer account transfers more efficient, especially in light of the different standards of MSRB Rule G-12 for interdealer failure to deliver transactions.

### **MSRB's Request for Comment on Dealer and MA Advertising Rules**

In March 2017, BDA submitted a comment letter in response to the MSRB's request for comment on amendments to MSRB Rule G-21 (Advertising) and to establish an advertising standard for municipal advisors, MSRB Rule G-40. In that letter, the BDA urged the MSRB to harmonize its advertising regulations for dealers with existing FINRA regulations applicable to dealers. Additionally, BDA argues that MSRB G-40 should be tailored to the actualities of the municipal advisory business, which is modeled on the broker-dealer.

### **FINRA Mortgage Security Margin Amendments**

In October 2015, FINRA filed proposed amendments with the SEC to Rule 4210 to establish margin requirements for transactions in TBAs, specified pools, and collateralized mortgage obligations. BDA submitted comments to the SEC in November 2015 and February 2016 that highlighted concerns with the proposal. BDA also met with the SEC in January and May to discuss concerns and to advocate for changes, which we

outlined in a letter submitted to the SEC in early May, followed by another letter in late May. FINRA amended the rule three times, including changes BDA recommended to increase to the allowable gross open position limit, an increased minimum margin transfer threshold, and to permit risk limits for advisor accounts to be made at the advisor level. The SEC approved the rule in June 2016. The rule has a 6-month implementation timetable for making risk limit determinations (December 2016) and an 18-month implementation period for the rule's other requirements (December 2017).

### **Municipal Advisor Regulatory Regime**

The SEC's Municipal Advisor (MA) rule went into effect on July 1, 2014. The MSRB has completed the core set of regulations for the MA regime which go into effect this year, including pay to play obligations (Rule G-37), supervisory and compliance obligations (Rule G-44), core standards of conduct (Rule G-42) and limitations on gift-giving (Rule G-20). BDA will be working with our members to ensure disclosure updates associated with standards of conduct are streamlined and efficient.

### **Private Placement Activity of Non-Dealer Municipal Advisors**

BDA remains concerned that non-dealer municipal advisors (MAs) may be violating securities law and denying investors the protections of the broker-dealer regulatory regime. BDA has consistently encouraged the SEC and MSRB to remind non-dealer MAs that soliciting investors and acting as a placement agent are registered broker-dealer activities.

### **Legislative Advocacy Priorities**

#### **Financial Reform Legislative Priorities**

BDA will work with the new Congress and Administration to advance regulatory reform legislation. This will include working to advance BDA's advocacy priorities including requiring more stringent regulatory cost-benefit analyses, High Quality Liquid Asset legislation, amendments to the Department of Labor Fiduciary Duty Rule, revisiting the Municipal Advisor Rule, and more.

#### **Protecting Tax-Exempt Bonds**

BDA continues to engage with the House Ways & Means Committee opposing any proposal to modify or eliminate the tax-exempt status for municipal bonds. Additionally, BDA has also communicated our support for maintaining the tax exemption for municipal bonds with House Speaker Paul Ryan (R-WI) and Rep. Kevin Brady (R-TX), Chairman of the House Ways & Means Committee, in response to the federal tax reform plan known in Washington as the "Blueprint". Municipal bonds have worked for issuers and taxpayers as a cost efficient means to finance critical infrastructure, transportation, and other community improvement projects for over 100 years. Limiting their value would significantly increase costs to state and local governments, taxpayers, and investors. BDA works with industry partners, including

issuers and state and local groups, through the Municipal Bonds for America (MBFA) Coalition to preserve the tax exemption. The MBFA Coalition has held multiple Muni Bonds 101 Seminars in which House and Senate offices have the ability to hear from expert panelists regarding the importance of preserving the present-law treatment of tax-exempt municipal bonds.

### **Bank Qualified Bonds**

BDA continues to support the reintroduction of The Municipal Bond Market Support Act. BQ legislation would increase the annual volume limit for bank-qualified bonds from \$10 Million to \$30 Million and index for inflation. Past legislation has also allowed for the use of pooled financings and calculates the volume cap at the issuer, rather than issuance, level. BDA has lobbied Congress extensively on the bank-qualified issue over the past six years and we will continue to do so in 2017.