

BDA ADVOCACY PRIORITIES

June 2016

FINRA Margin Amendments

In October 2015, FINRA filed [proposed amendments](#) with the SEC to Rule 4210 to establish margin requirements for "to be announced" (TBA) transactions, specified pool transactions, and transactions in collateralized mortgage obligations. BDA [submitted comments](#) to the SEC in November 2015 and February 2016 that highlighted ongoing concerns with the impact of the proposal on small-to-medium sized dealers. BDA also met with the SEC and FINRA in [January](#) and [May](#) to discuss outstanding concerns and a desire for further changes, which we outlined in another [letter](#). FINRA has since made another amendment to the rule which addresses gross open position limits as well as risk limits for advisor accounts, both changes the BDA had requested in a supplementary [letter](#). We now await a decision by the SEC as to whether to approve or disapprove the rule.

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 will go into effect this year, including pay to play obligations (G-37), supervisory and compliance obligations (G-44), core standards of conduct (Rule G-42) and limitations on gift-giving (Rule G-20).

Retail Confirmation Markup Disclosure Proposals

In late 2015, [FINRA](#) and the [MSRB](#) each released a rule proposal to require dealers to disclose a markup for retail accounts. [BDA submitted a comment letter](#) in December that urged regulators to harmonize their proposals and to strive to create the lowest cost and least complicated rule for retail investors and dealers. In April, the BDA [met](#) jointly with FINRA and the MSRB to advocate for a less complex, less costly rule prior to finalization.

Amendments to Provide Guidance on Prevailing Market Price

MSRB has requested comment on proposed guidance related to MSRB Rule G-30 to establish prevailing market price based on FINRA's "waterfall" approach. BDA submitted [comments](#) to the MSRB regarding outstanding concerns with the amendments including how using FINRA's taxable market approach may not be entirely appropriate for the municipal market.

FINRA Extended Settlement Initiative

In September, BDA met with FINRA to discuss their intention to update guidance or engage in a rule making related to forward settlement transactions in municipal securities. The discussion was focused on the municipal market but we learned that FINRA would like to engage in a dialogue with us about forward settlements in the taxable market as well. A full recap of the September 2015 meeting can be read [here](#).

IRS Proposed Regulations on Issue Price

In June 2015, the IRS and U.S. Treasury issued a proposed rule to amend the definition of issue price for municipal securities. BDA submitted a comment letter in September 2015 suggesting alternative approaches for consideration. Additionally, BDA discussed the proposal with senior regulatory officials at the IRS and Treasury during an [in person meeting](#) and through [testimony](#) at an IRS public hearing about the market impact of the rule. In December 2015, BDA submitted a follow-up [comment letter](#) including additional suggested changes for inclusion prior to rule finalization.

Fiduciary Duty

In April 2015, the Department of Labor (DOL) issued a [proposed rule](#) to expand the definition of 'fiduciary' under ERISA. The proposal would apply a fiduciary duty to those providing investment advice to retirement investors. BDA submitted a [comment letter](#) to the DOL and [testified](#) at a DOL public hearing where we advocated for the DOL and the SEC to coordinate their efforts in order to harmonize the rules applicable to broker-dealers and to avoid denying customers access to advice. The SEC has [stated](#) it intends to publish a proposed rule applicable to the standards of care provided by broker-dealers and investment advisers. DOL finalized their rule in April but timing on the SEC's proposal remains unclear.

MSRB and FINRA Best Execution Standards

MSRB Rule G-18 establishing best execution standards for municipal securities went into effect on March 21, 2016. MSRB published [implementation guidance](#) for the industry to consider as they update policies and procedures and FINRA published [best execution guidance](#) for fixed-income securities under their jurisdiction. BDA staff is working on a considerations document for our members to be released mid-2016.

IRS Political Subdivision Proposal

In February, the IRS proposed a three-step framework for defining 'political subdivision'. In May, the BDA submitted a comment [letter](#) and urged the IRS/Treasury to withdraw the proposed rule and re-propose because, as drafted, the rule will unnecessarily disrupt the ability of public projects associated with political subdivisions to attract tax-exempt financing. Additionally, BDA [testified](#) at an IRS public hearing on the proposal on Monday, June 6 in which we advocated for a withdrawal of the rule while also suggesting proactive alternatives for consideration.

Private Placement Activity of Non-Dealer Municipal Advisors

BDA remains concerned that non-dealer municipal advisors (MAs) may be violating securities law in certain instances and potentially 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.

MSRB Publishes Concept Proposal to Improve Disclosure for Bank Loans

The MSRB published for comment, a [concept proposal](#) to improve disclosure of direct purchases and bank loans. In the past, BDA has taken the position that greater bank loan disclosure should be required so that municipal market participants have a more complete understanding of the liabilities and creditworthiness of issuers. BDA submitted a [comment letter](#) to the MSRB stating that we do not believe it is appropriate, practical, or within the MSRB's legal authority to require MAs to be the market participant that is required to make the disclosure and that the optimal method for improving disclosure of bank loans would be for the SEC to amend Rule 15c2-12.

Improving Municipal Disclosure: SEC Rule 15c2-12

BDA continues to engage the SEC on improving the clarity of disclosures in the municipal marketplace. BDA submitted a [comment letter](#) to the SEC recommending several specific policy changes with respect to SEC Rule 15c2-12 including changing the timing of and eliminating the requirement for listed event notices for ratings changes, and providing obligated persons a more effective process for amending and updating financial and operating information filed pursuant to continuing disclosure agreements.

Protecting Tax-Exempt Bonds

BDA [wrote](#) to the Ways & Means Committee opposing any proposal to modify or eliminate the tax-exempt status for municipal bonds. 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. Recently the MBFA Coalition held a [Muni Bonds 101 Seminar](#) in which over 35 House and Senate offices were represented for a panel discussion on the importance of preserving the present-law treatment of tax-exempt municipal bonds.