BDA Bond Dealers of America

21 Dupont Circle NW
Suite 750
Washington, DC 20036

September 30, 2010

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

RE: File Number SR-MSRB-2011-09
Rule G-17: Conduct of Municipal Securities and Municipal Advisory Activities, to Underwriters of Municipal Securities

Dear Ms. Murphy:

The Bond Dealers of America (the "BDA") is pleased to offer comments to the Securities and Exchange Commission (the "Commission") with respect to File Number SR-MSRB-2011-09 regarding the proposed interpretive guidance to Municipal Securities Rulemaking Board ("MSRB") Rule G-17: Conduct of Municipal Securities and Municipal Advisory Activities, to Underwriters of Municipal Securities (the "Proposed Guidance"). The BDA is a Washington, DC-based organization that represents securities dealers and banks primarily active in the U.S. fixed income markets. The BDA's members include dealers that also are some of the nation's leading municipal financial advisors.

The Proposed Guidance submitted by the MSRB is significantly improved over the version originally proposed. However, the BDA believes that the Proposed Guidance can be improved further.

A regulatory requirement for disclosure, especially for routine transactions, should be imposed only if the underwriter has *reason to believe* that the issuer does not have the knowledge or experience available to it to understand the transaction. As the Commission and the MSRB have made plain in the context of MSRB Rule G-23, they view the underwriter and the issuer to be on opposite sides of the table in these transactions. The SEC and the MSRB should not confuse the matter, and the parties, by imposing fiduciary-like duties on underwriters through G-17 and any disclosure requirements must be narrowly drawn to avoid conceptual and practical inconsistencies that would only confuse the parties as to their roles and responsibilities.

Under the Proposed Guidance when issuer personnel lack knowledge or experience even with routine structures, the underwriter must provide disclosures on the material aspects of such structures. However, an underwriter cannot be certain of the level of expertise of all issuer personnel. Disclosures by the underwriter, especially regarding the structures of routine transactions, should be required only when the underwriter has *reason to believe* that the issuer personnel lack the knowledge or experience. In other words, the underwriter should not be required to guess at the issuer personnel's absolute level of knowledge or experience, but disclosures should only be required of the underwriter when the underwriter has reason to believe that, for instance, the issuer personnel have not before been involved in such transactions.

The guidance uses two terms "issuer personnel responsible for the issuance of municipal securities" and "an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter." These are not the same. The Proposed Guidance should clarify that these regulatory requirements are imposed on the underwriter only if the underwriter has reason to believe that issuer personnel do not have the knowledge and experience, regardless of whether the particular official that the underwriter reasonably believes to have the legal authority to contractually bind the issuer can be reasonably thought to have the knowledge and experience. Similarly, if the issuer has engaged a financial advisor, the underwriter disclosures should not be a regulatory requirement.

BDA also believes that this proposal is premature given the status of ongoing rulemakings by the Commodity Future Trading Commission ("CFTC") and Securities Exchange Commission ("SEC") regarding swaps and swap advisors. The Proposed Guidance would require certain disclosures for complex transactions, which include swaps. The SEC and the CFTC are in the midst of preparing regulations for swap advisors to special entities, which include municipalities. There is therefore, considerable overlap between the MSRB proposed requirements and the subject of the SEC and CFTC rulemakings. Although the MSRB maintains this proposal will be consistent with the above rulemakings once they come out, they also suggest they might have to adjust accordingly, should there be any discrepancies. We believe that, at a minimum, this portion of the Proposed Guidance should not move forward until the SEC and the CFTC have completed their rulemaking in this area.

Thank you for the opportunity to present our views on the Proposed Guidance. Please do not hesitate to call if you have any questions or would like to discuss further any of these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer