

December 13, 2011

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2011-63 - Request for Comment on Restated Sophisticated Municipal Market Professional Notice

Dear Mr. Smith:

The Bond Dealers of America (the “BDA”) is pleased to offer comments to the Restated Sophisticated Municipal Market Professional Notice (“Proposed Restatement”). 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 operate electronic trading systems.

The BDA commends the Municipal Securities Rulemaking Board (“MSRB”) for recognizing the significant changes that have occurred in the municipal market, such as the MSRB’s own efforts to provide information through EMMA and the growth of electronic trading. As the MSRB notes in the Proposed Restatement, the increased availability of information allows for a revision of the definition of a Sophisticated Municipal Market Professional (“SMMP”). We believe that the regulation of the municipal market should be informed by and evolve with the market itself.

We do, however, have some comments that we believe would improve the Proposed Restatement and make its implementation easier.

The proposed safe harbor would require an SMMP to have at least \$50 million invested in municipal securities in the aggregate in its portfolio and/or under management. First, we believe that the amount could be lower than \$50 million and still reflect that the investor is able to make independent judgments. We note that the requirement for Accredited Investors requires a net worth as low as \$2 million, and the SEC has determined that those investors are sophisticated enough to purchase

a variety of unregistered securities, including stock. While we do not advocate reducing the level of SMMP assets as low as the level for Accredited Investors, we do think that it could be reduced below \$50 million, to perhaps \$25 million.

We also believe that the requirement should be that an SMMP have the required amount invested in *fixed-income securities*, not necessarily municipal securities. Any investor with at least \$50 million, or \$25 million, in fixed-income assets will have the capacity to evaluate investment risk and market value. The requirement that the assets be fixed-income will assure familiarity with the characteristics of bonds. Large cross-over purchasers of tax-exempt bonds and purchasers of taxable municipal bonds, such as Build America Bonds, who might not have the required amount in municipal securities alone, are nevertheless of a size and sophistication to make the required judgments.

We also note that the Proposed Restatement provides that the safe harbor is not the only method by which a dealer could come to the conclusion that the customer is independently capable of evaluating investment risk and market value, but that the dealer can meet the requirement “through other means.” However, the Proposed Restatement does not say what those other means might be. In fact, the Proposed Restatement deletes the section of the existing notice that gives a nonexclusive list of relevant considerations that could be used in determining that a customer is capable of independently evaluating investment risk and market value. We believe that retaining the list would be useful. At a minimum, the MSRB should make clear that there is no negative implication to the deletion of the list and that the deletion is not an indication that the considerations are no longer considered to be relevant by the MSRB.

Finally, we note that in all cases under the proposal the dealer must obtain an attestation from the customer, whether the safe harbor is used or not. If the dealer wishes to avail itself of the safe harbor, it must obtain an attestation from the customer that the customer is capable of evaluating investment risks and market value independently. If the dealer is not using the safe harbor, it must obtain an attestation from the customer that the customer is exercising independent judgment in evaluating the recommendations of the dealer.

We welcome the flexibility of being able to obtain the attestation either orally or in writing and to have it be as narrow as for a single transaction or as broad as for all potential transactions. By allowing the flexibility, the MSRB recognizes the sophisticated nature of the participants.

However, we question the practical utility of the attestations and believe that they elevate form over substance. If the investor with these substantial levels of assets is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions in municipal securities, then it seems to follow that they will do so. A more practical approach would seem to be that the dealer inform the customer that the dealer considers them to be an SMMP, capable of exercising independent judgment and evaluating market risks and market value.

If the MSRB determines that attestations will be required, we are concerned about the burden and timing of obtaining the attestations for customers where the dealer has determined under the existing notice that the customers are SMMPs. Any customer that meets the current standards would meet the standards

under the Proposed Restatement. Therefore, we urge the MSRB to provide a transition rule and allow dealers 6 months to obtain the required attestations for customers that the dealer has determined meet the SMMP requirements under the existing notice.

Thank you for the opportunity to comment on the Proposed Notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Nicholas", with a stylized, cursive script.

Michael Nicholas
CEO