

January 30, 2012

VIA ELECTRONIC MAIL (send to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

RE: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee (Release No. 34-66080; File No. SR-FINRA-2011-073)

Dear Ms. Murphy:

The Bond Dealers of America (BDA) is pleased to submit this letter in response to the United States Securities and Exchange Commission's (SEC) solicitation of comments in connection with the Financial Industry Regulatory Authority's (FINRA) proposed rule change to implement an accounting support fee to fund the Governmental Accounting Standards Board (the "FINRA proposal"). The BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets and we welcome this opportunity to state our position.

While we understand the constraints imposed on the SEC and FINRA by the statute that requires these fees, we nonetheless wish to express our concerns. The fees proposed here are only the latest in a series of fees and burdens imposed on broker-dealers.

The BDA strongly objects to continuing the practice of saddling broker-dealers with costs that should be imposed more broadly, or in some cases, not imposed at all. In particular, the activities of the Governmental Accounting Standards Board (GASB) benefit many participants in the municipal market, from issuers to financial advisors to investors, as well as the citizens who get a clearer picture of the financial position of their governments. The fee proposed here should as a matter of policy also be broadly shared.

The Dodd-Frank Wall Street Reform and Consumer Protection Act provided for a national securities association to collect fees from its members in order to support GASB. This provision is somewhat analogous to the provision in Sarbanes-Oxley that provides for the SEC to collect fees to support the Financial Accounting Standards Board (FASB). The Sarbanes-Oxley provision, however, requires the *issuers* of securities to pay the fee. Moreover, only issuers above a certain size are required to pay the FASB fee. Smaller issuers are exempt from the FASB fee. The SEC also has the right and responsibility to review the FASB budget.

The FINRA proposal would require *broker-dealers* to pay the fees to support GASB. The fee would be assessed based on the firm's share of the par value of municipal trades made in the previous quarter. A firm would not be prohibited from passing the fee through to its customers. There would be an exception for only the smallest firms under the FINRA proposal, those whose fees would be less than \$25.

Because of our belief that the burden of supporting GASB should be shared broadly by those who benefit, we strongly support the provision of the proposal that allows broker-dealers to share that burden and pass the fee through.

Nevertheless, there are problems with passing it through, particularly for smaller firms. Under the FINRA proposal a firm would not know its liability until after the close of the quarter and therefore it could not determine the amount allocable to a given trade at the time of the trade, but only some time later. Any attempt to pass the fee to an investor would necessarily be an estimate, and one that would surely be either too much or too little. Setting up a system to track these charges would disproportionately burden smaller firms, as would the alternative of the broker-dealer accepting the entire burden of the GASB fee. For that reason we believe that the exemption should be increased from \$25.

The documentation that accompanied the proposal gives an example of an exemption level of \$1000, which it says would exempt 90 percent of dealers. But it would also capture, it appears, 90 percent of the par volume. Because of the concentration of trading, we believe the focus should not be on the number of dealers included or excluded, but on the proportion of the par value of the market included or excluded. With that as a guide, an exemption of \$1000 would be fair. It may be that it should be higher.

One of the especially objectionable elements of this proposal is that the GASB fees would, as a practical matter, be set by GASB itself and its parent organization, the Financial Accounting Foundation, which are private entities. FINRA would simply collect whatever amount GASB wishes. There would be no public oversight of the amount of the fees to be collected for GASB by FINRA. Neither FINRA nor the SEC has any authority to oversee the amount of the fees or the uses to which they are put. These fees would be collected under governmental compulsion and there will be no public accountability. Separating the authority to spend money from the responsibility for collecting it – and accountability to those who pay it - it is extremely bad public policy.

The BDA opposes the imposition of these fees on broker-dealers. BDA strongly encourages the SEC to disapprove the FINRA proposal.

Sincerely,



Michael Nicholas  
Chief Executive Officer