

# 2015 BDA Advocacy Priorities

## **Municipal Advisor Regulatory Regime**

The Dodd-Frank Act contained a requirement to create a new regulatory regime for municipal advisors. BDA worked extensively with the SEC as it formulated its Municipal Advisor rule and subsequent Frequently Asked Questions. The SEC's Municipal Advisor rule went into effect on July 1, 2014. Municipal Advisors providing advice to municipalities are required to register with the SEC and MSRB and have a fiduciary duty to the municipal issuer. The MSRB continues to work to complete its regulatory regime for municipal advisors. The BDA maintains an open dialogue with MSRB and SEC on the MA regulatory regime. For the latest activity on proposed MSRB Rule G-42 on duties of non-solicitor municipal advisors, click [here](#).

## **FINRA Margin Amendments**

FINRA has been authorized to file with the SEC, proposed amendments to FINRA Rule 4210 on margin requirements for “to be announced” (TBA) transactions, specified pool transactions, and transactions in collateralized mortgage obligations with forward settlement dates. The modified proposal makes changes in response to comments received by the industry and creates exceptions tailored to smaller customers. The proposal revises the original proposals amendments to maintenance margin, risk limit determinations, and de minimis margin transfer amounts. BDA plans to submit comments to the SEC once the modified proposal is published in the Federal Register. BDA's 2014 comment letter on Rule 4210 TBA amendments can be read [here](#). We are currently in the process of drafting a comment letter to the SEC on FINRA's latest amendments, which can be found [here](#).

## **HQLA**

In September 2014, federal banking regulators approved a final rule to implement the Liquidity Coverage Ratio (LCR), requiring banks with \$50 billion or greater in total assets to identify a specific set of High Quality Liquid Assets (HQLA) that the bank could sell to raise cash in the event of a liquidity crisis. The rule was approved and currently municipal bonds are not eligible for treatment as HQLA. Staff at the Federal Reserve has since requested comment on a proposal recommending the inclusion of certain municipal bonds in HQLA. In response to this proposal, the BDA submitted a comment letter containing some improvements to the FED's proposal while also urging the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to work on a comprehensive rule that will include all investment grade municipal securities and apply to all bank holding

companies subject to the rule. BDA's latest action on this includes a comment letter, which you can find [here](#).

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

BDA encourages the SEC and MSRB to remind MAs that acting as a placement agent is a broker-dealer activity and enforce the law. BDA is concerned that non-dealer municipal advisors (MAs) might be violating securities law in certain instances by acting as unregistered dealers in private placements. By engaging in broker-dealer activities without registering as a broker-dealer or complying with the requirements of broker-dealers, investors are afforded less of the protections of the regulatory regime adhered to by registered broker-dealers. The BDA sent two identical letters to the SEC and MSRB, focusing on the rapid growth of “direct placement, direct loan or private placement” transactions to banks and other investors. You can find those letters [here](#).

### **Best Execution Standards for Municipal Securities**

The SEC approved the MSRB’s Rule G-18 establishing best execution standards for municipal securities and the rule takes effect in December of 2015. The best execution rule will require municipal securities dealers to use “reasonable diligence” to identify the best potential trading venue for a particular security and then execute transactions in that venue to provide the customer with a price as favorable as possible under prevailing market conditions. The BDA awaits the MSRB’s interpretive guidance and has strongly suggested that the guidance contain clear guidelines and allow for a variety of policies and procedures to comply with best execution requirements. BDA's letters to the SEC and MSRB can be found [here](#).

### **Fiduciary Duty**

The Department of Labor (DOL) has issued a request for comment on a proposal to expand the definition of 'fiduciary' under ERISA which attempts to apply a fiduciary duty to broker-dealers providing investment advice for retirement plans. As proposed, the expansion would significantly limit the ability of dealers to provide investment advice and recommendations to retirement investors. BDA has submitted a comment letter to the DOL and have continued to advocate for the DOL and the SEC to coordinate their efforts. We have also cautioned that any rulemaking action should be conducted in accordance with a rigorous economic cost benefit analysis in order to avoid the imposition of unintended consequences, such as denying customers access to a wide array of products and advice. You can find the latest on BDA's efforts on fiduciary [here](#).

### **Pricing Reference Disclosure Proposals**

In November 2014, FINRA and the MSRB each released rule proposals to require dealers to disclose markups on certain retail size trades. Based on feedback from the industry, including BDA’s comments, the MSRB Board has instructed staff to develop a new proposal on disclosure of markups and markdowns for a category of principal transactions of municipal securities. BDA staff expects FINRA will work

in tandem with the MSRB to update their matched trades proposal. Currently, the BDA is working on responses to updated MSRB and FINRA proposals in which we will address new proposal language while continuing to urge regulators to find ways to improve EMMA and TRACE to deliver comprehensive market information to investors without saddling dealers with huge fixed costs for providing this disclosure. You can find the latest BDA comment letters to regulators [here](#).

### **IRS Proposed Regulations on Issue Price**

In June 2015, the IRS issued a notice of proposed rulemaking, which withdrew its 2013 proposed amendments to the definition of issue price and replaced that with a new proposal. The 2015 notice states that issue price will be determined by the first price at which a 'substantial amount' of bonds is sold to the public, retains the current definition of 'substantial amount' as equal to 10% of an issuance and uses actual sales to determine issue price. Unlike the 2013 proposal, the re-proposal provides for an alternative if 10% of an issuance is unable to be sold. The BDA continues to engage the IRS and Treasury in discussions about the workability of the rule and will submit another comment letter to this re-proposal in September 2015. With regard to the 2013 proposal, The BDA submitted comments and testified before the Internal Revenue Service and Treasury Department regarding the need for a reasonable expectations standard. We also met with senior staff at the IRS and Treasury regarding the impacts of their proposed regulations. You can find the latest in BDA activity on that front [here](#).

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

There have been several proposals to limit or eliminate the tax exemption for municipal bonds, including in the President's FY 2016 budget request, which contained a proposal to cap the tax-exempt status of municipal bond interest at 28 percent. BDA opposes any proposal to modify or eliminate the tax exemption. Municipal bonds have worked for issuers and taxpayers as a cost efficient means to finance critical infrastructure, transportation, and other community improvement projects for 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. You can find more information on the MBFA Coalition [here](#).

### **Bank Qualified Bonds**

Bank qualified debt allows small governments and authorities to directly place their debt with banks, particularly community banks, and the banks are then able to deduct a percentage of the carrying costs for purchasing these bonds as with their other investments. Bipartisan legislation introduced in the 2015 Congress seeks to permanently increase the bank qualified annual debt limit from \$10 million to \$30 million, index that amount for inflation, and apply it to individual borrowers. In addition, President Obama included in his FY 2016 budget request a provision to

increase the annual limit to \$30 million. Bank-qualified legislation has received a strong bipartisan reception, and we believe it is well-positioned heading into ongoing infrastructure financing and tax reform debates. For the latest on BDA's activities on Bank Qualified Bonds, click [here](#).

### **FINRA CARDS Proposal**

FINRA issued a proposed rule in October 2014 to implement the Comprehensive Automated Risk Data System (CARDS) that would alter its examination and surveillance programs to require dealers to submit account and transaction information for each of its customers to FINRA on a monthly basis. BDA expressed concern with the costs of the proposal as well as FINRA's untested ability to protect the personal investor account and transaction data that would be stored in the CARDS database from a cyber attack. Since receiving industry comments, FINRA has withdrawn the proposal for the time being. For BDA's letter to FINRA on their CARDS proposal, click [here](#).

### **CUSIP**

The SEC has replaced the usage of "CUSIP" with generally available security identifier ("security identifier") for rules under consideration by the SEC going forward. The rationale for this is that although the CUSIP number is in common use domestically for this purpose, there is anticipation that other suitable identifiers may become available in the future. The BDA continues to work with the Investment Advisers Association, the Investment Company Institute and the Government Finance Officers Association to seek a retroactive replacement of CUSIP identifiers. For BDA's latest industry letter on CUSIP, click [here](#).