

BDA ADVOCACY PRIORITIES

September-October 2016

FINRA and MSRB's Retail Confirmation Markup Disclosure Proposals and MSRB's Amendments to Provide Guidance on Prevailing Market Price

[MSRB](#) and [FINRA](#) have each filed retail confirmation disclosure proposals with the SEC. In early September 2016, BDA submitted a [comment letter](#) to the SEC in response to FINRA's filing and will submit a comment letter to the SEC in response to MSRB's filing in early October 2016. Previously, in 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 2015 that urged regulators to harmonize their proposals and to strive to create the lowest cost, least complicated rule for retail investors and dealers. Additionally, the MSRB's filing includes proposed guidance for dealers under MSRB Rule G-30 to establish the process for identifying the prevailing market price. The guidance is based on the "waterfall" approach as defined by FINRA Rule 2121. In April, the BDA [met](#) with FINRA and the MSRB to advocate for a less complex, less costly retail confirmation rule and improvements to the G-30 amendments.

FINRA Mortgage Security Margin Amendments

In October 2015, FINRA filed [proposed amendments](#) with the SEC to Rule 4210 to establish margin requirements for transactions in TBAs, specified pools, and collateralized mortgage obligations. BDA [submitted comments](#) to the SEC in November 2015 and February 2016 that highlighted concerns with the proposal. BDA also met with the SEC in [January](#) and [May](#) to discuss concerns and to advocate for changes, which we outlined in a [letter in early May and another letter in late May](#). FINRA amended the rule three times, including changes BDA recommended to increase to the allowable gross open position limit, an increased minimum margin transfer threshold, and to permit risk limits for advisor accounts to be made at the advisor level. The SEC approved the rule in June 2016. The rule has a 6-month implementation timetable for making risk limit determinations (December 2016) and an 18-month implementation period for the rule's other requirements (December 2017). BDA will hold a compliance-focused member call in October 2016.

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 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).

BDA will be working with our members to ensure disclosure updates associated with standards of conduct are streamlined and efficient.

Fiduciary Duty

In April 2016, the Department of Labor (DOL) approved a [rule](#) to expand the definition of 'fiduciary' under ERISA. The new rule applies a fiduciary duty to those providing investment advice to retirement investors. In response to the DOL's April 2015 rule proposal, BDA submitted a [comment letter](#) to the DOL and [testified](#) at a DOL public hearing where we advocated for a rules-based approach and a coordinated effort with the SEC. Additionally, the SEC has [stated](#) it intends to publish a proposed rule to harmonize to the standards of care applicable to broker-dealers and investment advisers in April of 2017. BDA continues to assist our membership with their compliance efforts under the final rule.

MSRB and FINRA Best Execution Standards

MSRB Rule G-18 established a best execution standard for municipal securities transactions. The rule went into effect on March 21, 2016. MSRB published [implementation guidance](#) and FINRA also published [best execution guidance](#) for the fixed-income securities under their jurisdiction. BDA held a best execution implementation webinar in February 2016 and compiled a Best Execution Considerations Document for members, accessible in the [Member Resources](#) section of our website.

IRS Political Subdivision Proposal

In February 2016, 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 because, as drafted, the rule will unnecessarily disrupt the ability of public projects 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 and 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.

Improving Municipal Disclosure: SEC Rule 15c2-12

BDA continues to work with our members and industry colleagues to engage the SEC on improving the clarity of disclosures in the municipal marketplace. Specifically, the 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. More recently, the BDA signed onto an industry-wide letter to the SEC requesting many of the changes we suggested in our original comment letter. The industry letter can be found [here](#).

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. Additionally, BDA [wrote](#) a letter to House Speaker Paul Ryan (R-WI) and Rep. Kevin Brady (R-TX), Chairman of the House Ways & Means Committee, in response to the federal tax reform plan known in Washington as the "Blueprint". 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.