BDA Bond Dealers of America

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Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Request for Comment on Draft Amendments to MSRB Rule G-21 on Advertisements and Proposed MSRB Rule G-40 for Municipal Advisor Advertisements (2017-14)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's request for comment on proposed draft amendments to MSRB Rule G-21 on Advertisements and on proposed MSRB Rule G-40 on Municipal Advisor Advertisements. The BDA supports harmonization of MSRB rules with FINRA rules to create compliance clarity and efficiencies. This request for comment outlines a confusing approach that harmonizes G-21 with FINRA 2210 in some areas while harmonizing Rule G-21 and G-40 with existing SEC rules applicable to investment advisers in other areas. The BDA believes that the MSRB should revise both rules by tightly conforming Rule G-21 to FINRA 2210 and changing Rule G-40 to tailor it to the context of the municipal advisory relationship.

BDA disagrees with how MSRB conceptualizes harmonization.

We disagree with the order of priority that the MSRB places on harmonization. The MSRB has chosen to prioritize the harmonization of MSRB G-21, applicable to broker-dealers with MSRB G-40, which is applicable to municipal advisors. However, MSRB G-40 contains some elements of SEC rules applicable to investment advisers. These elements, including the prohibition on testimonials, are not found in FINRA 2210, the existing broker-dealer rule for communication with the public applicable to the corporate securities market. This has led to the odd result that dealers in the municipal securities market will need to live under a different regime than dealers in the corporate securities market.

BDA members believe that proper harmonization of the two broker-dealer regimes is essential. When MSRB rules applicable to dealers do not harmonize with FINRA rules, it imposes a significant compliance burden on dealers to create two compliance regimes that become easy to confuse and time consuming to implement and enforce. The BDA believes that the MSRB needs to harmonize Rule G-21 with FINRA 2210.

MSRB should publish a request for comment that more fully harmonizes MSRB G-21 with the FINRA 2210 framework.

The primary reason why the BDA does not support the proposed amendments to MSRB Rule G-21 is that the MSRB sought to primarily harmonize the rule with new Rule G-40 instead of FINRA 2210, which governs a wide range of communications with the public. For BDA members, there are two essential parts of harmonization with FINRA 2210. In order for harmonization of MSRB rules with FINRA rules to be successful, MSRB must follow this framework.

1. FINRA 2210 is focused on three categories of communication with the public as outlined by FINRA 12-29.[1] These categories are: institutional communication, retail communication, and correspondence.
2. The requirements of the FINRA 2210 rules are dependent on who, in terms of retail versus institutional, receives the communication. Additionally, with respect to rules applicable to correspondence, the applicability of the rule is dependent on how many ***retail*** investors receive the correspondence within a 30 calendar-day period.

If MSRB has a rule that applies different definitions and different sets of responsibilities to municipal securities and does not differentiate between communications sent to retail and institutional customers, it will have created a new and unnecessarily increased regulatory burden along with considerable confusion for broker-dealers.

BDA urges the MSRB to strike the definition of "advertisement" as a part of harmonizing with FINRA 2210.

BDA notes that the definition of "advertisement" only exists in MSRB Rule G-21 and that the MSRB's definition of "form letter" differs in crucial ways from FINRA's definition of "correspondence". BDA believes, as part of harmonization, that the MSRB should take the following actions as it tailors its communication rules to focus on the three categories of communication in FINRA 2210: retail, institutional, and correspondence.

[1] http://www.finra.org/sites/default/files/NoticeDocument/p127014.pdf

1. Strike the definition of "Advertisement": MSRB should pursue harmonization with FINRA 2210 and the materials that are included and excluded from the scope of the rule should be addressed in the section of the rule specifically dealing with what retail communications should be required to be pre-approved by a principal.
2. The definition of "Form Letter" should be amended to focus exclusively on retail communications.
3. The definitions of standards for "Product Advertisement" and "Professional Advertisement" are made redundant by the inclusion of the proposed general and content standards of proposed G-21 and G-40. These provisions should be deleted to signify that these types of communications are covered by the general and content standards of the proposed rule.

BDA believes that only retail communication should require pre-approval by a principal. Correspondence and institutional communication should be exempt from the pre-approval requirements.

BDA members strongly urge the MSRB to follow the existing framework of FINRA 2210. The FINRA framework requires pre-approval by a principal or supervisory analyst of retail communications prior to first use. However, FINRA appropriately does not apply the same standard to institutional communications.

BDA urges the MSRB to create institutional standards that are harmonized with the existing framework of FINRA 2210, which requires a firm to have written supervisory procedures that establish guidelines for the review of institutional communications designed to ensure compliance with applicable standards. Furthermore, FINRA 2210 requires that documented and supervised personnel education policies are in place to ensure member firm personnel are informed of the communication standards when pre-review of institutional communications is not required by the firm.

BDA believes that, just like free writing prospectuses are excluded from FINRA 2210, investor roadshows and similar materials should be excluded from the scope of Rule G-21. The exclusion should also include other common materials not intended as advertisements, such as RFPs and RFQs sent to issuers.

As a part of its harmonization effort, the MSRB should exclude materials that are comparable to offering materials that accompany preliminary official statements, such as investor roadshow presentations and other similar materials information. In addition, there are several other materials that should be excluded. First, private placement memorandum and limited offering memorandum are frequently used as offering memoranda and thus should be excluded alongside preliminary official statements.

Second, both underwriters and municipal advisors respond to RFPs and RFQs and those responses may be made public and could fall into the current definition of "form letter". BDA does not believe it is appropriate to regulate responses to RFPs and RFQs in the same way as retail communications, requiring principal approval for each RFP and RFQ response that is sent to an issuer. The MSRB should follow the framework of FINRA 2210, which defines "correspondence" as a communication to 25 or more retail investors. The MSRB notes in the request for comment that if 25 or more persons receive the response, it would meet the definition of "form letter". BDA does not believe that is appropriate. Responses to RFQs and RFPs should be explicitly excluded from the coverage of both Rule G-21 and G-40.

If the MSRB choses to not harmonize the definition of "form letter" with the FINRA 2210 definition of "correspondence", the BDA recommends that the MSRB clearly define that a response to an RFP or RFQ sent to one issuer is not a "form letter" irrespective of how many employees of that one issuer, including 25 or more employees, subsequently receive the response.

BDA does not think MSRB's prohibition on testimonials in both Rule G-21 and Rule G-40 is warranted.

FINRA 2210 does not prohibit testimonials and BDA members do not see any broad-based investor protection rationale to prohibit testimonials for municipal securities. MSRB should include the same disclosure provisions as FINRA 2210, which rely on disclosure of potential conflicts related to testimonials. Furthermore, BDA does not believe that because the average age of a municipal bond investor is 61, as MSRB notes in footnote 14, that means that the average municipal bond investor lacks the cognitive ability to understand a testimonial or its associated disclosures.

Additionally, BDA notes that prohibiting testimonials would harmonize with existing rules applicable to investment advisers, not existing broker-dealer regulations. It is unclear why the MSRB would pursue this policy. It is confusing and naturally inconsistent to pursue a patchwork approach that takes portions of FINRA rules applicable to broker-dealers along with SEC rules applicable to investment advisers and label that approach harmonization.

BDA does not think the MSRB's inclusion of a principal approval requirement in Rule G-40 makes sense given the context of the municipal advisory relationship.

By definition, all clients of municipal advisors are institutions and do not need many of the mechanistic protections applicable to dealer relationships with retail investors. This is a point where harmonization with Rule G-21 (and SEC investment

adviser rules) does not make sense. Municipal advisory firms should be required to develop policies and procedures and be required to educate and train their municipal advisory professionals. But given the audience of advertisements by municipal advisors, the BDA does not believe that a principal needs to approve every advertisement.

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In conclusion, while the BDA appreciate the MSRB's efforts to harmonize its rules with FINRA's rules, it cautions MSRB that harmonization that results in differing standards harms dealers. There is no compelling policy reason to have different communication standards for municipal securities and corporate securities. BDA urges MSRB to focus on full harmonization between Rule G-21 and FINRA 2210.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer