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March 28, 2013

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2013-06 (March 5, 2013)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2013-06, requesting comments from market participants as to what they believe to be priority issues for the MSRB as it conducts an annual assessment to establish regulatory and other priorities for the next fiscal year, beginning October 1, 2013 (fiscal year 2014).

As we have expressed to the MSRB in the past, one of the BDA's most important policy priorities is to improve transparency within the municipal markets and we provide these comments from a platform of tremendous support for any measures that will improve market transparency. We appreciate this opportunity to expand upon our comments previously supplied in letters to the MSRB in connection with the review of its rules and related interpretive guidance for dealers this year, as well as overlapping issues from our comments to the MSRB when it evaluated and developed its priorities for fiscal year 2013.

The BDA believes that the MSRB's priorities for fiscal year 2014 should be as follows:

Enhance the User Capabilities of EMMA

The MSRB indicates in the Notice that one of the core activities of the MSRB is operating market transparency systems. The MSRB has consistently expressed that one

of its priorities is to continue to develop and enhance its Electronic Municipal Market Access ("EMMA") system to include additional data about the municipal market and municipal issuers and to improve usability. We believe that EMMA is a great tool for enhancing transparency in the market, and although it has made great strides in the few years since its inception, more work needs to be done in order to facilitate accessing and locating the information available to investors and municipal market professionals on this site. Even as professionals in this market, we sometimes find it hard to locate information relating to a particular security or issuer and this is only exacerbated when a CUSIP number has not yet been assigned or if the CUSIP number is unknown. We can only assume that for someone who is not as familiar with the municipal securities market, or someone who only accesses EMMA a couple of times per year or for a limited number of securities, their searches would be even less successful. Therefore, we would suggest that the MSRB reformat and recreate search capabilities on the user end of EMMA, making particular securities available by more readily searchable criteria. We strongly believe that the MSRB should prioritize improving the usability of the EMMA system going into the next fiscal year.

Advancing Municipal Advisor Regulation

Almost one full year has passed since we last responded to the MSRB's request for input on its annual planning and still, there remains a void in the regulatory scheme in the absence of a final definition of municipal advisor from the Securities and Exchange Commission ("SEC"). Considering that the MSRB is the sole regulator governing the municipal markets, we urge the MSRB to apply both formal and informal influence on the SEC to issue a final definition of municipal advisor. We believe it is most important that this definition be finalized so that currently unregulated industry participants better serve the municipal market by becoming subject to the type of regulatory structure and oversight that already covers broker-dealers. MSRB can play an important part in ensuring that just as municipal advisors become better defined and regulated, the vital role underwriters play and advice they are permitted to provide in negotiated transactions, in compliance with current MSRB rules, is fully preserved. Once the final definition of municipal advisor is released, we would immediately ask the MSRB to again turn to

reviewing and finalizing its own rules, thus further enhancing the rulemaking and interpretations needed to round out the regulatory framework in the municipal market.

Cost-Benefit Analysis Needs to Play a More Prominent Role in Rulemaking

The BDA believes that the MSRB should strongly consider incorporating into all future rulemakings, as well as all rules it intends to revisit, an analysis of the potential economic benefits and burdens of each rule as good regulatory practice whenever it adopts rules. We understand that the MSRB is considering the development of a cost-benefit-analysis model and to that end, we are extremely supportive and would make our membership available to provide additional input the MSRB may need in the creation of such a model and to offer insight into what a sensible model should entail in order to be responsive to the unique needs of the municipal securities market. BDA is uniquely positioned to provide the MSRB with distinctive and valuable insight into impact of a proposed rule on the municipal markets and the potential detrimental economic burdens of such rulemaking. This is because our members are the middle market dealers who will be most sensitive to any benefits as well as any increased costs and burdens associated with any new rules and modifications to existing rules. In addition, while MSRB rules are intended to affect one or more markets or type of participants directly, it may also be appropriate to consider additional markets or participants and any impact on competition that may be indirectly affected by the proposed rule.

Clarification of MSRB Rule G-17 Disclosure Requirements

Our membership continues to encourage the MSRB to revisit MSRB Rule G-17 disclosure requirements and provide more guidance. Even though the rule has been in place for some time, much frustration with how to apply, manage and explain the rule, especially with respect to interactions and dealings with long-standing issuer clients, still exists. For example, if it is permissible under the rule for an issuer to choose not to acknowledge receipt of the G-17 disclosure letter, we wonder why underwriters should even go through the process of requesting the acknowledgement. Furthermore, our membership is concerned that failing to raise an item in the G-17 letter might actually lead to greater liability in the way of not providing enough protections to the issuer

should any number of future unknown instances arise, relating to the absence of an item which may or may not even have been material or a conflict at the time the letter was provided to the issuer. As we stated to the MSRB in response to MSRB Notice 2012-63 (request for comment on MSRB rules and interpretive guidance), we continue to believe that the requirements of what the underwriters must disclose to issuers concerning material risks and financial characteristics remain unclear. We do not believe it was the MSRB's intent to foster an environment of overproduction of information to the tune of providing issuers with volumes of disclosures that may not result in the benefits they were intended to provide to issuers. Nor do we believe it was the MSRB's intent to allow for what has developed in the market – a situation where issuers have become essentially dulled by repeated disclosure of certain risk factors that may be present in every transaction. As an example of the practical negative implications of this rule, underwriters, as advised by their lawyers, are including in their G-17 disclosures, any and all possible risks that could arise from even the most basic of transactions. Furthermore, when it comes to complex financial products, a literal disclosure of all material considerations could entail dozens of pages of disclosures. This results in the issuers, even if they have to acknowledge the disclosure, either not reading the full letter or, in the alternative, not coming away with a true understanding of the relevance of the volumes of disclosures contained therein. The disclosures required by G-17 should be more clearly defined so that underwriters don't feel compelled, as many do now, to speculate about potential future risks they may not be in a position to determine or anticipate at the time of disclosure.

Among the ways the MSRB may consider providing clarity would be to identify those risks that are not the responsibility of the underwriter to disclose, or some "safe harbor" standards for determining what represents a risk that does not have to be disclosed. We should remember that G-17 is a rule about "fair dealing," so the failure of underwriters to disclose risks that they can't reasonably anticipate should not be considered a failure to deal fairly with an issuer. Without better parameters about what has to be disclosed and what does not, it is predictable that underwriters will deliver increasingly extensive disclosure to minimize their risk of noncompliance. Therefore, we believe further

clarification of the intended benefit the MSRB is looking to provide by requiring G-17 disclosures is needed and we would encourage the MSRB to do so with an eye toward focusing on the true goal, which is ensuring that the underwriter provide meaningful disclosures to the issuer, outlining the unique risks relating to specific products they recommend and any incentives that they have in recommending those products to the issuer, so as to ensure that the underwriter is dealing fairly with the issuer.

MSRB Rule Language Should be More Objective

As we stated in our comment letter to the MSRB in response to its review of rules and related interpretive guidance, we believe the MSRB should focus their rules more efficiently so that they anticipate the reality the enforcement of those rules will require. We appreciate the MSRB's recent transition to a new structure for rule proposals and one that is used by FINRA and other self-regulatory organizations in an effort to streamline the rules and harmonize the format to make the rules more flexible and easier for dealers and municipal advisors to understand and follow. However, according to our membership, it is very difficult for dealers to predict what data points FINRA examiners will use in determining things like fair pricing obligations under MSRB Rule G-30, Prices and Commissions. Therefore, although we are encouraged by MSRB's transition to a new rule structure, it is important for the MSRB to remember that there are current rules that have not been reviewed and remain unchanged and where the additional objectivity would be welcomed. We believe the MSRB should more precisely define its rules going forward, which will allow examiners to promote and encourage uniformity in their examinations of the market as a whole.

Thank you again for the opportunity to submit these comments.

Sincerely,

Michael Nicholas
Chief Executive Officer