



**Hill A. Feinberg**  
Chairman and Chief Executive Officer  
325 N. St. Paul Street  
Suite 800  
Dallas, Texas 75201  
(214) 953-4128

**Michael Bartolotta**  
Vice Chairman  
700 Milam Street  
Suite 500  
Houston, Texas 77002  
(713) 651-3612

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Board of Directors  
Municipal Securities Rulemaking Board  
1920 Duke Street Suite 600  
Alexandria, VA 22314

Sent via email to [CommentLetters@msrb.org](mailto:CommentLetters@msrb.org)

Re: Response to Request for Comment on MSRB Rules and Interpretive Guidance

Dear Members of the Board:

On December 18, 2012, you published MSRB Notice 2012-63, which requested comments on MSRB Rules and interpretive guidance. We at FirstSouthwest are happy to respond to this request and hope our comments are helpful as you seek to fulfill your obligation to protect investors, municipal issuers and the public. In our rapidly changing marketplace, the need for a fair and efficient regulatory environment is more important than ever.

As you are aware, we have each had the privilege of serving in the capacity as Chair of the Board, and several other FirstSouthwest executives have held leadership positions in other municipal advocacy organizations. As such, the members of our firm have a keen understanding of the complexity of writing rules and the challenges of keeping pace with an ever-changing technological landscape. We applaud the Board's step in reviewing holistically the rules that have evolved over the past 38 years as well as the expanded mandate given to the Board with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

**The MSRB Must Strive to Create a Level Playing Field for all Market Participants**

The single biggest impediment to effective regulation today is the lack of a level playing field for all municipal market participants. A single set of comprehensive rules is required to ensure the protection of issuers, investors and other market participants. Unfortunately, more than two years after Dodd-Frank was passed, we still do not have meaningful regulation of non-broker dealer municipal advisors. This fundamental inequality in the marketplace harms issuers in particular, as many of our competitors still are not subject to basic regulatory requirements such as financial disclosure, recordkeeping requirements, qualification and professional standards, pay-to-play rules, and compliance examinations. We urge the Board to continue to seek a definition of such advisors from the Securities and Exchange Commission so that regulation of these entities can be established and enforced. Additionally, there must be uniform enforcement of rules, which we acknowledge is outside the scope of the comments requested, but is essential to a fair and efficient market. Finally, we feel strongly that new regulatory requirements of municipal advisors must be carefully

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coordinated with existing MSRB, SEC and FINRA rules. Such coordination is essential if the MSRB is to avoid unnecessary costs for firms by requiring entire new compliance infrastructures.

With Dodd-Frank's dual mandate of issuer and investor protection, it is crucial that the Board clearly articulate the principles that will achieve this goal. This takes on high importance when you consider that these two mandates seem to be diametrically opposed. For instance, issuers strive for the lowest yield on their securities and securities must be sold to investors at fair and reasonable prices. What process should an underwriter undertake to assure that these two goals are met?

The MSRB Must Provide Greater Clarity to Underwriters and Investors

The MSRB must provide clarity to underwriters as to the activities that would constitute financial advice. With the advent of the G-17 disclosure letter and recent guidance related to G-23, we are concerned that an information barrier has developed between underwriters and issuers. Underwriters need additional clarity to ensure that they are allowed to communicate information and ideas to issuers without being considered a financial advisor. The current ambiguity has led to a situation where underwriters are reticent to discuss ideas that may prove beneficial to the issuer and third parties may try to intercede in direct information flow to issuers. Additional clarity provided by the MSRB along with appropriate disclosure would serve the best interests of issuers.

Finally, the MSRB can foster a fair and level playing field among investors by eliminating the ambiguity related to priority of orders and the definition of retail. We encourage the Board to establish definitions that can be commonly applied by issuers in developing designation policies and which investors can understand prior to entering orders. This will allow for a framework from which statistical analysis can be performed on the different types of order periods and the impact each has on the cost of issuance.

Marketplace Regulations Must be Balanced with a Consideration of Liquidity

As you are aware, the municipal market is fundamentally different from any other market, namely due to the vast array of securities as well as the longer duration of the market. This has made the United States public finance market a fundamentally different marketplace than the rest of the world, where issuers have the ability to finance projects on a long-term basis in a liquid market. As the Board undertakes a review of rules related to fair dealing and markups and markdowns, we encourage the Board to do so with a consideration of market liquidity in mind. The implementation of rules can often have an unintended adverse impact on liquidity that must be evaluated when considering new rules.

Existing Interpretive Guidance Must be Codified Where Possible

As a large number of interpretative notices have been accumulated over the years, we suggest that the interpretive notices be embodied in revised rules. To that end, we applaud the MSRB for its recent Notice 2013-04, which seeks to codify time of trade disclosure obligations. We believe that such efforts will lead to more uniform understanding and enforcement of rules.

Increasing Costs of Compliance

The final consideration we would like the MSRB to consider when evaluating rulemaking initiatives is the rapidly rising costs of compliance. One such area that must be evaluated carefully is the initiative to increase market transparency by enforcing more stringent EMMA submission requirements and trade reporting requirements. While providing accurate, timely information to investors is in the best interest of our market, compliance costs associated with ever-tightening reporting requirements are rising dramatically.

Increasing the number of documents that must be submitted, or tightening the time requirements for submission often involves additional investment in people and information technology resources. We encourage the MSRB to examine the ways in which this information is used by investors and urge the Board

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to consider relaxing or reducing reporting requirements for information that is not being used by investors. An analysis and disclosure of how information collected is used by the market place would be useful to all market participants.

Additionally, as the market is trending toward narrower spreads and takedowns, MSRB and other regulatory fees could become a factor in pricing bonds in both the primary and secondary markets. In the face of a challenging market environment, such expenditures can be difficult to bear. The Board must understand that the nature and unique characteristics of the municipal market may make it economically implausible, if not impossible; to increase transparency to the level associated with the equity markets. With increasing reporting requirements, the Board should undertake a cost benefit analysis of existing requirements and any proposed requirements in the future. An understanding of the benefits of such reporting should be clearly articulated to the market. Finally, before making technological changes to reporting systems, regulators must engage the firms to determine what is the most efficient and cost effective way to implement new reporting functions.

One of the great aspects of the municipal market in the United States is that any governmental entity that has the power to sell securities can access an orderly long-dated market where it can choose to have certainty in its debt structures, to the extent it chooses, at a time it desires. This would not be possible without a comprehensive and fair regulatory framework. FirstSouthwest remains fully supportive of initiatives to improve upon this framework.

We thank the Board for its decision to review its rules wholesale. We appreciate this opportunity to comment on the rules in general and look forward to commenting on specific rules and offering the expertise of our firm as a sounding board.

Sincerely,

  
Hill A. Feinberg  
Chairman and Chief Executive Officer

  
Michael Bartolotta  
Vice Chairman