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May 16, 2014

VIA ELECTRONIC MAIL

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

RE: MSRB Notice 2014-08 (March 17, 2014): Request for Comment on Establishing Professional Qualification Requirements for Municipal Advisors

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 2014-08, regarding Draft Rule G-3 ("Draft Rule G-3").[1] Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2], Congress, among other things, amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act") to provide for the regulation by the Securities and Exchange Commission ("SEC") and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons. The Dodd-Frank Act accordingly grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities. Among other rules published and soon-to-be published by the MSRB, Draft Rule G-3 is an important component of the regulatory framework for municipal advisors and we welcome this opportunity to provide our comments.

All Municipal Finance Professionals Should Have the Same Training

The BDA believes that all municipal finance professionals, including municipal advisors, should be treated the same with respect to the training and testing they are required to

[1] See MSRB Notice 2014-08 (March 17, 2014).
[2] Pub. Law No. 111-203, 124 Stat. 1376 (2010).

undertake in order to perform their responsibilities under the law. It is our opinion that there is nothing one group of municipal finance professionals should be trained to comprehend that another should not. And while we agree with the MSRB that professional qualification standards need to be established for municipal advisor professionals and their associated persons who engage in municipal advisory activities, we would suggest that the MSRB apply a more streamlined approach in establishing these standards. Below, we will lay out three options, in order of preference, which we would suggest the MSRB consider as alternatives to the approach laid out in Draft Rule G-3. We believe each of these alternatives will accomplish the same goals and reach the same intended audience, while not overloading the system or overburdening other municipal finance professionals.

Suggested Alternative Options

We believe the MSRB should consider the following three alternatives to the separate testing and continuing education requirement for municipal advisors set forth in Draft Rule G-3. First, the MSRB should consider foregoing the creation and administration of a wholly new exam for those financial professionals who are already subject to periodic examinations. The current test to qualify as a municipal securities representative is the Series 52 examination is the current test for associated persons newly qualifying as a municipal securities representative. The MSRB should consider whether this could be used for municipal advisor representatives. If so, then the MSRB could instead include all of the new relevant municipal advisor regulation and compliance information to the continuing education component of the exam cycle. For those municipal advisor representatives who are not currently qualified as municipal securities representatives they would be required to take the Series 52 exam, which would cover exactly the same material covered under the continuing education component for previously licensed finance professionals. This option would essentially allow those broker dealers who are already qualified as municipal securities representatives and subject to examinations (Series 52 or Series 53), to be qualified under the new standards set by Draft Rule G-3 and streamline the qualification process by using only one test for all currently unlicensed municipal finance professionals to take to qualify to enter the municipal finance industry.

We would suggest also investigating the steps taken by the industry when implementing the Series 79 exam for those people who had previously taken the Series 7 exam and met certain other qualifications. Specifically, FINRA Regulatory Notice 09-41 for Investment Banking Representatives provides that investment bankers who hold the Series 7 registration, as well as those who have passed and are registered with a "Series 7-equivalent exam," may opt in to the Investment Banking Representative registration, provided that, as of the date they opt in, such individuals are engaged in investment banking activities covered by Rule 1032(i). Those individuals who choose to opt in retain their Series 7 or Series 7-equivalent registered representative registration in addition to the investment banking registration. After May 3, 2010, Regulatory Notice 09-41 provides that any person who wishes to engage in the specified investment banking activities will be required to pass the Series 79 Exam or obtain a waiver.[3] If this precedent were also followed by the MSRB for Draft Rule G-3, it would permit certain qualified individuals to opt-in, while still maintaining the continuing education component of the exam cycle, which would cover the new information identified by the MSRB as important for the industry to understand for the purposes of acting under the municipal advisor regulatory regime. Therefore, we believe the MSRB could look to this Series 7 opt-in for the Series 79 as precedent for it to act accordingly in allowing certain qualified individuals to opt-in for the municipal advisor requirements.

Second, the BDA believes the next best solution would be to create a supplemental exam for previously licensed financial professionals, which would cover only the new material created by the MSRB. Those professionals who have already taken professional qualification exams such as the Series 7 or Series 52 exam would only now be subject to taking an exam covering the new material that was not included in their previously administered exams. Much of the information that would be tested in order to qualify as a municipal advisor representative is the same as that for municipal securities representatives. Similar to the above suggestion, those municipal advisor representatives

[3] FINRA Regulatory Notice 09-41, Investment Banking Representative, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p119461.pdf.

who are not municipal securities representatives and currently not subject to periodic examinations would take the new exam or some combination of an existing exam and the supplemental exam.

Third, if neither of the above scenarios seems workable to the MSRB, we would then suggest the MSRB create an entirely new exam and require all associated persons, including municipal advisor representatives, municipal advisor professionals and municipal securities representatives, to take this exam, thus establishing one uniform standard for all finance professionals and avoiding the situation where two exams are required to be taken by professionals at broker-dealer firms. As stated above, we believe the information needed to be known about the municipal securities market, credit is generally the same for a municipal advisor representative as it is for a municipal securities representative. The Series 52 or 53 exams would be eliminated in favor or this new broader exam that all municipal finance professionals would be required to take. We believe this alternative saves the industry from having to implement, manage and document compliance and continuing education requirements with two separate exams and schedules.

Additionally, the BDA would like to encourage the MSRB to require the passing grade for any new material covered by an exam for municipal advisory activities be the same 70% standard in place for all other exams.

The Rule As Proposed Would be Prohibitively Costly to the Industry

The BDA believes Draft Rule G-3 as proposed would be disproportionately expensive to structure and maintain for broker-dealer firms who will have to manage two registrations regimes for each employee. We also believe the MSRB should perform a thorough cost and benefit analysis for Draft Rule G-3 prior to its implementation. We have assessed the cost per firm for non-broker dealer firms to be significantly less for two reasons. One, non-dealer firms have fewer employees per firm as compared to broker-dealer firms and two, employees of non-dealer affiliated firms will only be required to take, pass and perform the required certification and continuing education for exams related to

municipal advisory activities (i.e.. there will be one test for municipal advisor representatives and one for municipal advisors principals so that the employees at municipal advisory firms may need to take two exams.) Unfortunately, this lends itself to an uneven playing field directly at the outset of the exam process with the practical outcome being keeping dealers from acting as municipal advisors. In our view, does the industry a disservice by taking a large component of the qualified professional players out of the game.

In fact, the BDA did a "back of the envelope" assessment of the costs to the industry. While these costs may not be insignificant with respect to one municipal advisor representative at one firm, they are substantial when looked at by firms with multiple municipal advisor representatives, many of whom are also broker dealers. We've laid our estimate of the costs for your consideration below:

- Assume there are 22,000 non-broker dealer financial advisory firms affected by the new municipal advisor rule and corresponding regulatory regime. If each has 1.5 employees who will need to qualify as municipal advisor representatives, that accounting amounts to 33,000 individuals who have to take the new exam and perform the associated continuing education requirement that currently do not have to do so.
- Assume there are 4,200 broker-dealer registered firms. If each has 10 employees who will qualify as municipal advisor representatives, that amounts to 42,000 individuals who will have to take the new exam and perform the associated continuing education requirement in addition to their exam and continuing education requirement to qualify as municipal securities representatives.

At the outset, those two scenarios alone would require 75,000 people to take new exams and meet the new continuing education requirements. To break it down in terms of cost to an individual BDA firm, we estimate the following numbers: For a smaller BDA member firm, we estimate the expense for registration of new municipal advisor representatives to be approximately $30,000. On top of that expense, that same firm

would have to pay $70,000 to bring those individuals who need to be dually registered under the requirements of the Draft Rule as a municipal advisor representative and as a municipal securities representative.

We would like to reiterate to the MSRB that not only does the complication of having to take two sets of exams and continuing education requirements cause an undue burden and costs for broker dealer firms, but also there immeasurable cost of the lost time of the municipal advisor representatives that could be spent serving the clients this rule is intended to benefit rather than preparing for and taking multiple tests. As a result, we would like to encourage the MSRB to undertake a full and complete study of the costs and benefits of the implementation of Draft Rule G-3 in its expected final form prior to its approval.

Maintain the One-Year Grace Period

The BDA supports the MSRB's provision to transition to the new qualification regime by providing municipal advisor representatives a one-year grace period from the effective date of Draft Rule G-3 (to be announced by the MSRB at a later date) in order to prepare for and pass the examination. However, we would caution that the MSRB may want to consider the volume of applicants (both those currently registered under other regimes and those unregistered municipal advisors) who will be descending upon the existing testing centers in droves. In fact, we are estimating that there could be as many as 75,000 people who would have to take, and possibly retake, this test during the one-year grace period. We would recommend that the MSRB review and assess the current testing center capacities to ensure that the testing centers will be able to accommodate the estimated number of municipal advisor representatives and professionals who will be seeking to be tested (and possibly retested) during the one-year grace period. Failure to do so may result in the MSRB having to extend the deadline or worse, having certain municipal advisor representatives and professionals unable to complete the required testing during the one-year grace period due to congestion at the testing centers. Thus, we would suggest that the MSRB undertake to investigate whether the current testing sites can accommodate this increased volume of applicants wanting to take the new exam,

while also serving those who are taking other professional qualification exams and continuing education requirements at the same exact locations.

The BDA would also like to suggest the MSRB consider how and where the licenses for those municipal advisor representatives not affiliated with a broker dealer firm, and thus not registered with FINRA, will be held. For broker-dealer firms, it is FINRA who holds the licenses for municipal advisor representatives once licensed via the examination process. This information, found on BrokerCheck, provides investors with information regarding the professional backgrounds of former and current FINRA-registered firms. This should also be the case for professionals qualifying for licenses under the municipal advisor regime. In our opinion, this goes directly to investor and issuer diligence as well as for accessibility to information. Therefore, we would like to point this out for the MSRB's consideration as it works with the SEC and FINRA toward the ultimate goal of establishing and maintaining a regulatory and examination regime for everyone licensed under the municipal advisor rule.

Waivers Should be Consistently Granted

The BDA is not opposed to Draft Rule G-3 including a waiver of qualification requirements that may be granted to individuals in extraordinary cases. However, we would like to suggest that any qualification requirements established for such waivers be limited with the result that waivers will be granted sparingly and only when appropriate. For example, in the experience of those at our member firms, we have only seen waivers permitted in instances where a firm has hired someone who had previously taken relevant exams, been licensed, and had requisite experience in the field, yet, for some reason, had let their registration lapse. A waiver in this instance would have been permitted to allow reactivation of such individual's registration. Similarly, under Draft Rule G-3, we believe waivers should only be permitted for the qualification requirements if there had been a previous attainment of licensure. We would be opposed to allowing waivers for an individual who had never taken a relevant professional qualification exam in the first place.

Effective Date / Delay in Implementation

As we have stated in previous meetings and letters, given the interaction and interdependence of each rule and regulation required to construct a complete regulatory framework for municipal advisors, the BDA believes the MSRB should delay implementation of all of its rules and regulations falling under the municipal advisor regulatory regime until all rules and regulations have been approved by the SEC. Consistent with our previous comments, we would reiterate that we believe an implementation date of six months following the approval of the last of the rules in the regulatory regime by the SEC is fair, given the complexity of the entirety of the municipal advisor regulatory regime. In the alternative, if the MSRB will have the exam finalized at the time of the identified effective date of this rule (or the entirety of the regulatory regime), we would ask that the industry be given one full year from that point to serve as the grace period. However, if the exam is not finalized by the effective date identified by the MSRB, we would ask that they make an allowance for the effective date to ensure there is a full one year grace period starting once the exam is final.

Thank you for the opportunity to present our views on Draft Rule G-3.

Sincerely,

Michael Nicholas
Chief Executive Officer