

November 17, 2016

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, Suite 1000
Washington, DC 20005

Re: *MSRB Notice 2016-24: Request for Comment on Draft Provisions to establish a continuing Education Requirement for Municipal Advisors*

Dear Mr. Smith;

I am writing to you today on behalf of the Third Party Marketer's Association ("3PM") to express the thoughts and concerns on behalf of the members of our association regarding the draft provisions proposed in MSRB Notice 2016-24.

3PM understands and agrees with the MSRB that Municipal Advisors ("MAs") should be required to implement a continuing education program that would be "designed to keep covered registered persons informed of issues that affect their job responsibilities and/or product and regulatory development." In fact, many of 3PM's members are already required as broker dealers to maintain a robust continuing education program and several who are registered as MAs have already included training relevant to MAs to their programs.

3PM believes that MSRB's proposal of a single pronged approach, like the Firm Element prong for dealers, is the appropriate alternative for Municipal Advisors.

While we appreciate the MSRB's efforts to reduce regulatory overlap for dealer-municipal advisor firms, we believe that by requiring firms to complete separate needs analyses, written training plans and other documentation for its municipal advisory and broker dealer activities, is in fact creating, rather than reducing, regulatory overlap.

Rationale

Existing CE programs include many factors that impact the business activities of our member's firms, not just the activities related to a single regulatory authority. For many firms, training programs this year will likely include topics such as Cyber Security, Due Diligence, KYC, Suitability, AML and Ethics – topics

that apply to all of our members' businesses. It seems unnecessary for the MSRB to require us to restate the same information regarding our training in separate reports for separate regulatory authorities as suggested by this proposal.

Furthermore, for most firm's operating as Municipal Advisors (MAs), the services they provide as MAs are separate and distinct business lines. This however is not the case for MA-Solicitor firms. Our approach to our business is consistent across most aspects, and differs only when we are offering product to Municipal entities.

Examination of our business shows that the work our members do to identify investment managers with products they would like to represent, the vetting of these product sponsors, the training done on the product, the on-going monitoring of the product sponsor, the suitability of investors, the marketing and sales approach taken, the product positioning for a strategy, etc. is all the same regardless of the type of institutional investors we are targeting. Where the difference arises is that for most solicitations our members either fall under the purview of FINRA or the States, however for solicitations to Municipal Entities (Public Pension Plans) we fall under the purview of the MSRB.

To further complicate matters, members who are dual registrants are generally examined by FINRA. Given this, we do not see the benefit to examiners in segregating the elements of our training that apply to our MA business from other areas being evaluated by FINRA.

Several of 3PMs members have already expanded their CE Programs to include specific training for MA Representatives that covers the firm's MA activities. Member firm accomplished this using one of two methods. Some accomplished this by adding new sections to their existing needs analysis, training plans and other reports about the firm's MA activities and what training would be required in this area. Other firms merely expanded their reports to include content related to their MA business activities and training requirements. Both approaches emphasize the fact that there is no need to recreate the wheel or go through the motions to duplicate information for different regulatory authorities so long as representatives are being made aware of their regulatory responsibilities and are being educated in areas specifically related to their firm's MA activities.

Furthermore, several of our members operate not only as broker dealers but also as investment advisers and have been implemented CE programs that cover both businesses for years. It seems duplicative that an approach that has been used for many years and has worked to meet the needs of different regulatory authorities must now be undone to meet the requirements established by a new regulator.

We believe it is inconsistent for the MSRB to propose to implement a risk based approach to CE Requirements on one hand while mandating a very prescriptive process on the other. The benefits of a principles based approach is that it allows firms to meet their requirements in a manner that is appropriate to their size and business activities. Having MAs follow specific reporting / documentation

requirements is at odds with this approach and is forcing firms with different business models to fit into a one-size fits all solution.

In addition to the information above, we also wanted to share our opinions on some of the questions posed in 2016-24:

Are there other reasonable regulatory alternatives that the MSRB should consider?

3PM believes that the single prong approach to Continuing Education is an appropriate alternative.

How likely is it that third-parties will develop CE content that small firms will be able to purchase rather than developing their own content?

We believe that it is very likely that third-parties will develop CE content that small firms can purchase at reasonable prices. In fact, several of the industry's CE providers began offering MA training modules as part of their firm-element product offerings over a year ago. We believe this trend is likely to increase now that industry participants are required to sit for and pass the Series 50 exam within the next year and will continue to expand once the MSRB's rules regarding continuing education are approved.

Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?

While we are not aware of any formal studies relevant to the benefits and costs of the proposal that the MSRB should consider, we would once again like to raise the significant financial and personnel resources that would be incurred by small, dually registered small firms if they are required to complete separate documentation for its specific MA CE training program. We further reiterate that we believe that MA firms will still be able to ensure compliance with the proposed CE requirements and meet the requirements commensurate with their firm's size and business activities without having to duplicate their CE documentation for each regulatory authority training is held for.

In addition to fiduciary duty obligations are there other obligations that should be included, as required, as part of the minimum standards of training?

Given that the MSRB has not proposed a Regulatory Element to their CE proposal, we believe that the Board should reiterate to MAs the importance ensuring their representatives understand what their regulatory responsibilities are and how they relate to their firm's business activities. While we do not believe that a specific requirement to include MA rules is necessary, reminding the industry of their duties to ensure personnel understand and comply with these regulations is never a bad thing and can be accomplished by including such training as part of their Firm Element training program.

In reducing regulatory overlap for dually registered firms, should the MSRB consider other alternatives to the draft CE requirements for municipal advisors?

Yes, we believe that dually registered firms should have the option to combine all its training requirements into one aggregate program that would address the firm's size, organizational structure, scope of business activities and other factors. While we would not be averse to including separate sections of these reports to address a firm's municipal advisory activities we do not believe that a full set of additional reports for this business line is required to ensure that MA take their CE responsibilities seriously or to the extent required by this proposed regulation.

Does your firm currently provide your municipal advisor professionals with continuing education regarding the applicable regulatory obligations?

While 3PM has not formally surveyed all its members who are registered as MAs, we are aware of several 3PM members that currently provide municipal advisor professionals with continuing education regarding their MA business activities, rules and regulations.

Do the draft CE requirements for municipal advisors strike an appropriate balance between a principles-based and a prescriptive approach for the development of a CE program? If not, explain why and in what areas the draft CE requirements should be more principles-based or prescriptive.

3PM believes that the MSRB's approach to allow firms to implement a principles-based approach is appropriate. The MA business is unique in that it encompasses a very diverse range of business models. Given this, a prescriptive approach would require some firms to follow rules that did not apply to their business models to remain in compliance. It is already difficult for firm such as third party marketers to fit into the scheme of several existing rules, a prescriptive approach to CE would require our members to employ additional resources to try to understand how these rules apply to their firms.

Do the draft CE requirements for municipal advisors appropriately accommodate for small and single-person municipal advisors? If not, describe how the draft CE requirements can be modified to be more appropriately accommodating.

In general, the MSRB has been very thoughtful in the accommodation of small and single-person municipal advisory firms. In respect this this rule proposal however, we do believe that small firms, who are also registered broker dealers could benefit by allowing these firms to combine all its training requirements into one aggregate program that would address the firm's size, organizational structure, scope of business activities and other factors. While we would not be averse to including separate sections of these reports to address a firm's municipal advisory activities we do not believe that a full set of additional reports for this business line is required to ensure that MA take their CE responsibilities seriously or to the extent required by this proposed regulation.

Would the draft CE requirements have the anticipated benefits of protecting municipal entities, investors and the public interest?

3PM believes that requiring firms to engage in a CE requirement is beneficial to investors and helps to not only protect the public interest, but to also protect firms and their representatives. The requirement to provide annual training is not overly burdensome and firms are permitted to implement this training in a manner that is appropriate to their firm's size and business activities. We believe a program that reinforces both the firm and each representatives' requirements is necessary.

It is our hope that by implementing a CE program and adhering to a strong supervisory system that firms will better have an opportunity to identify bad actors.

Would the draft CE requirements have an effect on conduct that is required for compliance with any other MSRB rule?

We do not believe that the CE requirements proposed by the MSRB will have much of an effect on firms that are already registered and adhering to the requirements imposed by other regulatory authorities.

Although broker dealers do not currently have a formal "fiduciary requirement", many firms operate as if they do, always putting the interests of their clients or in our case the investors we are recommending product to ahead if our own. This is attributable to several factors. First is that FINRA requires firms and representatives to meet a high ethical standard and prohibits representatives from engaging in certain activities that could create conflicts of interest and cause a firm to not act in the best interest of investors. Second, FINRA has issued guidance on conflicts of interest and has encouraged firms to evaluate any conflicts of interest that could be cause by their business model or firm practices. FINRA has also suggested that firms identify ways to mitigate any conflicts and change those practices that could lead a representative to engage in activities that is not in their client's best interests.

In addition, as previously mentioned several of our members also operate as investment advisors who are required to commit to a Code of Ethics and have a fiduciary responsibility to their clients or in our case the investors we are recommending product to.

Furthermore, while the industry does in fact have some bad actors that will never adhere to the appropriate conduct, that is not the standard in the third-party marketing arena. While our industry has experienced some instances where bad actors tainted the reputation of the industry at large, most third party marketers are professional, ethical and act responsibly. It is exact this rationale that led 3PM to issue a series of industry best practices that members are required to attest to on an annual basis.

Given this, we believe that it is time for rule makers, including Congress and the regulatory authorities, to recognize that most professionals and firms operating as federal registrants in the third-party marketing industry actually do the right thing on behalf of investors, their clients and employees.

Thank you for the opportunity to share our thoughts with you regarding this proposal. Please feel free to reach out to me at (585) 364-3065 or by email at donna.dimaria@tesseractcapital.com should you have any questions or require additional information pertaining to the proposed CE Requirements for MAs.

Regards,

<<Donna DiMaria>>

Donna DiMaria
Chairman of the Board of Directors, Third Party Marketers Association

About The Third Party Marketers Association (3PM)

3PM is an association of independent, outsourced sales and marketing firms that support the investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent. Members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org.

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