

March 5, 2019

**Submitted Electronically**

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

**RE: Request for Comment on Draft Interpretive Guidance on Application of  
MSRB Rules to Certain Prearranged Trading in Connection with Primary  
Offerings**

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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 Notice 2019-01 (the “**Notice**”): Request for Comment on Draft Interpretive Guidance (the “**Guidance**”) on Application of MSRB Rules to Certain Prearranged Trading in Connection with Primary Offerings. BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

***The BDA opposes the extension of issuer restrictions to non-syndicate dealers.*** The BDA believes that the Guidance inappropriately uses Rule G-17 to impose a duty on non-syndicate dealers to be aware of and comply with issuer restrictions. The BDA believes that the Guidance will have the unintended consequence of imposing a burden on dealers to monitor how they trade municipal securities that have been recently distributed when they are not syndicate members. The BDA believes that the Guidance should cover only syndicate members and regulate their relationships with issuers.

***The BDA believes that the Guidance should focus on the misrepresentation by a syndicate member as the violation of Rule G-17.*** The BDA believes that the only violation of Rule G-17 under the facts contemplated in the Guidance is when a syndicate member submits an order which it knows constitutes a misrepresentation of compliance with issuer restrictions. Instead, the Guidance casts a wide and unclear net on a wide variety of transactions involving syndicate members but also possibly not involving syndicate members at all. The BDA believes that it is a mistake to cast this net as it

becomes virtually impossible to implement compliance regimes to comply with the Guidance. Instead, the Guidance should focus on the duty of syndicate members to act reasonably in complying with issuer restrictions and not submit orders which they know violate those issuer restrictions.

***The BDA believes that the MSRB should be very clear about the kind of evidence that would establish a violation of Rule G-17.*** The Guidance is unclear about the kind of evidence that proves a violation of Rule G-17 as a result of prearranged trading. For example, the MSRB consistently uses the term “arrange” in the Guidance where the term “agree” should be more accurate. In both of the scenarios, the Guidance refers to one party “arranges” to purchase bonds. To the BDA, the term “arranges” is broader than the term “agrees” and we believe that, to constitute a violation Rule G-17, the offending dealers need to have an actual agreement in place to sell or purchase the affected municipal securities. In addition, the Guidance does not make clear that trading data, on its own, does not constitute sufficient evidence of prearranged trading. This is particularly concerning to the BDA. After the time of free to trade, the trading of municipal securities is very fluid and many legitimate reasons exist for the pricing of municipal securities in that time frame. The BDA strongly believes that the Guidance needs to be more specific that any violation of Rule G-17 as a result of prearranged trading needs to be predicated on evidence of an actual agreement between a syndicate member and some other market participant to evade the application of the issuer’s restrictions.

***The BDA believes that the MSRB should be more precise about the timing of events set forth in the scenarios.*** The BDA believes that the scenarios in the Guidance are unclear as to the timing of events. Each of the scenarios refers to the timing of the arrangement as “Prior to the completion of the distribution of the new issue....” To the BDA, that is not a clearly definable timeframe. The BDA believes that the more accurate timing should be the time when a syndicate/selling group dealer submits an order. The BDA believes this will clarify two things. First, it will focus the timing on the problematic conduct – collusion to submit or have submitted an order that results in a misrepresentation by a syndicate/selling group dealer. Second, the term distribution is very broad under the securities laws and can in theory encompass activities that extend far beyond the time of free to trade.

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Thank you for the opportunity to provide these comments.

Sincerely,

*Mike Nicholas*

Mike Nicholas  
Chief Executive Officer