

July 12, 2018

Submitted Electronically

Carl Tugberk
Assistant General Counsel
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: MSRB Questions regarding Pre-Arranged Trading

Dear Mr. Tugberk:

On behalf of the Bond Dealers of America (“BDA”), I am submitting this letter in response to your questions regarding the reaction of our members to a set of questions regarding pre-arranged trading of municipal securities. In your email to the BDA, you asked several questions regarding the following fact pattern:

“Prior to a new issuance, a dealer contractually agrees to buy bonds in the issue from an investor (often institutional) at a mark-up (e.g., 1/8th of a point over the new issue price) once the bonds are free to trade, regardless of where the deal breaks in the secondary market.”

After discussing your questions with our membership, we believe the primary concern of the MSRB may best be represented in Q. 6 – “Are dealers entering into this type of arrangement dealing fairly with the issuer, other customers and the syndicate members” and offer the following summary of our member comments and concerns.

- ***Our members are not familiar with the kind of contractual, coordinated trading that the MSRB seems to be suggesting is occurring.***

Our members are not familiar with the *contractual* nature of the trading fact pattern you described in your communication. More familiar to some of our members are instances where dealers that are not syndicate members have communicated an indication of interest to investors that it is willing to purchase a new issuance of municipal securities or similar securities at specified levels or spreads. In these instances, dealers are not coordinating or conspiring with investors to circumvent the priority of orders set by an issuer, but rather communicating, as is routinely done, an indication of interest to purchase securities based on their own customer demand. Under these circumstances, to the extent that an investor places an order with a syndicate member for bonds, the investor may simply have seen the potential for a quick profit. In this scenario, the BDA and its members strongly believe that the non-syndicate dealer has not acted unfairly toward the issuer or members of the syndicate in its purchase of these bonds.

Additionally, an underwriter of a primary offering of municipal securities has no control over bonds trading in the secondary market at prices over the list-offering price.

- ***Non-syndicate dealers are engaged in the business of trading municipal securities***

Dealers that are not part of an underwriting syndicate have no relationship with an issuer or members of the syndicate whatsoever and, accordingly, have no responsibility to monitor compliance with established priority of orders. Dealers are in the business of purchasing and selling securities, and there is nothing unfair about a dealer expressing interest in purchasing new issuance municipal securities.

- ***BDA members believe that the MSRB may be inferring too much from trading activity.***

Many of our members commented that, based on some of the questions, the MSRB may be inferring too much from post-offering trading activity. Our members point out that many times trading can result in a loss for the investor, depending on the circumstances. Accordingly, our members caution the MSRB not to make too many inferences merely from post-offering trading activity. Often times there are circumstances where there is absolutely no pre-arranged trading and a dealer is willing to pay a higher price for municipal securities based on their own customer interest and demand.

- ***The BDA cautions the MSRB not to over-regulate priority of orders or post-offering trading activity.***

The BDA appreciates the opportunity to provide these comments, however, cautions the MSRB to be mindful of potential unintended consequences should it decide to develop additional rulemaking in this area. Increased restrictions or additional requirements on the distribution and trading of municipal securities may adversely impact market liquidity and pricing for both investors and issuers alike. The MSRB should continue to give issuers the ability to craft retail order priority restrictions and not impose additional rulemaking.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas".

Mike Nicholas
Chief Executive Officer