

June 28, 2019

**Submitted Electronically**

Vanessa Countryman, Acting Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549

Dear Ms. Countryman,

The Bond Dealers of America (“BDA”) is pleased to submit comments in regard to an issue under consideration by the SEC’s Fixed Income Market Structure Advisory Committee (“FIMSAC”). At its April 15, 2019 meeting the FIMSAC considered a recommendation from its Municipal Securities Transparency Subcommittee titled “Preliminary Recommendation Regarding Certain Principal Transactions with Advisory Clients in Negotiated Municipal Underwritings” (the “Recommendation”). BDA generally supports the Recommendation and we urge the full FIMSAC to finalize and transmit its Recommendation to the SEC. We also urge the SEC to act on the Recommendation with rulemaking. BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets.

Background

Section 206(3) of the Investment Advisers Act in part governs the actions of Registered Investment Advisers (“RIA”) in executing principal transactions with advisory clients. Under 206(3) a RIA must make certain written disclosures and obtain written consent from a client each time the RIA and client want to engage in a principal transaction. The process of making disclosures and obtaining consent for each covered principal transaction is cumbersome and impractical. Consequently, many RIAs simply refrain from engaging in covered principal transactions with advisory clients.

This affects the new issue municipal securities market in an important way. Section 206(3) comes into play when a broker-dealer (“BD”) that is affiliated with an RIA is a manager or member of a negotiated new issue underwriting syndicate or selling group. The provision makes it difficult and unworkable for the RIA to offer

municipal new issue bonds to advisory customers when the affiliated broker-dealer is a member of the syndicate or selling group. As a result, these clients may not have access to desired municipal new issues.

There has been an unmistakable trend over the last two decades of retail investors moving from accounts based on commissions or other transaction fees to fixed fee-based advisory accounts. The volume of investor assets in fee-based accounts of various types has risen from \$800 billion in 2001 to \$4 trillion in 2017.<sup>1</sup> This trend disproportionately affects the municipal market because of the high level of retail participation. Approximately 45 percent of the \$4 trillion of outstanding municipal securities are held by individuals,<sup>2</sup> higher than any other fixed income sector.

### SEC action

In 2007 the SEC adopted Rule 206(3)-3T designed to streamline RIA compliance with Section 206(3). The purpose of Rule 206(3)-3T, which expired in 2016 after being extended, was to provide a more workable means for RIAs with affiliated BDs to offer negotiated municipal new issues to non-discretionary advisory account holders while remaining in compliance with Section 206(3). Under 206(3)-3T RIAs could offer negotiated municipal new issues to advisory clients if they took several steps:

- Provide written prospective disclosure regarding the conflicts arising from principal trades;
- Obtain written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions;
- Make certain disclosures, either orally or in writing, and obtain the client's consent before each principal transaction;
- Send to the client confirmation statements disclosing the capacity in which the adviser has acted and disclosing that the adviser informed the client that it may act in a principal capacity and that the client authorized the transaction; and
- Deliver to the client an annual report itemizing the principal transactions.

Rule 206(3)-3T was important because it provided a workable means for non-discretionary RIA clients to obtain bonds from negotiated municipal new issues where their RIA's affiliated BD is a syndicate or selling group member.

---

<sup>1</sup> Source: Tiburon Strategic Advisors

<sup>2</sup> Board of Governors of the Federal Reserve, "Financial Accounts of the United States," March 7, 2019, page 121.

The SEC considered extending 206(3)-3T when it was due to expire in 2016. The SEC did not extend the applicability of the rule, apparently because no stakeholder provided quantitative data to the SEC on the rule's effects. We agree with the Municipal Securities Transparency Subcommittee's view that the SEC "should not assume that the lack of quantitative analysis indicates that the costs [of Rule 206(3)-3T] outweigh the benefits; rather the Subcommittee believes that the lack of data more likely reflects difficulty in obtaining the data."

### Conclusion

The BDA urges the FIMSAC to adopt the Municipal Securities Transparency Subcommittee's Recommendation for a rule change related to Section 206(3) that would permit RIAs with affiliated BDs to offer negotiated municipal new issues to non-discretionary advisory clients under a streamlined compliance approach along the lines of Rule 206(3)-3T. We also urge the SEC to act on the FIMSAC's recommendation promptly.

If you or your staff has any questions or need additional information, please do not hesitate contact me directly at 202.204.7901 or [mnicholas@bdamerica.org](mailto:mnicholas@bdamerica.org). We look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is fluid and cursive, with the first name "Michael" and last name "Nicholas" clearly legible.

Michael Nicholas  
Chief Executive Officer  
Bond Dealers of America