BDA Bond Dealers of America

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August 6, 2018

Submitted Electronically

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

RE: MSRB Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am submitting this letter to provide comments to the MSRB's Regulatory Notice 2018-10 (Request for Comment: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities) (the "Notice"). 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 strongly believes that the Rule G-17 Disclosures are important disclosures and Rule G-17 should continue to require them.

The BDA strongly believes that the disclosures (the "Rule G-17 Disclosures") required by the 2012 Guidance (as defined in the Notice) are important and valuable to the municipal securities market. The Rule G-17 Disclosures have established a critical, written communication that clarifies the nature of the role of the underwriter in municipal securities transactions and conflicts of interests, in addition to the other matters covered by the 2012 Guidance. The 2012 Guidance has created a needed formal platform through which underwriters clearly communicate these matters to issuers. Before the 2012 Guidance, many of these matters were relegated to either oral discussions or just underwriters assuming that issuers understood these matters. Accordingly, the BDA supports the continued requirement of the Rule G-17 Disclosures.

The BDA does not believe that the 2012 Guidance should be changed to provide different requirements for different kinds of issuers.

The BDA does not believe that the 2012 Guidance should be changed to provide different Rule G-17 Disclosures to different issuers for two reasons. First, while we understand that some large issuers who frequently issue municipal securities at times receive many Rule G-17 Disclosures, the personnel in those issuers do change regularly and continue to need full Rule G-17 Disclosures. Second, the requirement of the 2012 Guidance that underwriters send Rule G-17 Disclosures to all issuers allows for a consistent, standard process for dealers. If underwriters were required to deliver different disclosures to different issuers, it would impose a significant compliance burden on dealers to prepare those

disclosures. Accordingly, we do not support varying the kinds of disclosure depending on the kind of issuer.

The BDA makes four suggestions to improve the Rule G-17 Disclosures and the 2012 Guidance.

The BDA makes four suggestions regarding how the 2012 Guidance can improve Rule G-17 Disclosures, which we believe will make them more meaningful and also reduce the number of unnecessary Rule G-17 Disclosures:

- *The 2012 Guidance should be modified so that underwriters who secure the IRMA exception under the SEC's municipal advisor rule are not required to deliver Rule G-17 Disclosures.*

The BDA believes that if an underwriter is exempt under the SEC's municipal advisor rule by securing the exception for independent registered municipal advisors, then Rule G-17 Disclosures will be unnecessary and should not be required. The whole point of the Rule G-17 Disclosures is to ensure that issuers understand the role and responsibilities of the underwriter, and ensuring that the issuer understands the role and responsibilities of the underwriter falls within the responsibilities of a municipal advisor. Accordingly, the BDA believes that the Rule G-17 Disclosures would be unnecessary in these circumstances.

- *The 2012 Guidance should be modified to clarify that only material, actual conflicts of interests should be disclosed.*

The BDA believes that one of the factors that contributes to the length and complexity of Rule G-17 Disclosures is that underwriters disclose all potential conflicts of interests instead of known, actual conflicts of interests. The BDA believes that the MSRB should revise the 2012 Guidance so that it is clear that underwriters do not need to disclose a list of boilerplate conflicts of interests and, instead, should disclose known, actual conflicts of interests that could impact the underwriter in the municipal securities transaction. The BDA believes that the clearer that the MSRB can clarify which conflicts of interest really need to be disclosed, the more helpful and valuable those disclosures will be.

- *The 2012 Guidance should be modified to allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances.*

The 2012 Guidance overly prescribes when underwriters should deliver some of the Rule G-17 Disclosures – particularly the disclosures concerning complex municipal securities transactions. Underwriters should deliver some of the Rule G-17 Disclosures at the outset of any engagement – such as the disclosures concerning the role of the underwriter. But the BDA believes that the MSRB should revise the 2012 Guidance so that underwriters have more discretion concerning when to deliver some of the Rule G-17 Disclosures. Appropriate disclosures do evolve through the process of preparing municipal securities transactions. In particular, the BDA believes that the disclosures concerning complex municipal securities transactions are most helpful later on in the process once the characteristics and risks of those transactions are better defined.

- *The 2012 Guidance should be modified to clarify that co-managers usually have no requirement to deliver Rule G-17 Disclosures.*

One of the reasons why large, frequent issuers receive so many Rule G-17 Disclosures is that co-managers send entire Rule G-17 Disclosures which frequently have exactly the same content as the Rule G-17 Disclosures delivered by the senior manager. The BDA believes that the MSRB should revise the 2012 Guidance so that it is clear that co-managers have no requirement to deliver any Rule G-17 Disclosures except for the circumstance where the co-manager has a discrete conflict of interest that materially impacts its engagement with the issuer. Otherwise, the BDA believes it should be clear that co-managers have no requirement to deliver Rule G-17 Disclosures.

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Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer