



**Federal Regulatory and Legislative Priorities
3rd Quarter 2018**

FINRA Rule 4210

In April 2018, FINRA asked the SEC to delay Rule 4210 amendments to March 2019, indicating that many market participants have requested that FINRA reconsider the potential impact of amended Rule 4210 on smaller and medium-sized broker-dealers. The BDA and its members led the charge in the request of this delay.

The BDA believes that the 4210 amendments represent a regulatory overreach by FINRA. FINRA is using a broad statutory authority of the Securities and Exchange Act in an attempt to adopt a systemic risk rule, potentially violating congressional intent. The BDA also believes that the 4210 amendments are anti-competitive to BDA member firms.

The BDA proposed a capital charge in lieu of margin, which would allow dealers to remain competitive with money manager accounts and still manage any systemic risk. The BDA engaged Capitol Hill, FINRA and the SEC on the details of the capital charge proposal. During FINRA's September Board Meeting, the FINRA Board of Governors approved revisions to the Covered Agency Transaction margin requirements that would:

- (1) Eliminate the 2-percent maintenance margin requirement;*
- (2) Allow firms to take a capital charge in lieu of collecting margin for mark to market losses, subject to specified limitations and conditions; and*
- (3) Streamline the rule language*

BDA expects the SEC to review FINRA's recommendations shortly. BDA will provide more information as it becomes available.

Fixed Income Market Structure

The BDA continues to play an active role in the SEC Fixed Income Market Structure Committee's activities.

Recently, the BDA formed its own internal working group on fixed income market structure, which has participation from 20 BDA member firms. The group held its first meeting on October 15, 2018 and will work to be a resource for regulators, policymakers and industry stakeholders. Updates will be provided shortly.

Retail Confirmation Mark-up Disclosure Rules

In early 2018, the BDA presented to the SEC a “conformance period,” in which the mark-up regulations would not be enforced if broker-dealers acted in good faith and worked to come into full compliance with the rules by December 31, 2018. Despite opposition from various trade groups, in late April 2018, the SEC denied the conformance period proposal for retail confirmation mark-up disclosure rules and they became effective on May 14, 2018.

SEC Municipal Disclosures-Rule 15c2-12

The BDA continues to advocate on Rule 15c2-12 to the SEC Office of Municipal Securities. Working with the Legal and Compliance Committee, the BDA continues to encourage commissioners to update the Commission’s interpretative guidance last updated in 1994.

In response to the SEC adoption of the Rule Amendments to Rule 15c2-12, the BDA has been in continuous contact with the Office of Municipal Securities in an attempt to qualify new questions that arose out of the new stated events within the Rule Amendments. Recently the BDA submitted questions to OMS for clarification and plans to follow up with the Office until the questions are fully answered.

MSRB Rule for Municipal Advisors/Update Dealer Standards on Advertising

The BDA has been active in submitting comments to the MSRB as they issue guidance through draft sets of frequently asked questions (FAQs) and compliance resources to implement proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities dealers. MSRB Rule G-21 and G-40 are set to be effective on February 7, 2019.

In July 2018, the BDA submitted comments to the MSRB on their draft set of FAQs related to Rule G-40 and a municipal advisor’s use of case studies and municipal advisory client lists. In September, the BDA submitted comments to their draft set FAQs related to the use of social media in advertising by municipal advisors and municipal securities dealers under Rule G-21 and Rule G-40. In October 2018, the BDA submitted comments a draft compliance resource regarding the application of the content standards under Rule G-40.

In September 2018, the MSRB issued final guidance on their FAQs regarding the use of municipal advisory client lists and case studies under Rule G-40. The guidance and revised FAQs include some clarifications requested by the BDA in its comments in July 2018.

Promoting Tax-Exempt Municipal Bonds and Private Activity Bonds

The BDA has been building relationships with various state and local groups, coalitions, and trade associations to continue to advocate for the protection of tax-exempt municipal bonds and for expanded use of private-activity bonds.

In July 2018, both the House Ways and Means and Transportation and Infrastructure Committees released outlines of potential tax reform and infrastructure spending plans to be debated this fall. While neither draft proposal directly address municipal bonds, or private-activity bonds, both

present an opportunity for the BDA to be a thought leader going forward through the fall of 2018 into the new Congress next year.

Municipal Advance Refundings

The BDA is leading the advocacy push for H.R. 5003, legislation that would fully reinstate municipal advance refundings. The BDA continues to work simultaneously with Capitol Hill, the Municipal Bonds For America Coalition, and the full issuer community to place advance refundings into the infrastructure conversation as attention turns to a potential package next year.

Grassroots lobbying efforts are ongoing with BDA membership contacting their representatives in Washington. In May 2018, the BDA Municipal Bond Division Leadership submitted comments to the House Ways and Tax Policy Means Subcommittee's hearing titled, "Tax Reform and Small Businesses: Growing Our Economy and Creating Jobs," requesting to restore the ability of state and local governments to save taxpayer dollars and generate additional funds for infrastructure and other key initiatives by restoring tax-exempt advanced refundings.

Michigan Legislation on Competitive vs. Negotiated Bond Sales

A bill was recently introduced in the Michigan State Legislature that would require municipal issuers to issue all outstanding debt through competitive bid, unless the issue is no more than \$500,000, at which point negotiated is an option. The BDA's Fixed Income Municipal Bond Committee has developed a strategy to fight against the anti-competitive nature of this bill and will engage in a grassroots effort to stop the legislation from moving forward before other states follow suit.

The BDA placed an op-ed for placement in the *BondBuyer* in opposition of the legislation. The piece will layout the BDA's argument in favor of allowing issuers the discretion of choice in what works best for them. The op-ed, as well as opposition from BDA members on the ground, helped to stop this bill from legislative action in 2018.

As we enter a new legislative session in 2019, the BDA will stay vigilant and work to ensure this harmful bill will not be revived.

Small Business Audit Correction Act

In June 2018, Senators Tom Cotton (R-AR) and Doug Jones (D-AL) and Representatives French Hill (R-AR) and Vicente Gonzalez (D-TX) formally introduced *The Small Business Audit Correction Act* (S. 3004 & H.R. 6021). The bill would exempt privately-held, small, non-custodial brokers and dealers in good standing from the requirements to hire a Public Company Accounting Oversight Board (PCAOB) registered audit firm to meet their annual SEA Rule 17a-5 reporting obligation to perform the audit in accordance with PCAOB standards. Passage of legislation would allow eligible firms to conduct their annual audits in a less costly and burdensome manner.

The House bill, H.R. 6021, passed the House Committee on Financial Services on September 13, 2018 by a vote of 36 to 16.

Municipal Bonds for America (MBFA) Coalition

In September, the Municipal Bonds for America (MBFA) Coalition increased its advocacy efforts for the support of municipal finance and the tax exemption on Capitol Hill. In addition to its annual educational seminar for Hill staff, the coalition also held discussions with staff at the National Economic Council (NEC), and hosted a fundraiser for Representative Richard Neal of Massachusetts.

On Monday, September 24, 2018, the MBFA Coalition held two educational seminars on Capitol Hill for House and Senate staff, and other interested parties, on the importance of preserving the tax-exemption for municipal bonds. MBFA Executive Chair Steve Benjamin, Mayor of Columbia, S.C., and current president of the U.S. Conference of Mayors presided over the events to highlight the benefits of the municipal bond market, the tax-exemption, and the importance to restore advanced refundings.

The MBFA coalition held over 40 meetings on Tuesday, September 25, 2018, with key members of Congress and their staffs that have influential voices on tax and infrastructure issues. Members of the MBFA's Executive Committee and legislative task force also visited the Deputy Assistant to the President for Financial Policy for the National Economic Council (NEC) at the White House to advocate to maintain the current law status of the municipal bond tax-exemption and to restore advance refundings. The delegation highlighted that municipal bonds are the original public-private partnership and tax-exempt bonds are used for core local government infrastructure that is the foundation for our nation's economy.

The MBFA Coalition capped the two-day event with a fundraiser for Representative Richard Neal (D-MA) who is projected to become the next Chairman of the House Ways & Means Committee if his party recaptures majority control of the House this fall. A strong advocate for municipal bonds, the former mayor of Springfield, MA, reaffirmed his support of MBFA priorities for protecting the tax-exempt status of municipal bonds and the reinstatement of advance refundings.

As discussions on Capitol Hill continue to develop on a federal infrastructure package and changes to the tax code begin to take form in "Tax 2.0," simply a second phase of tax cuts, the Coalition is preparing for the outcome of the 2018 mid-term elections to increase its advocacy efforts to preserving the tax-exempt status of **all** municipal bonds. The Coalition is well poised to carry its message into the New Year by leveraging the local leadership of its members to educate and gain support for retaining the municipal tax exemption in their communities through its library of source material and the BDA's recent release of the primer on municipal bond finance: ***The Municipal Bond Market – Building America's Infrastructure.***