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Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F St NE
Washington DC 20549

October 29, 2019

Comments in regard to File No. SR-MSRB-2019-10

Dear Ms. Countryman,

The Bond Dealers of America (BDA) welcomes the opportunity to comment on Release No. 34- 87256, "Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Amend and Restate the MSRB's August 2, 2012 Interpretive Notice Concerning the Application of Rule G-17 to Underwriters of Municipal Securities."[1] BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the U.S. fixed income markets.

The MSRB has filed with the SEC "Amendment 1 to File No. SR-MSRB-2019-10," an amended proposed revision of the MSRB's 2012 interpretive guidance associated with MSRB Rule G-17[2] (the "Amendment"). Rather than simplify and streamline Rule G-17 compliance, the lengthy Amendment would add significant complexity and uncertainty to the G-17 regime. BDA opposes the Amendment and the revised interpretation overall. We urge the SEC to disapprove the Amendment and request from the MSRB additional revisions. Our opposition to the Amendment stems from three principal issues.

The Amendment would add an additional required disclosure that a sole underwriter or syndicate manager would need to make to issuer clients.

The MSRB has proposed that under "Disclosures Concerning the Underwriter's Role," a sole underwriter or lead manager would need to "disclose" to an issuer client that "the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction."[3]

We remain strongly opposed to this provision. There is no statutory or regulatory requirement that issuers engage a Municipal Advisor ("MA"), and underwriters should not be required to promote the services of other market participants. There are no comparable requirements that MAs "disclose" to issuers that they engage the services of an underwriter or placement agent. There may be instances where the use of a MA by a municipal entity may not be cost effective.

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[1] *Federal Register*, October 15, 2019, page 55192.
[2] http://msrb.org/~/media/Files/SEC-Filings/2019/MSRB-2019-10-A-1.ashx
[3] Amendment, page 33.

We are not aware of other instances in regulation where one market participant is required to advocate for the use of another. MA law and regulation already provides significant incentives for issuers to engage MAs. For example, the SEC's final MA definitional rule[4] includes an exemption for underwriters to interact freely with an issuer who has engaged an Independent Registered Municipal Advisor. Most important, this requirement would not necessarily reduce cost, improve execution, reduce time to market, or provide any other benefit to municipal issuers. Indeed, the MSRB has provided no justification for this provision nor offered any explanation for why it is needed or how issuers would benefit.

The Amendment would substantially expand the potential volume of disclosures to issuers by expanding the disclosure of potential material conflicts of interest as well.

We remain opposed to this expansion of disclosure because the standard for defining potential conflicts is vague. This provision would result in inconsistent compliance standards as different underwriting firms interpret the definition of potential conflict differently. Moreover, underwriters are already required under Rule G-17 and the 2012 guidance to inform issuers of actual material conflicts of interest as they arise throughout the deal process and must give the issuer sufficient time to review emerging conflict issues.

The Amendment would require that an underwriter's "potential material conflict of interest must be disclosed if, but only if, it is reasonably likely to mature into an actual material conflict of interest during the course of the transaction between the issuer and the underwriter."[5] This is a vague definition and unclear standard for what "potential conflicts" must be disclosed and would result in a variety of interpretations in practice. It would provide little useful information for issuers, and compliance would be difficult and inconsistent. We urge the MSRB to limit conflict disclosure to actual, not potential, conflicts of interest.

The Amendment would create a vague and imprecise standard for determining what is a CMSF and what kinds of information related to the transaction would need to be disclosed and under what conditions.

The Amendment would introduce substantial new disclosures around "complex municipal securities financing"[6] ("CMSF"). The Amendment would create a vague and imprecise standard for determining what is a CMSF and what kinds of information related to the transaction would need to be disclosed and under what conditions. The standards in the Amendment related to complex municipal securities financing would result in a compliance gray area. Our key concerns include:

- The definition of CMSF is vague. It clearly includes VRDOs, swaps, and floating rate notes, but what else is included?
- The standard for what kinds of information surrounding a CMSF is poorly defined and imprecise.
- An underwriter disclosure statement in the context of a CMSF could be lengthy,

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[4] Securities and Exchange Commission, "Registration of Municipal Advisors," Release No. 34-70462, *Federal Register*, Vol. 78 No. 218, November 12, 2013.

[5] Amendment, page 34.

[6] Amendment, page 40.

complex, and costly to produce, and it is unlikely that issuer officials would in many instances read the document.

- Because the disclosure standard is vague, many underwriters under an abundance of caution would disclose much more information than an issuer would need to understand the transaction, resulting in "kitchen sink" disclosure.
- The Amendment introduces a vague concept of "tiered disclosure" tailored to an individual issuer's level of sophistication without providing any guidance on how to determine an issuer's disclosure needs.

Underwriters need more precision and guidance around this standard in order to implement sound compliance and consistent disclosures. We urge the MSRB to revise this element of the Amendment before it is finalized.

In addition, the BDA believes the MSRB missed an important and timely opportunity to provide substantial compliance efficiencies by combining and integrating underwriter disclosures required under Rules G-17 and G-23. We believe there is still an opportunity to address this issue in this guidance project, and we urge the MSRB to revise the Amendment to integrate G-17 and G-23 disclosures.

BDA is again pleased to provide comments on the Amendment. We believe the MSRB's proposed G-17 guidance is not ready for final approval for the reasons cited. We urge the SEC to disapprove the Amendment pending revisions we have outlined.

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Thank you for the opportunity to provide these comments. We look forward to the opportunity to discuss our concerns with you.

Sincerely,

Michael Nicholas
Chief Executive Officer
Bond Dealers of America