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Associate General Counsel  
Municipal Securities Rulemaking Board  
1150 18th Street N.W.  
Suite 400  
Washington, D.C. 20036

Re: Supplemental Comment Letter regarding Draft Interpretive Guidance on Dealer Responsibilities in Connection with Municipal Securities Transactions

Dear Mr. Lanza:

The Bond Market Association ("Association")<sup>1</sup> welcomes the opportunity to provide supplemental comment on the Municipal Securities Rulemaking Board's Draft Interpretive Guidance on Dealer Responsibilities in Connection with Municipal Securities Transactions (the "Interpretive Release")<sup>2</sup>. In that regard, we again express our strong support for the MSRB's initiative permitting dealers to designate a class of investors as "sophisticated market professionals" ("SMPs"). Notwithstanding some negative comments received to date by the MSRB, the Association continues to believe that such a designation has support in other markets, will advance the shared industry goal of promoting the efficient use of technology to buy and sell municipal securities and will inure to the benefit of all investors.

In support of our position, we make the following additional observations.

1. Designating certain classes of investors as SMPs will benefit all market participants and promote the development of on-line trading technologies. Distinctive regulatory treatment of SMPs will simplify regulatory burdens, cut costs and promote the development of online trading systems for all customers. By encouraging the development of online trading platforms, even if some platforms initially are limited to SMPs, the playing field will be leveled between all types of investors. There will be a freer flow of disclosure information, news, research, analytical tools and price information, and, most importantly, more widespread access to this information.

Nevertheless, it has been argued by some commentators that identification of a class of investor as SMPs would have a detrimental effect on the development of online trading systems for retail customers. We disagree. Given that retail customers currently hold over

35% of municipal bonds, and that retail investors are considered a key avenue of growth for municipal bond dealers, it is unlikely that this powerful sector will be ignored. Good business sense dictates otherwise. Platform sponsors will undoubtedly recognize that a diversified customer base - which includes retail customers - will also promote greater liquidity. As trading platforms are refined, as more guidance is developed on the issues of recommendations and suitability<sup>3</sup>, and as investor experience continues to increase, platform sponsors will likely gain the confidence necessary to expand their platforms to retail customers.

2. Regulatory precedent exists for differentiating between types of investors. There is a long tradition, both internationally and in the U.S. securities markets, of differentiating between different classes of investors based on factors such as access to information, sophistication and the like. The MSRB, in identifying the class of investors known as SMPs, is neither acting in a revolutionary manner, nor acting without significant precedent. Further, it is our experience that institutional investors are extremely interested in electronic trading, and the liquidity, anonymity, efficient execution and price transparency that it will bring. These institutional investors welcome regulatory guidance that will encourage and further enable online trading. Such investors are fully capable and equipped to evaluate investment risk and make independent investment decisions, and have access to the necessary information to enable them to do so, all as contemplated by the MSRB in their definition of SMP.

3. SMPS will continue to be protected from fraud. The Interpretive Release confirms that a SMP would continue to be entitled to the full range of protection afforded by application of the anti-fraud laws. We understand that the anti-fraud laws would require a dealer to inform an investor, SMP or otherwise, of any material information known to the dealer but not otherwise publicly available, affecting a particular bond. Thus, the SMP continues to be protected in the same manner as they are today.

4. Concerns regarding the adequacy of municipal bond disclosure and the availability of information to the marketplace generally should be directly addressed and are not relevant to the SMP initiative articulated in the Interpretive Release. Many commentators argued that, given the current state of disclosure in our municipal securities markets, investors - even sophisticated investors - simply do not have the same access to information as does the dealer community. As such they argue, that the identification of SMPs would leave SMPs without the protection afforded by the MSRB rules to which they might otherwise be entitled. We believe that it is illogical and without merit to link the quality and adequacy of disclosure with the designation of an investor class as SMPs. It is important to remember that the Interpretive Release is not diluting or reducing the amount or type of disclosure available to SMPs. It merely recognizes that for this particular investor class, access to information is readily available to both the SMP and the dealer, and that efficiencies could be achieved through the different application of MSRB rules<sup>4</sup>.

Moreover, it is apparent that many of the commentators were not aware of the significant MSRB initiatives taking place that will alleviate many of their expressed concerns regarding price transparency and disclosure.

**Price Transparency.** The MSRB is systematically and methodically moving towards a transaction reporting program that will achieve real time price transparency through Rule G-14.

**Disclosure.** The MSRB has consistently taken the lead on improving disclosure in our markets and making existing disclosure more readily available. The current MSRB proposals on enhancements to its CDINet System and the development of a centralized index system for disclosure documents is just the latest illustration of MSRB initiatives to improve disclosure. Likewise, other industry groups are actively involved in developing improvements to our markets. The National Federation of Municipal Analysts has developed "Best Practices" for disclosure in specific industry sectors. The Government Accounting Standards Board has released Statement 34 that revolutionizes the way state and local governments present their financial statements. The Government Finance Officers Association is in the forefront of advising its members on disclosure issues, including the development of issuer websites. And finally, the National Association of Bond Lawyers has developed a voluntary secondary market disclosure program for its issuer clients.

**Electronic Availability of Documents.** The MSRB has encouraged electronic filings and availability of disclosure documents. Recent proposed amendments to Rule G-36 allowing electronic filings of Official Statements and Advance Refunding Documents to the MSRB are indicative of the MSRB's leadership role in this regard.

Each of these initiatives shows that our markets are dynamic, and that given our unique regulatory structure, creative solutions are being reached to improve the efficiencies of price discovery, communication and trading. Concern over the adequacy of disclosure (however legitimate those concerns may be), whether because of the statutory or regulatory scheme or otherwise, should not be invoked to burden the marketplace with outdated rules that do not address that concern.

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In conclusion, the approach taken by the MSRB in its Interpretive Release is thoughtful and proactive, and one which recognizes that the forces of a free and open market will produce online trading platforms of the highest caliber. And importantly, it recognizes that premature regulation in an evolving technology will not serve the common goals of the industry. The benefits to be generated by e-commerce are common goals shared by buy-side and sell-side firms alike. The Association therefore encourages the MSRB to move forward expeditiously and embrace the SMP initiative articulated in the Interpretive Release<sup>5</sup>.

The Association appreciates this opportunity to provide supplemental comment on the Interpretive Release. If it would be helpful to the Board and its staff, we would be happy to make Association staff and member firm personnel available to meet with Board staff to discuss any of the points raised in this letter. Please address any questions or requests for additional information to Paul Saltzman, Executive Vice President and General Counsel, or Lynnette Hotchkiss, Vice President and Associate General Counsel, at 212.440.9400.

Respectfully submitted,

/s/ Lynnette Kelly Hotchkiss

Lynnette Kelly Hotchkiss  
Vice President and Associate General Counsel

cc: Securities and Exchange Commission

The Honorable Arthur Levitt, Chairman,  
The Honorable Isaac C. Hunt, Jr., Commissioner  
The Honorable Paul R. Carey, Commissioner  
The Honorable Laura S. Unger, Commissioner  
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The Bond Market Association

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Legal Advisory Committee, Municipal Securities Division  
E-Commerce Task Force, Municipal Securities Division  
Online Bond Steering Committee

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#### Footnotes

1. The Association represents securities firms and banks that underwrite, distribute, and trade debt securities, both domestically and internationally. More information about the Association is available on the Association's Web site at [www.bondmarkets.com](http://www.bondmarkets.com).
2. "Notice and Draft Interpretive Guidance on Dealer Responsibilities in Connection with Both Electronic and Traditional Municipal Securities Transactions", available at [www.msrb.org/msrb1/electronic](http://www.msrb.org/msrb1/electronic).
3. Many commentators wanted specific guidance and/or "safe harbors" for their particular interpretation of these rules. We too, ask for generalized clarification about the issues dealing with recommendations and suitability in an online environment. Nevertheless, we believe that the current "facts and circumstances" test works best - and will continue to work best in the emergence of e-commerce technologies. We appreciate the MSRB's statement in its Clarification of the Interpretive Release that it was not trying to expand the notion of what a recommendation is in the context of its suitability rules. We believe that whether or not a recommendation is being made depends on the content of the communication between the dealer and the customer - and not on the medium of communication and note that that interpretation is consistent with the views of NASD Regulation. (See letter dated January 23, 1997 from John M. Ramsay, Deputy General Counsel, NASD Regulation to The Bond Market Association.)
4. Many dealers would argue that institutional investors, due to their status as significant holders of municipal bonds, actually have greater access to fuller and more timely information than does the dealer community.
5. It is important to note that the Association and other commentators are not attempting to expand the definition of SMP put forth by the MSRB by advocating the inclusion of previously identified classes of investors. We, as well as other commentators, merely advocate that by allowing certain previously defined classes of investors to automatically fall within the definition of SMP, the administrative burden of redefining investors for different securities transactions will be reduced and administrative efficiencies will be achieved.

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