

Bond Case Briefs

Municipal Finance Law Since 1971

BDA's 2016-17 Federal Regulatory and Legislative Priorities and Accomplishments.

The following issue list highlights the BDA regulatory and legislative priorities over the past twelve months and the noted accomplishments achieved through direct Hill and regulator lobbying and by utilizing the BDA membership through meetings in Washington, DC and at BDA roundtables and conferences throughout the year. Thanks to your time and efforts, the BDA continues to expand our presence and impact and thus adds more value than ever to all member firms. Please don't hesitate to contact me with any questions or comments.

Tax Reform and the Municipal Bond Tax-Exemption

After steady focus by the BDA over 8+ years, and while various tax reform proposals have been released by Congressional leaders and the administration, the tax-exemption remains out of scope and off the table - for now. Through direct federal advocacy with state and local government organizations, issuer groups and middle-market broker dealers, the BDA-led Municipal Bonds for America (MBFA) Coalition continues to be the leading voice in Washington to protect the tax-exemption for municipal bonds. The BDA and MBFA coalition will continue to ensure that the tax-exemption remains intact during the legislative process in tax reform this fall and into 2018.

FINRA Rule 4210

BDA was successful in getting FINRA and SEC to file a last-minute amendment to the rule in June 2016 that significantly expanded the "gross open position" exception from \$2.5 million to \$10 million. BDA had advocated for a more expansive gross open position limit throughout the rulemaking and the \$10 million level does expand the universe of counterparties and trades where the transfer of margin will typically not apply. In May 2016, BDA submitted amendment language at the SEC's request that would have exempted all transactions, including transactions over \$10 million, if those trades settled on the next good settlement date. While, this advocacy didn't result in the exact change BDA wanted, getting the \$10 million exemption limit is a result of direct BDA advocacy at the SEC, especially. BDA had two fly-ins at the SEC to discuss this rule with Trading and Markets and the accomplishment is the higher "gross open position limit". More recently, BDA was supportive of a delayed effective date and lobbied FINRA directly for the delay, which is a significant and valuable delay for BDA member firms who would have been challenged severely by a December 2017 effective date.

Retail Confirmation Disclosure Rules

As a result of direct engagement, including two joint meetings with MSRB and FINRA and a direct BDA Board Meeting with Robert Cook and Bob Colby at FINRA, Robert Cook specifically sought a BDA amendment recommendation for improving the rule. This proposed amendment was then subsequently sent to SEC for a discussion with Trading and Markets. The accomplishment is in the value of direct engagement in a member-engaged process that delivered a serious policy proposal to the regulators at their request.

MSRB Rule G-15 Minimum Denomination Rule

As a result of direct lobbying efforts of the BDA, the MSRB withdrew a proposed rule to amend MSRB Rule G-15 for minimum denominations (Proposed and withdrawn MSRB Rule G-49). The withdrawal of the rule took place after a BDA conversation with MSRB Counsel Mike Post that was supported by Dan Deaton from Nixon Peabody. During that call, BDA highlighted that the rule proposal and the existing G-15 framework was harming the marketplace, especially retail investors. After withdrawing the rule, the MSRB sought additional input from the BDA on conference call with BDA members. The accomplishment is that BDA advocacy resulted in the rule being withdrawn. BDA educated MSRB and they appear committed to updating G-15 in a way that would focus the minimum denomination rule on issuances with minimum authorized denominations of \$100,000 and above, removing a significant burden on the retail municipal market.

DOL Fiduciary Duty

While the rule and exemptions are extremely burdensome, BDA and dealer firms were successful in getting significant changes included in the final rule. Initially the Best Interest Contract Exemption (BIC) and the Principal Trading Exemption excluded a series of assets including municipal bonds, UITs, CDs, and mortgage securities. While municipal bonds are still excluded from the Principal Trading Exemption (PTE), the other assets are not, and the list of assets that can be recommended to retirement investors under the Best Interest Contract Exemption is now unlimited.

Review and Withdrawal of IRS Political Subdivision Rule

The IRS political subdivision rule was proposed in 2016. BDA opposed the proposal. Due to market participant feedback the rule was not approved during the Obama Presidency. The Trump Administration review IRS rule proposals in 2016 and identified the political subdivision rule as a particularly burdensome rule. BDA and MBFA wrote to the IRS confirming that the rule was burdensome, unnecessary, and would harm economic growth. Currently, the proposal is identified as a rule that should be rescinded and this is very likely to occur in the fall of 2017. IRS repeatedly identified the comments of market participants as a reason why it identified this rule as particularly burdensome.

MSRB States Intent to not File Bank Loan Disclosure Concept Release

Although BDA is a proponent of bank loan disclosure, it opposed the MSRB's concept release on bank loan disclosure. That proposal would have required MAs to be the party responsible for making the disclosure. BDA said it would be preferable to have an amendment to 15c2-12 which would make certain bank loans subject to material event notices. The MSRB stated that due to the comments it received it would not turn the concept release into a rule filing.

SEC Proposes Amendment to 15c2-12 for Bank Loan Disclosure

BDA supports the disclosure of bank loans and the most effective way to require the disclosure of bank loans would be for the SEC to amend 15c2-12. In 2017, SEC released a proposed rule to amend 15c2-12 to require the disclosure of bank loans. This proposal is a BDA accomplishment. While the rule is not yet final, BDA has engaged in direct advocacy with the SEC prior to and after the rule proposal on the subject of bank loans.

High Quality Liquid Asset (HQLA) Legislation/Regulation

Working in tandem with state, local, and issuer groups BDA has supported the introduction and re-

introduction in the House and Senate and passage through the House of legislation to define municipal bonds as HQLA in the new banking liquidity rule. Additionally, BDA has urged federal banking regulators to amend the rule to allow municipal securities to be defined as Level 2A assets. Legislation to define municipal securities as HQLA (either as 2A or 2B) has bipartisan support and is discussed as a bill with a real chance to pass into law during this current session of Congress.

Potential

SEC Fixed Income Market Structure Committee

In August, BDA recommended four candidates (Craig Noble, Brad Winges, Horace Carter, Mike Marz) for the SEC's Fixed Income Market Structure Advisory Committee. Since that time, we have contacted each SEC Commissioner and the Office of Municipal Securities.

Municipal Bonds for America (MBFA)

In 2016, the MBFA Coalition went through extensive transformation structurally to enhance its advocacy efforts in Washington and beyond. The Coalition instituted formal bylaws, which helped to improve how the coalition operates and functions. Additionally, the Executive Committee was refreshed with new and impassioned leaders, while maintaining the incoming president of the U.S. Conference of Mayors, Steve Benjamin as our Executive Chair. These actions have proved to be valuable as the Coalition continues to receive record turnout and Congressional participation through its Muni Bonds 101 seminars on Capitol Hill, meets with staff members of influence at the White House, and continues to develop and maintain its relationship with members of Congress to preserve the tax-exempt status of municipal bonds. The MBFA completed a data project in 2016 that focuses on key members of Congress on the House Ways & Means and Senate Finance Committees, which demonstrates "by the numbers," the benefits of the municipal tax-exemption in the respective district or state of the member. The MBFA also led an effort in February 2017 that saw 385 organizations and individuals sign an advocacy letter, representing nearly all 50 states, to House and Senate leaders urging them to retain the current law status of municipal bonds as they begin deliberation on comprehensive tax reform.

Op-Eds

The BDA and MBFA continue to advocate for the value of municipal bonds and the importance they add to American society through various forms, including op-eds. For example: In September 2017, BDA Board Chair Tom Dannenberg was featured in Crain's Chicago Business, commenting on the disbanded White House Advisory Council on Infrastructure and touting the essential role of municipal bonds in financing our nation's growth, which drives our economy. Also, in September 2017, MBFA Executive Chair Steve Benjamin, mayor of Columbia, SC, was featured in an article in The Hill that focused on how those faced with the devastation left behind by Hurricanes Harvey and Irma can look to the traditional bond market to rebuild stronger, smarter, and more resilient communities. In November 2016, BDA CEO Mike Nicholas contributed to an op-ed in The Hill, which highlighted the importance of tax-exempt bonds as a viable solution for project finance and was written in response to the piece, "Bonds are Taxes," that argued local governments have the capacity to pay for needed projects out of current tax revenues.

Bond Dealers of America

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