

Bond Case Briefs

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BDA Members Meet with MSRB & SEC; Discuss SEC's Municipal Advisor Rule & MSRB's Regulatory Regime for Municipal Advisors.

Yesterday, BDA members and staff met with the MSRB and the SEC's Office of Municipal Securities to discuss ongoing concerns and further clarifications with the SEC's Final Municipal Advisor Rule as well as the MSRB's approach to their regulatory regime for municipal advisors.

Meeting with the MSRB

BDA members primarily discussed concerns with MSRB proposed Rule G-42 on duties of non-solicitor municipal advisors. Specifically, we discussed the following items:

- Principal Transactions – We expressed our concern that the language contained in proposed Rule G-42 creates a potentially unworkable paradigm, which may cause an underwriter to be precluded from certain principal transactions by inadvertently becoming a municipal advisor;
- Obligated Persons – The BDA believes MSRB's Rule G-17 on fair dealing protects obligated persons in a sufficient manner while recognizing that obligated persons are different from public entities and that the fiduciary duty standard should not be extended to obligated persons;
- Official Statements – The BDA believes the issuer should be positioned to determine the scope for review by a municipal advisor of its official statement and agreed with the MSRB that the ultimate goal should be that all parties to a transaction understand one another's obligations.

Regarding ongoing work by the MSRB in developing their regulatory framework for municipal advisors, we can expect further proposals on the following:

- Core duties of non-solicitor municipal advisors (G-42);
- Supervision of municipal advisors (G-44);
- Municipal Advisor Fees;
- Political Contributions;
- Gifts and Gratuities; and
- Solicitation Activities.
- Meeting with the SEC's Office of Municipal Securities

The BDA focused primarily on four areas of concern in its discussion with John Cross and other staff from the Office of Municipal Securities. Our desire is to have further clarification on the items below which include:

- Whether a firm can be a municipal advisor for the purpose of investment of proceeds without being precluded from underwriting the bonds;
- Navigating the municipal advisor rule when providing investment advice to municipal entities such that advice on bond proceeds can be avoided;
- Use of the language, "rely upon," under the Independent Registered Municipal Advisor (IRMA) exception; and

- The scope of the two-year “cooling off” period for municipal advisors, under the IRMA exclusion.

The BDA will be submitting another round of requested clarifications to the the SEC and hope to see a second round of FAQs released this spring. We will also be submitting a comment letter to the MSRB on their proposal for Rule G-42 and we encourage all of our member firms to do the same. The comment period expires on March 10, 2014.