



February 9, 2018

Mr. Ronald W. Smith, Corporate Secretary  
Municipal Securities Rulemaking Board  
1300 I Street, NW Suite 1300  
Washington, DC 20005

**RE: MSRB Notice: 2017-22**

Dear Mr. Smith:

Thank you for the opportunity to comment on the MSRB's Compliance Support program. NAMA represents independent municipal advisory firms and individual municipal advisors from across the country and has a keen interest in the MSRB's compliance support activities.

We support the MSRB's mission to develop rules for municipal advisors (MAs) and broker/dealers and to protect issuers and investors in this limited but important rulemaking capacity. Allowing for comment and looking for ways to improve compliance support is a welcome opportunity, and we look forward to providing this input and engaging in further conversations with the MSRB on this matter.

We are providing these comments in hopes of accomplishing two goals: first, to inform staff and the Board of our suggestions and concerns and, second, to encourage the Board to prioritize with staff the quality of resources and information available to regulated industry participants. This could be achieved by adopting policies and procedures related to the formulation and delivery of guidance developed by staff; appropriating funds for initiatives that are part of the MSRB's mission to produce rules and guidance for municipal advisors and broker/dealers to protect issuers and investors; and encouraging and facilitating staff to have greater substantive engagement with stakeholders.

### **MSRB Stakeholder Engagement**

Stakeholder engagement is critical because we believe it is the only effective way that the MSRB can become familiar with the wide range of business models and business practices in the municipal advisory community. There are currently over five hundred registered municipal advisory firms. These firms are diverse on numerous levels, including firm size and more importantly, MA firms serve a broad issuer community that operates under varying state and local laws, ordinances and policies and procedures related to debt issuance and management. Everyone has a difficult task at hand, including the MSRB, to develop rules, guidance and educational materials for this diverse community that simply is not one size fits all. Inclusive engagement with stakeholders can help all parties achieve better understanding of MA practices and MA rulemaking for the betterment of the market.

**Events:** We appreciate and will continue to seek MSRB's participation and attendance at NAMA and other marketplace events. Your participation is most valuable when it includes substantive content and interaction among participants. We believe that the value of these contacts is enhanced when the MSRB works with industry participants to develop meaningful structures, agendas and participation for these events to ensure that topics of interest are being addressed. We would ask the MSRB to be mindful of other marketplace events when scheduling their events, so that they do not compete. Also, if new, marketplace information or guidance are relayed at certain events, we would like to see this same information provided promptly to all other market parties.

**Compliance Advisory Group:** NAMA commends the MSRB for convening a Compliance Advisory Group to help the MSRB develop compliance resources for MAs and broker/dealers. We recommend, however, that the MSRB work to secure broader input from market participants and allow for public comment on documents that are being developed to help regulated entities. This should be done by soliciting public comments on a draft of documents developed by the MSRB and the Compliance Advisory Group. While the Compliance Advisory Group is strong and no doubt provides valuable input and insights to help MSRB staff and the Board, the MSRB should allow for this additional input in order to attract information, ideas and feedback from the extremely broad and diverse population of MA professionals. Additionally, by soliciting additional comments from the public, the MSRB would likely garner greater and widespread industry support as well as industry buy-in for MSRB initiatives, as all parties will have had an opportunity to influence the final documents that are developed for industry participants. We ask that the Board discuss and confirm that market input will be solicited on all market guidance.

### **MSRB's Development of Interpretative Guidance, Advisories, Compliance Resources and Regulatory Reminders**

The MSRB Board and staff should work to develop and implement internal policies and procedures that help the Board, regulated entities, and the public understand how all compliance resources are developed and what factors trigger the type of resource that will be provided related to rulemaking. In the past, the MSRB built a robust complement of guidance and information to its rulemaking that also included stakeholder input (e.g., Rules G-17, G-23, G-37). Additionally, for pending revised Rule G-15, the MSRB developed guidance and educational offerings for broker/dealer rule implementation months in advance of the Rule's effective date. NAMA strongly urges the MSRB to have compliance support policies and procedures that allow for guidance materials to be developed ahead of a rule's implementation date and on an ongoing basis for all regulated entities. One clear example of where this would have been welcome and useful to the market is with respect to certain provisions (suitability and documentation) of MSRB Rule G-42. Additionally, the MSRB should seek public comment on all types of MSRB compliance materials and engage professionals and trade associations before finalizing these documents. This will add time to the process, but will ultimately allow for resources to be better understood and used by marketplace participants, as well as assist the MSRB receiving input from those with practitioner expertise. The MSRB should also clearly indicate on its website what interpretive guidance included under the "interpretive guidance" tab for each of its rules was subject to public comment and approved by the SEC.

We have expressed concern in the past about MSRB guidance documents not being as clear as they could be in helping regulated entities comply with MSRB rules. This is especially true with the MA Compliance Advisories. The MSRB should also be clear that these Compliance Advisories and resources do not play a role in the SEC and FINRA examination process, and should clarify the purpose they serve for regulated entities. The Advisories themselves should not take the place of formal guidance or rulemaking, but rather should be used to summarize already developed guidance, or important information (including MSRB Rule approval filings with the SEC, where the MSRB comments and responds to comment letters they have received on the rulemaking and in doing so includes observations or clarifications about language in the proposed rule). Finally, public input should be sought on Advisories and other guidance materials as they are being developed. The most useful formats for these documents would be a mix of narrative information, FAQs and scenario-based examples.

The MSRB continues to offer numerous webinars and educational offerings to MAs and other market participants. These offerings (including future offerings in various formats) should coincide with approval of rulemaking or release of resources to help participants best understand the MSRB's work in specific areas. We do not see great value in events that simply recite a rule (either verbally or in a PowerPoint presentation). The MSRB should also consider developing transcripts of webinars and events so that they are available (and searchable) for MAs to review and absorb after the webinar and/or when their schedules permit.

We encourage the MSRB to continue providing robust guidance and resources related to its rulemaking free of charge to regulated entities. There is concern that effort spent to provide content and information for MuniEdPro comes at the expense of MSRB's actual statutory role to provide guidance and materials to regulated entities who must comply with MSRB rules. We know that the MSRB has an important educational role within the municipal market. We support efforts to educate MAs on MSRB rulemaking and educating issuers to understand the regulatory framework that is in place to protect them. However, the role that MuniEdPro plays in this education process remains uncertain. We believe the MSRB's focus should be to provide guidance and information related to rulemaking (with public input) and after the development of a robust suite of resources, only then determine if there is a need or appropriate role for the MSRB to have a pay-for component to its offerings especially for MAs and broker/dealers. We find it difficult to understand the difference in the guidance the MSRB should be providing as part of its overall statutory role, and the purpose of and content within MuniEdPro courses. Furthermore, regulated entities already pay fees to support the role of the MSRB, why then should those same parties pay for educational content that is already part of the MSRB's statutory guidance responsibilities.

Another concern is that revenue-producing endeavors like MuniEdPro are heavily promoted by the MSRB while other resources are not equally emphasized. For example, we do not believe that the MA community is generally aware of the availability of the MSRB's Market Regulation department to respond to compliance inquiries. The MSRB should work to better promote this feature. Additionally, information provided in these inquiries, should be made public so that all participants can better understand MSRB rulemaking and prevent providing selective guidance to some professionals over others. In the past, the MSRB provided the SEC with a record of the guidance provided in this forum and the MSRB should resume that process as well as making the record that they provide to the SEC publically available.

Another key area the MSRB could address is updating guidance that was developed prior to the regulation of MAs, that now pertains to MAs. In these instances, the guidance should include the term "municipal advisor" where applicable, and address issues that are related to MA practices as well as more recent information and examples that are of interest to all stakeholders. Additionally, where guidance exists that was developed prior to the *Dodd Frank Act* and the subsequent MA Rule, the MSRB should review those rules and guidance to reflect the regulatory regime as it exists today. This is especially true as prior to the *Dodd Frank Act* there was no federal definition of municipal advisor. Now that this definition exists, all MSRB rules and guidance should reflect this official term versus what the term may have meant prior to the *Dodd Frank Act*. MSRB guidance should also be updated to reflect limitations on the role of underwriters that were developed in connection with the final Municipal Advisor Registration Rule.

### **MSRB'S Website and Emails to Regulated Parties**

Overall, the MSRB's website is generally clear and full of helpful documents for a variety of market participants. However, at times this information is difficult to find. The MSRB could resurrect past resource pages for specific professionals where all information relevant to those professionals is contained on one page and include links to ancillary or more detailed information found elsewhere on the MSRB's website.

Many of our members are overwhelmed with the number of emails sent by the MSRB. There is further frustration that many of these emails are somewhat "marketing" in nature, which dilutes the emails that are of a more substantive nature. MSRB should consider consolidating their emails into a weekly offering that could include sections related to different parties and MSRB activities.

## **MSRB's Role in the SEC and FINRA Examination Processes**

While respecting and acknowledging the relationship between the MSRB and the SEC and FINRA, one area where we have great concern is when the MSRB provides interpretations or guidance to these bodies without sharing that information with regulated parties. We believe the MSRB should provide the same guidance it provides examiners to all market participants so that the entire marketplace can benefit from this information. Without guidance or even the existence of FAQs for key MSRB rules applicable to MAs, MAs who are striving to successfully comply with MSRB rules, only learn at the time of examination that their policies and procedures may not be working. By providing the market with information that is given to the examiners, the goal of educating regulated entities and helping them comply with MSRB rulemaking will better be achieved.

We encourage the MSRB to continue their activities to educate SEC and FINRA examiners. An additional approach to educate the examiners would be to develop a way for SEC and FINRA examined parties to provide the MSRB with real time information and insights from current examinations where the examined party felt that exam staff was not fully educated on MSRB rules. This could be a positive way for the MSRB to receive input that would make the MSRB's educational topics most timely and relevant.

NAMA remains optimistic that engagement with the broader community can greatly enhance the outcome with the MSRB starting the conversation about developing a compliance support program that is helpful to regulated entities. The MSRB can further enhance its efforts by: communicating in a more constructive manner with market participants; adopting policies and procedures that allow for a full understanding of how guidance and resources are developed; opening up the guidance and advisory process to public comment; avoiding occurrences where guidance may be provided to some parties but not all; focusing on the quality of documents and events provided; engaging with industry groups to learn about needs amongst their constituents; better categorizing and posting information on its website; and streamlining emails to regulated entities and other MSRB email subscribers.

In addition to these suggestions, the MSRB Board should be actively engaged to directly improve compliance support through appropriate funding allocation, developing policies and procedures for resource development and implementation, and focusing MSRB efforts on issues that specifically relate to its statutory mission. Such activities would enhance the continuation of MSRB staff's work to develop a strong compliance support program for regulated entities.

We would welcome the opportunity to further discuss these issues discussed in our letter with you at your convenience.

Sincerely,



Susan Gaffney  
Executive Director