



January 11, 2021

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20005

RE: MSRB Notice 2019-20: MSRB Requests Input on Strategic Goals and Priorities

Dear Mr. Smith:

The National Association of Municipal Advisors (“NAMA”) welcomes the opportunity to discuss the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Input on Strategic Goals and Priorities. NAMA represents independent municipal advisory firms and individual municipal advisors (“MAs”) from across the country and is very interested in the MSRB’s strategic plan initiative. Our comments here are generally consistent with past comments that we have made with regard to the MSRB’s mission, goals, priorities, and specific MSRB rules. We agree that with new leadership and a downsized Board, the MSRB is well positioned to review its past and current work and look for ways to leverage its resources and statutory authority to best serve the municipal market.

What are the important trends or developments you have your eyes on in the municipal market in the coming years?

Recognizing new trends and market developments is important so that the MSRB can work with stakeholders to identify areas or practices that need regulatory attention. However, that need with respect to the MSRB should be focused only on trends or developments that affect its statutory mission. As we discuss below, the MSRB has congressional authority to develop rules for broker-dealers and municipal advisors. Exercising that authority should direct the MSRB’s work including with respect to identifying trends and developments. If there are market practices that are developing that adversely affect issuers and investors, the parties the MSRB is legislatively mandated to protect, then the MSRB should address these issues. We specifically note that the identification of such practices may be conveyed to the MSRB staff by the Securities and Exchange Commission (“SEC”) Office of Inspections and Examination and Enforcement Division as those offices are in position to see practices that need new enhanced rulemaking to divert municipal market participants from engaging in activities that are harmful to issuers and investors.

The MSRB also has authority, as given to them by Congress and the SEC, to be the repository for issuer disclosure documents. It is this responsibility that led to the development and management of EMMA. While we encourage the MSRB’s work related to EMMA and other technology systems, the MSRB should focus efforts on ensuring that EMMA best facilitates the filing and retrieval of disclosure documents. The need for improving and being able to easily file and retrieve disclosure information is especially important as there are numerous efforts

underway encouraging issuers (or professionals they have authorized on their behalf) to provide additional voluntary disclosure documentation. We are also aware of concerns that the investor community have raised over time about how information in the EMMA system can be better presented to assist with investor needs to access disclosure documents, and suggest that the MSRB address their concerns as well.

While our next point is not a “market development” or “trend”, it is an area of great importance—how the MSRB approaches its own reserve levels and budget needs. We certainly understand the need to have reserves to protect operations during times of lower trade and issuance volume. However, there is not a consistent policy for addressing what happens when transaction volume far exceeds projections, and the MSRB revenues are much higher than budgeted (we note 2020 brought in a shattering new volume record, and many anticipate a continuing robust market in 2021). In the past, there have been rebates to broker-dealers and fee holidays. While looking at trends and developments, the MSRB should also consider how to address overfunding of reserves.

How would you assess the effectiveness of the MSRB at advancing its mission? What are we doing well? What should we approve upon?

Any assessment of MSRB’s effectiveness at advancing its mission must start with agreement as to the definition of such mission. NAMA reads the Exchange Act (Section 15B(b)) and SEC rules to identify the core MSRB functions as rulemaking and the development and operation of EMMA and other technology systems. The MSRB has often though, in the past, engaged in activities that go beyond the congressionally mandated and SEC approved items. These expanded activities include focus on market leadership and an education role, which we consider ancillary activities. Changes to MSRB’s own Articles of Incorporation (filed in the Commonwealth of Virginia), especially those made in 2010, have allowed the MSRB to institutionalize self-identified responsibilities of the organization that go beyond its congressionally developed mandate. Additionally, NAMA questions the MSRB’s need to fund these activities through increased fees on municipal advisors and broker-dealers.

NAMA, and other organizations, have commented in the past, and likely in this process as well, that the MSRB’s mission should focus on work that is specifically related to its mandates from Congress and the SEC. This includes educational efforts or protection of the public interest to be done - as stated in Section 15B(b) of the Exchange Act – that is limited to educational efforts within the scope of the MSRB’s rulemaking authority over municipal advisors and broker-dealers, and not more broad efforts the MSRB has engaged in recently. Further, the MSRB should look to sync the mission listed on its website and in its Articles of Incorporation, with the more accurate and limited mission expressed in the Exchange Act which would aid in the strategic planning process now in development.

The focus on modernizing the MSRB rulebook should serve as a recalibration in general for how the MSRB sees itself and portrays its work to the broader market and public. This pivot to focus on rulemaking, which we discuss further below, is a positive for the organization and marketplace and the MSRB should be applauded for undertaking this effort.

Positive changes at the MSRB in recent years include the reduction of emails sent out to stakeholders. Many found the volume of emails to be overwhelming and more “marketing” in nature, which diluted more substantive emails and information that the MSRB produced. Since that time, the consolidation of information (e.g., compliance corner, quarterly emails) has been a positive and strategic improvement on the MSRB’s communications front.

Suggested improvements in addition to a focus on developing the MSRB’s core mission include reaching out to stakeholders at the beginning of the rulemaking process or other core-mission based initiatives. This would allow the MSRB to be better informed about professional and market practices as rules are developed and revised. This suggestion is being made so that MSRB staff can internally approach the drafting of rulemaking, guidance and

other documentation with a broader understanding of the matter that can enhance the beginning of the drafting process.

The MSRB should also curtail broad education efforts, such as Muni Ed Pro. Educational efforts made for rulemaking or other areas where the MSRB has jurisdiction (e.g., EMMA, other systems), can be provided in a straight forward manner (e.g., a “typical” webinar) and not through a costly system, where many of the offerings stray away from the MSRB’s core mission. We would also note that in some of these offerings, that the information provided is not necessarily correct or on point, or is simply a reiteration of a rule, which does not provide significant value to participants viewing these events. Furthermore, NAMA has identified portions of courses that misrepresent the way in which business may be conducted including financing structuring courses that assume that only broker-dealers structure transactions.

It is worth highlighting that neither MSRB Rule G-3 regarding continuing education requirements – nor FINRA regulations of the same nature – mandate NASBA approved Continuing Professional Education (CPE) credits. Since CPE credits are not required by the MSRB or FINRA, we do not see the value of this layer of administrative burden on the MSRB. Thus, NAMA again strongly urges the elimination of MuniEd Pro and instead asks that the MSRB develop webinars or events related to its rulemaking to help stakeholders understand a particular regulatory matter. The cost of Muni-Ed Pro is not justified by the value it brings to the market.

Obviously as the MSRB revises its rulebook, educational materials will be needed and straightforward educational offerings should be developed. These should be produced in written form for easier and better reference and if the webinar format is used, the events should be transcribed to assist regulated entities with finding and using information developed by the MSRB. The concern here is that at times there have been either in MuniEd Pro offerings or in other webinar settings, statements made or clarifications provided that can not be found elsewhere. NAMA also urges the MSRB to be cautious about the selective use of interpretive assistance through responses to individual practitioners or SEC and FINRA examination and enforcement staff. As the broader regulatory participant community could benefit from the clarity provided in some of these non public forums, the MSRB should seek to find a way to provide such information to the entire market. In the past, interpretive guidance given by the MSRB in these forums was consolidated and published for general consumption and, subject to the concerns we note below, should again be generally available.

Finally, on the matter of developing a focused MSRB mission, this would also help with MSRB finance and budget matters. NAMA has commented in the past that while the MSRB looks to increase, halt or adjust fees on various professionals, that this should only be done while also looking at the expenditure side of the ledger. A streamlined mission and workplan, which includes reducing or eliminating many ancillary projects, would allow a more focused approach to identifying budget needs, and how fees should and need to be assessed.

As the MSRB modernizes its rule book, how should we improve the rulemaking process and ensure guidance remains relevant to today’s markets?

NAMA supports the MSRB’s focus on modernizing its rulebook and the retrospective rule and guidance review process. As has been commented over the past few months, a vast majority of this work will focus on broker-dealer rules, yet will be helpful to all market participants, especially regulated parties who could be aided by revised rulemaking and guidance to help both in practice and with compliance responsibilities.

NAMA is aware of the significant time and effort it will take to address, review, revise and restructure many MSRB rules and guidance. Having a process in place to determine which rules and guidance to tackle first, how that will be done, and how to solicit input from stakeholders will be imperative to this substantial undertaking.

While the rulebook should reflect current market practices, there are numerous changes and updates that need to be done just to get rulemaking and guidance to current time. NAMA's suggestions to address both of these areas include:

- Where there are legacy references to “financial advisors” that phrasing should be updated to “municipal advisors.”
- Where rules developed prior to passage of the Dodd Frank Act do not reflect the regulation and definition of municipal advisors, either in passing or substance, the rulemaking and guidance should be revised.
- In guidance that is beneficial to both MAs and broker-dealers, incorporation of MAs into the framework and notations should be completed.
- There are many types of “guidance and advisories” developed by the MSRB over the years. Twenty years ago guidance was mainly interpretative guidance that needed SEC approval. Today such “guidance and advisories” especially for MAs are not as structured, and do not need SEC approval. NAMA believes that the MSRB should focus on a principles based approach to guidance, as much as possible. While there may be areas where more robust interpretive guidance is needed (e.g., Rule G-37) aside from those documents, the MSRB should strive to develop one form of guidance/advisories across stakeholder lines. Having a uniform document structure outside of formal rules (issue area, content structure, “guidance”, format) would be helpful to all parties and reduce confusion about how to use such “guidance.”

NAMA suggests that such uniform guidance build from the MSRB's recent work where non-binding “considerations” and/or FAQs are presented. We strongly encourage the MSRB to solicit public comment and seek input from professionals on guidance development to ensure that these documents can be best utilized on the ground for practicing MAs and broker-dealers, and for firm compliance programs.

- Where possible, MSRB rules should match FINRA rules to avoid duplicative and administratively burdensome requirements on broker-dealer firms. MSRB should be especially conscious of the cost to firms of even small deviations in the rules and consider whether the additional regulatory protection gained, if any, justifies such deviations.
- All guidance and educational information related to rulemaking should be readily available (e.g., as noted above where a live or recorded event occurs having it also transcribed), and available free of charge to stakeholders.
- Related to specific modernization of the rulebook and guidance, examples of areas that the MSRB should address in this process include:
 - Unfinished work on Rule G-34 and CUSIP Numbers;
 - Rule G-23 and the modernization thereof to reflect the changes made in 2010 with the Dodd Frank Act that municipal advisors are now regulated;
 - Developing more approachable guidance to Rule G-40, than the three volumes of information first developed;
 - Enhancing G-42 guidance using a considerations/FAQs format to address not only issues that needed to be approached at the beginning of the rule's implementation but areas that have caused confusion in more recent times; and
 - More clear definition of Municipal Principal requirements for firms with multiple business lines.

- The MSRB should also extend their outreach efforts to speak with interested parties when comment letters are received in order to better understand the context of the written comments, engage in professional conversation, and answer any questions that MSRB staff may have about an association's or person's comments. As staff synthesizes and summarizes information received to present to the Board when rulemaking and other decisions are made, making sure that staff has as well rounded of an understanding and reasoning why a comment or suggestion is offered, would enhance the rulemaking process.

What are the most pressing knowledge and information gaps in the municipal market? How should the MSRB focus its educational efforts to provide value and impact for today's market?

The MSRB should focus on leveraging its knowledge and information to those areas that are unique to the MSRB and its narrow statutorily-mandated roles. There are numerous trade organizations that provide educational materials to their members. The MSRB should look to what it – as a regulator – can provide the marketplace related to their core work and mission.

Finally, we would note that the MSRB's rulemaking and other initiatives should answer the question "how does this protect municipal bond issuers and/or municipal bond investors." That is the key phrasing in the Exchange Act that provides an overarching guide to the MSRB's work. Perhaps incorporating this question into internal and external (request for comment) thought processes would further enhance MSRB's focus on the reasoning for specific outputs as well as its general mission.

Thank you again for the opportunity to comment on this important strategic planning initiative. NAMA welcomes the opportunity to discuss our comments further with MSRB staff and the Board.

Sincerely,



Susan Gaffney
Executive Director