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The Municipal Securities Rulemaking Board
1301 I Street NW, Ste. 1000
Washington, DC 20005

Re: Comment on Proposed Amendments to MSRB Rule D-15

To the MSRB:

I write to express my opposition to the proposed amendments to MSRB Rule D-15, which would exempt SEC-registered investment advisers from customer affirmation requirements and effectively presume that small- to medium-sized registered investment advisers (RIAs) qualify as Sophisticated Municipal Market Professionals (SMMPs).¹

These proposed changes rest upon a fundamentally flawed premise—that SEC registration status correlates with municipal securities sophistication. They do not. Moreover, the proposed amendments would strip away critical investor protections precisely when the municipal securities market faces unprecedented risks from the proliferation of speculative-grade debt issued by joint powers authorities and similar conduit issuers. This letter describes these issues and proposes possible alternative approaches for the MSRB.

I. SEC Registration Does Not Equal Municipal Securities Sophistication

Notice 2025-08 reflects the MSRB's understanding that SEC-registered investment advisers are "typically very sophisticated." This characterization is flawed for two primary reasons: (i) it conflates mere SEC registration with municipal market sophistication; and (ii) it fails to account for the vast disparity in resources and sophistication amongst RIAs.

A. SEC Registration is a Relatively Low Barrier to Entry that Imposes No Municipal Securities Expertise Standards

Registration with the SEC under the Investment Advisers Act of 1940 establishes that a

¹ I am an attorney who regularly represents public investors in securities disputes and arbitrations and am an active member of the Public Investors Advocate Bar Association (PIABA). The views expressed in this letter, however, are my own.

firm manages more than \$100 million in regulatory assets under management (AUM) and satisfies certain operational and disclosure requirements. However, these regulatory barriers to entry are modest, particularly with respect to the \$100 million AUM minimum. Given the long and steady appreciation in asset values across virtually all asset classes, \$100 million in AUM simply does not signify what it may have in past decades.

Critically, and as the Public Investors Advocate Bar Association (PIABA) rightfully points out in its comment letter, SEC registration does not require an RIA to undertake any specialized training or demonstrate any accreditation with respect to municipal securities. Moreover, the MSRB's position fails to appreciate that RIAs encompass a vast spectrum of professionals who focus on diverse arrays of securities and investment products. In my experience representing public investors, even RIAs that proclaim purported expertise regarding municipal bonds often lack a fundamental understanding of how to evaluate municipal bonds for their clients.²

The notion that an RIA qualifies as an SMMP merely because of its SEC registration is akin to the proposition that a psychiatrist possesses the same expertise as their cardiologist colleague to perform cardiac surgery merely because both physicians are licensed by the same state medical board. While both professionals meet the same general licensing standards, those standards say nothing about their specialized competencies in distinct areas of practice.

The MSRB need look no further than the dramatic rise in the number of SEC-registered RIAs in recent years to understand that SEC registration status has become an increasingly unreliable proxy for any form of specialized sophistication. In 2024, the number of SEC-registered advisers hit a record high according to an annual report from the Investment Adviser Association.³ The report further noted that the number of SEC-registered advisers had more than doubled since 2000—underscoring that SEC registration has become far more commonplace and therefore far less indicative of specialized expertise in any particular asset class.

B. Most RIAs are Small Businesses that Lack Critical Municipal Securities Evaluation Infrastructure

The existing SMMP framework properly assumes that qualifying entities possess: (i) timely access to material information; (ii) independent capacity to evaluate investment risks and

² Anecdotally, I represented a client in a matter where the client's RIA advised on the suitability of certain municipal bonds backed by California multi-family housing apartments based primarily on a single criterion: the physical distance of the apartment complexes from the Pacific Ocean. The RIA failed to perform any actual credit analysis of occupancy rates, debt service coverage ratios, property management quality, or local rental market conditions.

³ Investment Adviser Association, *Evolution Revolution: The Continued Growth and Transformation of the Investment Advisory Profession (2025 Annual Report)*, available at <https://www.investmentadviser.org/wp-content/uploads/2025/05/Snapshot2025.pdf> (last accessed February 2, 2026). The report further noted that the number of SEC-registered advisers had more than doubled since 2000.

market values; and (iii) ability to exercise truly independent judgment. These are not mere technicalities—they represent the foundational capabilities necessary to function as a sophisticated market participant.

Most SEC-registered RIAs with less than \$1 billion in assets under management lack all three capabilities with respect to municipal securities. Indeed, nearly 90% of RIAs operate as small businesses with fewer than 50 employees.⁴ Furthermore, RIAs that focus on individuals as their clients have an average of just eight (8) employees.⁵ While many smaller RIAs have certainly evolved from the “mom and pop” operations of decades past, they remain small businesses without the vast infrastructure and resources of major institutional firms such as BlackRock, Nuveen, or Franklin Templeton.

The following sections detail the critical infrastructure gaps that render most small-to-medium RIAs unsuitable for SMMP classification.

1. Absence of Dedicated Credit Research

Large institutional asset managers employ dedicated municipal credit research teams that continuously monitor issuer financial statements, track tax base changes, analyze complex revenue bond structures, maintain direct relationships with issuer officials, and subscribe to specialized research services such as Municipal Market Analytics (MMA), Bloomberg Municipal Research, and specialized legal opinions services.

Small-to-medium RIAs generally do not have this infrastructure. They typically rely exclusively on credit ratings from Moody’s, S&P, or Fitch—ratings that (i) lag material developments in issuer financial condition, often by months or quarters; (ii) fail to capture risks embedded in complex revenue bond structures, particularly those involving special-purpose entities; and (iii) provide no coverage whatsoever for the significant and growing segment of non-rated municipal debt.

The inadequacy of passive reliance on third-party ratings became evident during the 2008 financial crisis, when rating agencies systematically failed to identify risks in structured finance products. Municipal securities, while generally safer than mortgage-backed securities, nevertheless present complex credit risks that require active, specialized analysis—particularly for the types of special-purpose entity debt discussed in Section IV below.

2. Deficient Price Discovery and Best Execution Capabilities

MSRB Rule G-18 requires dealers to execute transactions at prices as favorable as possible under prevailing market conditions. However, this obligation substantially diminishes

⁴ *See id.*

⁵ *See id.*

for SMMP transactions, based on assumptions that sophisticated participants conduct comprehensive price discovery and can protect themselves through market knowledge.

Most small-to-medium RIAs lack any meaningful price discovery capabilities. They execute trades either: (i) through institutional sales representatives offering limited inventory from a single dealer's holdings, or (ii) through online custodian platforms (such as Charles Schwab or Fidelity) displaying available securities from the custodian's affiliated dealers—in both cases making no attempt to compare dealer offerings against alternative sources, obtain competitive bids from multiple dealers, or verify that prices reflect fair market value based on recent comparable transactions.

This deficiency is particularly acute in the municipal securities market, which lacks the transparency and liquidity of equity markets. Municipal bonds trade infrequently, with some securities experiencing zero trading activity for extended periods. Without active price discovery—requiring access to multiple dealer inventories, recent trade data, and sophisticated analytical tools—small RIAs cannot determine whether offered prices reflect fair value or include excessive dealer markups.

The MSRB's own EMMA (Electronic Municipal Market Access) system, while providing post-trade transparency, does not cure this deficiency. EMMA reports transactions after they occur; it does not provide the real-time competitive pricing information necessary for effective pre-trade price discovery. Small RIAs typically lack even the basic capability to use EMMA data to challenge potentially unfavorable pricing in real time.

3. Absence of Specialized Technology Infrastructure

Sophisticated municipal portfolio management requires specialized systems capable of: calculating duration, convexity, and interest rate sensitivity across the portfolio; monitoring diversification and concentration limits against regulatory or internal mandates; enabling instant swap analysis to compare existing holdings against potential replacements; generating real-time credit event alerts; and computing tax-equivalent yields across different investor tax brackets.

Small-to-medium RIAs typically rely on basic portfolio accounting systems provided by custodian broker-dealers (such as Schwab Advisor Center or Fidelity Wealth Central) that offer rudimentary reporting but lack sophisticated fixed-income analytics. RIAs using these systems cannot perform real-time swap analyses, adequately monitor duration exposure as interest rates change, or model interest rate scenarios—fundamental capabilities for sophisticated municipal portfolio management.

By contrast, major institutional municipal bond managers subscribe to specialized systems such as Bloomberg Port, BlackRock Aladdin, or FactSet's fixed-income analytics modules—platforms costing hundreds of thousands of dollars annually and requiring dedicated staff to operate effectively. These systems provide the analytical capabilities necessary to manage municipal portfolios with genuine sophistication. Their significant cost, however, make them prohibitively expensive for many RIAs.

II. Today's Heightened Risks in the Municipal Bond Market and Disparate Impact on Retail Investors

Historically, municipal bonds were viewed as conservative, “plain vanilla” investments prized for their tax-exempt income and relative safety. Retail investors—particularly retirees in high-tax states—sought municipal securities because they were generally backed by the taxing power and revenue streams of established governmental entities through general obligation or revenue bonds. This traditional view of municipal securities as low-risk investments persists in the minds of many retail investors and, unfortunately, many small-to-medium RIAs. For this reason, the popularity of municipal bond amongst retail investors has continued through today, with retail investors directly holding an estimated 40 to 45% of municipal bonds.

However, the municipal securities market has undergone dramatic structural changes in recent years. These changes have introduced new and substantial risks that require specialized expertise to evaluate—precisely the type of expertise that small-to-medium RIAs lack.

A. The Proliferation of Speculative-Grade Debt Issued by Joint Powers Authorities and other Conduit Issuers

The proposed rule changes arrive at a particularly inopportune time. The municipal market is experiencing rapid growth in debt issued by joint powers authorities (“JPAs”), community facilities districts, and similar special-purpose entities that lack traditional tax bases, general governmental backing, or established operating histories.

Many municipalities throughout the United States—smaller cities and towns, in particular—do not issue bonds directly because, among other reasons, they lack the financial expertise, staff resources, or market access necessary to complete complex securities offerings. Instead, local municipalities often join to create quasi-governmental agencies known as Joint Powers Authorities (“JPAs”).⁶ In essence, participating municipalities outsource and delegate their bond-issuing powers to JPAs, which are generally staffed by a small number of individuals—sometimes as few as three to five employees—and operate with limited oversight from the participating municipalities.⁷

JPAs frequently act as “conduit” issuers, meaning they issue bonds on behalf of private entities or special-purpose projects rather than to fund traditional governmental operations or infrastructure. These conduit bonds are typically secured not by the JPA’s taxing authority (which it generally lacks) nor by the general credit of participating municipalities (which rarely provide

⁶ Municipalities create JPAs pursuant to state laws commonly known as Joint Exercise of Powers Acts.

⁷ Matt Schiffrin and Isabel Contreras, *California Scheming*, FORBES (December 2, 2021), available at <https://www.forbes.com/sites/schiffrin/2021/12/02/california-scheming-municipal-bonds-workforce-housing-crisis-luxury-apartments/?sh=4e785e643001> (last accessed February 2, 2026). The Forbes investigation described certain JPAs as operating essentially as “shell companies” with minimal staff and oversight.

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Common structures include housing bonds, charter school facilities bonds, or other non-profit facilities bonds. These structures share common characteristics that distinguish them from traditional municipal securities: i) absence of governmental backing; ii) concentration risk; projections-based underwriting; iii) limited or no operating history; and iv) opaque legal structures. Such structures have produced significant defaults in recent years. In a comprehensive Forbes investigation, journalists documented numerous examples of JPA-issued workforce housing bonds that experienced severe financial distress or outright default, leaving retail investors with substantial losses.⁹ The Forbes investigation described certain JPAs as operating essentially as “shell companies” with minimal staff and limited oversight.

B. Regulatory Warnings and Recent Defaults

More significantly, SEC officials have recently sounded the alarm on these types of JPA bond issuances. In December 2023, the Director of the SEC’s Office of Municipal Securities, Dave A. Sanchez, stated he was “very concerned” about the proliferation of JPAs serving as conduit entities.¹⁰ Director Sanchez further stated:

Recently, the market has also seen the emergence and reemergence of certain deal structures including housing deals for essential workers and students...that have come under scrutiny because of questionable economics or other issues. We have seen certain

⁸ California is for JPA bond issuances, with some of the most prolific JPAs in the United States operating within the state. This includes an alphabet soup of entities such as the California Statewide Communities Development Authority (“CSCDA”), the California Community Housing Agency (“CalCHA”), and the California Public Finance Authority (“CalPFA”). CSCDA is perhaps the country’s largest JPA in terms of issuances—its website boasts that it counts over 350 California municipalities as participants and that it has issued over \$75 billion in bonds. California Statewide Communities Development Authority, About CSCDA, available at <https://cscda.org/about/> (last accessed February 2, 2026).

⁹ Schifrin and Contreras, *supra* note 7.

¹⁰ Dave A. Sanchez, Director, SEC Office of Municipal Securities, *Closing Remarks*, Compliance Conference, Washington, D.C. (December 7, 2023) (transcript available at <https://www.sec.gov/newsroom/speeches-statements/sanchez-remarks-compliance-conference-120723>) (last accessed February 2, 2026).

municipal entities cede authority for issuing conduit bonds to privately-run entities that are the leading issuers of defaulted bonds.¹¹

Many of these structures receive investment-grade ratings based on optimistic assumptions about future growth, development success, or private obligor performance. However, rating agencies—paid by issuers and underwriters—face inherent conflicts of interest that can lead to rating inflation, particularly for complex, structured transactions where historical default data is limited.

Moreover, a significant and growing portion of JPA-issued conduit debt carries no rating whatsoever. For these non-rated securities, investors must rely entirely on their own credit analysis—precisely the capability that small-to-medium RIAs lack. This lack of rating further led to significant underreporting of municipal bond defaults according to a study done by New York Fed economists.¹²

As described above, smaller RIAs are entirely unequipped to analyze the risks inherent in JPA-issued conduit debt. Instead, small RIAs rely on precisely the two sources that prove inadequate for these securities: (i) credit ratings that may be inflated, absent entirely, or based on overly optimistic assumptions; and (ii) dealer representations that dealers will have limited incentive to provide once SMMP status eliminates their heightened disclosure obligations. This is precisely the scenario the SMMP framework was designed to prevent: unsophisticated investors operating under the presumption of sophistication, exposed to complex and risky securities they cannot properly evaluate, with reduced dealer protections based on a false premise of capability.

The risks of municipal bonds were underscored by the June 2025 collapse of the Easterly ROCMuni High Income Municipal Bond Fund, which lost half its value and was comprised largely of non-rated conduit or JPA-type bonds that were not backed by a municipality.¹³

III. ALTERNATIVE APPROACHES BETTER SERVE THE MARKET

We recognize the MSRB's legitimate interest in reducing unnecessary regulatory burden and enabling efficient market operations. However, those goals can be achieved through more targeted reforms that do not sacrifice investor protection.

¹¹ *Id.* (emphasis added). Director Sanchez reiterated these concerns in subsequent remarks. See Dave A. Sanchez, Director, SEC Office of Municipal Securities, *Issues Revisited: Titles, Amendments to Rule 15c2-12 Undertakings and Voluntary Disclosure*, Washington, D.C. (June 30, 2025) (transcript available at <https://www.sec.gov/newsroom/speeches-statements/sanchez-speech-ghoa-06302025-issues-revisited-titles-amendments-rule-15c2-12-undertakings-voluntary-disclosure> (last accessed February 2, 2026)).

¹² <https://libertystreeteconomics.newyorkfed.org/2012/08/the-untold-story-of-municipal-bond-defaults/>

¹³ <https://www.investmentnews.com/independent-broker-dealers/after-muni-bond-fund-blow-up-broker-dealers-face-questions/261636>

A. Asset-Based Thresholds Should Be Raised, Not Eliminated

If the MSRB believes current thresholds for SMMP status are too low, the appropriate response is to raise them significantly rather than eliminate affirmation requirements. We would support:

1. Increasing the investment adviser threshold from \$100 million in regulatory assets under management to \$250 million or more, recognizing that only larger advisory firms have the infrastructure to support genuine sophistication in specialized areas like municipal credit analysis;
2. Requiring that a specified minimum dollar amount or percentage of the RIA's assets under management be allocated to municipal securities, demonstrating actual market focus rather than incidental participation; and
3. Maintaining affirmation requirements at all asset levels to ensure customers understand what protections they are waiving.

B. Streamlined Affirmations Can Reduce Burden Without Sacrificing Protection

If the burden of obtaining affirmations is the concern, the MSRB could allow one-time affirmations that remain valid for extended periods (e.g., three years) absent material changes in circumstances, rather than requiring transaction-by-transaction or even annual reaffirmations. This would reduce administrative burden while preserving the critical function of informed customer consent.

C. Enhanced Guidance on Sophistication Assessments

Rather than weakening standards, the MSRB should strengthen Rule D-15(b) by providing more detailed guidance on what constitutes a reasonable basis for believing a customer is capable of independent evaluation. Such guidance could include the following considerations for dealers:

1. Whether the customer employs dedicated fixed-income research analysts or relies on third-party ratings;
2. Whether the customer has access to alternative trading platforms and regularly solicits competitive quotes;
3. Whether the customer actively monitors execution quality and challenges pricing when appropriate;

4. Whether the customer reviews official statements, continuing disclosure, and other material information before making investment decisions; and
5. Whether the customer employs portfolio management tools capable of analyzing duration, convexity, and other fixed-income risk metrics.

Such guidance would give substance to the reasonable basis standard and help dealers make appropriate determinations even without affirmation requirements. However, we continue to believe that affirmations serve an irreplaceable function and should not be eliminated.

IV. Conclusion

The proposed amendments to Rule D-15 would strip away critical investor protections based on a demonstrably false premise: that SEC registration status correlates with municipal securities sophistication. As detailed in this letter, most SEC-registered investment advisers lack the dedicated credit research capabilities, price discovery mechanisms, and specialized technology infrastructure essential for sophisticated municipal securities analysis.

These deficiencies would expose retail investors to significant risks precisely when the municipal securities market is experiencing rapid growth in speculative-grade conduit debt issued by joint powers authorities and similar special-purpose entities. Small-to-medium RIAs are wholly unequipped to analyze the complex risks inherent in these securities, yet the proposed amendments would eliminate dealer protections based on a regulatory presumption of sophistication that does not reflect market reality.

The MSRB's legitimate interest in reducing regulatory burden can be achieved through more targeted reforms described herein that do not sacrifice fundamental investor protections.

Respectfully submitted,

/s Gary Varnavides
Gary Varnavides