3PM
THIRD PARTY MARKETERS ASSOCIATION

OUTSOURCED GLOBAL MARKETING OF ALTERNATIVE + TRADITIONAL INVESTMENTS

July 29, 2015

Lynnette Kelly
Executive Director
Municipal Securities Rulemaking Board ("MSRB")
1900 Duke Street – Suite 600
Alexandria, VA 22314-3412

Mary Jo White
Chair
US Securities and Exchange Commission ("SEC")
100 F Street, NE
Washington, DC 2054

Dear Ms. Kelly and Ms. White,

The Third Party Marketers Association ("3PM") has long been an advocate for intelligent and effective rulemaking. Our members are paid intermediaries commonly referred to in the industry as third party marketers, placement agents, or solicitors (collectively "Third Party Marketers"). 3PM leaders have actively invested our time and efforts to collaborate with regulators and other industry participants to promote a better understanding of the specific role of Third Party Marketers, and to ensure that our member's business practices are taken into consideration as regulators develop new rules that impact our industry and protect investors. It is our long-standing goal to provide legislators and regulators with a valuable resource for evaluating important rules or issues affecting our members, the industry and investor protection.

While Third Party Marketers are already subject to regulatory oversight from the SEC, FINRA and the States, Congress determined that Third Party Marketers should be included in the new Municipal Adviser ("MA") rule set that was mandated by Dodd Frank Wall Street Reform Act ("Dodd Frank"). We question whether this was an intentional decision to increase the already robust regulatory oversight on our industry or whether the decision to include Third Party Marketers in the rule set was because Congress did not understand the extent to which we are already regulated. Despite the reason and our disagreement with the decision, Third Party Marketers are considered MAs and are part of the constituency that the SEC and MSRB are required to provide oversight to.

Outside of Congress' intent to include Third Party Marketers in the definition of a MA, we are troubled by the subsequent efforts undertaken by either the SEC or the MSRB, which have not endeavored to incorporate the business practices of Third Party Marketers into its rulemaking. We believe the actions taken by the SEC and the MSRB are at odds with the Congressional intent and we seek your consideration of our position on the scope of the rulemaking and, in particular at this time, the scope of the proposed qualification examination which is proposed to be released in September. If Third Party Marketers are to be subject to a testing requirement for their role as MAs, then It is our strong contention that the examination is deficient.

Dodd Frank required the SEC to issue a definition of an MA). In 2013, the final definition of an MA was issued and included three principal types of municipal advisors: (i) financial advisors, (ii) investment

advisers and (iii) third party marketers and solicitors. The SEC definition is extremely broad, encompasses constituencies with a myriad of different business models, and specifically includes our members.

Notably and curiously, the SEC definition excludes federally registered investment advisers but did not carve out broker / dealers who are registered with FINRA and the SEC.

It is also important to note that many of the companies and individuals that fall into the MA definition are unlicensed and unregulated; ***Third Party Marketers are an EXCEPTION***. As mentioned, the vast majority of Third Party Marketers are already registered and licensed as broker-dealers, state regulated investment advisers, or both and as such are regulated by the SEC, FINRA and/or the States.

In 2010, 3PM worked closely with the SEC to ensure that SEC Rule 206(4)5 enacted meaningful new guidelines but did not prevent our members from providing important resources throughout all stages of the investment process. Since that time, we have proactively worked with FINRA, the MSRB, the SEC, NASAA and some States, the Public Pension Community as well as industry groups such as SIFMA, NSCP, and NAIBD, to educate the industry about our business and our members. We have encouraged these important parties to the rulemaking process to ensure that a few "bad actors" will not unnecessarily taint an entire industry of professionals who conduct themselves ethically and are in strict compliance with current rules and regulations. Importantly, we believe that those operating in compliance, and not those operating outside legal and ethical boundaries, should help shape future rulemaking. 3PM has also provided continuous and ongoing education, training and consultation to our members to ensure that they are informed and ever-compliant with evolving rules and regulations. In 2011, 3PM issued its own "Principles and Best Practices," to which our members certify annually.

The MSRB and SEC have done virtually nothing to recognize that Third Party Marketers are a component of this defined professional group despite our active and frequent participation in the MSRB's early outreach meetings and to contact the SEC directly. To date, the MSRB has not included a Third Party Marketer on its Board despite the submission of nominations on multiple occasions by several of our members. 3PM has formally participated in the regulatory process by submitting numerous letters in response to request for comments, and we have extended several invitations to the MSRB to speak at our annual conference, some of who have accepted (Larry Sandor and Gary Goldsholle), while many others have declined. 3PM also sent a representative to sit on the initial MA exam committee and several of our members have volunteered to assist in writing questions for the examination.

3PM has also reached out to the SEC to get further clarification on comments made during the issuance of the final MA definition which appear to carve out Third Party Marketers that work with private funds from the definition of a MA. It was our goal to alert the SEC to the confusion occurring in the industry as well the interpretations taken by many prominent law firms. These firms have been advising their clients who advise private funds that they are not required to register as MAs since their activities are not considered municipal advice. (See Appendix for the SEC Comment regarding this.) Our genuine quest for information was met with resistance from the SEC and we were left without resolution. If the regulatory authority that wrote the definitions will not provide clarification, where should we turn for guidance?

In all of these respects, 3PM has reached out directly to the MSRB and SEC to create a positive working relationship with a common goal – smarter and more effective regulation, and investor protection. We have even approached the MSRB about becoming more involved so that 3PM could provide valuable assistance and input regarding our industry. In response, we were advised that the MSRB was too small to entertain a routine or formal role of involvement and we were instructed to "just reach out if we had any input."

Notwithstanding these ongoing efforts, the MSRB recently confirmed that it will require all MAs including licensed agents of registered broker-dealers to take and pass a credentialing examination. About a month ago, the examination outline for the Series 50 exam was released. The outline revealed the continued refusal of the MSRB to recognize Third Party Marketers as a component of its constituency. After reviewing the content of the Series 50, we now believe it is imperative for us to speak out to a broader audience, to ensure that original intent of Dodd Frank is respectfully and appropriately administered in the hope of preventing unintended consequences that may interfere with the establishment of enhanced investor protections.

Before explaining this, we would first like to reiterate 3PM and its members are not adverse to the MSRB's Board's decision to implement a qualifying examination. Actually, we welcome a licensing examination that would effectively test our knowledge of the industry and the relevant new rules. We further believe that it is reasonable to establish a level of competence for those Third Party Marketers conducting business in the public sector.

As an example, we recognize that wrongdoing in the recent past has involved failures to disclose conflicts of interest, particularly from unlicensed persons. Testing the qualifications of all MAs regarding these topics would be new, meaningful, responsive to Congressional concerns, and welcomed by the Third Party Marketer community. But we do not see any merit whatsoever in releasing an examination that falls short of meeting that expectation by omitting an entire constituency's business model from the exam content. We fear that the MSRB's subsequent actions will also affect the development of new rules, especially in the area of sales practice guidelines and will do little more than create yet another set of redundant rules while leaving areas for potential injury exposed.

The MSRB's Series 50 Examination outline reveals its focus for MAs, directing its licensing agenda to the new MAs who had not previously held securities licenses. This is appropriate for much of the MA community, since as previously noted, most MA were UNLICENSED and UNREGULATED. However, ***it is redundant and irrelevant to subject Third Party Marketers, who already carry a multitude of securities licenses, to yet another qualifying examination when the exam has no specific industry content relevant to our industry***. We urge the SEC and Congress to consider that federally regulated investment advisers are already exempt, even though (unlike licensed representatives and/or broker dealers) they do not yet have a supervisory licensing structure, they are not subject to ongoing continuing education requirements and they are not routinely examined by the SEC.

Analysis of the Series 50 exam outline shows that only 10% of the examination is based on the new MA rules while the remaining 90% is based on business practices in which Third Party Marketers do not

engage. Of the 10% that is rules-driven, much is redundant to existing licensing content and/or does not relate to soliciting firms. In all, ***we estimate that less than 5% of the exam is relevant to the business services provided by Third Party Marketers.*** While we understand that over time this will change as new rules are written and approved, Third Party Marketers that are required to take the Series 50 within the first year will be subjected to an unfair and unbalanced examination. These Third Party Marketers will not have the option of waiting until a more representative examination is in place if they want to continue to conduct business.

The functional sections of the S50 examination, which comprises 90% of its content, test applicants on four major functions:

- Understanding of Municipal Finance
- Performing Issuer's Credit Analysis and Due Diligence
- Structuring, Pricing, and Executing Municipal Debt Products and
- Understanding the Requirements related to the Issuance of Municipal Debt

Again, none of which are include businesses or practices utilized by Third Party Marketers.

What is important to note here is that most Third Party Marketers have already have taken and passed the Series 7 exam as a requisite to licensing with FINRA. Of the 250 questions included on the Series 7 examination, 50 address Municipal Securities. Review of the course outline for the Series 7 reveals that there is substantial overlap between the Series 50 and the Series 7 in this regard. The Series 7 requires that the individual demonstrate knowledge of topics including:

- Characteristics of Municipal Securities
- Types of Municipal Bonds
- Characteristics of Municipal Bonds
- Municipal Fund Securities
- Early Retirement of Municipal Securities
- The impact of Call Features on Insurers and Investors
- Refunding Methods
- Factors affecting the marketability of municipal bonds
- Pricing of municipal securities and other mathematical calculations
- Tax treatment of municipal securities

All of the above are included in the four major function of the Series 50 examination.

It is our understanding that the MSRB is implementing a testing regime that is similar in nature to what already exists in the industry. Furthermore, the MSRB acknowledges that the Series 50, like many other qualification examinations contains irrelevant content to many individuals who must take the examination in order to work in the industry. While this may be true, it does not make it appropriate nor does it mean that what has been previously done should be carried forward into the future. We believe that there is a limit to how many times a Third Party Marketer must be subjected to being tested

on redundant material or on material that does not apply to our business model. We are also aware that the Series 50 will be shortly followed by a Principal level examination that will be even more difficult for our constituency to pass. Again we ask the question, how is testing a supervisor on functional business models and issues that they will never face qualifying an individual to oversee the actions of representatives in a totally different business model?

FINRA has recently issued Regulatory Notice 15-20 which requests comment on restructuring qualification examinations so that applicants would take a general knowledge examination and an appropriate specialized knowledge exam to reflect their particular registered role. The proposed initiative would address the redundancies among the many specialty licenses currently offered. While the proposal may not address every redundancy, we believe that the MSRB should work with FINRA to include the Series 50 as one of the specialty examination under consideration by this concept proposal. This would not only streamline the examination process by eliminating duplicative content but it would also provide firms and representatives a significant cost savings both financially and in terms of man-hours which could instead be used to focus on investors.

We urge the SEC and the MSRB delay the implementation of the S50 pilot exam to further explore the efficiencies that could be created by FINRA's concept proposal.

While we support the MSRB's need to test the new rules that apply directly to MAs, we are unsure why the MSRB has not been willing to allow an examination waiver for Third Party Marketers, who are already licensed thus demonstrating competence with the majority of material being tested.

It is our belief that a qualification examination should test the knowledge base of the individuals taking the exam and ensure that each is qualified to participate in the business in which they are engaged. For the examination to be universally meaningful across the entire MA constituency, it must contain material that incorporates a Third Party Marketer's day-to-day work as well as the rules that apply to this industry. If it does not, then it is an incomplete examination, disrespectful of the underlying Congressional intent. ***If the MSRB has weighed the relevance and chosen to eliminate material relevant to Third Party Marketers, then licensed Third Party Marketers should be exempt from taking the Series 50 examination.*** It certainly is not logical to require a Third Party Marketer to learn content that they will never utilize in their business and have already been tested on simply to demonstrate that they can pass a test.

From the start of the MSRB's efforts to enact a new regulatory regime for MAs, it is clear to us that our industry has been ignored. While Third Party Marketers comprise a mere 13% of the total MA constituency, it is unfair to an entire industry that Third Party Marketers be discounted when both Congress and the SEC felt it was important enough to specifically include Third Party Marketers in the definition of a MA.

Throughout the preparation process for the Series 50 exam Third Party Marketers have continually provided our input and completed the MSRB's surveys about the information contained on the exam.

Given total size of our constituency, even if every single Third Party Marketer that is registered as a MA responded, our input would not have swayed the results. We continue to stand ready to offer our input, however we are growing increasingly frustrated that our investment in time and effort is apparently not valued by the MSRB or the SEC.

We have expressed our on-going concern and have offered a number of constructive solutions. One such example we have suggested is that the MSRB implement a modular exam, which offers several different options for MAs. Applicants could then select one or more of the components which are relative to the business lines they engage in. Fundamental knowledge, such as the new MA rule set could be common in all modules or offered as a stand-alone module that all MAs would be required to take and pass. This approach allows content to be offered in such a manner that the MSRB would ensure that they are testing not only an MA's knowledge of the applicable rules, but also their knowledge of the manner in which they interact with investors.

This approach of combining different areas or knowledge and implementing modules is not new. It has been previously tested by FINRA and is embraced by the industry. One such example is the Series 66 licensing exam. FINRA recognizing the redundancies between the Series 65 for Investment Advisers, the Series 63 Uniform Securities (state law) license, and the Series 7 General Sales Representative exam and created the Series 66 to make the testing process more efficient for market participants engaging in this business. The MSRB can easily follow this precedent and issue a series of licenses particular to the individuals who are already participating in the MA industry as brokers, dealers or investment advisers.

Looking beyond our issues with the Series 50 examination, we are deeply concerned that the MSRB will continue to ignore Third Party Marketers in its ongoing rulemaking for MAs. This would create confusion without providing any benefit to investors.

For this reason, we urge you to consider re-directing the efforts of the MSRB before these unnecessary inefficiencies continue. We believe one of the original goals and intent Dodd Frank was to establish a regulatory scheme for parties that had not previously been regulated. If this is not correct and if instead Congress intended to include a segment of the regulated broker-dealer and investment adviser communities in this new scheme, then we urge our legislators and regulators to mandate that the new regulation address the entire constituency in a way that will meaningfully advance investor protections. ***This would require the MSRB to formalize its commitment to Third Party Marketers through actions such as allocating at least one seat on its Board of Directors to a Third Party Marketer representative and by taking steps to remedy the deficiencies of its qualification exam by either waiving the requirements for Third Party Marketers who are already licensed or by addressing the deficiencies of the Series 50 examination.***

This is an extremely important issue to Third Party Marketers and to 3PM, one in which we would like to see some resolution to. As such, we would welcome an opportunity to speak with the MSRB and / or the SEC either by conference call or at a face-to-face meeting where we could work to find constructive methods to improve the status and treatment of Third Party Marketers. Please feel free to contact me directly by phone at (585) 203-1480 or by email at donna.dimaria@tesseracapital.com.

Thank you in advance for your consideration.

Regards,

Donna DiMaria
Chairman of the Board of Directors
3PM Association

Copies also sent to:

MSRB: Robert Fippinger, Chief Legal Officer
John A. Bagley, Chief Market Structure Officer
Elizabeth Wolfe, Chief Financial Officer and Chief Risk Officer
Al Morisato, Chief Operations and Technology Officer
Ritta McLaughlin, Chief Education Officer
Jennifer A. Galloway, Chief Communications Officer

SEC: Luis Aguilar, Commissioner
Daniel Gallagher, Commissioner
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
Jessica Kane, Director –Office of Municipal Securities

FINRA: Richard G. Ketchum, Chairman and CEO

NASAA: William Beatty, President and Washington Director of Securities
Judith Shaw, President-elect and Maine Securities Administrator

Congress: House of Representatives – The Committee on Financial Services
Jeb Hensarling, Texas, Chairman
Maxine Walters, California, Ranking Member

Congress: The Senate – Committee on Banking, Housing & Urban Affairs
Richard Shelby, Chairman
Sherrod Brown, Ranking Member

Local Representatives and Senators of 3PM Members

Appendix

3PM is an association of independent, outsourced sales and marketing firms that support the investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent. Members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org.

SEC Comment regarding Placement Agents

In SEC Release No. 34-70462 accompanying the final SEC rules regarding municipal advisor registration, issued pursuant to Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act"), the SEC responded to requests that it specifically exclude placement agents from the solicitation portion of the definition of a "municipal advisor" in Section 15B by stating as follows:

> "Section 15B(e)(4)(A) of the Exchange Act states that the definition of municipal advisor includes a person that undertakes a solicitation of a municipal entity. Section 15B(e)(4)(B) of the Exchange Act states that the definition of municipal advisor includes a number of listed types of market participants (specifically financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors) if such persons otherwise meet the definition of a municipal advisor under Exchange Act Section 15B(e)(4)(A). In relevant part, Exchange Act Section 15B(e)(4)(A)(ii) provides that a municipal advisor includes a person that, on behalf of certain types of third-parties, undertakes a solicitation of a municipal entity to engage such parties to perform certain specified activities. In the case of placement agents, the Commission agrees with commenters that a placement agent for a pooled investment vehicle that is not a municipal entity (e.g., a hedge fund or mutual fund) and that "solicits" a municipal entity to invest in the fund does not, with respect to such activity, meet the statutory definition of the term "solicitation of a municipal entity or obligated person" in Exchange Act Section 15B(e)(9). Such a placement agent does not meet the statutory definition of the term because it is not soliciting on behalf of a third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser to obtain or retain an engagement by a municipal entity or obligated person of such third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser. Whether the placement agent otherwise meets the definition of "municipal advisor" with respect to any activity related to or in connection with its "solicitation" activity (that does not, as discussed above, meet the statutory definition of solicitation in Exchange Act Section 15B(e)(9)) would depend on the facts and circumstances."