



## Public Financial Management

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Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314  
Attention: Ronald W. Smith  
Corporate Secretary

Re: MSRB Notice 2011-16  
(Rules G-20, G-8 and G-9)

Dear Members:

The Municipal Securities Rulemaking Board ("Board") has requested comments on draft amendments to Rules G-20, G-8 and G-9 as set forth in Notice 2011-16.

I serve as General Counsel to Public Financial Management, Inc. ("PFM"), a municipal advisor registered with the Board. The following comments are submitted on behalf of PFM.

PFM has no comment with respect to the concept that municipal advisors should be obligated to observe the same rules against petty gratuities to obtain or retain clients for their services as are imposed on municipal securities dealers. PFM strenuously objects to the fact that, if the words of the proposed new Rule G-20 provisions mean what they say, the municipal advisory profession can be made to cease to exist, while the securities business of municipal dealers remains unaffected.

We begin with a comparison of Rule G-20(a)(i) with proposed Rule G-20(a)(ii). Under Paragraph G-20(a)(i), applicable to municipal dealers, the dealer is prohibited from providing an impermissible benefit to an individual, not an employee of the dealer, if the benefit is given to an employee of another person "in relation to the municipal securities activities" of the employer of the recipient of the benefit. Thus, without approaching a violation of Rule G-20, a municipal broker may give unlimited payments to affiliate business entities, the employees of affiliates not having municipal securities activities and to a



universe of entities and individuals who could facilitate the broker's municipal business. The fact that Paragraph (i) is not limited to payments without adequate consideration is a drafting omission, but not a crucial defect, because the prohibited payments are only those that are made to the employees of issuers or of other municipal securities businesses. Only as to the employees of issuers of municipal securities or other municipal securities dealers or advisors would the dealer need to resort to Sections (b) or (c) of Rule G-20 to find an exception for the benefit given to the employee.

Proposed Paragraph (ii) of Rule G-20(a), on the other hand, which the Board has created for municipal advisors, would subject to the Rule's limitation of a payment in excess of \$100 all payments by a municipal advisor to any person (other than an employee of the advisor) if the payment is in "relation to the municipal advisory activities \* \* \* of the municipal advisor (emphasis added)". As to proposed paragraph (ii) of Rule G-20(a), failure to confine prohibited payments to payments made without adequate consideration, coupled with the fact that the permissibility of the payment is unrelated to the character of the recipient (or, if to an individual, his employer) create a prohibition of such scope that it would shut-down municipal advisors. In the case of an independent municipal advisor, like PFM, everything we do, and every payment we make, can be said to be "in relation to [our] municipal advisory activities." Thus, unlike municipal dealers, a municipal advisor, in compliance with the Board's proposal, could conduct its business only to the extent of expenditures (for market data, or necessary software, or rent, say) in each case under \$100 per year or to such as are allowed by Paragraphs (b) or (c) of Rule G-20. Every proper expense of a municipal advisor that is a business entity must be deemed to have been made "in relation to" its advisory activities, because that is what the entity owes to its equity holders. The result described here is not hyperbole. It is not only compelled by the text of the proposed rule, but the Board tells us in the proposing Notice that the future of municipal advisors is in the Board's cross-hairs:

\* \* \* even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or an obligated person, a gift or gratuity that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the



future also would be covered by the provisions of draft Rule G-20.

It is inconceivable that the Board finds anything in the federal securities laws, including the Dodd-Frank Act, that authorizes the Board to shut-down municipal advisors, and, even if the draconian effect of proposed Rule G-20(a)(ii) is an inadvertent mistake, there is nothing in the federal securities laws, and particularly in the Dodd-Frank Act, which would authorize the Board to impose on municipal advisors a set of restrictions which the Board does not apply to municipal dealers.

In the context of proposed paragraph G-20(a)(ii), the exceptions allowed by Sections G-20(b) and (c) make no sense at all. Even if Sections (b) and (c) operate to relieve the burden of Paragraph G-20(a)(ii), there are a multitude of expenditures of a municipal advisor which have nothing to do with sponsoring educational seminars or employment of third parties or the obtaining of third-party services. More significantly, the proposed addition of Rule G-8(h)(2) would needlessly compound the data-collection burden of municipal advisors to collect all third party employment and service agreements of any kind. That is true because proposed Rule G-8(h)(ii) captures all of the agreements "referred to" in Paragraph G-20(c) without regard to whether any such contracts have any relationship to the substantive provisions of Rule G-20 (although, to be sure, the drafting of a description of such a relationship appears to be nearly impossible). We recognize, of course, that retention of the sort of data required by proposed Rule G-8(h) has been required of municipal securities dealers for some time under Rule G-8(a)(xvii), but in view of the limited scope of present Rule G-20, the burden of collecting agreements which could be exceptions to existing Rule G-20 is insignificant.

There are evident solutions to the manifest failures of the proposals made in Notice 2011-16.

First is that a prohibition applicable to payments by municipal advisors must attach only to gratuitous payments or payments in excess of fair value and must be limited and apply only to payments or furnishing things of value to the personnel of municipal advisory clients of the advisor or of entities of the class which comprehends clients of the advisor, such as municipal entities or obligated persons. In regard to an extension of the concept of Rule G-20 to municipal advisors, the Board has no legitimate interest in payments by a municipal advisor that are in exchange for fair value, and the Board has no



interest in even gratuitous payments by a municipal advisor that are not made to employees or officials of the class described above.

Second, the Board should withdraw proposed Rule G-8(h)(ii). To the extent that a municipal advisor might choose to defend a payment on the basis of a contract for employment or services, that is the registrant's election, not the Board's, and the decision whether to retain such a contract for purposes of evidencing the availability of an exemption under Rule G-20(c) is the Registrant's business, not the Board's. There is no reasonable purpose in the statutorily contemplated regulation of the affairs of a municipal advisor to require the advisor to retain and have available for inspection a document that is not required to be created by the registrant and serves no regulatory purpose other than to evidence the availability of an exemption from a Rule of the Board.

Very truly yours,

A handwritten signature in blue ink that reads "Joseph J. Connolly".

Joseph J. Connolly  
Counsel

JJC:plj