

# FIRST RIVER ADVISORY L.L.C.

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**SHELLEY J. ARONSON**  
**PRESIDENT**

*Certified Independent Public Finance Advisor*  
*NAIPFA DIRECTOR AT LARGE, 2012 – 2014*

January 16, 2014

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

Dear Mr. Smith

I appreciate the opportunity, on behalf of my firm, to comment on the Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors, released on January 9, 2014. My firm, First River Advisory L.L.C., is a registered Municipal Advisor (MA) specializing in the non-profit health care sector. Since First River Advisory's formation in 1995, nearly all of its clients have been obligated persons rather than municipal entities.

I strongly support the MSRB's initiative to apply the fiduciary standard to obligated persons as well as to municipal entities. Obligated person clients of MAs deserve the same consideration with respect to the fiduciary standard as other issuers and borrowers in the municipal bond market. I do not believe that carrying forward this distinction due to differences in the services provided to municipal entity and obligated person clients, or for any other reason, is warranted. As a principal of a small MA firm, I do not believe that a requirement to accept the fiduciary standard with respect to all clients would represent a compliance burden.

In comparing notes with leaders of other firm members of the National Association of Independent Public Finance Advisors (NAIPFA) whose practices are more oriented to municipal entity clients, I have found that my firm's engagements are far more extensive and complex. For instance, First River Advisory's agreement with a current client was executed in September 2013 for a financing that is not expected to be concluded until the first calendar quarter of 2015. One of my activities earlier this week was my participation in an all-day planning session with this client's executives and its architects and construction managers to produce a comprehensive schedule for an ambitious facilities improvement project. My primary role was to ensure that accurate and complete project development information would be available in a timely manner for disclosure in a preliminary official statement. Due to these more extensive and complex engagements with obligated person clients during which more comprehensive scopes of services are ordinarily provided, it may be even more important that MAs be required to apply the fiduciary standard to obligated person clients than to municipal entity clients.

For the past 18½ years, First River Advisory has routinely accepted the fiduciary standard with respect to all of its clients. Between the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in the autumn of 2010 and the release by the U.S. Securities and Exchange Commission of its Final Rule regarding Municipal Advisors in September 2013 (the SEC Final Rule), First River Advisory had taken the position that it has a fiduciary duty to obligated person clients, even though not specifically required by Dodd-Frank. It had been First River Advisory's expectation that the fiduciary standard inconsistency between municipal entity clients and obligated person clients would eventually be corrected. Further, it had always seemed to First River Advisory that in order to comply with MSRB Rule G-17, First River Advisory would have had to maintain a *de facto* fiduciary duty to its obligated person clients. First River Advisory's acceptance of the fiduciary standard was included in all client agreements executed during this period.

In order to prepare for the effective date of the SEC Final Rule, First River Advisory has prepared Written Policies and Procedures. First River Advisory's declared policy is the acceptance of the fiduciary standard, including the duty of loyalty and the duty of care, to all clients. This policy has been reflected in the one obligated person client agreement executed since the release of the SEC Final Rule.

First River Advisory has had a few municipal entity clients during its existence. They were not treated any differently than obligated person clients with respect to the fiduciary standard. I believe that it would be impractical for an MA firm to apply the fiduciary standard differently with respect to different types of clients. Moreover, I would not want to be put in a position to explain to an obligated person client that First River Advisory's municipal entity clients get the benefit of my firm's adherence to the fiduciary standard but that they are not entitled to such benefit.

I can also envision conflicts arising in connection with financings involving a conduit issuer (a municipal entity) which has its own MA. The objectives and concerns of conduit issuers and their borrowers (obligated persons) are not always aligned. In those cases, without consistent application of the fiduciary standard, the conduit issuer's MA would be required to accept the fiduciary standard, but the borrower's MA would not. Again, I would envision the borrower's executives asking "how come ..." questions, the responses to which would not likely be considered satisfactory by those executives.

Thank you for the opportunity to submit these comments. I may submit comments on other aspects of Draft Rule G-42, either on behalf of First River Advisory or in concert with other NAIPFA member firms.

Cordially,

A handwritten signature in black ink that reads "Shelley J. Aronson". The signature is written in a cursive style with a long, sweeping flourish extending from the end of the name.