



April 25, 2014

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

Re: MSRB Notice 2014-04 – Request for Comment on Draft MSRB Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors and associated amendments to Rules G-8 (on Books and Records) and G-9 (on Preservation of Records) (February 25, 2014)

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Draft MSRB Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors and associated amendments to Rules G-8 (on Books and Records) and G-9 (on Preservation of Records) (February 25, 2014) (collectively, the “Proposal”).

I. Executive Summary

SIFMA continues to support the MSRB’s efforts to ensure that municipal advisors² are properly supervised and that all municipal advisors adopt a supervisory structure for engaging in municipal advisory activities³. We commend the MSRB for proposing a supervisory regime for

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² For purposes of proposed Rule G-44, “municipal advisor” shall mean a municipal advisor required to be registered under section 15B of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

³ See letter to Ronald W. Smith, MSRB, from David L. Cohen, SIFMA, dated June 24, 2011, available at <http://www.sifma.org/issues/item.aspx?id=26101>

municipal advisors of similar robustness as the requirements of MSRB Rule G-27 - resulting in a level regulatory playing field for all municipal advisors⁴.

II. Elements of Supervisory System

SIFMA supports the elements of the supervisory system requirements contained in the Proposal. Draft Rule G-44 follows a widely accepted model in the securities industry of a reasonable supervisory system complemented by the designation of a chief compliance officer (CCO). The draft rule draws on aspects of existing supervision and compliance regulation under other regimes, including those for broker-dealers under rules of the MSRB and the Financial Industry Regulatory Authority (FINRA) and for investment advisors under the Investment Advisers Act of 1940 (Advisers Act).

In summary, draft Rule G-44 requires:

- A supervisory system reasonably designed to achieve compliance with applicable securities laws;
- Written supervisory procedures;
- The designation of one or more municipal advisor principals⁵ to be responsible for supervision;
- Compliance processes reasonably designed to achieve compliance with applicable securities laws;
- The designation of a CCO to administer those compliance processes; and
- At least annual reviews of compliance policies and supervisory procedures.

SIFMA believes that all of the elements listed above are critical to implementing a comprehensive supervisory system of controls. Municipal advisors should consider as a business practice some of the specifics contained in Rule G-27 (such as review of correspondence and conducting internal inspections) that are not prescribed in the Proposal.

⁴ This is in contrast to MSRB Notice 2011-28 (May 25, 2011), which proposed Rule G-44 require all non-dealer municipal advisors to adopt a “basic” supervisory system, while dealers subject to Rule G-27 would be required to maintain a “detailed” supervisory system. We do note, however, that the Proposal is less prescriptive than Rule G-27’s requirements.

⁵ See MSRB Notice 2014-04 at Note 2 (“The MSRB intends to propose amendments to MSRB Rules G-2 and G-3 to create the “municipal advisor principal” classification, define the term and require qualification in accordance with the rules of the MSRB.”)

III. Record Keeping and Preservation of Records

SIFMA supports the proposed amendments in the Proposal to Rule G-8 and Rule G-9.

The draft amendments to Rules G-8 and G-9, in summary, require each municipal advisor to make and keep records of:

- Written supervisory procedures;
- Designations of persons as responsible for supervision;
- Written compliance policies;
- Designations of persons as CCO; and
- Reviews of compliance policies and supervisory procedures.

SIFMA believes these record keeping and retention requirements are reasonable and are in line with existing MSRB record keeping and record retention requirements.

IV. Economic Analysis

SIFMA believes that the economic analysis conducted by the MSRB justifies the supervisory system elements and record keeping requirements contained in the Proposal. Draft Rule G-44 is intended to prevent unlawful conduct and to help detect and promptly address unlawful conduct when it does occur. The primary purpose of the SEC's Municipal Advisor Rule⁶ was to regulate previously unregulated municipal advisors. We concur with the MSRB that for the subset of municipal advisors that are municipal securities dealers, the existing supervisory requirements of MSRB Rule G-27 serve as a baseline. For this subset of municipal advisors, the draft Rule G-44 supervisory requirements are no more stringent than the baseline Rule G-27 requirements. Existing procedures under Rule G-27 may already cover dealer activities that are newly defined as municipal advisory activity. It is important to note that while the Proposal is comprehensive, it is not as prescriptive as the supervisory obligations of dealers contained in Rule G-27.

For the subset of municipal advisors that are also FINRA-registered dealers of municipal securities, the FINRA supervision and compliance requirements also serve as a baseline. The relevant FINRA rules require, among other things, that each dealer have a reasonable supervisory system, comprehensive compliance processes, and a CCO.

An additional baseline applies to municipal advisors who are also registered as investment advisers and subject to the requirements of the Advisers Act. The Advisers Act gives the SEC authority to punish failures by investment advisers (IAs) to reasonably supervise. In

⁶ See Registration of Municipal Advisors, Release No. 34-70462 (September 20, 2013), 78 FR 67467 (November 12, 2013), available at <http://www.sec.gov/rules/final/2013/34-70462.pdf>.

addition, the SEC requires IAs to have written compliance policies and procedures and designate a CCO as responsible for the administration of those procedures.

V. Designation of Chief Compliance Officer

Broker-dealers are required to designate a chief compliance officer that is an associated person of the firm and duly licensed⁷. Draft Rule G-44 would allow municipal advisors to outsource the CCO function. While requiring a CCO to be a duly licensed associated person of the firm is a higher and more rigorous standard, than permitting the CCO function to be outsourced, SIFMA does not object to the Proposal's flexibility on this aspect, which has precedent for investment advisors under the Investment Advisors Act of 1940⁸. In either case, the municipal advisor retains ultimate responsibility and liability for its compliance obligations. If outsourced, compliance will only be as good as the outsourcer. Non-dealer municipal advisors should be aware that enforcement regulators often site "failure to supervise" along with a substantive rule violation.

VI. Implementation Period

Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when Rule G-44 is adopted, the MSRB provides for a reasonable implementation period to develop and implement supervisory policies and procedures, as well as systems and controls, which would be no less than six months, before the Proposal becomes effective.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the MSRB's efforts to ensure that all municipal advisors are properly supervised and that municipal advisors adopt a supervisory structure for municipal activities.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,



David L. Cohen
Managing Director
Associate General Counsel

⁷ See FINRA Rule 3130.

⁸ See Section 202(25) of the Advisers Act and Rule 206(4)-7, 17 CFR § 275.206(4)-7.

Mr. Ronald W. Smith
Municipal Securities Rulemaking Board
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cc:

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