



November 14, 2016

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20005

RE: Regulatory Notice 2016-25: MSRB Long Term Strategic Priorities

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA), representing Municipal Advisory Firms and Municipal Advisors (MA) from across the country, is pleased to provide comments on the MSRB's request for input on its long-term strategic priorities.

NAMA, among other objectives, serves to promote and provide educational efforts to help its members navigate through the federal regulatory and municipal marketplace landscapes. It is the juncture of this mission and the implementation of new MSRB rulemaking over MAs that our comments and answers to questions are directed.

What are the most important issues, risks or challenges in the municipal marketplace and how should the MSRB, within its scope of authority, address them?

The MSRB should begin with a realistic assessment of its actual scope of authority. Unfortunately, in certain recent proposed rules, the MSRB has asserted an increasingly broad regulatory authority. With respect to its actual core mission -- to develop rules for municipal advisors and broker-dealers -- the most important issue for the MSRB would be to ensure that the rulemaking process and implementation does not impose an undue burden on regulated entities. This should not be read to suggest that NAMA is advocating any rollback in the standards of conduct applicable to regulated entities. On the contrary, NAMA has long supported the imposition of these high standards and have generally pressed for higher standards than what has ultimately been adopted by the MSRB. However, the MSRB (in conjunction with the SEC and FINRA) needs to be focused on having the rules, as actually examined for and enforced, promote these high standards rather than rewarding a "check the box" mentality that does not actually produce desired protections for municipal entities.

We call on the MSRB to take stock and review all rulemaking that has been done to date and evaluate whether, as it is actually being examined for and enforced, its rules are promoting "form" or "substance." This requires a meaningful discussion of true rulemaking needs going forward as opposed to the present approach which appears to be mainly focused on transferring, virtually whole cloth, the

regulatory structure for broker-dealers onto municipal advisors. The MSRB should also identify educational and guidance opportunities that can help MAs better understand and comply with rulemaking, and remain aware of the responsibility the MSRB has to not place undue regulatory burdens on small MA firms, as explicitly required by the *Exchange Act*.

NAMA has and continues to support meaningful rulemaking to ensure the integrity of the municipal market. However, our concern is that each rule has been developed without taking into account the totality of all rulemaking that has been imposed in a relatively short time frame. Opportunities to consolidate filing dates (such as the dates for annual updates to MSRB and SEC MA registration forms) and the due dates for fees appear to not have been considered creating an unnecessarily confusing array of dates associated with fees and form updates. Even the most recent MSRB proposal filed with the Commission on client complaints makes no effort to consolidate with existing rules – creating one more opportunity for a regulatory foot fault without improving the protection of issuers. We also suggest that the MSRB review the compressed time frame and costs associated with implementation of all rules, how they have been assimilated into a MA firm’s practice, and if that experience has facilitated MA understanding and compliance with these rules.

Again, we are supportive of meaningful rulemaking for MAs, and have commented in the past that where a rule currently exists for the broker-dealers that it be similar in application to MAs – without having to reinvent the wheel. However, the MSRB should also carefully analyze if a particular broker-dealer rule or segments of a particular rule apply to the work and practice of MAs. Only after analysis and conclusion that such rulemaking is applicable to the responsibilities of Municipal Advisors, should it be proposed for revision or development. For instance, the MSRB has announced or already submitted rules with respect to client complaints that appear already covered by existing rules or that could be handled in a manner far more efficiently.

Finally, within a global review of the rulemaking on MAs, the MSRB should evaluate the totality of the rulemaking on smaller firms and the burdens associated with understanding and complying with the rulemaking. We would argue that a vast majority of MA firms are “small” and therefore it should be in the forefront of consideration when the MSRB undertakes new rulemaking how small firms will be fairly able to allocate resources to understand, implement and adhere to the MSRB rulemaking book. Unfortunately the MSRB has not given enough attention in its overall development of rules, that address the regulatory burdens on small firms as is required by Section 15B(b)(2)(L)(iv) of the *Exchange Act*.

Should any of the MSRB’s statutory mandates – protecting municipal securities investors, protecting issuers and other municipal entities, promoting market fairness and efficiency and providing market transparency be emphasized in any particular way?

In the past the MSRB has developed resources for issuers on the responsibilities of outside professionals, including Municipal Advisors, and had them posted on the MSRB web site. As additional rulemaking has come to fruition, and in the case of G-42 that plays an important role in the MA and issuer relationships, those resources should be updated and made readily and easily available to issuers on the MSRB web site. Additionally, market information and data that is useful to issuers, and Municipal Advisors, at the time of sale, should be made available. This includes having the MSRB require the reporting of Yield to Maturity to help protect the interests of issuers, similar to the Yield to Call reporting that is in place to help protect investors. Finally, in light of regulatory proposals that came forth this year (e.g., bank loans) the MSRB should be aware that the role of a MA is primarily to advise the municipal entity and/or obligated person, and not to protect investors.

With respect to municipal advisor regulation, which has been a focus of recent years, are there areas that stakeholders believe warrant additional considerations by the MSRB?

As noted previously, a substantial amount of new rulemaking has been developed or updated for MAs within the last two years and most has occurred without any guidance or educational assistance beyond explanation of what the rule states. There is tremendous opportunity for the MSRB to develop guidance which would result in greater understanding and compliance with rulemaking. When new rulemaking was applied to broker-dealers, the MSRB provided guidance in a number of areas to help those professionals understand not just the words of the rulemaking but also how it applies in practice. Municipal Advisors have not been afforded such assistance, which is particularly needed due to the fact that many MA professionals have not had experience with any regulatory framework, prior to the implementation of the MSRB rules.

For example, some of the guidance developed many years ago for broker-dealers that now applies to MAs, as noted below, could include new topics reflective of today's market and practices. Including the application to Municipal Advisors of the current answers and information throughout these documents would also be useful.

G-20, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-20.aspx?tab=2>
G-37, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-37.aspx?tab=2>
G-37, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G37-Frequently-Asked-Questions.aspx>

Furthermore, as SEC-OCIE and FINRA exams have taken place, there is a lack of implementation guidance to address the questions asked and information requested by examiners. The gulf between certain principles-based MSRB rules and the very prescriptive documentation expected during an exam is painfully evident and will only grow as examiners now have an ever-expanding MSRB rulebook to evaluate in their exam process. This is not an acceptable state of affairs and suggests that, despite frequent claims of coordination, not enough is being done to educate examiners on the proper interpretation of existing MSRB rules. We are not requesting that the MSRB develop strict prescriptive procedures as we believe a principles-based approach is superior. However, the MSRB could more systematically request comments from professionals about the areas where confusion exists and provide further FAQs and examples of compliant documentation systems. The MSRB has a unique opportunity to develop a smart and efficient model regulatory system for MAs.

Guidance on newly developed and recently implemented G-42, is also warranted, again to ensure understanding and compliance. There are many facets to this rulemaking that will take time and application to fully grasp, in addition to meeting the expectations of OCIE and FINRA examiners. MSRB could be a great resource to MAs and identify areas where guidance is needed, through request for comment and review of OCIE exams, and provide additional assistance in these areas.

Other Comments – Board Composition

Finally, and again as NAMA has noted in previous comment letters, we suggest that the Board review its own internal rules, especially for those who are seated on the Board. As we commented on the A-3 proposals, the MSRB should look to expand the amount of time that a person has to be separated from being a regulated party and can be considered a 'public member' to a time frame longer than two years. Additionally, the process for approving MSRB Board members which was changed in late-2010,

without discussion or public comment, should be revisited and the MSRB should seek additional public comment on the Board member selection process.

The MSRB has a great deal on its plate related to its core statutory responsibility to develop rules for the municipal advisors and broker-dealers, in an effort to protect issuers and investors in their interactions with these regulated entities as well as provide guidance and educational resources to assist with rulemaking compliance. Furthermore, the MSRB has also been tasked with managing the EMMA and other market transparency systems. We believe it is important for the MSRB to focus on these efforts and not look to initiatives that may not be within the direct scope of their mission, which would take away resources – both staff and financial – from fulfilling their core duty to develop rules for municipal advisor and broker-dealer professionals, subject to the approval of the Securities and Exchange Commission.

NAMA again very much appreciates the opportunity to comment on the MSRB's long term goals, and stands ready to discuss these items further with MSRB Board members and staff.

Sincerely,

A handwritten signature in cursive script that reads "Susan Gaffney". The signature is written in black ink and is positioned below the word "Sincerely,".

Susan Gaffney
Executive Director