



**Comments of National Association of Health and Educational Facilities Finance
Authorities (Notice 2018-03)
April 16, 2018**

The National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA" or the "Association") appreciates the opportunity to comment on Notice 2018-03 -- Request for Input on Draft Frequently Asked Questions Regarding Rule G-42 and the Making of Recommendations-- as it applies to municipal advisors who are contracted by conduit issuers or conduit borrowers.

NAHEFFA is a national association of mostly statewide tax-exempt bond issuing authorities which are created and empowered by state laws and recognized by the Internal Revenue Code. A primary purpose of these authorities is to provide conduit financing for nonprofit healthcare and education institutions and other charities. NAHEFFA's mission is to support access to readily available, low-cost capital financing options for these institutions. The Association promotes the common interests of its member organizations and seeks to enhance the effectiveness of such organizations and their programs. The Association focuses its efforts on issues which directly influence the availability of, or access to, financing options, including tax-exempt financing, for health and educational institutions.

NAHEFFA supports the mission of the MSRB and specifically supports the MSRB federal regulation of municipal financial advisors.

We filed comments on March 10, 2014 related to then draft Rule G – 42, MSRB regulatory notice 2014 – 01. In those comments, we raised several issues specific to the conduit financing structure and the use of Municipal Advisors (“MAs”) in that context by issuers and borrowers. Most of the issues that we presented were left unaddressed in the final rule.

We appreciate that MSRB invited us to renew these concerns. On November 30, 2016, we requested written guidance that would clarify for our members, our borrowers, other conduit issuers and borrowers and municipal advisors throughout the United States that our understanding of G – 42 is correct, allowing for the continuation of flexible and highly productive arrangements to the mutual benefit of borrowers and issuers.

Our request for guidance revolved around ensuring (i) the ability of an Authority's municipal advisor to advise the borrower in conduit financing transactions, (ii) the ability of a conduit borrower's municipal advisor to advise the Authority in conduit financing transactions, and (iii) that the borrower and an Authority can use the same municipal advisory firm. As a foundation, we believe that for these scenarios to work within the regulatory regime, the MA must make full disclosures to both parties.

**Comments of National Association of Health and Educational Facilities Finance
Authorities (Notice 2018-03)
April 16, 2018**

About eight months later, on, July 13, 2017 guidance was issued. <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-42.aspx?tab=2>. Unfortunately, as we have discussed with MSRB, we and our advisors have not found the guidance useful. The guidance is more in the nature of a list of obvious, relevant considerations than a clear path forward on the use of MA's in our sector. Further, as we also have noted in informal and formal comments to the MSRB, the process of developing the guidance would have benefited greatly from outreach to the many conduit issuers and other groups, besides our own, through a regular notice and comment process.

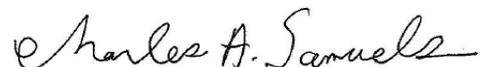
Now, clearly based on a significant amount of work, the present notice was issued. Draft FAQ 9 is specifically directed at conduit issuers and notes the different obligations that MA's have to nongovernmental borrowers (obligated persons) and governmental issuers or borrowers. Yet, surprisingly, there is no mention of the existing guidance, which is still on the MSRB website, either in this FAQ or anywhere else in the document. <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-42.aspx?tab=2>.

This raises the question whether that guidance is still considered to be relevant and valid. If it has been withdrawn as a practical or technical matter -- which we would support because it is not particularly useful -- the MSRB should make this clear in this FAQ. If it is not withdrawn and is still applicable, then surely it should be referenced in FAQ 9 and perhaps elsewhere in the document and its learnings used to answer some of the questions.

We suggest that the MSRB use the opportunity of the FAQ to either integrate this existing guidance with the FAQs or make clear that it has been withdrawn. It also would be helpful to use this FAQ 9 or new questions to deal with the issues presented in our previous request for guidance so that clear answers to our outstanding questions are provided (some within the G-42 recommendations requirements for obligated persons context and some outside of that related to advice).

Thank you for providing us with the opportunity to comment on these important issues.

Respectfully submitted,



Charles A. Samuels,
Mintz, Levin, Cohn, Ferris, Glovsky
& Popeo, P.C.
701 Pennsylvania Ave., NW
Suite 900
Washington, DC 20004
casamuels@mintz.com
(202) 434-7311
Counsel for NAHEFFA