



March 15, 2022

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

RE: 2021-18: Second Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46

Dear Mr. Smith:

Thank you for the opportunity to comment on MSRB Notice 2021-18 regarding Solicitor Municipal Advisors. NAMA represents independent municipal advisory firms and individual municipal advisors (MAs) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

We must begin our comments expressing extreme concern about the “Books and Records” discussion (for proposed rule G-46) on page 13 of the Notice. The Notice states that (by paraphrase) the MSRB proposes to include recordkeeping expectations into the text of the Rule itself rather than including it in MSRB Rule G-8, and that the MSRB will take a similar approach with respect to future MSRB rules or rule amendments with the goal of including books and records obligations to each MSRB rule in the text of each rule itself.

As far as we know the MSRB has not discussed this proposed change in its recordkeeping rulemaking approach and framework with stakeholders, nor has it proposed the change separately and within its own context. Finding a proposed change that impacts the entirety of MSRB recordkeeping rules within a rule about solicitors, and without specifically highlighting the larger implications of such a change, is very surprising. As a matter of principle, proposed broad changes to MSRB rulemaking should not be tucked away in unrelated proposed rulemaking.

The MSRB should have detailed and substantive discussions with stakeholders about its recordkeeping rule intentions and develop a formal proposal for public comment. This is especially true as the Notice states that these changes to the MSRB’s recordkeeping approach “will be more helpful to stakeholders in the long run.” Without input from stakeholders, and without stakeholder review and consideration of such a change, we are unclear how the MSRB has come to this conclusion.

As for the Notice, we agree in principle with the points made in the MSRB’s summary of proposed rules for solicitors. We would suggest that, as with all MSRB rulemaking, the MSRB use existing rules and apply them when possible – or at least apply the baseline intents of them - uniformly. We noted previously that we believe this could be done by using the current rulemaking structure to highlight and include areas where rulemaking applies to solicitors and amend rules to add language specifically needed for solicitors. While we do not necessarily disagree that a new rule is out of place, we again

emphasize the need for MSRB rulemaking and guidance to be clear and especially in this case, avoid confusion between inter- and intra- agency rulemakings.

The only other comment we wish to make about the specific questions in the proposal relate to written disclosures. We support MSRB's proposal to have disclosures provided in writing and not be given orally. This overlays with MSRB rulemaking in this area for broker-dealers and municipal advisors and upholds a key MSRB mission to protect issuers.

We would also like to highlight another broader point raised in the Notice highlighting potential undue burdens the rulemaking places on small firms. This is a topic NAMA has raised consistently over the years and one that deserves further discussion. When the Dodd Frank Act was developed, there was specific effort to make sure that by regulating MA firms, the regulatory regime would not be overly burdensome and costly for small municipal advisors (Section 15B(2)(L)(iv)). We would welcome having conversations on the impact the regulatory regime has on MAs with the MSRB, and helping the MSRB understand these burdens.

Finally, we would like to note that (due to no actions of the authors or staff addressing this issue), the proposed rules apply to professionals that solicit on behalf of third-party professionals and where a government would rely on what is said to them. These professionals have nothing to do with municipal advisory work yet the "solicitor municipal advisor" phrasing implies that the professional involved is providing advice related to a municipal securities transaction. The real intention discussed in the Notice was to regulate "solicitor MAs" in order to have some type of regulatory regime, especially related to pay to play arrangements, over public pension placement agents. It is unfortunate that professionals unrelated to municipal advisory services causes confusion on the larger scale due to the naming convention used for these solicitor professionals.

We realize that the MSRB must address the application of MSRB rules to these professionals and undergo the arduous work to align them with SEC Investor Adviser rules AND MSRB Municipal Advisor rules, AND MSRB Broker-Dealer rules. We hope that this proposal will lead to finalizing the regulatory framework over solicitors and that going forward the MSRB can allocate its time and resources to rulemaking that applies to a larger, regulated profession audience.

Thank you for the opportunity to comment on proposed Rule G-46.

Sincerely,

A handwritten signature in cursive script that reads "Susan Gaffney".

Susan Gaffney
Executive Director