



601 Route 73 North
Suite 206
Marlton, NJ 08053
(856) 234-2266 Phone
(856) 234-6697 Fax

March 10, 2014

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

Dear Mr. Smith:

On behalf of my firm, Acacia Financial Group, Inc., I appreciate the opportunity to provide the following comments on Draft MSRB Rule G-42, on Duties of the Non-Solicitor Municipal Advisors, released on January 9, 2014.

Pertaining to the draft text of Rule G-42, we would propose the addition of the following underlined, bolded language to Draft Rule G-42(c)(ii) as follows:

“(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing entered into prior to, upon or promptly after the inception of the municipal advisory relationship. The writing must be dated and include, at a minimum, ... (ii) the reasonably expected amount of any such compensation (stated in dollars to the extent it can be quantified) **only if such reasonably estimated amount can be estimated at the time of such written documentation.**”

Rationale: Many times a municipal advisory may be engaged, pursuant to an RFQ/RFP or otherwise, to become the municipal advisory to a client with little, if any, known or defined anticipated transaction plans provided by the municipal entity or obligated person at such time (e.g. a municipal entity or obligated person who issues an annual RFQ or RFP for municipal advisor services that may arise during the year, but without specifying what those transactions may be).

Pertaining to the draft text of Draft Rule G-42(d), as follows:

“(d) *Recommendations.* A municipal advisor must not recommend that its municipal entity or obligated person client enter into any municipal securities transaction or municipal financial product unless the advisor has a reasonable basis for believing, based on the information obtained through the reasonable diligence of the advisor, that the transaction or product is suitable for the client. In addition, the municipal advisor must discuss with its client:

- (i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;
- (ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is suitable for the client; and
- (iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

With respect to a client that is a municipal entity, a municipal advisor may only recommend a municipal securities transaction or municipal financial product that is in the client's best interest."

Question/Concern: How is a municipal advisor to address a situation wherein the municipal entity or obligated person either (a) has decided upon a pre-determined transaction (plan of finance) prior to the engagement of said municipal advisor to which the municipal would not recommend or (b) irrespective of the advice of the municipal advisor upon engagement, chooses to pursue a transaction (plan of finance) to which the municipal would not recommend. How is the municipal advisor to proceed in consideration of the above language?

Regarding Question 2 under General Matters as follows:

"2) Do commenters agree that a municipal advisor that is engaged by a client in connection with either an issuance of municipal securities or a municipal financial product that is related to an issuance of municipal securities should have an obligation, unless agreed to otherwise by the advisor and client, to review thoroughly the entire official statement? Should a municipal advisor be permitted to limit the scope of the engagement such that the advisor is not required to review the official statement? If so, under what circumstances should this limitation be allowed? Should any duty to review the official statement be limited to any portions of the official statement directly related to the scope of municipal advisory services?"

Response: We believe that municipal advisors level of duty regarding the review of the official statement should be limited to those sections directly related to the scope of the municipal advisory services. Further, we believe that in circumstances wherein the municipal advisor has been engaged to provide services in a capacity that does not include the participation in the preparation of the official statement (e.g. pricing services only), then the municipal advisor should not bear a level of duty to the review of the official statement. In both cases, the level of duty and scope of review could be articulated to the disclosure described in Draft Rule G-42(c)(iv) & (v).

Regarding Question 6 under General Matters as follows:

"7) Should a municipal advisor be required to obtain a written acknowledgment from the client of receipt of the conflicts disclosure and consent to any conflicts disclosed before proceeding with a municipal advisory engagement?"

Response: We believe that municipal advisors should not be required to obtain a written acknowledgement from the client of receipt of the conflicts disclosure and consent to any conflicts disclosed before proceeding with a municipal advisory engagement, but should be required to (i) provide such information (and record such provision), (ii) request receipt and consent, but (iii) be permitted to proceed with a municipal advisory engagement in the absence of such receipt and consent if the municipal advisor has a reasonable belief that such information has been received. This is analogous to

INTERPRETIVE NOTICE CONCERNING THE APPLICATION OF MSRB RULE G-17 TO
UNDERWRITERS OF MUNICIPAL SECURITIES

Sincerely,

A handwritten signature in blue ink, appearing to read "Kim M. Whelan", with a long horizontal flourish extending to the right.

Kim M. Whelan
Co-President