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March 10, 2014

VIA ELECTRONIC MAIL

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

RE: MSRB Regulatory Notice 2014-01 (January 9, 2014): Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Regulatory Notice 2014-01, regarding draft Rule G-42 ("Draft Rule G-42") on the standards of conduct and duties of municipal advisors when engaging in municipal advisory activities other than the undertaking of solicitations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[1], Congress, among other things, amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act") to provide for the regulation by the Securities and Exchange Commission ("SEC") and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons. The Dodd-Frank Act accordingly grants the MSRB broad rulemaking authority over municipal advisors and municipal advisory activities. We recognize that Draft Rule G-42 is one step in the establishment of a regulatory framework for municipal advisors and we welcome this opportunity to state our position and provide these comments.

[1] *See* Pub. Law No. 111-203, 124 Stat. 1376 (2010).

General

The BDA has supported and welcomes the regulation of municipal advisors through the municipal advisor rule of the SEC (the "Municipal Advisor Rule")[2] and the rules of the MSRB which will help to establish and govern the conduct standards for municipal advisors. We have concerns, however, about Draft Rule G-42 in its current form. In particular, we are concerned about the interaction between the SEC's approach to defining a municipal advisor using an activities-based approach and the MSRB's approach to defining a financial advisor which has been traditionally transaction-based. How the concept of a financial advisor relates to the concept of a municipal advisor is very important. The SEC Municipal Advisor Rule and the MSRB rules, including Draft Rule G-42, cannot function independently of each other. We would like to warn the MSRB to strongly consider how it exercises its broad rulemaking authority over municipal advisors and municipal advisory activities and examine how the rules created pursuant to this authority will interact with the SEC's Municipal Advisor Rule in governing and proscribing the duties of a municipal advisor. There is a tremendous opportunity for the MSRB to add clarity for municipal advisors and help them work within the framework put forth by the SEC Municipal Advisor Rule. We hope these comments will help the MSRB avoid negative consequences for the municipal marketplace and potentially unnecessary burdens that substantially change the conduct of business without realizing intended policy benefits.

Principal Transactions

We are concerned with the provisions of Draft Rule G-42 that prohibit principal transactions for a municipal advisor for two reasons. First, the use of the phrase "[e]xcept for an activity that is expressly permitted under Rule G-23…" is unclear and creates confusion as to exactly what activities are permitted under Draft Rule G-42. The MSRB should more clearly indicate which activities are intended to be permitted under Draft Rule G-42 following the framework set forth by the SEC's Office of Municipal Securities in its FAQs.[3] Second, Draft Rule G-42, as written, places a complete

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[2] *See* Registration of Municipal Advisors, Exchange Act Release No. 34-70462, *available at* https://www.sec.gov/rules/final/2013/34-70462.pdf.

[3] *See* Registration of Municipal Advisors, Frequently Asked Questions ("FAQs") at

prohibition on all principal transactions by a municipal advisor, thereby casting a large net around many activities and transactions that are unrelated to the actual advice being given by the municipal advisor. For example, the provision could be interpreted to prohibit commercial banks from being able to hold the deposits of an entity just because another business segment of the bank is working on a transaction involving the issuance of securities with that entity. While certain principal transactions may indeed result in a conflict of interest, a ban on all principal transactions for a municipal advisor whether or not the principal transaction relates to the municipal advisor relationship does not harmonize with SEC interpretative guidance in its recently issued FAQs. The SEC's guidance limits the prohibition to conducting business as the result of a conflict to the particular transaction on which the conflict arose. The Office of Municipal Securities in its FAQs relating to the Municipal Advisor Rule clearly limits the scope of such prohibition to the transaction at hand. The ban on engaging in principal transactions under Draft Rule G-42 should be limited to the specific transaction or transactions for which the municipal advisor was engaged to provide advice and should not apply broadly to all activities of the municipal entity.

Fiduciary Standards

The SEC did not undertake to define the fiduciary duty or other standards of conduct of a municipal advisor in its Municipal Advisor Rule and so Draft Rule G-42 seeks to define the fiduciary duty and the applicable standards of conduct by subjecting municipal advisors to a duty of care and a duty of loyalty in the conduct of their municipal advisory activities. Draft Rule G-42 also requires municipal advisors to disclose conflicts of interest and certain other information to their clients and to document their municipal advisory relationship. The fiduciary standards set forth in Draft Rule G-42, however, do not operate like other well-established fiduciary standards, such as those for attorneys, which means a large portion of the municipal securities industry will now have to design unique compliance regimes. The MSRB does not provide justification as to why this fiduciary standard deviates from accepted and established fiduciary duty standards or provide a detailed discussion of the benefits being obtained by veering away from

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http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf.

commonly used standards when there is significant precedent in this area that could be drawn from – in particular the ABA Model Rules of Professional Conduct ("Model Rules").[4] Moreover, there is no discussion in the cost-benefit analysis section of the proposed rule regarding such a significant deviation from the typical legal framework for fiduciary standards.

The BDA proposes that the fiduciary duty standard should not be different for municipal advisors than it is for other professionals with fiduciary duties and that, in particular, the provisions concerning conflicts of interest should be structured like the requirements for conflicts of interest for attorneys. For example, the Model Rules applicable to attorneys provide for a definition of conflicts that generally (1) involves the representation of one client while being adverse to another client, or (2) involves a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client, a third person or a personal interest of the lawyer. In the event a conflict of interest arises, if the lawyer reasonably believes that he or she will be able to competently and diligently represent each affected client, the attorney may proceed by disclosing the conflict of interest and each affected client must give its informed consent, confirmed in writing. There are then specific types of conflicts, such as an engagement involving the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding, that cannot be waived by a client under any circumstances. This is a more workable regulatory structure than a blanket prohibition for all principal transactions in which a conflict of interest may arise for a municipal advisor.

The BDA supports the requirement that a municipal advisor disclose any material conflicts of interests and believes appropriate disclosures and waivers should be the basis for the MSRB fiduciary standard. Paragraph (b) of the Draft Rule G-42 sets forth the requirements for municipal advisors to disclose conflicts of interests. In addition, the BDA would like to see the MSRB incorporate into Draft Rule G-42 a further standard

[4] *See* American Bar Association Model Rules of Professional Conduct *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

establishing conflicts that cannot be waived. The Model Rules describe this type of conflict as a conflict that will cause the attorney to be unable to provide competent and diligent representation to each affected client.[5] Draft Rule G-42 could include a provision that a municipal advisor should disclose any actual or potential conflicts of interest of which it is aware after reasonable inquiry that might impair its ability either to render unbiased and competent advice to or on behalf of the client or to fulfill its fiduciary duty to the municipal entity client. If a municipal advisor concludes that a conflict of interest calls into question its ability to render unbiased and competent advice, as a fiduciary to a municipal entity, the municipal advisor may be in the position of being unable to serve as a municipal advisor on that transaction.

The BDA believes that Draft Rule G-42 should contain a provision dealing with when and how municipal advisors withdraw from or terminate a municipal advisor relationship with a municipal entity. As with other fiduciary standards, MSRB Draft Rule G-42 needs to provide for the effective withdrawal and termination of municipal advisory relationships. Under the Model Rule of Professional Conduct (the "Model Rules"), a representation in a matter generally is completed when the agreed-upon assistance has been concluded.[6] Similarly, an advisor's fiduciary duty should end at the completion of the transaction for which advice was given or in accordance with the terms of the written agreement. Also, municipal advisors need to be sure that their affirmative withdrawal as a municipal advisor in advance of the completion of a transaction complies with the MSRB's fiduciary duty standards and these standards should be included in any final rule.

Furthermore, it is critical that the MSRB clarify when a municipal advisory relationship is no longer in existence or deemed to be no longer in existence and the municipal advisor is no longer held to a fiduciary duty standard. Draft Rule G-42 should apply on a transaction by transaction basis and clarify the beginning and end of a municipal advisor relationship to avoid confusion and the unintended consequence of broker-dealers being constrained from pursuing legitimate business opportunities in a market in which issuers

[5] *See* Model Rules 1.7.
[6] *See* Model Rules 1.2(c) and 6.5.

can choose from a variety of professionals for advice and underwriting services.

Obligated Persons

The BDA agrees that it is appropriate to limit the extension of the fiduciary duty of a municipal advisor only to its municipal entity clients and not extend it to obligated persons. The Dodd-Frank Act clearly provides that a statutory fiduciary duty is owed by a municipal advisors to its municipal entity clients only and not to its obligated person clients. Congress was clearly intending to protect municipal entities in this regard and created separate legal duties for a municipal advisor when it advises its municipal entity clients and its obligated person clients. While the Dodd-Frank Act authorizes the MSRB to prescribe means that are reasonably designed to prevent acts, practices, and business conduct that are not consistent with a municipal advisor's fiduciary duty to its clients, the fiduciary duty does not extend to obligated persons because Congress only extended the fiduciary duty to an advisor's municipal entity clients. Further, the BDA believes that the MSRB amendment to Rule G-17, which requires that municipal advisors must deal fairly with all persons and not engage in deceptive, dishonest, or unfair practices, provides sufficient protection for obligated persons. The concept of an "obligated person" includes a wide spectrum of different kinds of entities, from universities to hospitals to corporate borrowers to developers, with different financial capabilities, levels of sophistication and regulatory requirements. It would include, for example, Goldman Sachs Headquarters LLC and The Goldman Sachs Group, Inc., who are obligated persons in connection with bonds issued by the New York Liberty Development Corporation to finance Goldman's new headquarters in New York City. Applying a fiduciary duty to each and every one of those relationships could lead to unintended consequences for the obligated persons and afford protections to entities that do not need, do not want, and were not intended, to be protected by Congress under the Dodd-Frank Act.

We are also concerned about the inconsistencies in the application of Draft Rule G-42 with respect to obligated persons. Draft Rule G-42(f) provides that "a municipal advisor, and any affiliate of a municipal advisor, is prohibited from engaging in any transaction, in a principal capacity, to which a municipal entity or *obligated person* client of the

municipal advisor is a counterparty" (*emphasis added*). In the absence of the municipal advisor having a fiduciary obligation to its obligated person clients, this prohibition on principal transactions is overreaching and provides unnecessary protections for obligated persons. Any restrictions on engaging in principal transactions should be limited only to municipal entities.

As discussed above, we believe Draft Rule G-42(a) expressly and correctly provides that a municipal advisor is subject to different legal duties when advising a municipal entity and when advising an obligated person. A municipal advisor, when advising a municipal entity, is subject to a fiduciary duty. A municipal advisor when advising an obligated person is subject to a duty of care and a duty of fair dealing. Despite the clear intention to establish distinct standards in Draft Rule G-42 for a municipal advisor when advising a municipal entity and when advising an obligated person, Draft Rule G-42 then imposes the exact same obligations and restrictions on the actions of a municipal advisor without regard to the type of client it is advising rendering any distinction in the standards meaningless. By imposing the same obligations and restrictions equally to both relationships, the result is that Draft Rule G-42 would, in practice, effectively extend a fiduciary duty to a municipal advisor's advisory activities with an obligated person. We believe that this result is both inconsistent with the MSRB's intent and the clear distinctions drawn in the Dodd-Frank Act between a municipal advisor's duties owed to clients that are municipal entities on the one hand, and obligated persons, on the other. We would request the MSRB to review and revise Draft Rule G-42 as needed to ensure that the final rule is internally consistent and also consistent with respect to the very different duties and obligations imposed upon municipal advisors depending on whether they are advising municipal entities or obligated persons.

Review of the Official Statement

The BDA believes that the default requirement in Draft Rule G-42 that a municipal advisor 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 must, under its duty of care, undertake a "thorough review" of an official statement is

appropriate. Including a default requirement will help to ensure that an issuer and a municipal advisor discuss and specify in the documentation evidencing the engagement the precise scope of the municipal advisor's responsibility with respect to the official statement. However, we would like the MSRB to provide additional clarification regarding what constitutes a "thorough review" of an offering document and how a "thorough review" is distinguished from a due diligence review of an offering document in order to guide municipal advisors as to the breadth and scope of their required review of the official statement in light of this default requirement.

We believe that it is generally the prerogative of the client to determine the scope of municipal advisory activities to be performed by the advisor, including whether or not the municipal advisor will review or prepare the official statement. Very often, an issuer will have engaged bond counsel or disclosure counsel to prepare or review the official statement and it should be decided by the issuer and the municipal advisor if the municipal advisor's role will be limited. Draft Rule G-42 in its final form should make it very clear that a municipal advisor's review of the offering document should be qualified to the scope of services the issuer chooses, as there are typically other professional service providers who are also engaged by the issuer in preparation of the official statement such as public accountants and engineering firms. In those instances, however, where the municipal advisor is specifically engaged to prepare or assist the issuer in preparing the official statement, the municipal advisor should not be able to contractually limit its obligation to do a thorough review of the official statement. Draft Rule G-42 seems to allow such a scenario. If the municipal advisor is engaged to prepare the official statement, the advisor should be held under its duty of care to be sure that the issuer understands its obligations with respect to the information in the official statement and to make sure that that official statement contains the information necessary, and at a minimum accurate and complete, for the type of transaction or security being offered. Any definition or guidance regarding what constitutes a "thorough review" of an official statement would therefore need to give due weight to a number of facts and circumstances, including, without limitation, the municipal advisor's contractual responsibility and role in preparing the official statement, the municipal advisor's

experience in the municipal market segment in which the deal falls, the municipal advisor's role in the overall transaction, and the role of other parties such as bond counsel, disclosure counsel, other consultants to the issuer, underwriters and their counsel in the preparation of the official statement.

Documentation of the Municipal Advisory Relationship

Under Draft Rule G-42(c), municipal advisors must evidence each of their municipal advisory relationships by a writing entered into "prior to, upon or promptly after the inception of the municipal advisory relationship." Draft Rule G-42 regarding documentation works well in the situation where a municipal advisor is hired for a period of time to provide advice regarding a number of transactions. However, with respect to more limited engagements, Draft Rule G-42 should mirror the transaction-based framework established by the Municipal Advisor Rule. The disclosures required by Draft Rule G-42, by MSRB Rule G-17 and by the Municipal Advisor Rule would provide the issuer with critical information it needs before engaging a party to provide advice in its designated role in connection with a specific transaction. Under the SEC's Municipal Advisor Rule, a person generally can become a municipal advisor in one of three ways: (1) providing advice with respect to the issuance of municipal securities; (2) providing advice with respect to municipal financial products or (3) undertaking to solicit a municipal entity. We believe each one of these circumstances should be addressed separately and we will not at this time address the solicitation of a municipal entity since it is outside the scope of Draft Rule G-42.

Draft Rule G-42(c) is modeled in part on MSRB Rule G-23, which requires that a dealer that enters into a financial advisory relationship with an issuer must evidence that relationship in writing prior to, upon, or promptly after the relationship has been entered into. Rule G-23 (b) clearly provides that "a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue." Rule G-

23(c) states, "Each financial advisory relationship shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisor relationship". The guidance on the Rule G-23 also provides that although Rule G-23(c) requires a financial advisory relationship to be evidenced in writing, a financial advisory relationship will be deemed to exist whenever a dealer renders the types of advice provided for in Rule G-23(b), regardless of the existence of a written agreement.

Under Rule G-23, in order to establish a financial advisory relationship one of two conditions must be present - the broker, dealer or municipal securities dealer must render financial advisory or consultant services to an issuer or enter into an agreement to render financial advisory or consultant services to an issuer. Similarly, Draft Rule G-42 provides that a "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor engages in or enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person client.

Under Rule G-23, however, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter and not as a financial advisor, a broker, dealer or municipal securities dealer renders advice to an issuer with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities. A dealer that clearly identifies itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the issuer with respect to that issue (e.g., in a response to a request for proposals or in promotional materials provided to an issuer) will be considered to be "acting as an underwriter" under Rule G-23(b) with respect to that issue. Thus, in order to establish a financial advisory relationship there must be a mutual desire and understanding between the dealer and the issuer to enter into a financial advisory relationship and not an underwriting relationship (even if such agreement is not in writing). This extremely important concept is also present in the Municipal Advisor Rule where an underwriter cannot take advantage of the protection of the underwriter exception without the issuer's participation because the issuer has to grant the exception to the underwriter.

For the purposes of Draft Rule G-42, where an entity is engaging in conduct that would not trigger municipal advisor registration, such conduct should also be excluded from Rule G-42. As a result, we believe that only when such advice is given in a forum where a municipal entity has an expectation and a desire that the advice should carry a fiduciary responsibility does the entity become a municipal advisor and trigger the requirement to evidence the relationship in writing whether or not the municipal advisor will be paid for the advice. The disclosures required by Draft Rule G-42, by MSRB Rule G-17 and by the Municipal Advisor Rule would provide the issuer with the critical information it needs before engaging a party to provide advice in its designated role in connection with a specific transaction.

It is a different analysis in the case of municipal financial products. In order for a person to become a municipal advisor by providing advice with respect to municipal financial products, we believe that all of the requirements for being deemed a municipal advisor with respect to the issuance of municipal securities should apply with the following exception: a municipal advisor should only have to evidence the relationship in writing if they are to be paid for the advice. Unlike the situation where a person becomes a municipal advisor by providing advice with respect to the issuance of municipal securities, there is only one possible role for the dealer here: the role of municipal advisor in the relationship. No other role that might provide a conflict with the municipal entity or obligated person is possible. As a result, when a person becomes a municipal advisor with respect to municipal financial products, the only need for a written agreement is to lay out the scope of the terms of the relationship and the compensation. Since the written agreement is a consideration for both parties when it involves payment to the municipal advisor, we believe that this is the only instance where a written agreement should be required.

Economic Analysis

The BDA does not believe that Draft Rule G-42 should contain any exemptions or special provisions for small municipal advisors. The Dodd-Frank Act recognized the need to regulate all municipal advisors and their advisory activities in order to address a variety

of problems that had been identified with the practices and course of conduct of some municipal advisors, including a failure to place the duty of loyalty to their clients ahead of their own interests and to exercise a duty of care. We are appreciative of your concern not to place smaller municipal advisory firms at a competitive disadvantage but these regulations need to apply to all municipal advisors without regard to size much like the rules for broker-dealers. We believe that Draft Rule G-42 is consistent with the Dodd-Frank Act's provisions with respect to burdens imposed on small municipal advisors and that above all it is in the public interest and necessary for the protection of investors, municipal entities, and obligated persons that Draft Rule G-42 be applied to all municipal advisors regardless of their size.

Disclosure of Liability Insurance Coverage

Draft Rule G-42 would require a municipal advisor disclose to its client either the amount and scope of coverage of professional liability insurance that it carries and any material limitations on such coverage or that it does not carry any such coverage. The purpose of this disclosure would be to permit a municipal entity to assess the resources available to protect it in the event of a breach of the municipal advisor's fiduciary duty. We agree that issuers should be aware of financial resources of the firm they are engaging as a municipal advisor and that protection of issuers is important. However, a number of firms providing municipal advisory services have a significant amount of net capital that would be available and this resource would likely exceed the amount of any commercially available liability insurance and offer better protection for their municipal entity clients. We would suggest that rather than require all municipal advisors to disclose very detailed information about their professional liability insurance, municipal advisors should be required to disclose the mechanism (capital, insurance, or a combination of both) and amount of financial resources which would be available to a municipal entity client if needed. If a municipal advisor does not have a certain threshold amount of capital (such amount to be determined by the MSRB) or professional liability insurance, then the BDA believes Draft Rule G-42 should provide that a municipal entity be able to request or require the advisor to obtain professional liability insurance in a certain minimum amount determined by the MSRB for protection of their municipal

entity clients only in the event of a breach of the municipal advisor's fiduciary duty.

Recommendations

Draft Rule G-42 provides that a municipal advisor should not recommend a transaction unless it has a reasonable basis for believing that the transaction is suitable for the client, and also lays out specific items that the municipal advisor must discuss with its client, including the evaluation of material risks and potential benefits, the basis for suitability and whether alternatives have been considered before the municipal entity enters into a municipal securities transaction or municipal financial product. The Supplementary Material accompanying Draft Rule G-42 recognizes that there are times when a municipal entity or an obligated person may elect a course of action that is "independent" of or contrary to advice provided by the municipal advisor yet does not provide any guidance as to the meaning of the word "independent." If a municipal entity or an obligated person that has engaged a municipal advisor is acting "independently," does it mean they are no longer relying on or considering the advice of the municipal advisor (which could raise issues for the independent registered municipal advisor exclusion of the Municipal Advisor Rule) or that they are not seeking the advice of the municipal advisor they have engaged or that they are acting contrary to the advice being given by the advisor? The use of the term "independent" in this context should be clearly defined in the Draft Rule G-42 or Supplemental Material to avoid confusion and unintended consequences.

Another concern is how exactly a municipal advisor is supposed to make a suitability determination as a municipal advisor. Under Draft Rule G-42, a municipal advisor's determination of whether a municipal securities transaction or municipal financial product is suitable for the client must be based on numerous factors including the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products, financial capacity to withstand changes in market conditions and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry. What these factors

do not include is the fact that many issuers are faced with policy and political considerations that may be very complex and may also guide or influence an issuer's decision-making process. The MSRB should clarify that if a client has clearly stated its goals and objectives to its advisor, the municipal advisor in making its recommendation does not need to step into the shoes of the client and examine, analyze or assess the appropriateness of the client's stated objectives or goals but may generally accept the goals and objectives.

We are also concerned that in order to maintain proper books and records of any evaluations and recommendations made by a municipal advisor that a number of discussions that typically occur verbally between an issuer and its advisor would need to be memorialized in writing, which may be of great concern to issuers and impractical for the municipal advisor. A decision made by an issuer may make sense to the issuer at the time the decision is made for any number of reasons and may be a good decision at the time it is made, but could be subject to questioning long after the transaction is completed. If these discussions and alternatives are memorialized, this may affect the decision-making process and how much information an issuer may be willing to disclose to its advisor. In addition, the MSRB should describe in more detail exactly what records a municipal advisor will need to retain. A municipal advisor needs to know whether it should retain records or copies of all the proposals it receives, just those proposals it receives and reviews at the specific request of the issuer or only those proposals it receives, reviews and recommends to an issuer.

Prohibited Activities

Draft Rule G-42(g) sets forth a number of prohibited activities for municipal advisors. In addition to these requirements, we feel that the rule should also expressly prevent a municipal advisor from using its advisory position to engage in non-competitive practices. There have been occasions where financial advisory firms have recommended a dealer to serve as an underwriter solely because that dealer did not compete with them for advisory business. Even though this activity would be both a violation of the duty of loyalty element of the advisor's fiduciary duty and a violation of Rule G-17's fair dealing

requirement, this type of activity is so egregious that it should be expressly prohibited and included in the enumerated list of prohibited activities for municipal advisors in Draft Rule G-42(g).

In addition, we would also like to add to the prohibited activities the use of the word "independent" by municipal advisors who are not affiliated with a broker-dealer. The word "independent" has historically been used by advisors to convey to issuers that because they are not affiliated with broker-dealer that they are free from potential conflicts and implying that they would provide better advice. Under Draft Rule G-42, disclosure of actual and potential conflicts of interest is required when a municipal advisor is engaged by a client so an issuer will now know whether a firm they are considering to engage as a municipal advisor has any conflicts of interest. We believe the use of the word "independent" in this context by a municipal advisor can be misleading to municipal entities and obligated persons and its use should be prohibited in this context.

Thank you for the opportunity to present our views on Draft Rule G-42.

Sincerely,

Michael Nicholas
Chief Executive Officer