March 10, 2014

Thank you for the opportunity to comment on proposed Rule G-42, regulating the activities of Municipal Advisors. I applaud the Board's efforts to begin to require accountability of heretofore unregulated Municipal Advisors. The Board posed many questions that are worthy of debate. I intend to focus on only a few of the issues raised in the proposal. There is, however, one glaring omission that must be remedied and it will be addressed first.

How in the world could the Board propose to regulate the activities of Municipal Advisors and remain silent as to political contributions? G-42 was originally a pay-for-play rule. The Board elects to expand the Rule to provide for the general regulation of municipal advisory activities and leaves pay-for-play out? Who argued this was a good idea? Pay-for-play is the first municipal advisory activity the Board quotes as a cause for Congressional concern, yet nearly four years after Dodd-Frank becomes law, pay-for-play is not mentioned in the currently proposed regulations. This is an oversight that must be immediately remedied. Currently, registered broker-dealers are prohibited from making political contributions to municipal issuer officials, while heretofore unregulated municipal advisor firms, even under the proposed regulations are free to make any legal political contribution and disclose it as a "potential conflict of interest." If the Board does nothing else in the short term, the same pay-for-play rules that apply to MSRB member broker-dealer firms must also apply to all Municipal Advisor firms.

The Board has determined that engaging in principal transactions with a municipal issuer client is completely incompatible with the fiduciary obligation that an advisor has to its issuer clients and has proposed to prohibit any such activity. This is the case regardless of whether or not the advisor is involved in this area in an advisory capacity, there are bond proceeds involved, the activity occurs in another division of the firm, or the competitive nature of the investment activity involved is such that the advisor has no competitive advantage. However, an advisor is free to accept payment from a third party to recommend that the issuer engage in principal transactions with that party and must merely note the acceptance of that payment as a "potential conflict of interest." To the casual observer, the latter situation presents a larger problem for the issuer than the former. Is a municipal issuer at a larger disadvantage where the sales division of the broker-dealer is offering to sell securities in a competitive environment or where the Municipal Advisor has been paid to advise the issuer whose services to employ? An advisor is employed to provide advice related to a municipal debt issuance. In the very least, if the funds involved in a securities transaction are not demonstrably bond proceeds, the existence of an advisory relationship with the issuer should not disqualify that broker-dealer from competing for the issuer's business.

As to the review of offering documents, a Municipal Advisor receives significant compensation for services rendered absent the undertaking of risk. Consequently, review of the offering document should be one of the activities for which a Municipal Advisor is held responsible. A Municipal Advisor should not be able to negotiate their way out of this responsibility. The Board, however, has unnecessarily complicated the matter by including the word "thorough" in its regulatory dictate. A review of the

offering documents is either conducted or it is not, and if that review is **c**alled into question the answer will most likely be determined, unfortunately, in court. The current language imposes an unfair burden upon a trier of fact inexperienced in the municipal securities arena, to say nothing of a young FINRA examiner, by placing on them the responsibility for the determination of what constitutes a "thorough" review of an offering document. If a Municipal Advisor has documented a review of the offering document, the confirmation of said review should be sufficient for regulatory purposes.

The Notice requests comment as to whether or not a Municipal Advisor should be required to disclose the disciplinary history of persons employed at the Municipal Advisor. In the event the Board elects to require disclosure of disciplinary histories of parties employed by municipal advisors, only information pertaining to persons directly involved with providing services to the municipal issuer should be the subject of the requirement. Many firms that provide municipal advice have thousands, if not tens of thousands, of employees and the disciplinary history of each employee of a large firm is not relevant to the nature of the advisory services being provided to a municipal issuer.

Professional liability insurance is extremely expensive. The annual premiums for a policy of any size can be in excess of $100,000. While I am aware that many firms, my employer included, obtain coverage of this nature and certain clients require such coverage, it is difficult to argue that to such a requirement would not be an impediment to entry into the Municipal Advisory arena.

I am certain that creating a regulatory regime for an arena where none existed before is an arduous undertaking. One could not expect staff or the Board to address all the potential issues or problems created by such an undertaking in a single effort. Thank you for the opportunity to comment on the issues that that I most strongly believe need to be addressed.

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