

March 17, 2014

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

**Comment on Draft MSRB Rule G-42 on Duties of Non-Solicitor Municipal Advisors**

Dear Mr. Smith:

Thank you for the opportunity to respond to your request for comments on Draft MSRB Rule G-42, Regulatory Notice 2014-01 as regards to Duties of Non-Solicitor Municipal Advisors. We are submitting our comments specifically with regard to the category of “*Economic Analysis*”.

FCS GROUP is a small (<25 employee) firm that provides advice to municipal entities and publicly owned utilities in the form of utility rate studies, revenue sufficiency studies, financial chapters for master plans, cost of service analysis, user fees, indirect allocation, utility valuations, asset management, and other financial planning and analysis matters. We do NOT provide **direct** advice to clients on the choice of or with regards to the structure timing, terms and other similar matters concerning debt instruments, financial products or issues.

The data that we provide is simply a projection or forecast of the estimated cost to provide water, storm, sewer, electric, solid waste or transportation services to a municipality’s constituents and include estimates and recommendations of how those costs might be recouped from or spread out between various classes of customers: single family homes, multifamily homes, apartments, commercial and industrial businesses. As part of our studies we make **assumptions** as to whether the municipality might need additional outside funding to finance their costs such as a loan, developer fees, bonds, etc.

There is always an **independent registered municipal advisor** or financial advisor as an intermediary between us and the decision to issue a debt instrument. Our role is limited to evaluating whether the client has sufficient cash flow needs to meet **WHATEVER** debt service coverage requirements are needed. We have no control over, nor do we team with other firms, on how our deliverables will be used. We **DO NOT** select financial instruments, recommend financial instruments, participate in financial transactions, or deal in specific transactions. The work product that we do provide that is closest to our understanding of the definition of a municipal advisor activity as defined in Rule G-42 is parity certification.

That being said, we are concerned about the economic impact of the Draft MSRB Rule G-42 on the Duties of Non-Solicitor Municipal Advisors. Specifically three items will directly or indirectly impact us: 1) competition from engineering firms; 2) annual fees; and 3) certification.

1. Certain engineering firms offer the same services that we do and compete for the same clients. In fact a number of our employees worked for engineering firms before joining our firm. We understand that engineering firms are exempt from compliance with MSRB Rule G-42 by definition. We argue that either we should also be exempt to level the playing field, or that the exemption should not apply to **a type of firm**, but rather to the **type of work** being performed. Therefore, if revenue sufficiency studies or the financial chapter of a master water plan are to be governed by MSRB Rule G-42, than either 1) engineering firms should not be allowed to perform them without registering as municipal advisors; OR 2) revenue sufficiency studies, parity certifications, financial planning, etc. should not be regulated under MSRB Rule G-42. Without leveling the playing field, small firms like ours will be unable to compete against the HDRs, CH2M Hills, and Black and Veatches of this world and essentially we will be forced out of business. The MSRB Rule G-42 states that engineering firms are exempt if they are providing engineering advice. Does that exemption extend to an engineering firm that provides both engineering advice and financial advice?
2. The MSRB plans to seek approval from the SEC to charge municipal advisor firms an annual fee of \$300 per professional. Our projects typically require an analyst, a project manager and a principal. This is designed intentionally so that we can DECREASE the cost to the municipality by using lower paid entry level employees on more routine tasks, but ensuring the client has access to the knowledge and expertise of our 20- to 30-year veteran consultants. How is the MSRB defining “professionals”? Does it include anyone working on the project or is it anyone working for the firm? If there is a principal assigned who is responsible for ensuring quality control and assurance as well as compliance with the MSRB and SEC rules and regulations, could the fee then only apply to that individual or that category of individuals? This fee will have to be added to the cost of our services. Being a small firm our profit margins are already extremely tight and this seems to be an unnecessary financial burden not only to us, but to our clients who costs must be increased to cover the fees paid by us as well as the fees paid by financial advisors or independent registered municipal advisor who may also be assigned to the same project. A revenue-based fee applicable to the firm as a whole might be easier to administer and more fair. Finally, if engineering firms are not required to pay these fees, it puts our firm at a distinct competitive disadvantage when it comes to competitive bidding.
3. The rule proposes the development of a test to certify municipal advisors. We contend that the definition of municipal advisor is so broad as to put those firms whose services are only tangentially connected to the diverse list of municipal advisor services outlined in MSRB Rule G-42 at a distinct disadvantage. Certification creates an additional cost burden on these firms in the form of increased salary expenses to recruit and hire employees who are certified in areas of municipal advice that do not even apply to and/or are not necessary to know in order to do the work that we perform. It is like asking every doctor to be certified to perform brain surgery. If there is to be a test, it must in some way be adapted to the various categories within the definition of municipal advisor. For example the Life Underwriter Training Council (LUTCF) certification has three parts. Two parts are mandatory for everyone, but the applicants have a choice in which test they take for the

third part. A similar approach would allow the test to be more adaptable to the various disciplines within the definition of municipal advisor.

Even with that change, the addition of certification requirement would be burdensome for firms and cumbersome to administer. Unfortunately certification is never a one-time event. You have to study for the test as well as take additional classes for continuing education units on an on-going basis. This burns up available resource time forcing firms to hire more individuals to be able to perform the same amount of work that they did before the certification was required and in turn increases the cost of doing business. The MSRB might consider replacing this requirement by recognizing college approved degrees in finance or related fields in place of certification at least for those municipal advisors who are not dealing with debt issuance and transactions.

Finally, we believe that it is overkill for every employee in a firm to be required to pass the test. Similar to the structure of an accounting firms where not everyone must be a CPA or an engineering firm where not everyone is a licensed PE, a firm in the municipal advisor field should not need to have all employees certified if that is the ultimate direction the MSRB chooses. For example a CPA firm is simply a firm that is owned, at least in part by a Certified Public Accountant, licensed in the state in which they operate.

The CPA firm usually consists of people at various levels in their accounting career. Some come to work as a Staff Accountant, working through their experience requirements, and others come to work as seasoned accountants experienced in all aspects of accounting. The one common factor is prior to working with clients at a CPA firm most have at least attained a bachelor's degree in accounting and are well on their way to becoming accounting experts. Accounting is a skill acquired over many years of experience, it is not something learned overnight or by taking an test. It is our belief that the same is true of municipal advisors and not every professional in the firm should be required to pass the certification test. Nor is certification any assurance that the municipal advisor knows the “right stuff”.

Again, we thank you for this opportunity to provide our input on this matter. I can be reached at 425-867-1802, ext. 226 or [tareeb@fcsgroup.com](mailto:tareeb@fcsgroup.com) for further comment.

Sincerely,

Taree Bollinger  
Vice President