LAMONT
Financial Services Corporation

March 10, 2014

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

Dear Mr. Smith,

Thank you for the opportunity to comment on the Proposed Rule G42, the Duties of Non-Solicitor Municipal Advisors. I appreciate that the Board thoughtfully considered the role of the municipal advisor with respect to its duties to issuer clients and the increased transparency that the rule should help foster. However, there are several aspects of the rule that are laced with probably incorrect assumptions and that may result in the Rule being less effective or more burdensome than desired. There are other aspects in which the Proposed Rule may have over-reached and may negatively affect the cost structure of the industry.

I believe that the municipal advisor industry accepts that they have a fiduciary duty, which includes both a duty of loyalty and a duty of care. However, in implementing these principals, like everything in life, the devil is in the details.

Recommendations. The proposed Rule has a flawed assumption that all municipal advisors would be making recommendations in nearly every instance regarding a municipal financial product or financing. For approximately half of Lamont's issuer clients, they do not seek a recommendation from their municipal advisor about whether to proceed with a transaction. They believe they are sufficiently capable of weighing the risks in a transaction and making their own decision about whether to proceed. These are large sophisticated issuers with multi-billion dollar debt portfolios. They want their municipal advisor to assist them in executing the transaction and helping them get the best price when the issue comes to market. Does this fact pattern suggest, for those clients who do not seek a recommendation from their municipal advisor, only a suitability review/determination is necessary from the municipal advisor? If the answer is in the affirmative, then this should be made explicit in the discussion of limiting the municipal advisor arrangement. If the answer is no, then the Rule will have the consequence of increasing the cost of compliance to the municipal advisor, which will in turn increase the cost to the issuer client.

The Rule will make work for the municipal advisor in order to comply with the requirements of the Rule. My fear is that if the issuer does not want the advisor to make a recommendation, the municipal advisor will be faced with a very difficult problem: the issuer will not want to pay the advisor to consider and paper over its work as though a recommendation to move forward was

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made, even though a recommendation was not required, just to avoid a books and records examination problem by the SEC or FINRA. This could create a cost to the municipal advisor, since the client may refuse to pay for the compliance related cost.

Official Statement. In general, I agree with the premise that municipal advisors should thoroughly review an issuer's official statement to make sure that the official statement fairly presents the client to investors. This would especially be true for issuers that come to market infrequently, have had economic set-backs or are under any distress. This would also be true for obligated parties in a transaction, as they are the credit behind the issuer of the bonds. However, if the issuer has issued bonds multiple times in the course of a year, I would submit that an initial thorough review of the official statement in any year with a review of the changes in each subsequent issuance should be sufficient for the municipal advisor to discharge its duties. Further, if the issuer has competent disclosure counsel that it hired for multiple transactions, then a municipal advisor should be able to rely on competent disclosure counsel to provide accurate and full disclosure about the issuer and the transaction.

E&O Insurance Disclosure. While I believe that Errors and Omissions insurance should be required of all municipal advisors as part of their overall professional qualifications, it may create a barrier to entry in the municipal advisor business. However, before the Board explicitly requires such insurance, the Board should do research to thoroughly understand the coverage being provided. For example, very few carriers actually provide E&O insurance for practitioners in the municipal bond business. Some advisors carry E&O insurance designed for management consultants under the theory that they solely provide advice to municipal issuers, but do not have any other duties regarding the recommendation of municipal financial products. The cost differential may be five times or more for bond business coverage versus management consultant coverage. In addition, the policy limits are more restrictive for the bond business coverage. As a result of this disparity, unless or until the Board had satisfied itself as to which coverage was appropriate to address its concern over professional qualifications, I would not recommend that the Board take any position on what is sufficient coverage while ascertaining that such coverage would be generally available in the marketplace. We have seen numerous RFPs where an issuer has established insurance requirements that are not generally available to municipal advisors, and have to back-track on the requirements during the RFP process.

Affiliates. Lamont, like many municipal advisors that created investment advisory affiliates in order to comply with SEC rules regarding bidding escrows and similar matters for its municipal clients, has an affiliate that is staffed by persons who work at Lamont Financial Services (LFS) but are specifically licensed to work as an investment advisor. Some broker dealers who bid to provide such escrows require that Lamont Investment Advisors (LIA, registered with state regulators since it does not manage money) establish a brokerage agreement with them, where the BD places the securities versus payment until such time as the issuer's trustee settles the account with the broker dealer. We are concerned that while such practices would satisfy the

broker dealer, that under the Rule it would have the appearance of being a principal transaction while it is really an agent transaction.

In addition, we are concerned about the compensation disclosure requirements of the Rule. At Lamont, LIA does not pay commissions or referral fees to LFS personnel whose clients ask us to bid escrows, investments, or value swaps. However, for employee compensation, both LIA and LFS are treated as one pool. The distribution of such employee compensation would occur at the end of our fiscal year and would not be known and is not necessarily tied to the fees for which the affiliate actually did the work. Conflict of Interest disclosures related to this activity would, of necessity, be so general as to be virtually meaningless.

General Conflict Disclosures. True conflict disclosures, as opposed to conflicts regarding the method of payment, should be discussed at the outset of the relationship and signed off by the issuer official. Fee splitting and other similar arrangements are very problematic and should be prohibited. Payment of fees by a third party, such as an investment provider, should be fully disclosed as to the dollar value of the payment. . This approach benefits the issuer, since the fee is included in the yield on the investment, reducing any arbitrage payment to the IRS. Further, the permissible fees are limited by the IRS.

Payments by affiliates would represent a potential conflict and should be disclosed if the affiliate is engaged in a principal transaction or if it directly manages investments with authority to actively manage the investments

Conflict Disclosures Regarding Method of Payment. While I appreciate the need to provide disclosures regarding payments by third parties to the municipal advisor, providing the proposed disclosures regarding methods of compensation seems to run the risk of being so obvious as to insult the intelligence of the issuer official. All of Lamont's issuer clients actively manage their municipal advisor relationships as they are very cost conscious. For certain clients, who have multiple municipal advisors, the issuers are required to determine which advisor will do what task to avoid duplication of effort. The level of disclosure being proposed could be provided to issuers but should only be done based upon an analysis by the municipal advisor as to the level of sophistication of the client as an issuer and manager.

Protecting Issuers. In discussing the SEC definition and the Proposed Rule G42, the most common refrain I hear from Issuers large and small is that the SEC and MSRB's desire to protect issuers only makes more work for the Issuer. This may be because Lamont has mostly large and sophisticated clients. However, regarding the MA rules, it should be recognized by the Board that large and sophisticated issuers have devised their own approaches to interacting with underwriters and municipal advisors, and the Board should consider developing a sophisticated issuer exemption for those portions of the Rule that would not benefit sophisticated issuers. If the Board is unable to define a sophisticated issuer, the Board could allow the municipal advisor to make such a determination based upon his knowledge of his client in its suitability assessment.

Books and Records. While I clearly understand that much of the books and records requirement is necessary to establish that the advisor is following the Rule, there are a few aspects that are not particularly clear that could create substantial burdens on municipal advisors. For example, would it be MSRB's intent to have all emails and client records saved in the same folder in electronic media? This could represent expensive updates to our systems if this is required. Further, is it the intent of the Rule that municipal advisors save every presentation made by an underwriter to its MA client, or only the ones the issuer decides to go forward with? Would this also be true for RFP's? Lamont's clients regularly receive RFP's from underwriters that may be four or more inches thick. For some of our clients, we receive up to 50 proposals in an RFP cycle. This is a lost of paperwork to be stored.

Is the "saving of presentations" requirement to tie to underwriter recommendations that might be prompted by an IRMA letter? This could create a very large document management problem, since many of these pitch books and presentations come in paper versions only. Scanning these documents will also cause the municipal advisor to expend a lot of clerical time for little benefit and would be burdensome to municipal advisors both large and small.

Economic Justification. I believe that the Board took an "easy pass" on economic justification by taking a position that the SEC requires most of this in its rule making and the Board is just making clear what the duties and responsibilities would be for recordkeeping. While I agree that this is a baseline, the Board should not approach this as a shelter from engaging in further econo9mic analysis. Some of the administrative requirements are all part of running an advisory business, such as contracts, engagement letters, and retention of files and emails. However, based upon the issues outlined above, I can easily imagine that the paperwork associated with the Rule could take 20-25 percent of an advisor's time to complete, some of it against the client's wishes. In addition, as discussed above, the costs associated with professional liability policies vary greatly based upon the type of coverage being provided.

I believe that the effect of the SEC definitions and the Rule will be that over time, a substantial number of small firms will find it difficult to comply with the requirements and seek to merge with larger or better equipped partners. It would not surprise me to see that the headcount of the industry will be relative constant, but that the number of reporting firms will decline by 20%.

I do not agree with the view that compliance costs will be spread amongst all of a firm's clients and should not raise the cost of doing business or the cost to issuers. The cost of compliance with the Rule is mostly going to be in the daily cost of documentation the MA's review of presentation by underwriters, considering and documenting alternatives, and the requirement to develop recommendations in writing to our clients, all in preparation for an eventual examination by the SEC or FINRA. This is not a small task. The problem for MA's is that their clients may not find the notion of documenting all these facts helpful to getting the transaction done, and will not appreciate the effort to comply with the Rule. As a result, they may not be willing to pay for this, and the MA may have to eat it as an expense. Given the small margins in the MA business,

a 20% loss of productivity can be debilitating to a MA firm in the short-term, before prices can be adjusted by the MA and the client.

Answers to Questions

Q1. Should the fiduciary standard apply to all of a municipal advisor's clients? Yes for its municipal advisory activities. However, we think that the Dodd Frank standard is appropriate, especially since certain municipal advisors are being hired in cases of municipal distress. In such cases, the municipal advisory firm may not represent the municipal entity or the obligated party, but may represent other creditors.

Q2. Should the advisor thoroughly review the entire official statement? As discussed above, this is a case-by-case issue, and depends upon how often the issuer is in the market, disclosure counsel, etc.

Q3. At the outset of a transaction, the issuer client is usually asking questions regarding what resources it will need to complete the transaction. I don't really think the Rule will serve to foster this in any material way.

Q4. I think that the disclosure of conflicts related to compensation sends a message to the issuer official that they are not competent.

Q5. To be clear, I am not in favor of fee splitting. However, allowing an investment provider to pay fees related to the solicitation of the investment by the municipal advisor, and which is within the permitted limits of the IRS rules, should be acceptable so long as it is disclosed to the issuer and to each investment provider on the bid list.

Q6. True conflicts should be disclosed at the outset of the relationship or during contract development.

Q7. Yes, which could be done in an email, in the engagement letter, or in a contract with the issuer?

Q8. I believe that if the offending individual has been terminated from the firm, then such disclosure of past events is less than useful unless there was also a finding of supervisory weaknesses. If the individual is still at the firm, then disclosure is required.

Q9. As stated above, E&O insurance should be a professional qualification. I would suggest that the MSRB be quite careful in making this a requirement, as discussed above. Before requiring such insurance, the Board should determine that there are sufficient providers and the average cost of a policy that covers practitioners in the municipal advisor business that work on transactions is commercially reasonable.

Q10. It may become a barrier to entry to small firms who provide MA services on less than a full time basis.

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Q11. This question is too general to answer in the affirmative. I think that the municipal advisor should review documents that support the credit structure of the bond issue. In most circumstances, the municipal advisor will be involved in all aspect of the transaction, and so would have reviewed the documents and may have provided comments to the documents. However, depending upon when the municipal advisor is engaged, the balance of the financing team may have already thoroughly vetted the feasibility document. In some cases, the municipal advisor is the last to be hired, and in such circumstances is generally hired to supervise the pricing of the transaction. It is difficult to write rules that govern all circumstances, since situations vary so much.

Q12 and Q13. I don't think that the MA rule should conflict with dealer rules regarding principal transactions, recognizing that a fiduciary duty to the issuer will require additional verification steps to ensure that the pricing has been at least as good as having a third party in the transaction. The MA who is acting as a principal should provide the issuer with a third party data source to verify the pricing of investments or municipal financial products. Failing that, the MA should offer to bring in a third party verification of the pricing from firms for which it does not engage in active trading relationships.

Closing Comment

I believe that the Rule addresses issues related to fiduciary duty and suitability, and does a good job at providing insight about the issues that MAs must address and procedures for demonstrating compliance with the Rule. Further, I think the MA industry should be regulated, provided that we can find ways to make it less burdensome.

Portions of the Rule should have further review by the Board to insure that the number of unintended consequences can be minimized.

Thank you for the opportunity to provide my comments on the Proposed Rule G-42.

Yours truly,

Robert A. Lamb
President

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