March 10, 2014

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 223 14

Re: MSA Professional Services, Inc. Comments on Draft Rule G-42

Dear Mr. Smith:

On behalf of the MSA Professional Services, Inc. – a Midwest leader in engineering, architectural, transportation and planning services for municipalities - I appreciate the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) draft Rule G-42, regarding the duties of non-solicitor municipal advisors.

MSA would appreciate direction and clarification from the MSRB on the following topics as we proceed with drafting internal and external policy frameworks to achieve and sustain compliance with Municipal Advisor (MA) provisions contained within Dodd-Frank. While Dodd-Frank provisions draw a large swath across numerous professional services previously unregulated by the Securities and Exchange Commission (SEC) and MSRB, it fails to clearly state, define or demonstrate the intended level of analysis and due diligence expected of regulated MAs.

<u>Suitability Analysis Required for Recommendations</u>

"Draft Rule G-42 subjects municipal advisors to a duty of care in the conduct of their municipal advisory activities. In addition, draft Rule G-42 requires municipal advisors to disclose conflicts of interest and certain other information to their clients and document their municipal advisory relationship. Draft Rule G-42 does not permit a municipal advisor to recommend that a client enter into any municipal securities transaction or municipal financial product unless the advisor *has a reasonable basis for believing that the transaction or product is suitable for the client."*

- What specific metrics (standard debt issuance options) should be used to determine suitability?
    - Local bank financing
    - State Revolving Loan Fund (SRF) or equivalent
    - State Trust Fund or equivalent
    - USDA Rural Development

    - Open bond market

- Will there be standards set for this quantitative review or will it be the responsibility of the individual MA to define the suitability metrics based on the unique circumstances of each client or project?

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."

- Can adherence to this rule be accomplished through contract (Master Services or Professional Services Agreement) or does this need to be done on an individual MA activity to MA activity basis?

Specifically, the Act itself sates that "Engineers may provide advice beyond engineering advice when such an independent registered municipal advisor is present without triggering the requirement to register as a municipal advisor."

- Can an engineering firm, under contract, mitigate the inherent MA responsibilities outlined if the municipality, in writing, releases the firm from the MA role?

- Can such a release be made based upon the municipality's *intent* to engage an MA at a later date, or does the engagement need to be in place in order for the engineer to be exempted from the MA responsibilities?

- If the contracted MA is not physically "present" when advice and/or services identified as within the realm of MA responsibilities is discussed with the community, is the engineer in breach of the MA provisions?

- Once a community releases a firm from the duties of the MA role, who is ultimately responsible to ensure that the MA protections of the client are enforced?

Limited Scope for MA Duties
"Supplementary Material .04 provides that a municipal advisor and its client may limit the scope of the municipal advisory relationship to certain specified activities or services. The municipal advisor, however, is not permitted to alter the standards of conduct or duties imposed by the draft rule with respect to that limited scope."

- Can adherence to this rule be accomplished through contract (Master Services or

Professional Services Agreement) or does this need to be done on an individual MA activity to MA activity basis?

- For communities that pursue multiple annual projects with an engineering firm through a Master Services Agreement, can the community elect to exempt the firm from the MA role on an annual basis through contract?

- How should this be handled by both parties if some of the annual engagement is in need of MA compliance and some is exempted?

Recommendations
"Section (d) provides that a municipal advisor must not recommend that its client enter into any municipal securities transaction or municipal financial product *unless the advisor has a reasonable basis for believing that the transaction or product is suitable for the client.* The advisor also is required to discuss with its client its evaluation of the material risks, potential benefits, structure and other characteristics of the recommended municipal securities transaction or municipal financial product; the basis upon which the advisor reasonably believes the recommended transaction or product is suitable for the client and whether the municipal advisor has investigated or considered other reasonably feasible alternatives. With respect to a municipal entity client, the advisor must only recommend a transaction or product that is in the municipal entity client's best interest."

- Can this information and recommendation be transmitted to the client orally or will each alternative require empirical evidence demonstrating the material risks, potential benefits, structure and characteristics? If oral transmission is acceptable, does said discussion need to be documented by both parties?

- Please define "client's best interest".
    - Is this to be inferred as the lowest overall cost?
    - Least subject to market volatility?
    - Most stability in terms of guaranteed interest rate over the life of the loan (vs. speculative balloon financing or bond re-issuance)?
    - Will the MSRB be drafting a suitability matrix to more clearly define "best interest"?

Review of Recommendations of Other Parties
"Section (e) addresses situations when a municipal advisor may be asked to evaluate a recommendation made to its client by another party, such as a recommendation by an underwriter to an obligated party of a new financial product or financing structure."

- Prior to said review, will it be necessary to have documentation regarding the other parties' MA dealings, recommendations and contracts with the client?

- It would seem rational and necessary to require the other party to disclose any and all documentation used in the recommendation for this analysis and review. Would this best be accomplished through the client or directly between MAs?

Specified Prohibitions
"Draft Rule G-42(g) specifically prohibits certain types of activities by a municipal advisor, including: receiving excessive compensation; delivering an invoice for fees or expenses that does not accurately reflect the municipal advisory activities actually performed or the personnel that actually performed those services; misrepresenting its capacity, resources and knowledge in response to requests for proposals or qualifications or in oral presentations to a client or prospective client."

- "Excessive compensation" – please define a metric to determine excessive compensation as multipliers, engineering and professional services costs vary tremendously by geographic region, firm, and overall scope of services.

Questions Identified in G-42 Correspondence:
1) Do commenters agree or disagree that a need exists for the MSRB to articulate the duties of municipal advisors or to prescribe means of preventing breaches of a municipal advisor's fiduciary duty to its municipal entity clients? If so, do commenters agree or disagree that the draft rule addresses those needs?

> While the Draft Rule identifies the areas of concern and resultant compliance required to protect and preserve a fiduciary duty related to MAs, it fails to clearly articulate the specific mechanisms to achieve said compliance. For example, it identifies that policies and procedures need to be in place for MA compliance yet that requirement is not underscored with an identifying traits, qualifications or specific standards which outline the types of policies and procedures that will be acceptable by the MSRB for compliance.

2) The MSRB proposes to use the fiduciary duty already imposed on municipal advisors by the Dodd-Frank Act to serve as a baseline for evaluating the economic impact of the draft rule's articulation of standards of conduct and duties for municipal advisors when engaging in municipal advisory activities for municipal entity clients. Is this an appropriate baseline?

> No. The 2010 Dodd-Frank Act has, in effect, been in place for 3+ years, the enforceable

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portions related to fiduciary duties and MA rules and responsibilities is brand new. In fact, to date, I would not suppose many existing or “to be classified as” MAs have spent much in the wake of hard economic dollars on compliance strategies, policies, procedures or protocols. I assume there will be whirlwind of compliance activity prior to the July 1, 2014 permanent registration phase-in date as MA firms prepare for compliance activities beginning in the new fiscal year (once the rules become enforceable). Using compliance with 2010 Dodd-Frank Act fiduciary duty provisions as the baseline for determining economic impact related to MA compliance would not be a fair comparison for determination as the level of firm activity required for MA compliance will be increasing in future months with enforceability and compliance provision engagements.

3) The MSRB proposes to use the fair-dealing requirements under MSRB Rule G-17 to serve as a baseline for evaluating the economic impact of the draft rule’s articulation of standards of conduct and duties for municipal advisors when engaging in municipal advisory activities for obligated persons. Is this an appropriate baseline?

Yes.

4) The MSRB proposes to use the Dodd-Frank Act’s prohibition on municipal advisors from engaging in any fraudulent, deceptive, or manipulative act or practice in connection with advising a client to serve as a baseline for evaluating the economic impact of the draft rule’s articulation of standards of conduct for municipal advisors (regardless of whether the client is a municipal entity or obligated person). Is this an appropriate baseline?

Yes.

5) The MSRB proposes to use the existing requirements for dealers who act as financial advisors to issuers with respect to the issuance of municipal securities to serve as a baseline for evaluating the economic impact of the draft rule’s articulation of standards of conduct and duties for this subset of municipal advisors. Is this an appropriate baseline?

No Comment.

6) The MSRB proposes to use the required disclosures in registration forms of certain disciplinary history and legal events contained in the SEC Final Rule to serve as a baseline for evaluating the economic impact of the draft rule’s disclosure requirements. Is this an appropriate baseline?

No Comment.

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7) The MSRB proposes to use the recordkeeping and record preservation requirements contained in the SEC Final Rule to serve as a baseline for evaluating the economic impact of the draft rule's recordkeeping and record preservation requirements. Is this an appropriate baseline?

Yes.

8) In addition to the baselines proposed above, are there other relevant baselines that the MSRB should consider?

No Comment.

9) Please compare the costs and benefits of having disciplinary histories and legal events disclosed through registration forms versus disclosure directly to the client.

No Comment.

10) Are there lower-cost alternatives to requiring disclosure of the amount of professional liability coverage carried by the municipal advisor that would provide comparable benefits to clients of municipal advisors?

No. Direct professional liability coverage disclosure can easily be integrated into existing disclosure documents for transmittal to clients.

11) Would additional benefits accrue if the MSRB were to impose different or additional recordkeeping requirements and, if so, what would these requirements entail?

No.

12) To the extent that draft Rule G-42 establishes new, or clarifies existing, standards of conduct and duties for municipal advisors, will this cause a change in the quality of advice offered by municipal advisors?

Potentially. Our main concern is that with the additional MA responsibilities imposed, the "message" relayed to municipalities might be that only traditional financial services firms have the authority or ability to provide quantitative and qualitative analysis of various debt service and municipal financing mechanisms related to municipal projects or have the ability to assist in developing feasible alternatives for project funding. This may reduce the overall quality of recommendations. Furthermore, for firms that refuse

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to register, the new regulations may prevent candid conversations with communities regarding rate studies, economic development options, etc. that are usually critical to success at early stages of project planning.

13) To the extent that draft Rule G-42 and the draft amendments to Rules G-8 and G-9 impose costs on municipal advisors, will these costs be passed on to municipal entities or obligated persons in the form of higher fees?

Yes. Any cost for compliance re: MA duties and responsibilities will result in higher fees for municipal entities. The evaluation and transmission of information that would now be considered within the realm of MA activities has been traditionally billed as services rendered. Now, however, with the new recordkeeping and compliance requirements, firms will find a way to re-coup, if not all, a significant portion, or this value-added service to clients, driving up the ultimate cost for municipal projects and, ultimately, municipal services.

14) To the extent that the requirements of draft Rule G-42 enhance the oversight of municipal advisors, will this affect the willingness of market participants to use municipal advisors?

Some municipalities may determine that it is cost-prohibitive to use MAs to the extent outlined in Dodd-Frank. This may have the detrimental impact of diluting the quality of information used in the pre-planning and project stages of municipal work.

15) To the extent that the requirements of draft Rule G-42 enhance the oversight of municipal advisors, will this lead to different issuance costs and financing terms for issuers?

Yes, as the overhead and maintenance costs required for MA compliance will be rolled into the overall debt issuance cost equation.

16) To the extent that the requirements of draft Rule G-42 lead to reduced issuance costs and better financing terms for issuers, will this improve capital formation?

We do not agree that provisions outlined in G-42 will lead to reduced issuance costs.

17) Would the requirements of draft Rule G-42 assist municipal entities or obligated persons in making hiring decisions with respect to municipal advisors?

Yes. Clear documentation of MA experience, qualifications and disclosure will improve transparency for the solicitation of MA activities.

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18) What are the initial and ongoing costs associated with making and preserving the additional records required by the draft amendments to Rules G-8 and G-9?

Records preservation costs appear to be negligible. The primary increase in costs will be in achieving a compliance program and the related documents needed to maintain compliance on a project-to-project and client-to-client basis. Firms will find a way to include up-front and on-going MA compliance costs as a component of billable projects that contain Municipal Advisor compliance requirements.

19) Are there additional costs or benefits to recordkeeping that the MSRB should consider? If so, please explain.

No.

20) If the draft rule is adopted, what are the likely effects on competition, efficiency and capital formation?

No Comment.

21) How will the requirements of draft Rule G-42 affect potential municipal advisors' decisions with respect to entry into the market?

The systematic approach required for an acceptable and sustainable MSRB MA Compliance program may prevent entry into the MA market and may, in fact, consolidate the existing market accordingly. A firm who wishes to achieve and maintain compliance must have the appropriate administrative, legal, accounting and supervisory systems in place, upon which an appropriate compliance platform can be achieved. These upfront costs may deem MA activities as cost-prohibitive for smaller firms and prevent entry for some market participants.

22) What training costs would the requirements of draft Rule G-42 cause at municipal advisory firms to ensure compliance?

Without the appropriate level of direction from MSRB re: up-front certification requirements, appropriate number of individuals required for compliance review purposes, continuing education requirements, etc., it would infeasible to determine a training cost at this time. It is impractical to determine the potential cost of training when the specific training requirements have not been spelled out by the MSRB.

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23) Will draft Rule G-42 have benefits in terms of protecting municipal entities, obligated persons and investors?

No Comment.

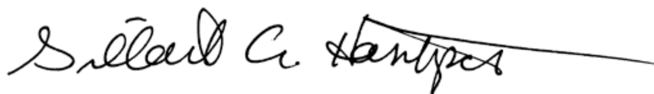
24) Will the requirements of draft Rule G-42 impose any burden on small municipal advisors that is not necessary or appropriate?

Small municipal advisors may be driven from the marketplace as it may become economically infeasible to achieve compliance without an economy of scale to help absorb initial overhead costs for policy and procedure creation and implementation.

25) Will the requirements of draft Rule G-42 create advantages for large municipal advisor firms relative to smaller municipal advisor firms?

Yes.

MSA appreciates the opportunity to provide comment on the draft Rule G-42 and would appreciate any direction the MSRB could provide on the above questions and comments that will help facilitate a smooth transition in the A & E industry to adopt the appropriate Municipal Advisor compliance policies, protocols and procedures.



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