NORTHLAND SECURITIES

March 7, 2014

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

RE: MSRB 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 Northland Securities, Inc. (" Northland"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2014-01, regarding draft Rule G-42 ("Draft Rule G-42"). Let me begin by providing a brief profile of Northland Securities as context for our comments:

- Northland Securities is both a broker-dealer and registered municipal advisor.
- Northland provides debt issuance and management assistance to local governments primarily in Minnesota and Iowa. In addition, we provide a variety of other services including financial planning, economic development assistance and investment management.
- Northland serves as underwriter and placement agent working with obligated persons in the areas of housing, health care and higher education.
- We have long-term ongoing relationships with the majority of our local government clients. The nature of the relationship varies from client to client. For some clients, we act exclusively as a municipal advisor. Some clients choose to use Northland as both municipal advisor and underwriter, depending on the transaction. Finally, we also work with issuers that only use Northland as underwriter.

The remainder of this letter provides comments on specific aspects of the Draft Rule G-42.

Nature of Relationships

A critical issue for Northland is for Draft Rule G-42 (and all subsequent municipal advisor regulations) to support the transaction-based framework created by the Municipal Advisor Rule. A person acts as a municipal advisor in context of a specific transaction (issuance of municipal securities). This context defines our ability to operate within this regulatory framework. Each interaction with a client/issuer becomes one of the following:

1. Advice on the issuance of municipal securities provided as municipal advisor.
2. Advice on the issuance of municipal securities provided in the capacity other than municipal advisor pursuant to a stated exclusion in the Municipal Advisor Rule.

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3. General information (not advice) on municipal securities.

4. Other consulting services not related to advice on the issuance of municipal securities.

Framing service delivery in this manner helps to ensure that we clearly communicate our role to the issuer at the earliest opportunity and that we comply with the regulations that govern that role.

While the intent of Draft Rule G-42 appears consistent with this framework, the use of the term "relationship" blurs the practical application. Draft Rule G-42 uses relationship as a means of defining the municipal advisor activities. For example, under Documentation of Municipal Advisory Relationship, it states: "*A municipal advisor must evidence each of its municipal advisory relationships by a writing entered into prior to, upon or promptly after the inception of the municipal advisory relationship*." The practical challenge of applying the standard is that municipal advisor activities often occur within "relationships" between an issuer and an advisor that are both historical and ongoing. While the advisor's role within each transaction is defined, this is rarely thought about as a separate relationship. Draft Rule G-42 contributes to this confusion by using "maintenance of the municipal advisory relationship" under .09 Know Your Client.

An alternative would be to apply the approach for the Underwriter Exclusion in the Municipal Advisor Rule. To use the Underwriter Exclusion, a broker-dealer must be engaged as underwriter before providing advice. Applying this approach to Draft Rule G-42 would require the municipal advisor to be engaged prior to providing advice. This approach has several benefits:

- The approach fits cleanly with other aspects of the Municipal Advisor Rule. The same approach applies when that party is a municipal advisor or is acting in another capacity under the Municipal Advisor Rule.
- The issuer must make a conscious decision about the party providing advice in each instance. The disclosures required by the Draft Rule G-42, by MSRB Rule G-17 and by the Municipal Advisor Rule provide the issuer with critical information before engaging the party to provide advice. Without this distinction, the municipal advisor could claim that the relationship was not formed until after the initial advice was provided.
- This approach is consistent with the Disclosure and Documentation requirements in Draft Rule G-42. Information is required to be provided prior to or at the inception of the municipal advisory relationship. It seems desirable to require this information prior to providing advice, which is the activity that triggers the need for the disclosures in the first place.

Official Statement Review

The requirement for a thorough review of the official statement under .01 Duty of Care does not match the actual delivery of service in some market areas. The Draft Rule G-42 states that a municipal advisor "must also undertake a thorough review of the official statement for that issue, unless" the issuer limits the engagement to exclude this activity. This provision works when the official statement is prepared by a party other than the municipal advisor. In our

market, however, the standard practice is for the municipal advisor to prepare the official statement on behalf of the issuer. The requirement that a municipal advisor review its own work has little meaning.

The relevant requirement would be to extend the due diligence standards for underwriters to municipal advisors. Under the Duty of Care, a municipal advisor that prepared all or portions of an official statement would be required to attest to the due diligence used in this work. Useful guidance on this issue comes from the March 19, 2012 National Examination Risk Alert entitled "Strengthening Practices for the Underwriting of Municipal Securities". This document discusses effective practices for disclosure due diligence and supervision by broker-dealers. The same practices apply equally to municipal advisors. The Risk Alert notes that underwriters have the duty to review an official statement "with respect to accuracy and completeness of statements made in connection with an offering". A municipal advisor should be held to the same standard in both the review and preparation of official statement. Municipal advisors should also have the same supervisory obligations for disclosure review and preparation.

Recommendations

The Draft Rule G-42 proposes an appropriate standard of conduct for making recommendations about a municipal securities transaction. A municipal advisor should not recommend a transaction unless it has a reasonable basis for believing that the transaction is suitable for the client. The challenge in operating under the proposed Draft Rule is its prescriptive nature. The Draft Rule specifies items that the municipal advisor must discuss with its client including the evaluation of risks and benefits, the basis for suitability and the investigation of alternatives.

The scope of the recommendations requirement is unclear. The Draft Rule G-42 ties the requirement to entering into a municipal securities transaction or municipal financial product. There are a variety of municipal advisor activities that do not cross the threshold. An advisor may provide advice on the structure, terms and timing of an issue without recommending entering into a transaction. An advisor may provide advice on the investment of bond proceeds and material events disclosure without recommending entering into a transaction. If the intent is that the recommendations requirement applies to all recommendations, I do not think the proposed language in the Draft Rule achieves that result.

Additionally, the requirement may create areas of conflict between advisor and issuer. While the Draft Rule G-42 allows the advisor to "discuss" matters with the client, the need to document these discussions encourages the advisor to use written communications. This creates the potential for information from the advisor that conflicts with actions taken by the issuer. For example, an issuer may choose to use lease financing for a new facility when the advisor's explanation of alternatives shows that general obligation bonds produce the lowest cost debt.

An alternative approach would be the following:

"A municipal advisor must make a recommendation to a municipal entity or obligated person client related to the issuance of municipal securities or a municipal financial product unless the advisor has a reasonable basis for believing, based on the information obtained through reasonable diligence of the advisor, that the recommendation is suitable for the client."

This approach creates a standard for conduct while allowing flexibility in its application. This approach is similar to the concept of defining "advice" in the Municipal Advisor Rule. The determination would be based on the facts and circumstances of each situation.

Economic Analysis

We believe that Draft Rule G-42 should not include any exemption based on the size of a municipal advisory firm. Such an exemption would create a variety of problems. The municipal advisor registration requirements apply to all parties acting as municipal advisor. An exemption would create a class of registered advisors that are not subject to conduct, supervision and licensing requirements. Issuers would be required to distinguish municipal advisors that are registered, but not otherwise regulated. Economics is not sufficient justification to exclude a group of advisors. If issuers benefit from these regulations, then they should apply equally to all municipal advisors. Finally, an exemption would create financial inequities. Unregulated advisors would be able to charge lower fees without the overhead associated with regulatory compliance.

Liability Insurance

We agree with the proposed requirement that the municipal advisor disclose information regarding professional liability insurance (or the lack of) to the issuer. We do not, however, believe that it is appropriate or necessary for the MSRB to prescribe standards for such insurance. The issuer should have the ability to determine if liability insurance is needed and the related coverage. The MSRB may wish to consider creating issuer education material about this topic.

Thank you for the opportunity to provide these comments. Do not hesitate to contact me with any questions or the need for clarification. We look forward to continued participation in the rulemaking process.

Sincerely,

John R. Fifield, Jr.
Director of Public Finance/Senior Vice President