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March 17, 2014

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

Dear Mr. Smith:

Thank you for the opportunity to comment on Regulatory Notice 2014-01. Wulff, Hansen & Co. is an 80-year-old FINRA member broker/dealer and a registered municipal financial advisor active in the California market. Most of our issuer relationships are of a long-term nature, some dating back decades. With some clients we serve exclusively as municipal advisor, with others solely as an underwriter. Certain clients may retain us as either depending on the facts and circumstances of a particular project.

Our comments below address the various sections of Draft Rule G-42 individually, followed by our response to certain questions contained in the Notice.

G-42(a)

In many localities municipal advisors have long had fiduciary duties under State law and a new uniform standard applying to advisors nationwide is appropriate, creating a more level playing field across the nation.

We generally support the other concepts underlying Draft Rule G-42(a). G-42(a)(v) allows fee-splitting arrangements so long as they are properly disclosed. This should be retained as such arrangements can sometimes be efficient and beneficial to the client: An example might be when the advisor engages a specialist to perform a particular type of financial analysis and compensates him out of the advisor's fee. G-42(a)(v) should be modified to make clear that the advisor's arranging for routine purchase of services on behalf of the client in a transaction with an entity in which the advisor has an interest (e.g, purchase of services from DTCC when the advisor is also a DTCC Participant and thus part-owner) does not constitute disclosable 'fee-splitting' (or a principal transaction) for purposes of the Rule when the services in question cannot be purchased from another unrelated entity.

In addition, Supplementary Material .01, on the 'Duty of Care', raises potential difficulties. The requirement that the advisor undertake a 'thorough review' of an entire Official Statement unless specifically relieved of that duty by the client is unreflective of how things work in the real world. Of course all parts of an Official Statement require review, and that review is best conducted by subject matter experts. In actual practice, an advisor 'thoroughly reviews' those

portions of the OS which fall within its professional competence, leaving word-by-word review of technical legal documents to counsel, of engineering data to engineers, and so forth. The advisor will likely also 'review' those sections as well, but is not necessarily competent to form a judgment or be an arbiter as to whether they are properly prepared. Requiring the advisor to conduct and document a 'thorough' review of every word in every section and appendix of the OS would be duplicative and thus increase costs with no commensurate benefit. Division of labor in the review of the Official Statement is a matter best left to those most familiar with the issue: Issuer staff, the advisor, counsel(s), and other members of the team. It should not be prescribed in the Rule. In addition, the cost of thoroughly documenting such a review would be excessive and would unduly burden small issuer clients who would ultimately pay the bill.

G-42(b)

If Draft Rule G-42(a) is adopted as proposed, making municipal advisors subject to a fiduciary duty with regard to its municipal clients, Draft Rule G-42(b) may well be unnecessary and redundant. The fiduciary duty would, in our view, in and of itself require disclosure of items specified in G-42(i) through (v) as well as (vii). We believe (vi) is unnecessary, as the conflicts posed by the various means of compensation are both inherent and obvious upon even the most cursory reflection. Few issuer officials can be unaware that a person compensated solely by completion of a transaction has an incentive to ensure that the transaction takes place, or that persons paid by the hour have incentive to spend more hours on their tasks than might be the case in a fixed-price engagement. These are common-sense conflicts that all of us confront every day as we engage professionals, tradespeople, and others. That said, including (vi) would likely do no harm other than as a source of confusion and suspicion, but we think it is simply unnecessary.

We find items (viii) and (ix) to be inappropriate. In the case of (viii) we are not aware of any other industry or profession – not law, not medicine, not dentistry, not engineering, not anything - whose overseers require provision of this information. Purchase of such insurance is a business decision and says nothing about the firm or individual's professional competence. Indeed, one can argue that those who knowingly do poor work are more likely to purchase insurance than are those having strong professional qualifications and who are more careful in their conduct. Further, issuers who are concerned with this often request the information in their RFP or other proposal. Others do not, and issuers should remain free to choose what they want to know about a vendor's insurance arrangements.

In the case of (ix), this also greatly exceeds what is required of other professions. Such information is already publicly disclosed on Form MA or MA-1. We suggest as an alternative that advisors be required to provide potential clients with a link or other information directing them to the website or other place where such information can be reviewed should the client wish to do so.

The final sentence of proposed Rule G-42(b) is unnecessary and in practice redundant. Assuming that G-42(i) is adopted as written, the subject of conflicts would be adequately addressed. G-42(i) requires disclosure and thus an advisor who discloses none is effectively asserting that he has none to disclose.

G-42(c)

We support Draft Rule G-42(c) except that G-42(c)(ii) should better reflect the fact that at the beginning of an engagement, and often for a long period of time after commencement, it is not possible to know even in very round numbers what an advisor's compensation might be. The terms of compensation are laid out in the agreement, but the number of hours or the size of a financing may in the end vary by as much as an order of magnitude. Requiring hypothetical examples would likely confuse the client and at best is of small utility, and at worst could give a highly erroneous impression of the ultimate cost of services. Ensuring that the terms of compensation are clear and unambiguous is the best solution at this point in the engagement.

G-42(d)

Draft Rule G-42(d) is generally reasonable, but needs to make clear the advisor's duty in cases where the client, for political or other reasons, wishes to engage in a transaction that in the advisor's opinion is not financially or economically beneficial. Such actions are not uncommon, particularly in areas where the issuer perceives social, political or other intangible benefits associated with the project. A solar installation which costs more than its fossil-fuel equivalent would be an example. Although Supplementary Material .03 states than an advisor would not be required to resign rather than assist in such a project, additional details of his obligations and responsibilities - both those removed and those which still exist - in such circumstances should be included.

G-42(e)

Draft Rule G-42(e) is unnecessary, as the obligations it imposes are already contained in G-42(a)(i) and (ii), G-42(c) and G-42(d). They are part of standard advisory work.

G-42(f)

Draft Rule G-42(f) should specify that the sale of other additional municipal advisory or related services (the latter properly defined to protect the client) does not constitute a 'principal transaction'.

G-42(g)

We support Draft G-42(g) except that G-42(g)(ii) should be modified to apply only to inaccuracies resulting in overstatement of the fees, expenses, or activities being billed for. Advisors frequently understate or do not charge at all for incidental services provided in the context of a long-term and mutually satisfactory relationship, perhaps to help the client keep a project within budget, to avoid the appearance of 'nickel-and-diming' him, or because calculating the exact amount due for a particular small task would not be justified by the revenue involved. Allowing the advisor to understate or forgo part of an amount technically due him is good for the client and should be left to the advisor's discretion.

Supplementary Material:

Other than our comment above on Supplementary Material .01 and our requested clarification of duties and responsibilities in the circumstances to which .03 applies, the balance of the Supplementary Material is useful and we support it as proposed.

Other Questions

The Regulatory Notice asks whether advisors should be required to obtain written acknowledgment of, and consent to, their disclosures. We think not. In our experience, obtaining written acknowledgement from the proper issuer officials can be difficult and in many cases impossible. Indeed, we understand that certain issuers have been advised by counsel that they are never to sign such an acknowledgement under any circumstances. A reasonable approach would be to require that the advisor document his request for such an acknowledgement rather than mandate that he actually receive it.

The Notice asks whether advisors should be required to purchase professional liability insurance. We would oppose this idea in the strongest terms. We know of no other profession required to do so. Purchase of insurance is a business decision to be made by each advisor. Issuers who are interested in the matter can inquire, and in our experience many of them do so. Municipal advisors can purchase many other commercial services which may benefit or protect the clients such as sophisticated software, fire insurance covering its premises and the client work product stored therein, firewalls protecting confidential client information, technical consultants working on the clients' behalf, and so on. The list is endless. The purchase of business services is a business decision and not an appropriate subject for regulation. In addition, smaller firms might well find themselves priced out of the market and in poor market conditions insurers could cease offering such coverage at any price as has happened in the past with similar types of insurance.

The Notice asks if advisors should be required to review any feasibility study as part of its suitability evaluation. We do not think such a review should be mandated by Rule. Each engagement is structured in light of the facts and circumstances surrounding it, and the advisor's specific scope of work should be left to the parties. The same considerations expressed above regarding Supplementary Material .01 apply here. The advisor's role could be such as to not require this review, or the feasibility study could be of such a technical nature that review by the advisor would not be useful and were better left to a technically qualified party on the team whose opinion could then inform that of the advisor.

Thank you again for the opportunity to comment on this Regulatory Notice.

Very truly yours,

Chris Charles
President