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

Re: MSRB Notice 2014-01 Request for Comment on Draft Rule G-42, on Duties of Non-Solicitor Municipal Advisors

The Yuba Group appreciates the opportunity to provide comments in response to the Municipal Securities Rulemaking Board ("MSRB") proposed Rule G-42, on Duties of Non-Solicitor Municipal Advisors. The Yuba Group commends the MSRB's continued effort in working with and listening to market participants as new MSRB Municipal Advisor Rules are drafted.

Background

The Yuba Group is a seven-person advisory firm formed in 2010. Our work is focused solely on higher education and not-for-profit institutions. In addition to assisting with tax-exempt and taxable debt transactions, as well as interest rate swaps, we provide on-going services related to capital financing, debt policy/capacity and rating strategies.

Our clients include a range of public and private colleges and universities, as well as research, cultural and other types of not-for-profit institutions. Current clients include several Ivy League institutions and other major research universities – both public and private- as well as liberal arts schools and "niche" institutions. We do not advise any issuing authorities. Our partners and other personnel have many years of prior experience at investment banks, rating agency and other financial services and swap advisory firms.

Comments on MSRB Draft Rule G-42

General Matters

The Yuba Group offers these comments in response to certain questions in the General Matters section (1, 2 and 9) posed in the MSRB Draft Rule G-42, as follows.

1. Draft Rule G-42 follows the Dodd-Frank Act in deeming a municipal advisor to owe a fiduciary duty, for purposes of the draft Rule G-42, only to its municipal entity clients. Is carrying forward that distinction in the draft rule appropriate in light of the services a municipal advisor provides to its obligated person clients? Would having a uniform fiduciary standard applied to all of a municipal advisor's clients facilitate compliance with the draft rule or provide better protection for issuers? If so, are there any legal impediments to the MSRB extending a fiduciary duty in the draft rule to all clients of a municipal advisor?

Response:

Although the Yuba Group understands that the Dodd-Frank Act specifically requires a fiduciary duty to municipal entities and not "obligated persons," we believe there should be no distinction between these types of borrowers and a uniform fiduciary standard should apply to all municipal advisor clients. As a municipal advisor, we would not view our responsibility to our private, 501(c)3 institutions as any less than to our public university clients. In fact, we would argue that some of the smaller private institutions were more adversely affected by the heavy marketing of auction rate and swap structures than public institutions of higher education who may have access to additional resources and expertise in evaluating the benefits and risks associated with such products. It is also possible that the lower "duty of care standard" imposed on municipal advisors to 501(c)3 institutions may not provide these institutions with adequate protection.

The Yuba Group encourages the MSRB to utilize a uniform fiduciary standard for both municipal entities and "obligated persons."

Additionally, although the Yuba Group understands that the SEC has defined "obligated person" as the same meaning in section 15(B)e(10)[1], the effect of this means that there are no restrictions on providing advice to 501(c)3 institutions for future issues of debt until they have made an application to or are in negotiation with an issuing authority. By the time a borrower makes an application to an issuing authority, a bond structure has already been determined in most cases. This allows bankers, planning to act in the capacity of underwriters, to provide advice up until that point to 501(c)3 institutions. The use of the "obligated person" structure also may add a level of ambiguity since not all issuing authorities have formal applications. If the MSRB is able to broaden the application of the Rule such that an "obligated person" is not based on "per issue" basis, but rather a 501(c)3 institution who could potentially be, or intends to become, an "obligated person," that would eliminate such ambiguities and remove the status of the issuing authority application from impacting the ability to provide advice.

[1] As such, the definition in Rule 15Ba1-1(k) provides that obligated person has the same meaning as in Section 15B(e)(10)) and means "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities."

The Yuba Group recommends that the MSRB expand the G-42 requirements for an "obligated person" so that Rule G-42 applies to municipal bond issues prior to the application of a 501(c)3 institution and prior to application to an issuing authority.

2. Do commenters agree that a municipal advisor that is engaged by a client in connection with either an issuance of municipal securities or a municipal financial product that is related to an issuance of municipal securities should have an obligation, unless agreed to otherwise by the advisor and client, to review thoroughly the entire Official Statement? Should a municipal advisor be permitted to limit the scope of the engagement such that the advisor is not required to review the Official Statement? If so, under what circumstances should this limitation be allowed? Should any duty to review the Official Statement be limited to any portions of the Official Statement directly related to the scope of municipal advisory services?

Response:
As a municipal advisor (MA) to a borrower in the municipal market, we consider the review of the Preliminary and Final Official Statement (OS) as part of our responsibilities in implementing a bond transaction and will communicate to our client any inconsistencies, inaccuracies and omissions that we may find. The Yuba Group currently documents our method of reviewing the OS within our engagement agreements. However, the draft supplementary Material .01, regarding Duty of Care indicates that "a municipal advisor that is engaged by a client in connection with either an issuance of municipal securities or municipal financial product that is related to an issuance of municipal securities must also undertake a ***thorough*** review of the official statement for that issue."

The Yuba Group would like clarification by the MSRB to ensure this "thorough" review does not require municipal advisors to perform due diligence or engage counsel to assist in such matters. If the municipal advisor were to be formally "responsible" for reviewing the disclosure document that may require them to hire counsel to perform diligence and provide them with a 10(b)5 opinion. If so, that will have the effect of increasing fees to the borrower. Additionally, there are other parties (underwriter, underwriter's counsel, borrower's counsel) who are already responsible for performing due diligence and, in the case of counsel, provide a 10(b)5 opinion on the Official Statement. It may also make the availability and costs of Professional Liability insurance prohibitive.

The Yuba Group requests that the MSRB clarify its meaning of a "thorough" review of the Official Statement required to be performed by municipal advisors, taking into consideration other parties that have responsibility over the content of the OS. We believe that an advisor's role should be focused on the appropriateness of the financing strategy, not investor disclosure.

9. Should the MSRB, in furtherance of its mandate under the Dodd-Frank Act to protect municipal entities and obligated persons, require professional liability insurance by municipal advisors, and if so, should the MSRB specify the minimum amount and terms of such coverage?

Response:
The Yuba Group has made the decision since our formation to obtain professional liability (PL) insurance despite its hefty cost. Each year, our insurance broker re-bids our PL and general liability (GL) insurance, often with very large increases in the premiums, and we are concerned that insurers may view the new regulatory environment and the potential requirement to have PL insurance as justification for increasing such fees even further. Often, our clients have specific requirements regarding PL and general liability coverage, and it may be more appropriate for these arrangements to be discussed between MAs and their clients rather than being mandated by the MSRB.

The Yuba Group recommends that the requirement as written in the draft remain the same which does not require PL insurance, but does require a disclosure of "the amount and scope of coverage of professional liability insurance, deductible amounts, and any material limitations on such coverage, or a statement that the advisor does not carry any such coverage."

Economic Analysis

The Yuba Group appreciates the MSRB's effort in obtaining supporting data, studies, or other information related to our views of the economic effects of the draft rule. Additionally, the Yuba Group, as a small municipal advisor, is happy to provide feedback regarding the potential economic impact of the draft rule and draft amendments on small municipal advisors.

The Yuba Group offers these comments in response to certain questions in the Economic Analysis section (specifically 13, 21, and 22) posed in the MSRB Draft Rule G-42, as follows.

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?

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

Response to 13 and 21:
The financial model of small MA firms is fairly straightforward, and to the extent that our costs increase, we either have to decrease the amount we pay our employees and ourselves or attempt to increase our fees. In order to serve our clients with the level of care and loyalty to which we are committed, there are limited numbers of clients we can take on without increasing the number of our employees. In a truly service-oriented business, there are limited "economies of scale," and we are very cognizant of our clients' sensitivities to costs as they are under continuous pressures regarding affordability. In order to be truly independent, we do not have other business lines that can supplement our income, and it is often challenging to compete with the investment banks in attracting high quality personnel. We have a number

of fixed costs that are fairly expensive that enable us to perform our role (Bloomberg terminals, DBC software, Reuters etc.) in addition to salaries of our employees, and the costs of compliance, both direct and related to the "opportunity cost" of our time are daunting.

The Yuba Group believes that the costs associated with compliance with new regulations may have many unintended consequences, including the need for advisors to increase fees to cover such expenses, with issuers reluctant to accept such increases and some who may decide against hiring an independent advisor to avoid such fees entirely. The costs may also discourage highly qualified individuals from entering the profession. Smaller firms and those more specialized, will be particularly sensitive to the increased time and costs associated with compliance, compared with larger firms who may be able to enjoy any "economies of scale."

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

Response:
As stated earlier, the Yuba Group focuses solely on higher education and not-for-profit institutions. Over the past couple of months, we have had to spend a great deal of time reviewing the 778-page SEC rule, the SEC guidance, existing MSRB rules and draft Rule G-42 in addition to speaking with counsel, clients and underwriters about the existing and upcoming regulations. Since our clients need to understand how communication with their bankers may change, we have spent time developing materials to explain the new rules to them and assist in the potential provision of the independent registered municipal advisor ("IRMA") exemptions. We estimate that compliance with the current MA rules will cost us over $50,000 for the first six months of 2014, for our small firm, which includes:

- Registration fees, time allocated to training staff, issuers;
- Outside consultant assistance for new rules and advice;
- Time allocation internally to learn the rules, discuss the rules, create internal documents, and prepare registration documents; and
- Time allocation for client education.

As the MSRB continues to introduce and implement new rules for municipal advisors, it would be more efficient, particularly for small firms, for these to be done on a consolidated basis, rather than "piecemeal," if at all possible. Having to review a series of rules released over time imposes greater time demands compared with a smaller number of rules which are more comprehensive in nature.

Other Matters for the MSRB's Consideration

The Yuba Group is aware that the MSRB is planning professional tests for the municipal advisor community.

The Yuba group recommends that the MSRB take into consideration the costs of administering these tests, especially for small firms. It is the Yuba's group calculation based on the cost of the tests, time studying, and lost wages, that this will be an additional $89,000 cost to the firm. In addition to these initial fees, we expect that there will also be annual continuing education fees associated with professional standards.

The Yuba Group recommends some suggestions as the MSRB develops professional standards to minimize costs in this regard:

- Acknowledge the length of prior advisory and/or investment banking work in establishing needs for examination or other requirements. For example, the MSRB could consider allowing professionals who have provided advisory service for many years to be exempt from taking the full exams, or only require them to complete some continuing education courses, whereas someone without experience with advisory work would need to pass the exam to demonstrate a basic knowledge of the industry and market;
- Grandfather those individuals who have been in this business for several years and were registered as Series 7, 52 and/or 53 in prior positions.

We encourage the MSRB to consider the potential impact and costs of compliance on small firms as it develops professional standards and requirements.

In closing, we recognize the challenges of drafting rules that will impact advisors, bankers and issuers with varying degrees of expertise and resources, and appreciate the opportunity to respond to the MSRB. We are hopeful that the MSRB will take our comments into consideration.

Thank you.

Linda Fan
Managing Partner