



April 28, 2014

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

Re: MSA Professional Services, Inc. Comments on Draft Rule G-44

Dear Mr. Smith:

On behalf of MSA Professional Services, Inc. (MSA) – a Midwest leader in engineering, architectural, transportation, funding and planning services for municipalities – I appreciate the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) draft Rule G-44, regarding Supervisory and Compliance Obligations of Municipal Advisors.

MSA would appreciate direction and clarification from the MSRB 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 the MSRB, it fails to clearly state, define or demonstrate the level of analysis and due diligence expected of regulated MAs regarding supervisory obligations outlined in the provisions.

The rule outlines the need for specific written supervisory procedures and compliance policies for each firm providing MA services.

- Will the MSRB be releasing an outline containing format guidelines or contextual requirements for each policy and procedures manual to follow, or should MA firms self-determine these documents based on direction provided in G-42?

Paragraph .01 of the Supplementary Material specifies several factors that MAs' written supervisory procedures must take into consideration, including the advisor's size, organizational structure, nature and scope of activities, and number of offices.

- Will larger MA firms be held to a stricter standard for MA compliance as compared to smaller MA firms as it relates to acceptable policy and procedure development and implementation?

Draft Rule G-44(a)(ii) requires MAs to designate one or more municipal advisor principals (MAP) to be responsible for the supervision required by the draft rule. Paragraph .03 of the Supplementary Material specifies the authority and specific qualifications required for MAPs responsible for supervisory functions.

"They must have the authority to carry out the supervision for which they are responsible, including the authority to implement the municipal advisor's established written supervisory procedures and

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take any other action necessary to fulfill their responsibilities. They also must have sufficient knowledge, experience and training to understand and effectively discharge their supervisory responsibilities.”

- Will these additional experience, training and knowledge metrics referenced for MAPs be identified in subsequent MSRB Notices? What metrics will the MSRB use to determine “experience, training and knowledge” outside of the qualification requirements referenced in *MSRB Notice 2014-08*?
- What is the proper (MSRB-approved) ratio for appropriate compliance with MA activities:
 - One certified MA representative per firm?
 - One certified MA representative per state per firm?
 - One certified MA representative per “X” # of clients per firm?

While Paragraph .01 of the Supplementary Material specifies several factors that MAs must take into consideration in drafting and implementing supervisory procedures and gives flexibility to achieve compliance, the subjective nature of that analysis may not provide the appropriate structure for maintaining continuity with fiduciary requirements outlined in the legislation. A more objective, metric-based approach would be preferable; one which ***clearly*** defines the appropriate number of MA representatives required to fulfill regulatory responsibilities.

- Can the Chief Compliance Officer (CCO) and/or the designated MAP also serve in a functional municipal advisor representative capacity? Can the duties of the CCO and MAP be vested in the same person? Can a person serve as a municipal advisor representative, CCO and MAP for a firm?
- If a firm decides to outsource the CCO functions as identified in Paragraph .06 of the Supplementary Material, is that entity operating under the MA registration of the firm, or must he/she be subsequently registered as an individual MA (MA-I)?
 - A previous issuance contained a provision which stated that if a firm chooses to subcontract with an independent MA on behalf of its clients, said MA could not have been associated with the firm for two years.
 - Will the same provisions apply to the CCO position?

What rationale did the MSRB use in determining the above?

- This requirement, if enforced, may prevent access and participation to the MA services market by qualified professionals who could provide the MA services at a reduced cost for municipalities.
- Additionally, please explain the rationale and intent behind the two-year duration outlined in the legislation.

The Draft amendments to Rule G-3 would define a municipal advisor representative as “a natural person who is associated person of a municipal advisor, other than a person whose functions are solely as clerical or ministerial, who engages in municipal advisory activities as defined in Rule -13.”



It is unclear to many firms, including MSA, whether the acting MA representative needs to be *physically in attendance* at meetings and discussions where financing options are outlined for projects in order to maintain compliance with the provisions. Although this question might be most appropriately addressed as it relates to *Notice 2014-08*, guidance from the MSRB is sorely needed on this topic. The interpretation will significantly impact communities and consultants, as it directly relates to the development of Supervisory Policies and Procedures outlined in G-44.

Project Scenario:

Community “X” is in need of municipal advisory services in conjunction with an infrastructure project.

Their consultant (Company “Y”) is registered as a Municipal Advisor with the MSRB and also has individual employees registered / certified as municipal advisors.

Employee “A” is the registered / certified MA for Company “Y” and performs the financial analysis and evaluation in conjunction with the municipal advisory services for Community “X”.

Employee “A” provides a written report to Employee “B” (engineer of the same company) to deliver to the community to provide background of financing options in conjunction with general project discussions.

- Question 1: Does this meet the requirements of MA provisions outlined by the MSRB?
- Question 2: Must Employee “A” be physically in attendance at meetings where preliminary financing discussion occurs in advance of a potential project in order to maintain MA compliance?

MSA believes that the above scenario should qualify as fulfilling MA provisions and the intent of fulfilling a fiduciary duty to municipal clients outlined by the MSRB and required by Dodd-Frank. If this scenario, however, would require the physical attendance of the registered / certified MA from Company “Y” at each meeting where financing options are discussed, this will significantly increase the cost of each project for the community – far outweighing the benefits of municipal advisor services provided.

General Questions Outlined in notice 2014-04:

Does draft Rule G-44 strike an appropriate balance between a principles-based and a prescriptive approach to supervision? If not, explain why and in what areas draft Rule G-44 should be more principles-based or prescriptive.

Requiring the MA representative for a municipal advisor firm to be physically in attendance at meetings where project financing alternatives are discussed seems overtly cost-prohibitive for each project, especially during preliminary discussions. This approach, if required by the regulations, is too heavily weighted towards a prescriptive-based approach and will impact the upfront and long-term financing costs for municipal projects.



MSA recommends that MA compliance activities can take place by an MA and that information be provided to another employee of the MA firm for delivery and discussion and still meet the intent of the regulations – especially during preliminary project discussions. There is a time and place for active, in-person MA participation on a municipal project, but requiring physical attendance at every meeting where financing alternatives may or may not be discussed is cost-prohibitive. A more principles-based approach should be applied; one that allows for the community and MA to determine if attendance is warranted or appropriate.

Is Draft Rule G-44 appropriately accommodating for small and single person municipal advisors? If not, describe how the draft rule can be modified to be more appropriately accommodating.

While provisions outlined in G-44 appear to accommodate smaller and single person MA firms, MSA questions whether a small firm can meet the litany of compliance mandates in a cost-effective manner, while still preserving the fiduciary duty with municipal clients.

Conversely, Paragraph .02 of the Supplementary emphasizes the flexibility of the draft rule and its benefits to smaller firms. Policies and procedures must take into consideration “the advisor’s size, organizational structure, nature and scope of activities and number of offices.”

This statement would suggest that the Policies and Procedures developed and implemented by MA firms will differ based on the above. This would seem to hold larger firms to a higher standard than smaller firms. MSA recommends a prescriptive approach be applied to the Policies and Procedures outlined in G-44 – one that places clear, regulatory requirements on all firms, regardless of size.

Do commenters agree or disagree that municipal advisors should be able to outsource the CCO function pursuant to the draft rule and that the CCO should not be required to be a principal or even an associated person of the municipal advisor?

While we agree that the CCO position as an outsourced position could help promote and improve the fiduciary duties required by MA regulations, ultimately, compliance falls squarely on the shoulders of MA firms. Thus, MSA questions whether MA firms will elect to use outside CCOs due to liability and exposure concerns.

Questions:

- Will outside CCOs be subject to the same two-year provision outlined for MA duties being performed by a former employee of the MA firm?
- Can an outsourced CCO provide compliance services for multiple MA firms?

Should draft Rule G-44 require municipal advisors to complete a periodic self-certification regarding the meeting of professional qualification standards by its associated persons and the municipal advisor’s ability to comply, and history of complying, with all applicable regulatory requirements?

This requirement seems practical and feasible, though certification metrics should be outlined by the



MSRB for consistency amongst all regulated firms, regardless of size.

To the extent that Draft Rule G-44 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 costs associated with MSRB MA compliance, whether directly or indirectly related to a specific project or MA activity, will be passed along to clients in the form of higher fees.

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?

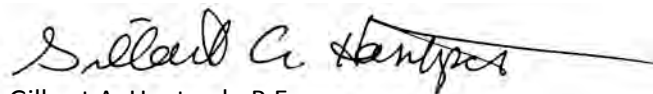
The development and implementation of adequate policies and procedures, annual filing and/or certification requirements, and the preservation of client records for retention compliance will add an additional expense to MA firms. This will result in additional costs for MA participants that will be passed along to municipalities, the ultimate beneficiary of these services. It would be premature to attempt to quantify these costs at this time as there are still unanswered questions regarding what types of information will be required for regulatory retention compliance.

Will Draft Rule G-44 have benefits in terms of protecting municipal entities, obligated persons and investors?

As mentioned in both the SEC Final Rule and *Notice 2014-04*, there is “little publicly available information about the municipal advisor industry.” As such, benefits to municipal entities would seem clear as they relate to required informational transparency and the requirement of a supervisory structure in place to protect, promote and preserve a municipal advisor’s fiduciary duty respective to municipal clients.

Unfortunately, without adequate input, clear direction or direct communication to municipalities, it leaves the “explaining” up to the MA services industry. How to explain the costs and benefits of regulatory compliance to the benefitting municipalities is a missing piece that has not received adequate attention. These costs will be initially absorbed by the MA industry but will most likely be recouped through MA activities in the future – resulting in higher project costs for municipalities. The potential “unfunded mandate” for MA compliance will not remain unfunded in perpetuity.

MSA appreciates the opportunity to provide comment on the Draft Rule G-44 and would welcome 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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