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BY ELECTRONIC MAIL

August 25, 2014

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

Re: ***MSRB Regulatory Notice 2014-12***
Request for Comment on Revised Draft MSRB Rule G-42
Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith,

The American Bankers Association (ABA)[1] appreciates this opportunity to comment on Regulatory Notice 2014-12 issued by the Municipal Securities Rulemaking Board (MSRB). This Regulatory Notice revises MSRB Draft Rule G-42 on the standards of conduct and duties of municipal advisors engaging in municipal advisory activities other than solicitation.

ABA is most appreciative of the MSRB's responsiveness to the comments received on its first draft of Rule G-42. We believe the re-proposal significantly increases the ability of banks to continue to provide services to municipal entities within the scope of the new municipal advisor regulatory regime. We strongly support the MSRB's determination that neither the proposed fiduciary duty nor the prohibition on principal transactions should be extended to obligated persons. We are particularly appreciative that the scope of the prohibition on principal transactions has been better tailored. Our comments in this letter address clarification of the scope of Revised Draft Rule G-42, the principal transactions provision, and an appropriate effective date.

Clarification of the Scope of Revised Draft Rule G-42
In the definitions section of the preamble,[2] the MSRB noted commenters' requests that Rule G-42 "should state clearly that it does not apply to activities that have been excluded or exempted under either the Dodd-Frank act or the SEC Final Rule."[3] The preamble further states that "[t]he references in the initial Draft Rule to the Exchange Act and the rules and regulations thereunder encompassed the statutory exclusions and the rule-based exemptions." In Revised Draft Rule G-42, the MSRB has in paragraph (f)(v) defined the term "municipal advisory activities" for purposes of this rule to be those that would cause a person to be a municipal advisor as defined in the final rule issued by the Securities and Exchange Commission.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.
[2] MSRB Regulatory Notice 2014-12 at 16.
[3] Securities Exchange Act of 1934, Section 15B(e)(4), 17 CFR 240.15Ba1-1(d)(1)-(4).

Nonetheless, given the desire of banking organizations for clear guidance, we urge the MSRB to state explicitly that the ban on principal transactions does *not* apply to any activity (including excluded or exempted activities) that does not require registration as a municipal advisor under the SEC's final rule. This is particularly critical in the case of bank loans to municipal entities in cases where the loan appears to be a security and thus may appear nominally to come within the ambit of the definition of "principal transaction" as formulated in Revised Draft Rule G-42.

Prohibition on Principal Transactions

As re-proposed, the prohibition would apply to principal transactions by the municipal advisor or its affiliate that are directly related to the advised transaction. The MSRB has further defined the term "engaging in a principal transaction" to encompass only those transactions in which the municipal advisor or its affiliate is acting as a principal:

- Selling to or purchasing from a municipal entity any securities; or
- Entering into any derivative, guaranteed investment contract or similar financial product with the municipal entity.

These two critical revisions are most welcome and go far to make workable the fiduciary duty. However, we are concerned that in large complex multi-entity, geographically dispersed banking organizations, there remains a distinct possibility that an affiliate of a municipal advisor (or another unit within the same bank that has established a municipal advisor in a separately identifiable department or division (SIDD)) may be unaware of the scope of an advisory relationship and unknowingly engage in a transaction that is related to the advised transaction. We believe such an inadvertent situation could occur even if a large banking organization incurred the cost of investing in the extensive monitoring necessary and prudently supervised its activities to detect all potential "affiliated" principal transactions. Moreover, banking organizations often impose internal "Chinese Walls" to prevent the improper disclosure of material information, ensure privacy, and/or ensure that client information does not extend beyond general "need to know" parameters, a system that could inappropriately be undermined by a monitoring system intended to address "affiliated" transactions. However, rigorous application of such a Chinese Wall could make it difficult for an institution to recognize a transaction of concern.

We recognize that the purpose of imposing a fiduciary duty on municipal advisors is to ensure that municipal entities receive disinterested advice. In the case of an affiliate (including another unit within the same bank which has established a municipal advisor SIDD) without knowledge of the municipal advisory engagement or its scope, we suggest that this objective of the MSRB could be achieved if the municipal advisor did not advise the municipal entity to engage in such transaction.

In addition, we urge the MSRB to clarify that the prohibition on principal transactions applies only in the case of advice provided pursuant to a municipal advisory relationship. Paragraph (e)(ii) should be revised to read as follows:

> (ii) A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice *pursuant to a municipal advisory relationship*.

Finally, we believe that the new sentence of Supplementary Material .07 concerning the inapplicability of the principal prohibition to the exemption in MSRB Rule G-23 is unneeded. Rule G-23 applies in any event. Should the MSRB determine to retain this language, the proviso at the end should be revised to read: *provided that such a transaction is not prohibited by the provisions of Rule G-23.*

We strongly urge the MSRB to adopt these further limited amendments to the prohibition on principal transactions in Revised Draft Rule G-42.

Transition Period

We urge the MSRB to provide a transitional provision in Revised Draft Rule G-42 to permit advisors to honor their existing financial advisory agreements with advised clients. Many financial advisory firms have a large number of existing financial advisory agreements, many of which are multi-year contracts. A significant amount of time and expense would be required to supplement or amend these agreements with the additional content and disclosures required by paragraph (c) of Revised Draft Rule G-42. Importantly, municipal entities may conclude under the particular state and/or local procurement laws applicable to them that an amendment to an existing municipal advisory agreement made to comply with provisions of the Revised Draft Rule might require the reopening of the request for proposal process for issuers to hire municipal advisors. Such a process could require a significant amount of time, effort, and expense for municipal advisors and their clients to implement, sometimes requiring publication of public notices and public hearings. Moreover, we cannot assume that municipal advisors would be able to compel their municipal entity and obligated person clients to revise existing contracts in accordance with the new MSRB requirements.

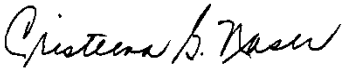
Accordingly, we ask the MSRB to allow firms to continue to operate under existing advisory agreements until they expire and then enter into new agreements that meet all of the G-42 requirements. However, as part of such a transition, we believe it would be appropriate for municipal advisors to provide to their advisory clients within 60 days of the effective date of a final rule the disclosures required by Revised Draft Rule G-42(b) of material conflicts and disciplinary actions. Other than these disclosures, we believe that contracts in place on the effective date of a final rule should be honored and allowed to run their course until termination in accordance with their terms. Upon such termination, the required contractual provisions of a final rule would be required to be included in new municipal advisory agreements between the parties.

Conclusion

ABA greatly appreciates the MSRB's responsiveness to the concerns we raised in our previous comment letter. However, as discussed above, we believe that additional changes are merited with respect to the scope of the prohibition on principal transactions to address the concerns of banking organizations. In addition to concerns about unknowing violations of this prohibition, we believe it is important for the MSRB to state explicitly that the prohibition does not apply to activities that are excluded or exempted under the SEC final rule. We believe also that a transition period to allow existing contracts to expire according to their terms is warranted so long as appropriate disclosures are provided to advisory clients within 60 days of the effective date of a final rule.

If you have questions about any of the issues raised in this letter, please do not hesitate to contact me.

Sincerely,



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