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September 2, 2014

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

Re: Draft MSRB Rule G-42 – Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith:

Thank you for the opportunity to comment on the important topic of the Municipal Securities Rulemaking Board's (MSRB) revised draft Rule G-42, pertaining to the duties of non-solicitor municipal advisors (MAs). The MSRB's development of regulations related to the SEC's final Municipal Advisor Rule is of great interest to many of our members, as issuers will be affected by the proposed regulatory framework for these professionals, particularly with regard to fiduciary duty.

Members of the Government Finance Officers Association's (GFOA) Governmental Debt Management Committee helped develop these comments, and remain concerned about the fiduciary responsibilities of MAs as discussed in the draft Rule, as well as the roles that MAs should serve as defined and referred to throughout the Rule.

Below are our comments on the specific provisions in the proposed Rule that relate to our members.

Principal Transactions

The GFOA maintains that the section of the proposed Rule on principal transactions is one of the most important parts of the draft rulemaking, and very much appreciates the MSRB's inclusion in the updated draft of a definition of the term *engaging in a principal transaction* to be limited to the transaction for which the MA is providing advice.

Municipal Advisor/Issuer Relationship and Scope of Work

We are also very appreciative of the MSRB's consideration of suggestions included in our March 13, 2014 comment letter on the MSRB's initial draft of this Rule, in which we advocated for enabling issuers to set the standard for their scope of work and control of engagement with their MAs, rather than the MSRB dictating the terms of these arrangements and establishing specific criteria for the type of work an MA should provide. This modification will allow issuers greater flexibility in defining the parameters of engagements with MAs based on the needs of the issuer, rather than having to rely on prescriptive one-size-fits-all criteria set by the MSRB. We are also appreciative of language included in the revised draft with respect to documenting a municipal advisory relationship. While there may not always be a need for a specific contract, and the draft Rule does not prohibit an issuer from requiring a contract, the terms of the relationship with a MA do need to be defined and documented as soon as engagement with an issuer begins. Note that we advise in the GFOA Best Practice *Selecting and Managing Municipal Advisors* that "*Issuers should have a written contract for municipal advisory services that should detail the scope of services and basis for compensation*."

Recommendations to Clients/Suitability and Duties

We support the proposed Rule's standards for suitability, duty of care, duty of loyalty and know your client. These should be maintained in subsequent revisions of the Rule. However we do note that the revised draft Rule deleted language that instructed MAs to only recommend municipal securities transactions and financial products that are in the issuers' best interest. While the duty of loyalty still requires a MA to act in a municipal entity client's best interests, we would like to see this express language in the context of recommendations reinserted in the Rule. We note that the draft Rule now does not even require that a MA's own recommendation be suitable for its client, which represents a substantial weakening of the Rule.

Prohibited Activities/Conflicts of Interest

As we noted above regarding principal transactions, we appreciate the MSRB providing a definition of the term *engaging in a principal transaction* and clarity on when a firm may serve as an MA and also be party to other transactions with a municipal entity – the clarification being that the conflict of interest would only arise if it is related to the same transaction where the MA is providing advice. We also support the need for MAs to disclose conflicts of interest, including disclosure of any finder's fees, fee splitting, payments to consultants, or other contractual arrangements of the firm that could present a real or perceived conflict of interest. In this area, we note that the previous draft of this Rule stated that the MA must disclose to the issuer any conflicts of interest and other information at the inception of the MA relationship. However, the revised draft states that it must be done upon or prior to engaging in MA activities. We would like to see this section clarified in any forthcoming revisions of this proposed Rule, to define exactly what point in the path to issuer/MA engagement conflicts of interest must be disclosed. GFOA's preference would be for MAs to disclose all conflicts of interest to issuers in writing prior to engaging in MA activities on the issuers behalf.

Additionally, while the revised draft clearly defines what is and what is not a principal transaction, the GFOA also wants to ensure that no component of a final Rule on G-42 removes the authority of issuers to decide for themselves how they utilize a MA or underwriter on a transaction so long as compliance with MSRB Rule G-23, MSRB Rule G-42 and the SEC's Municipal Advisor Rule are maintained. As we indicate in the GFOA Best Practice *Selecting and Managing Municipal Advisors*, *"Due to potential conflicts of interest, the issuer also should enact a policy regarding whether, and under what circumstances, it would permit a firm to serve as an underwriter on one transaction and a municipal advisor on another transaction."* The draft Rule in supplementary section .07 refers to the way Rule G-42 will work with other rules, including Rule G-23. To avoid any confusion or conflict between Rules G-42 and G-23, we would suggest that this section specifically state that a professional does not Violate Rule G-42 when meeting specific standards set forth in Rule G-23. These would be for work related to three types of transactions – pools, remarketing and purchasing bonds for clients.

MSRB Fees Imposed on MAs

We request that the MSRB include similar language in the Rule that is in place for bond dealers that prohibits fees from being passed through to issuers.

Inadvertent Advice

This new section added to the revised Rule is very important to the market. However, we would appreciate additional clarification and some examples of instances in which inadvertent advice might given and how the forthcoming MSRB MA Rules and current broker/dealer rules would apply in these instances.

Investment of Bond Proceeds

Some of our members continue to request clarification on the regulation of advice from brokers to issuers related to the investment of bond proceeds. This draft, as does the original, appears to prohibit

broker/dealers from selling securities to issuers after having advised them to invest their bond proceeds in those investments. The GFOA suggests that SEC and MSRB work together to carefully craft a solution that adheres to the spirit of the MA Rule but also does not create significant disruption in current business practices.

Rule Parity

Finally, GFOA would like to reiterate our contention that all MSRB rulemaking for issuers that is similar to current rules for broker/dealers should, where possible, be congruent.

Thank you for re-proposing this rule and again for the opportunity to comment on this important rulemaking.

Sincerely,

Dustin McDonald
Director, Federal Liaison Center