WM Financial Strategies

11710 ADMINISTRATION DRIVE
SUITE 7
ST. LOUIS, MISSOURI 63146
(314) 423-2122

August 25, 2014

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

Re: Request for Comments to Draft Rule G-42

Ladies and Gentlemen:

I am a sole proprietor doing business as WM Financial Strategies. I have a career devoted entirely to public finance and have been an independent financial advisor (now known as a Municipal Advisor) since 1989. In my capacity as an independent Municipal Advisor, I am writing to set forth my comments relating to the Municipal Securities Rulemaking Board's Draft Rule G-42.

In general, I appreciate the changes made to the first version of the rule; however, some provisions continue to concern me as noted below:

1. Draft Rule G-42 Imposes Excessive Burdens on Municipal Advisors

Draft Rule G-42 includes "Supplementary Material: .01 Duty of Care" which requires a municipal advisor to "undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information." I concur that a municipal advisor should make a reasonable investigation in order that recommendations reflect a municipal securities transaction or municipal financial product that the advisor reasonably believes is in the client's best interest. The investigation should include a review of budgets, audits, other publicly available documentation (when appropriate), and discussions with the client. However, a financial advisor should not be required to determine whether the information provided to it by the municipal entity is "materially inaccurate or incomplete." The municipal advisor should be able to rely on publicly available documents as being true and accurate and should be able to assume that any additional information provided to it by the municipal entity is also true and accurate.

2. Draft Rule G-42 Negates Rule G-23 and the Intent of SEC's Definition of Municipal Advisor

Draft Rule G-42 includes "Supplementary Material: .06 Inadvertent Advice" which creates a loophole that will allow broker-dealers to serve as financial advisors (without a fiduciary duty) and then switch to serving as an underwriter by claiming that such advice was inadvertent. This loophole negates the current Rule G-23 and allows broker-dealers to effectively serve as a financial advisor and then switch to serving as an underwriter. As written, the draft Rule G-42 permits a return to the historical bad business practice that created conflicts of interest that were not in the issuers' best interest. The

proposed provision blurs the lines between the roles of financial advisors and underwriters and undermines the definition of Municipal Advisor and the exemptions provided by the SEC.

3. Contingent Fees that are based on the completion of a transaction, but not on the size of a transaction, are not a conflict of interest

Just as a particular bond structure should reflect the municipal entity's best interest, so should the fee arrangement selected. Unlike underwriters that must disclose their contingent fee arrangements, a Municipal Advisor is required to act in the best interest of their clients. Accordingly good advice will prevent a fee arrangement from creating a "conflict."

Financial advisors are often engaged to structure and arrange the sale of municipal securities **after** a determination has already been made by the municipality to issue securities to finance a specific capital project (e.g. voters have approved general obligation bonds). Municipal issuers rely on the expertise of their financial advisor to develop marketable bond structures and to actively locate broker-dealers willing to underwrite the issue. A conflict of interest does not exist when payment of fees is based on the success of services to be provided (the sale of securities is completed). Should a financial advisor be compensated when it fails to successfully provide the services for which it was engaged?

Furthermore, many municipal entities are small with limited budgets. Costs of issuance, including financial advisory fees, are to be paid from the proceeds of the securities. If the issue is not successfully completed, payment of fees would have an adverse effect on these entity's operating budget. Contingent fee arrangements benefit Municipal Entities by insuring that their governmental funds will not be drawn upon for payment of fees if the transaction is not completed.

Based on the foregoing, the MSRB should not require a "conflict of interest" disclosure of fee arrangements that do not inherently create conflicts of interest.

4. Summary

I appreciate many of the changes made by the MSRB to the first draft of Rule G-42 and respectfully request that the MSRB further modify the draft Rule G-42 as described herein.

Sincerely,

Joy A Howard

Joy A. Howard
Principal