

August 23, 2019

**Submitted Electronically**

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1300 I Street NW  
Washington, DC 20005

**RE: Request for Comment on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors.**

Dear Mr. Smith,

The Bond Dealers of America (BDA) is pleased to comment on MSRB Notice 2019-13, "Request for Comment on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors." BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the U.S. fixed income markets.

We are encouraged that the MSRB has undertaken a review of Rule G-23. The nearly eight years that the current iteration of Rule G-23 has been effective have given market participants ample time to observe how the rule is functioning and where improvements and efficiencies can be implemented. In this letter we discuss several of the questions the MSRB poses in Notice 2019-13.

The BDA believes Rule G-23 generally works well and has been effective in addressing conflicts of interest that can arise on negotiated underwritings where a dealer municipal advisor (MA) would seek to serve as both an underwriter and MA on the same transaction. We have suggestions in several areas which we believe will improve the Rule without threatening any of its protections. We discuss our recommendations below.

**Certain provisions of Rule G-23 warrant changes.**

The BDA believes some compliance efficiencies could be gained by (i) making a clarifying change to the terminology used in the Rule; and (ii) eliminating Rule G-23 by combining key elements of Rule G-23 with the Interpretive Guidance for Underwriters under Rule G-17 and with Rule G-42, the rule that governs many other aspects of MA activity. Specific recommendations include:

- We recommend that the MSRB update the term "financial advisor" to "municipal advisor" wherever in the rule book it is appropriate and particularly in Rule G-23. "Financial advisor" and related uses of the term appear 20 times in Rule G-23, including in the rule's title. Some of the MSRB's own rules, like G-42 and D-13 use the "municipal advisor" terminology consistent with language in SEC rulemaking. Others, like G-23, use "financial advisor," which is inconsistent with

SEC terminology. The use of two different terms for persons engaged in the same activity is unnecessary and could be confusing.

- We urge the MSRB to adopt changes in the rules and interpretive guidance governing required disclosures to issuers by underwriters and dealer MAs. Interpretive guidance associated with Rule G-17 mandates that dealers provide written disclosures to issuer clients “in the earliest stages of the underwriter’s relationship with the issuer.” Guidance associated with Rule G-23 specifies that in order for a dealer to establish itself as an underwriter, not a MA, on a transaction, the dealer must “clearly [identify] itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the issuer.” Two separate requirements governing client disclosure rules are confusing and potentially conflicting. We ask that the MSRB eliminate the disclosure guidance related to Rule G-23 and consolidate all guidance related to dealer client disclosures into the guidance provided for Rule G-17.
- There is little justification for maintaining Rule G-23 as a separate rule. It would be appropriate for the MSRB to consolidate regulatory requirements for MA client relationships into a single rule, Rule G-42, and to fold the provisions of Rule G-23 and associated guidance into Rule G-42 and its guidance. The Appendix attached to this letter includes our recommended revisions to Rule G-42 incorporating provisions of Rule G-23.

**We strongly oppose SEC action on a recent PFM request for guidance related to private placements. If the SEC does act, we recommend that the MSRB conform Rule G-23 to provide similar authority for dealer MAs as the SEC provides for non-dealer MAs.**

The MSRB may be aware that PFM, the municipal advisory firm, has requested guidance from the SEC on the role of MAs in municipal private placement transactions.<sup>1</sup> Specifically, PFM has asked the SEC to publish guidance that would allow PFM and other non-dealer MAs to identify, solicit, and assess qualified investors, interact with investors, and perform coordination necessary with selected investors on private placement new issues. BDA strongly opposes PFM’s request. PFM has essentially asked the SEC for permission to act as an unregistered broker dealer in performing placement agent activities, especially with respect to the function of identifying and interacting with investors. They have argued erroneously that such guidance is necessary for them to fulfill their fiduciary duty to issuers. If the SEC acts favorably on PFM’s request, the full panoply of broker-dealer regulation focused on investor protection and safety and soundness would be discarded with respect to municipal private placements. We recommend that the MSRB specify in Rule G-42 or elsewhere that as far as MSRB rules go, it is impermissible for non-dealer MAs to conduct placement agent activities for their municipal issuer clients.

If the SEC does act favorably on PFM’s request, non-dealer MAs would be permitted to engage in placement agent activities reserved in law and regulation for broker-dealers. However, dealer MAs would be prohibited from engaging in the same activities due to restrictions imposed by Rule G-23. Rule G-23 is clear that a dealer MA must choose between serving as MA or as underwriter/placement agent.

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<sup>1</sup> Letter from Cheryl Maddox, General Counsel, and Leo Karwejna, Chief Compliance Officer, PFM, to Brett Redfearn, Senior Special Counsel, and Rebecca Olsen, Director of the Office of Municipal Securities, Securities and Exchange Commission, October 30, 2018.

If the SEC acts favorably on PFM's request, we urge the MSRB to amend Rule G-23—or whatever rule in which dealer MA restrictions would be embodied—to ensure that dealer MAs would have the same authority on private placement transactions as non-dealer MAs.

**The MSRB's review of Rule G-23 is welcome.**

We welcome the MSRB's review of Rule G-23 as part of its retrospective rule review. We recommend specific changes to the structure and language of the Rule and associated interpretive guidance as specified above. We also recommend changing the Rule's treatment of placement agent activities if and when the SEC acts on PFM's request for guidance related to non-dealer MAs and private placements. We look forward to working with you as you move forward with respect to Rule G-23.

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If you or your staff has any questions or need additional information, please do not hesitate contact me directly at 202 204 7901 or [mnicholas@bdamerica.org](mailto:mnicholas@bdamerica.org). We look forward to your response.

Sincerely,



Michael Nicholas  
Chief Executive Officer  
Bond Dealers of America

**Appendix. Suggested Edits for MSRB Rule G-42 that Incorporates Rule G-23.**

(Recommended added text is underlined. Recommended deleted text is crossed through.)

(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

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(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice, or additional compensation for acting as a placement agent; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

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(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

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(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, it must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client, based on the information obtained through the reasonable diligence of the municipal advisor. If the review of a recommendation of another party is requested by the municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is or is not suitable for the client. In addition, the municipal advisor must inform the client of:

- (i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;
  - (ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and
  - (iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.
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*(e) Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

(ii) Except as provided for in paragraphs .14, .15, and .16 of the Supplementary Material of this rule, a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from (1) acquiring as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or act as agent for the issuer in arranging the placement of such issue; or (2) engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, issue of

municipal securities or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client. The use of the term "indirectly" in this section (e) shall not preclude a municipal advisor that has a municipal advisory relationship with respect to the issuance of municipal securities from purchasing such securities from an underwriter, either for its own trading account or for the account of customers, except to the extent that such purchase is made to contravene the purpose and intent of this rule, nor shall it preclude a municipal advisor that has a municipal advisory relationship with respect to the issuance of municipal securities from serving as successor remarketing agent for such issue if the municipal advisory relationship in connection with such issue has been terminated for a period of at least one (1) year prior to such municipal advisor being selected to serve as successor remarketing agent.

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(f) *Definitions.*

(i) "Advice" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(ii) "Affiliate of the municipal advisor" shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv) "Municipal advisory activities" shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iii) of this rule.

(v) A "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vi) "Municipal entity" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(vii) "Obligated person" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(viii) "Official statement" shall, for purposes of this rule, have the same meaning as in Rule G-32(d)(vii).

(ix) "Principal transaction" shall mean, for purposes of this rule, when acting as principal for one's own account, a sale to or a purchase from the municipal entity client of any security or entrance into any

derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

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## **Supplementary Material**

**.01 Duty of Care.** Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph .01. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(a) any advice provided to or on behalf of a client;

(b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

**.02 Duty of Loyalty.** Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph .02. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

**.03 Action Independent of or Contrary to Advice.** If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

**.04 Limitations on the Scope of the Engagement.** Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.



**.05 Conflicts of Interest.** Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

**.06 Relationship Documentation.** During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

**.07 Inadvertent Advice.** A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

**.08 Applicability of State or Other Laws and Rules.** Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of

purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

**.09 Suitability.** A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

**.10 Know Your Client.** A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" include those required to:

- (a) effectively service the municipal advisory relationship with the client;
- (b) act in accordance with any special directions from the client;
- (c) understand the authority of each person acting on behalf of the client; and
- (d) comply with applicable laws, regulations and rules.

**.11 Excessive Compensation.** Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

**.12 529 College Savings Plans, ABLÉ Programs and Other Municipal Fund Securities.** This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLÉ programs (*i.e.*, a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities. All references in this rule to an "official statement" include the disclosure document for a 529 college savings plan or an ABLÉ program and the investment circular or information statement for a local government investment pool.

**.13 Principal Transactions - Other Similar Financial Products.** For purposes of subsection (f)(ix) of this rule, which defines the term "principal transaction," the phrase "other similar financial product"

includes a bank loan, but only if it is in an aggregate principal amount of \$1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

**.14 Principal Transactions – Successor Municipal Advisor.** A broker, dealer, or municipal securities dealer that previously had a municipal advisory relationship with respect to an issuance of municipal securities shall not be prohibited from acquiring as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or act as agent for the issuer in arranging the placement of such issue, if the issuer engaged a successor municipal advisor, or if the municipal advisory relationship in connection with the issue has been terminated for a period of at least one (1) year.

**.15 Principal Transactions – Placements with Governmental Entities.** A municipal advisor shall not be prohibited from acting as agent for the issuer in arranging the placement of the entire issue with any state, local or federal governmental entity as part of a plan of financing by such entity for or on behalf of the issuer, but only if such municipal advisor does not receive compensation from any person other than with respect to municipal advisory services related to such placement and does not receive compensation from any person for underwriting any contemporaneous financing transaction directly or indirectly related to such issue undertaken by the state, local, or federal governmental entity with which such issue was placed.

**.14-16 Principal Transactions - Exception for Transactions in Specified Fixed Income Securities.**

Engaging in a principal transaction with a municipal entity client is not specifically prohibited under subsection (e)(ii) of this rule if:

(a) the municipal advisor is a broker-dealer registered under Section 15 of the Act, and each account as to which the municipal advisor relies on this paragraph .14 16 is a brokerage account subject to the Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, and is an account as to which the municipal advisor exercises no investment discretion (as defined in Section 3(a)(35) of the Act), except investment discretion granted by a municipal entity client on a temporary or limited basis;

(b) neither the municipal advisor, nor any affiliate of the municipal advisor, is providing or has provided advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice as to another principal transaction under circumstances meeting all the requirements of this paragraph .1416);

(c) the principal transaction is a sale to or a purchase from the municipal entity client of any U.S. Treasury security, agency debt security, or corporate debt security (as defined in paragraph .1517 of the Supplementary Material) and does not involve municipal escrow investments (as defined in 17 CFR 240.15Ba1-1(h)); and

(d) the municipal advisor either: (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction under circumstances meeting all of the following requirements:

(A) neither the municipal advisor nor any of its affiliates are the issuer of, or, at the time of the sale, an underwriter (as defined in 17 CFR 240.15c2-12(f)(8)) of, the security;

(B) the municipal entity client has executed a written, revocable consent prospectively authorizing the municipal advisor directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the municipal entity client, so long as such written consent is obtained after written disclosure to the municipal entity client explaining: the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; the nature and significance of conflicts with its municipal entity client's interests as a result of the transactions; and how the municipal advisor addresses those conflicts;

(C) the municipal advisor, prior to the execution of each principal transaction, informs the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and obtains consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction;

(D) the municipal advisor sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10 or Rule G-15, a conspicuous, plain English statement informing the municipal entity client that the municipal advisor disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction, the municipal entity client authorized the transaction, and the municipal advisor sold the security to, or bought the security from, the municipal entity client for its own account;

(E) the municipal advisor sends to the municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon subsection (d)(2) of this paragraph ~~.1416~~, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph ~~.1416~~ includes a conspicuous, plain English statement that the municipal entity client may revoke the written consent referred to in paragraph (d)(2)(B) of this paragraph ~~.1416~~ without penalty at any time by written notice to the municipal advisor.

This paragraph ~~.14-16~~ shall not be construed as relieving in any way a municipal advisor from acting in the best interest of its municipal entity clients, nor shall it relieve the municipal advisor from any obligation that may be imposed by other applicable provisions of the federal securities laws and state law.

**~~.15-17~~ Terms Relating to the Exception in Paragraph ~~.1416~~.** For purposes of paragraph ~~.14-16~~ and this paragraph ~~.15-17~~ of the Supplementary Material:

(a) "agency" means a U.S. executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury securities;

(b) "agency debt security" means a debt security (i) issued or guaranteed by an agency, or (ii) issued or guaranteed by a government-sponsored enterprise, including a securitized product that is issued by an agency or a government-sponsored enterprise, or, for which, the principal or interest (or both) is guaranteed by an agency or a government-sponsored enterprise;

(c) “corporate debt security” means a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer and, if a “restricted security” as defined in 17 CFR 230.144(a)(3), sold pursuant to 17 CFR 230.144A, but does not include a money market instrument;

(d) “government-sponsored enterprise” has the same meaning as defined in 2 U.S.C. 622(8);

(e) “money market instrument” means a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an agency or a government-sponsored enterprise, a maturity of one calendar year and one day or less;

(f) “securitized product” means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes, but is not limited to, an asset-backed security, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is considered a debt security; and

(g) “U.S. Treasury security” means a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.