



August 25, 2014

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

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

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“**SIFMA**”)¹ appreciates the opportunity to provide comments on the Municipal Securities Rulemaking Board (“**MSRB**”) Regulatory Notice 2014-12 containing a revised draft proposal for MSRB Rule G-42 (“**Re-Proposed Rule G-42**”) on the standards of conduct and duties of municipal advisors when engaging in municipal advisory activities other than solicitations.

I. Executive Summary

SIFMA applauds the MSRB’s efforts in revising its original proposal in light of comments received.² SIFMA believes that the MSRB made great strides in making Re-Proposed Rule G-42 workable without compromising protections to municipal entities, obligated persons or investors. However, SIFMA still has significant concerns regarding certain aspects of Re-Proposed Rule G-42. In particular:

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

² SIFMA commented in detail on the original proposal. See Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 10, 2014, available at <http://www.msrb.org/RFC/2014-01/SIFMA.pdf>.

- The proposed prohibition on principal transactions should only apply to transactions that are directly related to the advice provided by the municipal advisor, rather than transactions that are unrelated to the municipal advisory relationship.
- The proposed prohibition on principal transactions should not apply to all business units of a municipal advisor and its affiliates. Most financial institutions have businesses and affiliates that are completely unconnected with their municipal advisor business, and the activities of such “remote” businesses should not be subject to the prohibition on principal transactions. Instead, the prohibition should apply only to businesses at the municipal advisor and its affiliates that have significant connection with a municipal advisory engagement.
- The proposed prohibition on principal transactions should provide an exception for municipal advisors that are broker-dealers providing incidental advice in connection with brokerage/securities execution services, particularly with respect to fixed-income securities.
- The documentation and disclosure requirements under Re-Proposed Rule G-42 should be revised so that they do not inappropriately apply to incidental advice provided in connection with brokerage/securities execution services.
- The safe harbor for inadvertent advice in Supplementary Material .06 should be expanded to provide an exception from the prohibition on principal transactions and certain other requirements under Re-Proposed Rule G-42.

II. Comments on Content of Re-Proposed Rule G-42

A. Principal Transactions

Re-Proposed Rule G-42(e)(ii) prohibits a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, 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.” While SIFMA believes that the prohibition as reformulated in Re-Proposed Rule G-42 is vastly more workable for municipal entities and municipal advisors than under the original proposal, there are a number of technical problems and ambiguities in the proposed rule text that the MSRB should rectify.

1. The MSRB Should Clarify That the Principal Transaction Ban does Not Apply to Transactions that are Not Directly Related to the Advice Rendered by a Municipal Advisor

Pursuant to Re-Proposed Rule G-42(e)(ii), the prohibition on principal transactions is triggered only when a municipal advisor or its affiliate engages in a transaction as principal “directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice.”

The MSRB should clarify that the prohibition only applies to principal transactions that are directly related to the *advice* the municipal advisor is providing, not merely the same municipal securities *transaction* in connection with which the advice is provided. For example, a municipal advisor may have an advisory relationship with respect to a client’s investment activities. In that context, a municipal advisor may be asked to provide advice with respect to the investment of the potential proceeds of an issuance of municipal securities. The MSRB should confirm that acting as a municipal advisor in such a context would not result in the municipal advisor (or its affiliates) being prohibited from acting as a principal in a municipal securities offering that client ultimately decides to engage in—such as acting as an underwriter of that transaction or an affiliate engaging in a direct purchase of the resulting municipal securities.

Similarly, consider a situation where a firm is engaged as an underwriter on a municipal securities transaction. During the course of the transaction, the issuer contacts a separate division of the same firm to seek its assistance in acting as a guaranteed investment contract broker with respect to the anticipated proceeds. The MSRB should clarify that such a tangential municipal advisory engagement conducted by separate personnel from the underwriting engagement would not be prohibited under the rule, as the underwriting is not directly related to the advice provided under the municipal advisory relationship.

Although not entirely clear from the proposed language, SIFMA believes that, in these cases, a municipal advisor or its affiliate acting as an underwriter should not be viewed as engaging as principal with respect to the “same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice,” even if all or a portion of the proceeds of an issue of municipal securities are included within the funds as to which the municipal advisor is providing advice. Moreover, a bank that is affiliated with a municipal advisor should not be precluded from engaging in a direct purchase of municipal securities from an issuer where its affiliate (*e.g.*, an asset manager) has provided, or provides, investment advice with respect to proceeds of those securities, as the transaction has no relation to the advice.

Accordingly, Re-Proposed Rule G-42(e)(ii) should be revised as follows: “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 *advice rendered by such municipal advisor*.”

2. The Principal Transaction Ban Should Be Limited to Areas of a Municipal Advisor and its Affiliates That Have Actual Knowledge of the Municipal Advisory Relationship and its Scope

The principal transaction ban in Re-Proposed Rule G-42(e)(ii) is currently drafted in a manner that could be read to prohibit principal transactions by areas of a municipal advisor and its affiliates (“**Remote Business Units**”) that have no knowledge of the advisory engagement or its scope and where the municipal advisory business: (i) has not advised, directed or encouraged the municipal entity to engage in the principal transaction with such other area or affiliate and (ii) has no direct economic interest in any such principal transaction. In effect, the ban, as drafted, imposes a strict liability standard on the legal entity that is acting as a municipal advisor and its affiliates. In SIFMA’s view, the purpose of a principal transaction ban is to ensure that the municipal advisor, through its advisory personnel, provides disinterested advice that is not influenced by the potential for profiting through self-dealing. No policy is furthered by a ban that purports to extend to Remote Business Units. If such a strict liability standard were extended to Remote Business Units, multi-service firms that consist of numerous departments and corporate affiliates would need to implement extensive internal processes to ensure that Remote Business Units and their personnel did not inadvertently violate the principal transaction ban.³ Not only would such processes be costly and burdensome to implement, and serve no practical benefit, but they would potentially result in inappropriate sharing of customer information and leakage of material nonpublic information around an extensive organization, which would run contrary to the information barriers and other informational safeguards that are at the core of most financial institutions’ compliance programs and cultures and which are in many cases legally mandated.⁴

Accordingly, Re-Proposed Rule G-42(e)(ii) should be revised to exclude from its ambit principal transactions by Remote Business Units. The MSRB could address this concern by revising Re-Proposed Draft Rule G-42(e)(ii) to include a knowledge qualifier, as follows: “A municipal advisor to a municipal entity client, and any affiliate of such

³ If the MSRB were to accept SIFMA’s proposed clarification in Section II.A.1, to limit the prohibition to transactions directly related to the municipal advice provided, it would also be less likely that a Remote Business Unit could inadvertently engage in a prohibited transaction.

⁴ See *e.g.*, Exchange Act Section 15(g) (requiring registered broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business, to prevent the misuse of material nonpublic information by the firm or its associated persons in violation of the Exchange Act).

municipal advisor, is prohibited from *knowingly* engaging in a [prohibited]⁵ principal transaction ...⁶

3. The MSRB Should Carve Out an Exception for Incidental Advice to Brokerage/Securities Execution Services Customers of Fixed-Income Securities

As discussed further below, a number of proposed requirements in Re-Proposed Rule G-42 (such as the requirement to evidence a municipal advisory relationship in a written document and to provide certain disclosures) are highly impractical in the context of ordinary securities or brokerage/securities execution services relationships, where a certain amount of discussion takes place between a broker and his or her clients that may amount to “advice.” A corollary to these concerns is that if the principal transaction ban were to extend to this type of informal advice, the ban would potentially exclude or limit the possibility of municipal advisors engaging as principal in securities transactions with municipal entity customers unless the municipal advisor refrained from providing any such informal advice (except where the firm has determined that such advice does not extend to the proceeds of an issue of municipal securities or municipal escrow investments), or execution is effected on an agency basis. Since nearly all transactions in fixed-income securities are effected on a principal basis, the problem is particularly acute with respect to that market.

When a municipal advisor is providing advice on investments incidental to its brokerage/securities execution services activities, rather than advising on a municipal securities offering, the municipal advisor and its affiliates should not be prohibited from transacting as principal.⁷ At a minimum, however, there should be an exclusion for transactions in fixed-income securities by broker-dealers whose advice to a municipal entity that would otherwise trigger the ban is limited to providing advice on investments incidental to its brokerage/securities execution services that are not part of a formal mandate or engagement.⁸

⁵ As noted in Section II.A.1 above, SIFMA believes that the prohibition should in any case be clarified to only apply to a transaction directly related to the advice that the municipal advisor provides.

⁶ The MSRB has shown sensitivity to the problem of inadvertent violations in proposing Supplementary Material .06 concerning inadvertent advice. Similar considerations are present in this situation, but would not be addressed by Supplementary Material .06 as proposed.

⁷ We also observe that the proceeds of municipal securities issuances are generally required to be invested in limited types of assets with limited duration and of high quality, reducing the risks raised by this type of advisory relationship.

⁸ We note that a similar consideration gave rise to the SEC promulgating a temporary rule to permit broker-dealers that have non-discretionary advisory accounts to engage in principal transactions in certain fixed-income securities, subject to conditions. See Advisers Act Rule 206(3)-3T; Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Advisers Act Release No. 2653 (Sept. 24, 2007) (noting, in particular, the fact that fixed-income securities are generally “traded by firms on a principal (...continued)

We note that, in another context (when providing personalized investment advice to retail customers), the SEC is already considering whether broker-dealers should be subject to a fiduciary duty and related restrictions on principal trading.⁹ The SEC has not yet decided either (i) to subject a broker-dealer to a fiduciary duty in such a context, or (ii) if it did, whether the broker-dealer would be permitted to transact with its customer as principal. However, the SEC's most recent request for data on the topic asked commenters to assume for those purposes that "[b]roker-dealers also would continue to be permitted to engage in, and receive compensation from, principal trades," with appropriate disclosure, notwithstanding a fiduciary duty.¹⁰ In light of the SEC's pending consideration of whether a broker-dealer fiduciary duty would prohibit principal transactions and, at least preliminary view that it would not, the MSRB should not at this stage take a more stringent view than the SEC on the question of what a fiduciary duty would entail in regard to limitations on principal transactions, and should clarify in Rule G-42 that advice informally given in the context of ordinary brokerage/securities execution business would not trigger the proposed prohibition on principal transactions.

4. The MSRB Should Clarify the Proposed Exemption for Transactions Complying with MSRB Rule G-23

Supplementary Material .07 notes, in relevant part, that the prohibition on principal transactions "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, provided that the municipal advisor complies with all of the provisions of Rule G-23." The limitation on the scope of the principal transaction prohibition provided by this section of Supplementary Material .07 is not entirely clear.

Supplementary Material .07 seems to contemplate that, under certain circumstances, Rule G-23 would permit, notwithstanding the general prohibition under Rule G-23(d)(i), a municipal advisor to purchase an issuance of municipal securities from an issuer as principal. SIFMA requests that the MSRB clarify (perhaps by providing pertinent examples) what activity—permissible when conducted in compliance with Rule G-23—the MSRB intends Supplementary Material .07 to permit under Rule G-42(e)(ii).

(continued...)

basis" was one of the factors that led to the promulgation of this rule.) See Advisers Act Release No. 2653 at 36-38.

⁹ See, e.g., Duties of Brokers, Dealers, and Investment Advisers, Exchange Act Release No. 69013 (Mar. 1, 2013).

¹⁰ *Id.* at 26-27.

5. The MSRB Should Clarify That Investment Vehicles Advised by Municipal Advisors and Their Affiliates are not Themselves Affiliates for Purposes of the Principal Transaction Ban

The MSRB should confirm that an investment vehicle, such as a mutual fund, that is advised by a municipal advisor or its affiliate is not itself an affiliate of the municipal advisor, such that if a municipal advisor recommends that a municipal entity or obligated person invest bond proceeds in the fund, the subsequent sale of the vehicle's shares to the municipal entity by the municipal advisor or an affiliated broker-dealer on an agency basis is not regarded as a principal transaction by an affiliate of that municipal advisor. As an example, mutual funds and other similar vehicles have independent boards, and their affiliates do not have significant equity stakes in the funds that they advise. Therefore, the same types of conflict of interest considerations that generally are raised by principal transactions by a municipal advisor or its corporate affiliates are not present, particularly where the fund has an independent board.

B. Required Disclosures

1. The MSRB Should Exclude Remote Business Units and Other Items From Certain Proposed Disclosure Requirements

Re-Proposed Rule G-42(b)(i)(B) would require municipal advisors to disclose "any affiliate . . . that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related" to the services to be provided.

As noted above, many municipal advisors are part of large, multi-service organizations that have distant and organizationally separate business units that conduct business in the same legal entity as the municipal advisory business and in affiliated entities. While SIFMA does not object to the general principal of disclosure concerning compensation by other business units as a prophylactic measure, Re-Proposed Rule G-42(b)(i)(B) should be revised to exclude compensation of Remote Business Units of the municipal advisor and its affiliates. SIFMA also urges the MSRB to exclude compensation that is immaterial in amount. In addition, the MSRB should either eliminate the term "indirect compensation" or clearly define the term.

2. Municipal Advisors and Their Affiliates Should Not Have Disclosure Obligations to Investors

Supplementary Material .08 to Re-Proposed Rule G-42 would require that, where an affiliate of a municipal advisor prepared any material that is included, in whole or part, in an official statement, the municipal advisor must provide written disclosure to investors (which may be in the Official Statement) if any of its affiliates provided services that are directly or indirectly related to its municipal advisory activities. This disclosure requirement would also be deemed satisfied if the relevant affiliate provides

the written disclosure to investors. Mandating the municipal advisor or its affiliates to provide such disclosure is inappropriate and impractical, and the MSRB should eliminate this proposed requirement.

Municipal advisors and their affiliates may have no contractual or other relationships (and in many cases have no form of privity) with investors, nor do they control the content of the Official Statement. Rather, it is the obligation of the issuer under federal securities laws and other applicable law to make sure that its disclosure is materially accurate and complete and the responsibility of broker-dealers to comply with their obligations under applicable law. A municipal advisor may be engaged to advise and assist an issuer in connection with the preparation of the issuer's disclosure—but it remains the issuer's disclosure, not the municipal advisor's. Re-Proposed Rule G-42(b)(i)(B) would already otherwise require that municipal advisors provide this same conflict information to the issuer; with the information in the issuer's possession, the MSRB should leave it to the issuer to determine whether or not such information is material to investors and warrant disclosure.

C. Specified Prohibitions

1. Affiliates of Municipal Advisors Should Not Be Prohibited from Receiving Certain Payments to Obtain or Retain Municipal Advisory Business

Re-Proposed Rule G-42(e)(i)(E) would prohibit “payments made for the purpose of obtaining or retaining municipal advisory business” except for reasonable fees paid to another registered municipal advisor. As SIFMA previously commented, the rule should be modified to permit payments to affiliates in preparing responses to RFPs or RFQs, normal business entertainment expenses, and other unobjectionable expenditures made in the ordinary course of marketing and sales activities.

2. If Properly Disclosed, Fee-Splitting Arrangements with Affiliates Should Be Permitted

Re-Proposed Rule G-42(e)(i)(E) would prohibit “making, or participating in, any fee-splitting arrangements with underwriters on any municipal securities transaction for which it is acting as municipal advisor, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor.” If properly disclosed, fee-splitting arrangements to affiliates of a municipal advisor should not be prohibited. There may be legitimate reasons for fee-splitting arrangements, including fee structures requested by clients of an affiliate. If a client receives full and fair disclosure regarding the arrangements and any conflicts of interest it may entail, the parties should be free to agree to the fee arrangement that it believes is most economical and efficient under the circumstances.

D. Documentation of Municipal Advisory Relationship

1. The MSRB Should Not Require Written Documentation of a Municipal Advisory Relationship in the Case of Brokerage/Securities Execution Services

Re-Proposed Rule G-42(c) requires that a “municipal advisor must evidence each of its municipal advisory relationships by a writing entered into prior to, upon or promptly after the establishment of the municipal advisory relationship” and include a number of elements related to the municipal advisory relationship, including, among others, the (i) form and basis of direct or indirect compensation; (ii) information required to be disclosed under Re-Proposed Rule G-42(b); and (iii) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement. Re-Proposed Rule G-42(f)(vi) notes that a “municipal advisory relationship” is “deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for or on behalf of a municipal entity or obligated person.”

The requirement to evidence a municipal advisory relationship in a written document and to provide certain disclosures are highly impractical in the context of ordinary securities or brokerage/securities execution services relationships, where a certain amount of discussion takes place between a broker and its clients that may amount to “advice” and given the potentially significant number of transactions involved and timing considerations. Moreover, according to common industry-wide practice, a municipal advisor would not “enter into an agreement to engage in municipal advisory services” when providing incidental brokerage/securities execution services.

Therefore, the MSRB should clarify that informal advice that is incidental to providing brokerage/securities would not, alone, trigger a written documentation requirement under Re-Proposed Rule G-42(c), since there would be no “municipal advisory relationship.” Similarly, the MSRB should clarify that the disclosure requirements under Re-Proposed Rule G-42(b) also would not be required for the same reasons.¹¹

¹¹ We note that there are other contexts in which minor or incidental municipal advisory services, outside the context of a municipal securities transactions, should not trigger the full proposed documentation requirements. For example, a municipal entity that previously issued municipal securities may contact a firm, on a very informal telephone basis, seeking its view of the materiality of an event and whether disclosure would be required. While providing this type of advice could constitute municipal advisory activities, it would be impractical (and indeed prohibitive) to require that such informal and relatively short-lived relationship be fully documented in accordance with Re-Proposed Rule G-42(c).

2. The MSRB Should Not Require Specific Disclosure of the Legal and Disciplinary Events That Are Already Listed in Forms MA and MA-I

Re-Proposed Rule G-42(b)(ii) would require a municipal advisor to disclose to clients legal or disciplinary events that are “material to the client’s evaluation or integrity of its management or advisory personnel.” While the MSRB helpfully revised certain of the disclosure requirements related to a municipal advisor’s legal or disciplinary history contained in Re-Proposed Rule G-42(c), requiring in Re-Proposed Rule G-42(b)(ii) duplicate disclosure of specific events that are already disclosed in Forms MA and MA-I provides little, if any, benefit to municipal entities or obligated persons, while it imposes unnecessary additional burdens on municipal advisors. A municipal advisor is also not in the position to determine the manner in which a client evaluates potential municipal advisors or how a client may view the integrity of the advisor’s personnel. Providing clients and prospective clients with the information in relevant agreements regarding how to obtain electronic access to a municipal advisor’s legal and disciplinary history on Forms MA and MA-I should sufficiently achieve the MSRB’s goal of providing clients with access to the municipal advisor’s legal and disciplinary history.

Further, the MSRB should remove the requirement in Re-Proposed Rule G-42(c)(iv), which would require municipal advisors to document the date of the last material change to a legal or disciplinary event on Form MA or MA-I. As a result, municipal advisors would need to update their written disclosures and documentation with each of their municipal advisory clients whenever a material change to a legal or disciplinary event was made to Form MA or MA-I. This requirement to continuously update form documents would be burdensome and effectively be a technical “trap for the unwary” for municipal advisors, but would provide little benefit to clients.

3. The MSRB Should Define “Indirect Compensation”

Re-Proposed Rule G-42(c)(i) would require municipal advisors to include in their relationship documentation “the form and basis of direct and indirect compensation” for the services. As noted above, the MSRB should clarify what it believes would need to be included within the form and basis of “indirect” compensation. While it is customary to set out the form and basis of direct compensation in engagement documentation, it is not clear what indirect compensation must be disclosed.

4. The MSRB Should Limit Required Conflict Disclosure to Those Conflicts That Could Reasonably Impair Fiduciary Standard of Advice or Conduct

Re-Proposed Rule G-42(b)(i)(A) would require disclosure of “any . . . potential conflicts of interest . . . that might impair” a municipal advisor’s advice or its ability to act as a fiduciary. If this requirement is retained, it should be limited to conflicts “that could reasonably be anticipated to impair” such matters.

5. The MSRB Should Clarify the Application of the Documentation and Disclosure Requirements to Existing Relationships

Re-Proposed Rule G-42(c) requires certain relationship documentation be entered into “upon or promptly after the establishment of” a municipal advisory relationship” and Re-Proposed Rule G-42(b) would require certain disclosures be provided “upon or prior to engaging in municipal advisory activities.”

Municipal advisors will likely have existing ongoing municipal advisory relationships in place (in some cases documented in accordance with Rule G-23) at the time Rule G-42 is ultimately approved by the SEC and becomes effective. Re-documenting these existing relationships may be overly burdensome both for municipal advisors and clients. In addition, as the relationships are already in existence, new disclosures will likely not impact the client’s decision to engage the municipal advisor. The MSRB should therefore limit the extent to which existing ongoing relationships would need to be re-documented and new disclosures provided.

E. Municipal Advisor Standards of Conduct

1. The MSRB Should Clarify Duty of Care As Applied to Brokerage/Securities Execution Services

As noted in Sections II.A.3 and II.D.1 above, the application of certain aspects of Re-Proposed Rule G-42 to advice to municipal entities in the brokerage/securities execution services context are impractical or unclear. For example, proposed Supplementary Material .01 would require that a municipal advisor make a reasonable inquiry regarding the facts that are relevant to a client’s determination to pursue a particular course of action. While this requirement may be appropriate in the context of arranging a municipal securities issuance, it could be prohibitive in the case of ordinary brokerage and related advice, given the number of trades potentially involved, timing considerations and the general context of broker-related advice. SIFMA does not believe that such a standard should be applied in addition to otherwise applicable suitability requirements that would attach to recommendations made in the context of brokerage/securities execution services.

2. The MSRB Should Expand Supplementary Material .06 to Include in its Scope the Prohibition on Principal Transactions and Other Requirements Under Re-Proposed Rule G-42

Supplementary Material .06 of Re-Proposed Rule G-42 helpfully provides a limited and conditional safe harbor for inadvertent advice and specifies the steps that may be taken if a party inadvertently engaged in municipal advisory activities does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship and elects to seek a safe harbor from the requirements of sections (b) and (c)

of Re-Proposed Rule G-42 relating to disclosure of conflicts of interest and documentation of the municipal advisory relationship.

While Supplementary Material .06 would protect a municipal advisor from the disclosure and documentation requirements of Re-Proposed Rule G-42, it would not protect municipal advisors from other requirements under Re-Proposed Rule G-42, such as the principal transaction prohibition under Re-Proposed Rule G-42(e)(ii). Without explicitly including a safe harbor for providing inadvertent advice from the prohibition on principal transactions, it is unlikely that firms will go through the process that is required under Supplementary Material .06, given that retracting the inadvertent advice will not permit the municipal advisor to engage 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.

Moreover, the MSRB should extend the safe harbor under Supplementary Material .06 so that a municipal advisor would also not be required to comply with the requirements related to making recommendations and reviewing third party recommendations under Re-Proposed Rule G-42(d) if it inadvertently provided advice to a municipal entity or obligated person. Without explicitly including a safe harbor for providing inadvertent advice from the requirement to recommend and review third party recommendations, municipal advisors will still be required to undergo a detailed suitability analysis and investigate or consider other reasonably feasible alternatives with respect to the municipal financial product or municipal securities transaction to which the municipal advisor inadvertently provided such advice.

We therefore believe that Supplementary Material .06 should be revised as follows: “A municipal advisor is not required to comply with sections (b), (c), (d) and (e)(ii) of this rule if the advisor meets all of the following requirements.”

3. The MSRB Should Clarify the Required Disclaimer Under Proposed Supplementary Material .06

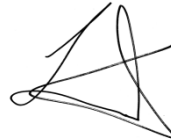
In order for a municipal advisor to avail itself of the safe harbor for inadvertent advice under proposed Supplementary Material .06, condition (A) would require that the municipal advisor provide “a disclaimer that the advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities.” A firm may be a registered municipal advisor engaged in municipal advisory activities for some clients, but inadvertently provided advice to another client. As a result, it could not state that it “has ceased engaging in municipal advisory activities.” Rather, the MSRB should clarify that a municipal advisor need not cease *all* municipal advisory activities, but rather those undertaken for the particular client in relation to a particular matter. Specifically, condition (A) could be modified as follows: “a disclaimer that the 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 the matter on which advice was inadvertently provided.*”

Mr. Ronald W. Smith
Municipal Securities Rulemaking Board
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Please do not hesitate to contact me at (212) 313-1130, or our counsel, Lanny A. Schwartz of Davis Polk & Wardwell LLP, at (212) 450-4174 with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, stylized triangular graphic.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: Lynnette Kelly, Executive Director, MSRB
Michael L. Post, Deputy General Counsel, MSRB
John Cross, Director, Office of Municipal Securities, SEC