



August 19, 2019

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

**Re: MSRB Notice 2019-13: Request for Comment on MSRB Rule G-23 on
Activities of Dealers Acting as Financial Advisors**

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to provide input on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment (the “Request”) on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors.² In connection with the ongoing retrospective review of its rules and guidance, the MSRB is seeking comment on Rule G-23, revisited last in 2011,

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² MSRB Notice 2019-13 (May 20, 2019).

and its interaction with the more recent municipal advisor regulatory framework and other rules and guidance adopted or updated since then. As always, we welcome a retrospective review of rules to ensure that they reflect current market practices, do not create unwarranted burdens on market participants, and are appropriately harmonized with other rules. We applaud the MSRB's choice to review Rule G-23 with a goal to appropriately update the rule in light of the adoption of the SEC's municipal advisory regulatory framework and eliminate any inconsistencies between the two. We share common ground with the MSRB in this goal, and hope our comments are helpful to update the rule to reflect Congress' intent of municipal advisor regulation and issuer protection. Below are our responses to select questions posed in the Request.

Responses to Select Questions Posed in the Request

- 1. What has been the experience of issuers, dealers, municipal advisors, and other market participants with respect to Rule G-23's prohibition on role switching since the 2011 amendment? Has the rule been effective in achieving its primary purpose of addressing the conflict of interest that exists when a dealer acts as both a financial advisor and an underwriter with respect to the same issue?***

SIFMA's members implemented the role-switching prohibition and currently utilize the exceptions, which should be preserved and expanded in a revised rule as described in our responses to other questions posed by the MSRB. With respect to placement agent activity in relation to the role-switching prohibition, please see our responses to Questions 3 and 7 below.

- 3. Considering the implementation of the MSRB's and SEC's municipal advisor rules, are there ways the MSRB could achieve Rule G-23's purpose without retaining it as a standalone rule? For example, should the MSRB eliminate Rule G-23 and address any need for regulatory requirements and exceptions through enhancements to other MSRB rules, such as Rule G-42?***

SIFMA's members do not have a strong opinion whether Rule G-23 remains as a standalone rule or is eliminated and incorporated into other rules, primarily G-42, though they recognize that principles of regulatory construction may favor that G-23 be eliminated to streamline similar or related requirements. More importantly, our members are more concerned about G-23's substance as opposed to the form it takes, including preserving and expanding the exceptions to the role-switch prohibition for them to serve the market effectively; ensuring that it is consistent with other rules; and that it is uniformly applicable to all parties operating in the same or similar roles.

The current construct – a newer municipal advisory framework for dealer and non-dealer municipal advisors existing with an older Rule G-23 applicable to dealer municipal advisors only – has resulted in confusion over role clarity, i.e., what is and is not permitted when acting in a certain role. For example, as we have seen recently with the interpretive request made to the SEC by PFM, non-dealer municipal advisors believe that, because they are subject to a fiduciary standard, they can act as a placement agent for the same issue on which they are serving in the capacity of an municipal advisor, even though dealer municipal advisors are prohibited from this role-switching under G-23. SIFMA submitted a response to the PFM letter objecting to the request, pointing out, in part, that the same principles that compel the role-switching prohibition for dealer municipal advisors apply equally to non-dealer municipal advisors acting in the same role.

In addition, SIFMA's members strongly believe that the current role-switching exceptions should carry over. This includes the bond bank exception; the remarketing exception; and the exception specifically allowing a dealer municipal advisor to buy the bonds from the issuance from another syndicate member for its own account or for the account of customers so long as it is not an effort to become an indirect underwriter contrary to the role-switching prohibition. The reasons for these exceptions remain valid; they have served the market well, offering municipal issuers choice, flexibility, and as a result, lower cost financing. As discussed in our response to Question 6.d., additional exceptions should be added as well.

In the appendices to this letter, we offer how the MSRB could amend G-23 if it is kept as a standalone rule (Appendix A) or how to integrate it into G-42 (Appendix B) to incorporate our comments.

4. *If Rule G-23 continues as a standalone rule, what are the ways in which Rule G-23 should be better aligned to the municipal advisor rules? Should Rule G-23 incorporate the defined terms and key terms of art of the MSRB's and SEC's municipal advisor rules? Are there terms in the MSRB's and SEC's municipal advisor rules that should not be incorporated in Rule G-23?*

The MSRB should take this opportunity to eliminate the term “financial advisor” and adopt the term “municipal advisor” uniformly across its rulebook. Having separate terms is a vestige of the past and it is confusing. Adopting a uniform term would also resolve any ambiguity that could be interpreted to suggest there is a distinction between financial advisors and municipal advisors.

We recommend defining municipal advisor and municipal advisory services by reference to the definition of those terms under the Exchange Act and the rules, regulations, and interpretive guidance thereunder. This would ensure consistency between the relevant SEC and MSRB regulatory regimes and would make clear that a dealer providing advice under *any* municipal advisor exemption would not be subject to the role-switching prohibition under Rule G-23, which we address in our response to Question 5 below.

Doing so would require that the MSRB harmonize other rules, such as Rules G-3 and G-37; however, we believe that G-23 can be updated without having to update other rules at the same time. Separately, without knowing the “key terms of art,” we cannot comment on which ones should be hypothetically incorporated into a standalone Rule G-23.

5. *Does Rule G-23 prohibit any activities that would be permitted under the SEC's municipal advisor rules in ways that are contrary to the regulatory purpose underlying the rules? For example, does Rule G-23 unduly impede*

the activities of dealers operating under an exclusion or exemption from registration under the SEC's municipal advisor rules?

The term “financial advisor” is confusing in the context of G-23 given the SEC’s municipal advisor rules. It could (and we believe it may) be the basis of an interpretation that a dealer providing municipal advice in reliance on the IRMA exemption would be prohibited from acting as a placement agent or underwriter for the same issue because it would still be considered a financial advisor for the purpose of G-23’s role-switching prohibition. We do not believe this interpretation is correct or appropriate; it would be completely inconsistent with the SEC’s municipal advisor rules that do not require dealers relying on the IRMA exemption to register as municipal advisors. This interpretation would also result in the MSRB usurping the SEC’s decision to exempt dealers from registration to the detriment of issuers.

6. *Should the MSRB make any amendments to the Role Switching Exceptions?*

For example –

a. Does the Bond Bank Exception remain appropriate? Should this exception be broader or narrower?

The Bond Bank Exception as currently written remains appropriate and is utilized by our members. The exception allows dealer municipal advisors to fulfill the purpose of these statutorily authorized entities and, importantly, may provide issuers a more cost-effective means of borrowing. In addition, this exception remains appropriate because dealer municipal advisors do not have a conflict of interest that could harm either the issuer or investor.

b. Should Rule G-23 provide an exception to a dealer that avails itself of any of the exclusions or exemptions under the SEC's municipal advisor rules, such as the IRMA exemption?

Please see our response to Question 5.

d. Should Rule G-23 provide an exception for a dealer financial advisor if it disengages as financial advisor and a successor financial advisor is

engaged by the issuer? If so, should the rule impose a cooling off period?

We believe that additional exceptions should be provided when a dealer municipal advisor, after providing issue-specific advice³, is disengaged either by termination or the end of the contract term and the issuer engages a successor municipal advisor. Once an issuer engages a successor municipal advisor, the predecessor dealer municipal advisor that provided issue-specific advice should be able to engage in underwriting activities for that issue. Given that the issuer is independently represented by a successor municipal advisor that can provide advice on upcoming issuances, and the fact that the role-switching prohibition applies on an issue-by-issue basis, we believe there should be a clear exception for the predecessor municipal advisor to underwrite an issue on which it previously provided advice.

In the event that the issuer does not engage a successor municipal advisor, then the dealer municipal advisor that provided issue-specific advice should be able to engage in underwriting activities after a one-year cooling off period, the same as the remarketing exception's cooling off period.

These exceptions would address the situation⁴ where a dealer municipal advisor provides advice on the financing terms of an issue, such as an airport, but that issue for a variety of reasons does not come to market until after the dealer has been disengaged and a successor municipal advisor is advising the issuer, or at least a year has passed. We believe that these exceptions would provide clarity to market participants about the obligations, or lack thereof, owed to issuers when a dealer municipal advisor is disengaged after providing issue-specific advice. They should be allowed because relevant

³ Advice, as that term is defined in SEC Rule 15Ba1-1(e), with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities.

⁴ This situation likely involves the largest most sophisticated program issuers that have lengthy plans of finance and rotate among advisors every few years or choose from among a pool.

conflicts of interest are addressed by the presence of a successor municipal advisor or sufficiently mitigated by a cooling off period.

7. *Rule G-23's prohibition on role switching currently extends to dealer financial advisors acting as a placement agent for the issuance of municipal securities.*

- a. *As it pertains to placement agent activities, is the prohibition sufficiently clear as to what activities are, or are not, permissible for dealer financial advisors? Should the MSRB provide interpretive guidance regarding the scope of activities that a dealer financial advisor may perform under Rule G-23 without being regarded as a placement agent for purposes of the rule's prohibition on role switching?***

Please see our response to Question 5. SIFMA supports the rule's current construct which prohibits a municipal advisor from serving as placement agent for the same issuance of municipal securities, assuming that non-dealer municipal advisors are similarly prohibited from serving in both roles. Given the SEC's ongoing consideration of this issue, the MSRB should defer its review of this issue. We believe it may be more appropriate for the SEC than the MSRB to provide guidance on what constitutes placement agent activities under the Exchange Act.

- b. *If Rule G-23 were eliminated as a standalone rule, with any substantive requirements being moved to Rule G-42 or another MSRB rule, should the MSRB modify Rule G-42 or such other rule to address any permitted or prohibited placement agent activities by a municipal advisor insofar as MSRB rules are concerned?***

We feel it is critical that all the exceptions to Rule G-23 be preserved, and examination of permissible or prohibited placement agent activities should be deferred until the SEC's consideration of the issue.

8. *In the context of a dealer acting as a financial advisor, are there ways the MSRB could improve the efficiency and effectiveness of disclosures and*

related documentation requirements under Rules G-23 and G-42 and the Rule G-17 Interpretive Notice while preserving issuer protection?

Yes, we believe that the MSRB could improve the efficiency and effectiveness of disclosures required under its rules. The rulebook contains disclosure requirements in multiple rules and guidance, which creates a compliance challenge for SIFMA's members as they work earnestly to comply with the various disclosure requirements. Having these requirements spread throughout several rules, sometimes with minor differences between them, can lead to unnecessarily duplicative and voluminous disclosures, which are neither efficient nor effective for dealers and issuers alike. We welcome further discussion with the MSRB to create harmonized – in both content and timing – disclosure requirements and interpretive guidance to lessen the compliance challenges while still providing meaningful disclosures to issuers.

- 9. Rule G-23's prohibition on role switching applies on an issue-by-issue basis. Does this standard continue to be appropriate? Should the prohibition be broader or narrower? Should the MSRB provide interpretive guidance regarding what constitutes an "issuance" for this purpose, and if so, how should it be defined?***

This standard continues to be appropriate. The MSRB should not provide interpretive guidance regarding what constitutes an "issuance" for this purpose. "Issuance" should be defined by the SEC.

- 10. Should the MSRB retire any interpretive guidance related to Rule G-23? What aspects of Rule G-23's interpretive guidance should be updated and/or retained? For any interpretive guidance that is not retired, should the MSRB recast the interpretive guidance as a single publication? Are there topics related to Rule G-23 about which the MSRB should provide new or additional interpretive guidance?***

SIFMA's suggested rule changes in the appendices, particularly Appendix A, incorporate or, in some instances, may obviate some of Rule G-23's 2011 Guidance. If the MSRB retains the guidance, it is appropriate to address an inconsistency

between the 2011 Guidance, Rule G-42 and SEC guidance. The 2011 Guidance states:

In addition to engaging in underwriting activities, it shall not be a violation of Rule G-23(d) for a dealer that states that it is acting as an underwriter with respect to the issuance of municipal securities *to provide advice with respect to the investment of the proceeds of the issue, municipal derivatives integrally related to the issue, or other similar matters concerning the issue.*⁵ (emphasis added).

Rule G-42 and the SEC's guidance⁶, however, deem these activities to be outside the underwriter's function for purposes of the underwriter's exemption from the advisor rules. It probably makes sense to address this inconsistency and/or consider the effect of the municipal advisor rules, as noted elsewhere, in the interpretive guidance.

Finally, when addressing the 2011 Guidance, one piece of guidance that the MSRB should retain is the guidance that Rule G-23 does not apply when the municipal advisor's client is a conduit borrower, rather than the issuer.⁷ This guidance continues to be useful to market participants.

⁵ MSRB Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists under Rule G-23 (Nov. 27, 2011).

⁶ 78 Fed. Reg. 67512-13 (Nov. 12, 2013).

⁷ See Notice on Application of Board Rules to Financial Advisory Services Rendered to Corporate Obligors on Industrial Development Bonds (May 23, 1983); see also SEC Release No. 34-63946 (File No. SR-MSRB-2011-03), 76 FR 10926, 10935 (Feb. 28, 2011).

We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130 or (202) 962-7300.

Sincerely,



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Managing Director and
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Bernard V. Canepa
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Cc (via Email): Municipal Securities Rulemaking Board
Lynnette Kelly, President and CEO
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
Stephen Vogt, Assistant General Counsel

Appendix A

Suggested Edits for a Retained, Standalone MSRB Rule G-23

(a) *Purpose.* The purpose and intent of this rule is to establish ethical standards and disclosure requirements for brokers, dealers, and municipal securities dealers who act as ~~financial~~ municipal advisors to issuers with respect to the issuance of municipal securities.

(b) ~~Financial Municipal Advisory Relationship.~~ For purposes of this rule, a ~~financial municipal~~ advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer ~~renders or~~ enters into an agreement memorialized in a writing satisfying the requirements of Rule G-42(c) to render engage in financial municipal advisory or consultant services activities (as that term is defined in SEC Rule 15Ba1-1(e)) to for or on behalf of an ~~issuer~~ municipal entity or obligated person with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue. For purposes of this rule, a ~~financial municipal~~ advisory relationship shall not be deemed to exist when ~~the broker, dealer or municipal securities dealer, in the course of acting as an underwriter and not as a financial advisor, a broker, dealer or municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities after having taken the steps necessary to establish or perfect an exemption or exclusion from the registration requirements under Rule 15Ba1-1 of the Act, or applicable rulemaking authority or guidance.~~

~~(c) Agreement with Respect to Financial Advisory Relationship.~~ Each financial advisory relationship shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences). Such writing shall set forth the basis of compensation, if any, for the financial advisory services to be rendered, including provisions relating to the deposit of funds with or the utilization of fiduciary or agency services offered by such broker, dealer, or municipal securities dealer or by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer in connection with the rendering of such financial advisory services and shall be delivered to the issuer.

(d) *Prohibition on Engaging in Underwriting Activities.*

(i) Subject to provisions of subsections (d)(ii) and (iii), no broker, dealer, or municipal securities dealer that has a ~~financial~~ municipal advisory relationship with respect to the issuance of municipal securities shall acquire 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.

(ii) Notwithstanding subsection (d)(i), 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 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.

(iii) Notwithstanding subsection (d)(i), a broker, dealer, or municipal securities dealer that has a ~~financial~~ municipal advisory relationship with respect to the issuance of municipal securities 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 broker, dealer or municipal securities dealer does not receive compensation from any person other than with respect to ~~financial~~ those 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.

~~(iii)~~v The limitations set forth in this section (d) shall also apply to any broker, dealer, or municipal securities dealer controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer having a financial advisory relationship with respect to the issuance of municipal securities. The use of the term "indirectly" in this section (d) shall not preclude a broker, dealer, or municipal securities dealer that has a ~~financial~~ 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.

(e) *Remarketing Activities.* No broker, dealer, or municipal securities dealer that has a ~~financial~~ municipal advisory relationship with an issuer with respect to the issuance of municipal securities shall act as the initial remarketing agent for such issue; provided, however, that this section shall not prohibit such broker, dealer, or municipal securities dealer from thereafter serving as successor remarketing agent for such issue if the ~~financial~~ municipal advisory relationship in connection with such issue has been terminated for a period of at least one (1) year prior to such broker, dealer, or municipal securities dealer being selected to serve as successor remarketing agent.

(f) *Applicability of State or Local Law.* Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or local law applicable to the activities of ~~financial~~ municipal advisors.

Appendix B

Suggested Edits for MSRB Rule G-42 that Incorporates G-23

(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.

(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.

(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.

(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.

(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.

(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.

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, ABLE Programs and Other Municipal Fund Securities.

This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLE 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 ABLE 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.

.44 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 .44 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 .4416);

(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 .4517 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 .4416, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph .4416 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 .4416 without penalty at any time by written notice to the municipal advisor.

This paragraph .44 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.

.45 17 Terms Relating to the Exception in Paragraph .4416. For purposes of paragraph .44 16 and this paragraph .45 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.