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May 29, 2015

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: SR–MSRB–2015–03

Dear Mr. Fields:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to submit comments on Municipal Securities Rulemaking Board ("MSRB") Proposed Rule G-42: Duties of Non-Solicitor Municipal Advisors. NAMA is America's leading organization of municipal securities industry professionals who provide municipal advisor ("MA") services to States and municipal entities and obligated persons. NAMA members must be registered and in good standing with the Securities and Exchange Commission ("SEC") and the MSRB. Our organization and members support core principles to protect the interests of municipal bond issuers and the public trust; build a more vibrant, competitive, and transparent municipal securities marketplace; and to uphold the highest standards of professional ethics, qualifications, education, training, and regulatory compliance.

Last year, 10,867 municipal bonds were sold in the United States totaling nearly $335 billion. According to Thomson-Reuters, MAs advised issuers on more than 80 percent of those transactions. The continued and growing use of MAs by state and local governments and their instrumentalities underscores the importance of SEC and MSRB rulemaking related to MAs.

NAMA has supported MA regulations and has regularly issued supportive testimony, commentary, official letters, position statements and opinion editorials on municipal advisor regulatory matters. NAMA has submitted two prior comment letters regarding Proposed Rule G-42 ("Proposed Rule") as it was being developed.

While we are mostly supportive of Proposed Rule G-42 we would like to highlight a few areas of concern that should be addressed prior to its adoption. While MAs expect to be held accountable for compliance with Rule G-42, we are concerned about the lack of definitive guidance throughout the Proposed Rule as to how compliance would be determined during examinations. NAMA understands that SEC and FINRA examiners will employ quantifiable criteria to determine compliance with the Rule, however, the Proposed Rule currently relies too heavily on subjective criteria that will be open for interpretation by examiners, and opens the door to inconsistencies among examiners. We would ask that the SEC and/or the MSRB provide non-exclusive explanatory examples in supplementary material to

this rulemaking or in interpretive guidance or through other means that would help to further clarify the various requirements placed on MAs throughout the Proposed Rule. If not included in this rulemaking then any interpretive guidance should be accomplished before the effective date of the Rule. It will be difficult for MAs to determine whether the policies and procedures that they have implemented will be adequate to ensure compliance with the Rule until guidance is released. NAMA believes that these explanatory examples should be provided to ensure that the Proposed Rule does not impose an undue burden on small MAs, in contravention of Section 15B(b)(2)(L)(iv) of the *Exchange Act of 1934.*

NAMA suggests several changes below to the Proposed Rule to better clarify certain provisions and better inform MAs of how regulators plan to interpret the final Rule.

1) Recommendations and Review of Recommendations of Other Parties - Section (d)

This section calls upon the MA to exercise "reasonable diligence" to determine whether a municipal securities transaction or a municipal financial product is suitable for a particular client. Further, this section states that the MA must "inform the client" about: the risks, benefits and other characteristics of a financial product; the basis upon which the MA reasonably believes the product recommended by another party is or is not suitable; and whether alternatives were investigated or considered by the MA, and the MA's final recommendation or non-recommendation.

NAMA supports requirements to inform the client about reasons for a recommendation or non-recommendation. However, this section of the proposal could benefit from greater clarity by providing non-exclusive lists of examples, in addition to general principles, of how regulated entities could comply with the regulations. For instance, regulated entities could benefit from having examples presented of how a municipal advisor/firm should perform its reasonable diligence to satisfy the criteria listed in this section. Similarly, Section (d)(iii) regarding investigating the use of other alternatives, could benefit from some explanatory examples so that MAs know how best to document internally (and to their client) the review process for a transaction. Finally, a list of alternative financings could be exhaustive and non-germane to the client, and therefore we believe that further clarifying Section (d)(iii) to read "other suitable and reasonably feasible alternatives" would be helpful and would better reflect the suitability standard already embedded in the Proposed Rule. The SEC should require the MSRB to provide these explanatory examples as supplementary material to the Proposed Rule. If not provided as supplementary material, the explanatory examples should be provided in interpretive guidance prior to the effective date of the Rule. NAMA believes that these explanatory examples should be provided to ensure that the Proposed Rule does not impose an undue burden on small MAs, in contravention of Section 15B(b)(2)(L)(iv) of the *Exchange Act of 1934*.

2) Standards of Conduct - Section (a)

NAMA supports the imposition of strong fiduciary duty standards relating to MAs' duty of loyalty to their municipal issuer clients, together with MAs' duty of care standard to all clients. NAMA, as a matter of policy, strongly encourages its member firms to apply the fiduciary duty standard to obligated person clients as well, even though not required by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* or the Proposed Rule G-42 and NAMA has previously supported extending the protections of Proposed Rule G-42 to obligated persons. However, as noted above, this section too could benefit from the greater clarity provided by non-exclusive explanatory examples of what

constitutes 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." Although NAMA recognizes that the MSRB cannot address every possible scenario that would involve a reasonable inquiry, as a practical matter all regulated entities will incur greater costs if they have to design compliance processes in the absence of explanatory examples. This is particularly relevant in the case of small municipal advisors and Section 15B(b)(2)(L)(iv) of the Exchange Act requiring that MSRB rules do not impose an undue burden on small municipal advisors.

3) Applicability of State or Other Laws and Rules - Supplementary Material .07

While Proposed Rule G-42 places a duty of loyalty standard on MAs that would seem to prohibit an MA's firm from selling or purchasing to the municipal entity, it is unclear due to seemingly permissible language in Rule G-23, whether Proposed Rule G-42 would supersede the language of G-23 and therefore prohibit the same firm from entering into derivative contracts or investing bond proceeds for the municipal entity. This is especially troubling because, as the SEC noted in the final Municipal Advisor Rule, many of the problems that state and local government issuers faced during and after the Great Recession are related to the investment of bond proceeds and complex derivatives products.

The MSRB stated that they included the last sentence of Supplementary Material .07 to "avoid a potential conflict in MSRB rules." The MSRB also stated that certain provisions of Proposed Rule G-42 would serve to prohibit an MA from providing advice with respect to municipal swaps or the investment of bond proceeds, despite the seemingly permissible language of Rule G-23 and the last sentence of Supplementary Material .07. The MSRB further states that, despite the proposed language in Supplementary Material .07, G-42 should not be read to mean "that a transaction not prohibited by Rule G-23 is deemed in all cases to be lawful vis-a-vis all other requirements under Proposed Rule G-42 (such as the duty of loyalty) and under other laws (such as the statutory fiduciary duty)." Therefore, any potential conflict between Rule G-23 and Proposed Rule G-42 has not been solved by the last sentence of Supplementary Material .07 but actually is enhanced by that language. NAMA believes that additional activities or principal transactions that should be prohibited by Proposed Rule G-42 (namely advice with respect to municipal derivatives or the investment of proceeds) do not conflict with Rule G-23 but merely supplement those previous prohibitions by extending the list of prohibitions found in Rule G-23. Such a reading would also be consistent with the general policy behind the revisions to Rule G-23 that sought to avoid "issuer confusion" caused by a single party serving in multiple roles on a single transaction.

Therefore, in this section, we believe that last sentence in Supplementary Material .07 should be deleted from Proposed Rule G-42 to avoid confusion for regulated entities but also to avoid a conflict with the provisions of the *Exchange Act of 1934* that limit the scope of the underwriter exclusion in the context of municipal advisory activities.

4) Disclosure of Conflicts of Interest and Other Information – Section (b).

Although the following comments do not necessarily reflect elements of the Proposed Rule that are in conflict with the *Exchange Act of 1934*, NAMA believes the MSRB should address them now to avoid continued ambiguity and costs for regulated entities as well as confusion for the municipal entities and obligated persons that would potentially receive duplicative disclosures from municipal advisors.
TIMING OF CONFLICTS DISCLOSURE

Section (b) of the Proposed Rule states that the disclosure of conflicts of interest and other information must be provided "*prior to or upon* engaging in municipal advisory activities." (emphasis added) Section (c) of the Proposed Rule requires evidence of municipal advisory relationships to be evidenced in writing and to include the information required by Section (b) but states that this writing must be delivered "prior to, upon *or promptly after*" (emphasis added) the establishment of the municipal advisory relationship. As a strictly practical matter, it will be difficult for an MA to produce the documentation required by Section (c) of the Proposed Rule until "promptly after" they are engaged to provide municipal advisory services. This would mean that an MA would have to send conflicts disclosure to their client at the moment of hiring (at the latest) and then again as part of their written documentation. Note that the interpretive guidance for MSRB Rule G-17 for broker-dealers only requires conflicts disclosure to be made "generally" at the time of engagement "(*e.g.*, in an engagement letter)."

To avoid both confusing guidance and duplicative disclosures to clients, NAMA recommends that Section (b) of the Proposed Rule should either not have a timing requirement for disclosure (because it is already covered in Section (c)) or the timing requirement should be the same as in Section (c).

Proposed mark-up of relevant section:

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

LIST OF POTENTIAL CONFLICTS

Section (b)(i) of the Proposed Rule identifies the material conflicts of interest that need to be disclosed and states that the list "includes" the items in paragraphs (A) through (G). It is not clear what the difference is between paragraphs (A) and (G) as both appear to be catch-all provisions. Because both paragraphs (A) and (G) are catch-all provisions, NAMA proposes that they be merged into a single paragraph and the word "including" be struck from the lead-in clause and be replaced by "relating to."

Proposed mark-up of relevant section:

(b) *Disclosure of Conflicts of Interest and Other Information*.

(i) all material conflicts of interest, ~~including~~ relating to:
(~~A)~~ ~~any actual or potential conflicts of interest of which it is aware after reasonable inquiry that could reasonably be anticipated to impair its 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~~;
(A~~B~~) 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~~C~~) 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~~D~~) 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~~E~~) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;
(E~~F~~) 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; and
(F~~G~~) any other actual or potential conflict of interest of which it is aware after reasonable inquiry ~~engagements or relationships of the municipal advisor~~ 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.

5) Documentation of Municipal Advisory Relationship – Section (e).

While we support having to provide information and access to Forms MA and MA-I to satisfy the purposes of this section, it is important to note how difficult it is and will be for our clients to find relevant MA-I documents within the EDGAR system. The MA-I forms need to be searchable by the name of the individual MA, and we suggest that the individual advisor's name, not just the filing number or firm name, be displayed on the forms and fields found in the EDGAR system. Additionally, in paragraph (iii), more clarity about the term "detailed information" is needed. Again, this could be provided in the form of non-exclusive examples. For example, the MSRB could indicate that the requirement to provide "detailed information" could be met by providing a link to the MA firm's EDGAR page to the client.

On behalf of all of our members, thank you again for the opportunity to comment on this new and essential Rule for municipal advisors. We welcome the opportunity to answer any questions you may have or further discuss the issues raised in this letter.

Sincerely,

Terri Heaton, CIPMA
President
National Association of Municipal Advisors (NAMA)

cc:

Jessica Kane, Director, Office of Municipal Securities
Rebecca Olsen, Deputy Director, Office of Municipal Securities
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board