American Bankers Association
Building Success. Together.

Cristeena G. Naser
Vice President and Senior Counsel
Center for Securities, Trust & Investment
202-663-5332
cnaser@aba.com

BY ELECTRONIC MAIL

March 4, 2014

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

Re: MSRB Notice 2014-01 – Draft MSRB Rule G-42 Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith:

The American Bankers Association (ABA)[1] appreciates this opportunity to comment on draft Rule G-42 proposed by the Municipal Securities Rulemaking Board (MSRB). The draft rule would establish standards of conduct and duties of municipal advisors, including the fiduciary duty required under Section 975 of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act).[2] Our members and their affiliates provide a broad range of products and services to municipal entities and obligated persons in various capacities, including as municipal advisors.

Among other things, draft Rule G-42 would impose on municipal advisors a fiduciary duty to municipal entity clients, and the proposal seeks comment on whether that duty should be extended to clients that are obligated persons. In addition, with respect to both municipal entity and obligated person clients, municipal advisors would be subject to (1) a duty of care, (2) a prohibition on principal transactions by the municipal advisor and any of its affiliates with any advised municipal entity or obligated person, and (3) a requirement to disclose fully conflicts of interest and certain other information. As discussed more fully below, ABA has significant concerns about the proposal.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

[2] *Pub. L.* 111-203.

- First, a municipal advisor owes no fiduciary duty to obligated persons in the statute. As a result, the MSRB does not have the requisite authority to extend that duty to obligated persons.

- Second, draft Rule G-42 should be amended to state clearly that it does not apply to activities that have been excluded or exempted under the final municipal advisor rule of the Securities and Exchange Commission (SEC).

- Third, the complete prohibition on any principal transactions with advised municipal entities or obligated persons by the municipal advisor or *any of its affiliates* must be significantly narrowed, and should not apply in any event to affiliates. As drafted, it would disproportionately impact banking organizations[3] which are required by law to compartmentalize a variety of activities in affiliates that are separate from the commercial bank. In addition, the prohibition would effectively deprive a commercial bank of the opportunity provided by the SEC in its final rule[4] from organizing its municipal advisory activities in a separately identifiable department or division (SIDD), the whole purpose of which is to avoid subjecting the entire bank to the municipal advisory regulatory regime. Because banks almost always provide banking products and services in a principal capacity, the prohibition would prevent commercial banks and their affiliates from providing any other banking products, such as deposit accounts, loans, or cash management services to advised municipal entities or obligated persons despite the fact that these products and services are exempt from the municipal advisor regulatory regime. Principal transactions should be treated in the same manner as they are in other regulatory regimes, i.e., they are permissible with appropriate disclosure and client consent. In any event, no prohibition on principal transactions should extend beyond the advisory transaction or relationship.

DISCUSSION

1. The MSRB has no authority to impose a fiduciary duty on municipal advisors with respect to obligated persons.

In draft Rule G-42, the MSRB asks whether it should extend to obligated persons (who are private sector entities) the fiduciary duty imposed on municipal advisors with respect to municipal entities. Under a plain reading of Section 975, the MSRB has no authority to do so. In considering Section 975, Congress, had it wanted to do so, could easily have extended to obligated persons that fiduciary duty. Because Congress chose not to do so, neither can the MSRB.

Even if the MSRB had the requisite authority, such treatment would be completely unworkable in the real world. Obligated persons can include non-profit firms such as colleges and

---

[3] As used in this letter, the term "banking organizations" includes bank holding companies or any other group of companies that includes as an affiliate a commercial bank.
[4] *See* Registration of Municipal Advisors, Release No. 34-70462.

universities, and for profit firms become obligated persons when they become “conduit borrowers,” *i.e.*, they work with municipal entities on the issuance of tax-exempt bonds for which the conduit borrower becomes the obligor. Such obligated persons can be multi-national corporations, such as Georgia-Pacific with far-flung operations and multiple needs for a broad range of financial services.[5] Identifying obligated persons is a huge challenge for the financial services industry under the SEC’s final rule. Banks have hundreds, and in many cases thousands of customers, any one of which could become an obligated person without the bank’s knowledge. Such customers have no independent obligation to inform the bank that they are an obligated person, and, although banks and their affiliates could ask private-sector firms to provide notification when they become obligated persons, such firms are under no obligation to do so. As a result, there is a significant risk to banks of an inadvertent regulatory violation by becoming an unwitting municipal advisor with respect to a person they do not know is an obligated person. That risk of violating registration requirements would be unfairly exacerbated by the risk of violating any attendant fiduciary duty.

2. **Draft Rule G-42 should not apply to the provision of products or services that are either excluded or exempted under the SEC’s final rule on municipal advisor registration**.

In enacting Section 975, Congress specifically excluded certain activities from the municipal advisor regulatory regime. Likewise, in its final rule implementing Section 975, the SEC specifically exempted certain activities from that regulatory regime. However, draft Rule G-42 could be read to reach such activities, particularly with respect to the ban on principal transactions. Therefore, we urge the MSRB to confirm that any activities excluded and exempted by Congress or the SEC are outside the scope of the proposed rule.

3. **The prohibition on principal transactions must be narrowed substantially**.

Draft Rule G-42 would prohibit a municipal advisor and any of its affiliates from acting as principal in *any* transaction with entities or obligated persons. We believe that the proposed complete prohibition is far too blunt an instrument to address any concerns the MSRB may have regarding principal transactions. Nor has the MSRB provided support for its position that municipal entities and obligated persons, regardless of sophistication, are incontrovertibly unable to provide informed consent to principal transactions. ABA strongly disagrees with that position. Such a ban would also force banking organizations’ municipal entity customers and

[5] See the detailed discussion of this issue under Section 3B.

obligated persons to decide to choose between receiving covered municipal advice or banking products and services from their banks, because banks would not be permitted to provide both.[6]

Indeed, as discussed below, there are other long-established fiduciary regimes in which principal transactions are permitted with disclosure of the conflict and informed consent by the client. Moreover, the imposition of a complete ban would place banking organizations at a significant competitive disadvantage to entities, such as registered investment advisers, that are excluded from municipal advisor registration and thus may engage in principal transactions subject to appropriate disclosure and consent by the advisory client. Accordingly, ABA believes that principal transactions must be permitted with appropriate disclosure and consent.

In addition, the extension of the prohibition to all transactions by affiliates of a municipal advisor is unwarranted and will ultimately restrict the ability of municipal entities and obligated persons to obtain financial products and services.

A. Other fiduciary regulatory regimes do not completely prohibit principal transactions.

Other fiduciary regulation regimes, including common trust law, state fiduciary law (including the Uniform Trust Code),[7] the Employee Retirement Income Security Act of 1974 (ERISA) and national and state banking regulations – all of which incorporate the highest, strictest form of "fiduciary duty" – do not completely prohibit principal transactions. Rather, such transactions may be permitted, depending on whether the advisor has investment discretion as well as on the provisions of the governing documents or applicable state law. ERISA provides for certain prohibited transaction exemptions that permit principal transactions by an ERISA fiduciary with the advised account.[8]

---

[6] *See* ABA's letter to the MSRB on Draft Rule G-36 (April 11, 2011).

[7] Under the Uniform Trust Code, Section 802(f), Duty of Loyalty, "An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of [Article] 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined". Section 802(h)(4) provides that, "This section does not preclude the following transactions if fair to the beneficiaries: a deposit of trust money in a regulated financial-service institution operated by the trustee."

[8] ERISA Section 408(b)(4) provides an exemption from prohibited transactions for "The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if (A) the plan covers only

State and national banks and trust companies (hereinafter, bank fiduciaries) are subject to the requirements of many decades of fiduciary common law, federal fiduciary regulations for national banks and trust companies, and comparable fiduciary regulations under state law for state banks and trust companies. Banks must apply to the appropriate regulator to receive trust powers, providing evidence of personnel competent to provide investment management services and of capital to support the services in a safe and sound manner. They are examined regularly by state and federal bank regulators for compliance with trust law and trust principles.[9] In particular, the Office of the Comptroller of the Currency (OCC), which regulates national banks, has promulgated regulations at 12 CFR Part 9, Fiduciary Activities of National Banks, that have become the model for fiduciary regulations throughout the country. Importantly, those regulations govern conflicts of interest only with respect to the "fiduciary account," and do not attempt to restrict more broadly conflicts in all transactions with the fiduciary client.

Similarly, registered investment advisers (RIAs) are permitted, consistent with their fiduciary duty, to act as principal in transactions with advisory clients so long as the adviser obtains the client's consent after disclosure of (1) the adviser's capacity, (2) any compensation to be received by the adviser, and (3) any other relevant facts.[10] It is not insignificant that Congress excluded RIAs from the registration requirement under Section 975, because it believed that the existing regulatory scheme provided appropriate protection for municipal entities and obligated persons.[11]

B. The ban on principal transactions should not apply to affiliates of a municipal advisor.

Although a complete ban on principal transactions by affiliates might be feasible in the case of stand-alone advisors, it is entirely unreasonable and impractical in the context of the structure of the banking industry. Such a prohibition would necessarily force a banking organization to assess the value of providing advisory services to municipal entities and obligated persons as compared to the value of providing all other products and services to municipal entities and obligated persons. Whatever the determination, the clear result would be to curtail significantly

---

employees of such bank or other institution and employees of affiliates of such bank or other institution, or (B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment."

[9] OCC has published numerous handbooks on various aspects of fiduciary activities.

[10] *See*, Investment Advisers Act of 1940 § 206(3).

[11] National and state banks are exempt from registration as an investment adviser under federal and state law, because Congress and state legislators recognize the comprehensive regulatory requirements and robust supervisory oversight of banks offering investment advice.

the provision of services by banking organizations to municipal entities and obligated persons, without any offsetting policy benefits. Moreover, it would likely lead to less competition and reduced availability of services in the municipal advisory market.

Because of statutory restrictions on the activities of banks under federal banking law,[12] banking organizations are formed with numerous affiliates both in the U.S. and abroad that perform specific activities pursuant to differing national and international regulatory regimes. Domestically, a typical banking organization may include a commercial bank regulated under banking laws, a registered broker-dealer regulated under the Securities Exchange Act of 1934, and possibly a registered investment adviser regulated under the Investment Advisers Act of 1940. The bank may provide deposit, lending, cash management, and custody services to municipal entities and obligated persons, while the broker-dealer may provide underwriting services to them. Banking organizations may provide advice to these clients through an RIA or a bank trust department. Moreover, unlike the securities industry, commercial banking services (i.e., deposits, loans, and cash management services) are almost always provided in a principal capacity.

A complete prohibition on *any* principal transactions with entities or obligated persons by the municipal advisor or any of its affiliates would, in essence, prohibit a bank using a SIDD for its municipal advisory activities from providing any other banking products such as deposit accounts, loans, or cash management services to those clients. This would entirely defeat the purpose of a SIDD, which is to confine the applicability of municipal advisor rules to a specific department or division of the bank without extending the municipal advisor regulatory regime to the entire bank. A similar situation for the bank would arise should any bank affiliate, such as a broker-dealer, provide covered advice to a municipal entity or obligated person.

Moreover, it is unclear that banks would be able simply to cease providing services to municipal entities or, in particular, obligated persons, and thus banks would be in jeopardy of incurring a regulatory violation. For example, municipal entities, non-profit organizations, and private corporations that are deposit, lending, or investment clients of a bank could make an offering of municipal securities with which neither the bank nor any of its affiliates was involved or had knowledge of. Further, if a bank learns that such a private corporation to which it has made a loan has become an obligated person, the bank would not necessarily be able to accelerate the

---

[12] *See, e.g.,* The National Bank Act, 12 U.S.C. § 21 *et seq.* and The Bank Holding Company Act, 12 U.S.C. § 1841 *et seq.*

repayment of a loan. Nor could it immediately cease providing deposit and cash management services to the corporation. Indeed, if the bank was the primary or sole provider of such services, immediate cessation could cause significant disruption to the corporation's business operations. Similarly, if a bank's trust department is providing advice to a private company's pension plan, it may not immediately be able to end its fiduciary relationship because it learns that an affiliate has provided advice on the company's conduit bonds.

Such a ban would ultimately disserve municipal entities and obligated persons. Both groups, like other bank and brokerage clients, seek a variety of services from financial institutions, many of which are unrelated to the issuance of municipal securities or municipal financial products. Examples would include custodial services for funds other than bond proceeds, cash management services, the investment of cash balances (i.e., "sweeping" cash balances) in money market mutual funds (assuming that such investments constitute principal transactions under draft Rule G-42), currency exchange services, loans for specific purposes, lockbox services for tax and fee collection, payroll deposit/payment accounts for their employees, and bond trustee services.

Obligated persons in a municipal financing are even more diversified in the range of services they seek from banking organizations. Many of these private sector firms are national or even multi-national in scope. For example, Georgia Pacific uses tax-exempt municipal financing to build pulp processing plants in economically depressed areas; for-profit health care corporations operate hospitals and clinics in a number of states; and airlines finance gate construction at different airports through tax-exempt bonds issued by a local municipal entity that are backed by the gate lease revenues collected by the airport. These last transactions, for example, are almost always without recourse to the municipal entity except with respect to the rights to the gate lease revenues that are pledged as security for the municipal entity's conduit loan to the obligated person. These types of organizations seek numerous services from banking organizations that are wholly unrelated to the issuance of municipal securities or municipal financial products, such as deposits and cash management services, letters of credit, revolving financing facilities, mortgages, or other types of loans.[13]

However, under draft Rule G-42, the provision of municipal advisory services to an obligated person on a single transaction, would trigger a complete ban on principal transactions by the

[13] We note that banks are prohibited by anti-tying laws from tying lending approval to the purchase of other banking or bank-affiliated products or services. *See,* Section 106 of the Bank Holding Company Act Amendments of 1970, 12 U.S.C. § 1972.

municipal advisor and all of its affiliates with the entire obligated person firm, whether or not those transactions are related to the advisory transaction. Thus, if a bank-affiliated broker-dealer were to advise an airline company on a tax-exempt financing in California, the bank itself could not make a loan to buy planes or permit the airline company to make deposits into the bank for any purpose. Nor could that broker-dealer sell investments to the airline's self-managed deferred executive compensation fund. If that broker-dealer were to advise a healthcare corporation about hedging a tax-exempt new hospital financing in Ohio through the use of a derivative, the bank could not offer a revolving facility to replace MRI equipment for clinics in Oregon. Moreover, custody clients of banks often use bank-affiliated broker-dealers to effect securities transactions on their behalf. Such transactions for equity securities are effected on an agency basis and are permitted with appropriate disclosures. However, such transactions in debt securities (such as for government securities) are effected on a principal basis and so would be prohibited.

This is but a sampling of the types of ordinary banking transactions that would be prohibited under draft Rule G-42. It should be clear from these examples that there is, in fact, no inherent conflict of interest in a banking organization acting as municipal advisor to an obligated person for a tax-exempt financing on one transaction and then its affiliate or even the bank itself, acting as a principal in a wholly unrelated arm's-length transaction. Congress surely did not intend to disrupt both municipal and private sector markets so significantly.

As noted above, draft Rule G-42 as a practical matter will not work for a municipal advisor firm that has affiliates. For banking organizations that typically have asset management, advisory, banking, wealth management, and other subsidiaries, merely tracking the multiple relationships with advised counterparties is already difficult. Such firms typically have internal conflict checks that make sure they do not inadvertently find themselves providing advice to two parties to the same transaction. But to comply with the rule as proposed, a banking organization, before seeking an engagement with a municipal entity or obligated person, would need to be sure that none of its affiliates was engaged in any kind of ongoing principal transactions anywhere in the world with that client. This is a nightmarishly complex task, and one in which predictable inadvertent oversights could lead to unintended regulatory violations.

The following example is illustrative. Assume that a bank-affiliated broker-dealer has been engaged by an airline as a municipal advisor on a tax-exempt gate-lease revenue-backed transaction, which would make the airline an obligated person. At the same time, the broker-

dealer's commercial bank affiliate is also negotiating an ordinary commercial loan with the airline for a cargo facility in another state. For reasons of negotiating strategy, the parties have signed non-disclosure agreements. Therefore, neither affiliate will know that the other may be providing services to the same entity. If both transactions are completed, there would be a violation of the rule, yet neither party would be aware of the violation. On the other hand, if there was no confidentiality agreement in place and the affiliates learned of the negotiations, what should be done? Should the bank be allowed to complete the loan or must it back out? What if the bank has already signed a contingent commitment letter months before that only surfaces after the broker-dealer accepted a municipal advisory role? In this and similar cases, the result for the airline is that its funding processes may be disrupted with no observable benefit. For all of the above reasons, we urge the MSRB *not* to extend any restrictions on principal transactions to affiliates of a municipal advisor.

C. Any prohibition on principal transactions should apply only to the municipal advisor with respect to matters directly related to the municipal advisory transaction or relationship.

Any consideration of restrictions on principal transactions should be limited only to municipal advisors and to matters concerning the advisory transaction or relationship. We note that this formulation is the same one proposed in the MSRB's 2011 draft Rule G-36 in which the prohibition on principal transactions applied only to matters concerning the "municipal advisory engagement."[14] We believe that this scope would appropriately address concerns about conflicts of interest, while preserving the current range of services to municipal entities and obligated persons.

We note that those entities providing advice to advised municipal entities or obligated persons that enjoy an exclusion from municipal advisor registration requirements are free to engage in principal transactions. As discussed above, RIAs may, consistent with their fiduciary duty under the Investment Advisers Act of 1940, engage in principal transactions with their advisory clients with disclosure and consent. The differing regulatory regime would create a significant competitive disadvantage for banking organizations, particularly with respect to the provision of investment management and advisory services, because a banking organization would be subject to Rule G-42's prohibition on principal transactions while an RIA providing exactly the same services would not. We believe that when Congress exempted RIAs from municipal

[14]MSRB Notice 2011-48 (August 23, 2011). *See also,* SEC Municipal Advisor Frequently Asked Questions at 5.2, (January 16, 2014).

advisor registration, it was mindful of the fiduciary duty of investment advisers, believing that an RIA's advisory clients were protected under that regulatory regime, including with respect to principal transactions. No policy reason supports the proposed disparate treatment.

4. Compliance with bank fiduciary regulations should satisfy the draft Rule G-42's requirements for municipal advisors.

Banks provide a range of investment management and advisory services in their fiduciary capacity through trust departments and trust companies (hereinafter, bank fiduciaries), and may be required to register as municipal advisors, because they provide advice with respect to proceeds from an offering of municipal securities. Their municipal advisory activities arise generally in the context of providing advice either to separately managed accounts in which pension plans offered by municipal entities invest, or to collective investment vehicles in which advised municipal entities or obligated persons invest.

Bank fiduciaries are subject to the strictest fiduciary duty under state and federal banking, trust, and common law.[15] A bank fiduciary is required by a long history of case law to put the interests of account beneficiaries before the interests of the bank. The bank fiduciary owes its beneficiaries undivided loyalty and must administer each trust for the exclusive benefit of account beneficiaries and the purposes for which the account was created.[16] For all fiduciary clients, including retirement plans, national banks must comply with 12 CFR Part 9, while state-chartered banks must comply with applicable state fiduciary and trust law and regulation, which often defers to the requirements under 12 CFR Part 9. To the extent a bank fiduciary obtains investment discretion with respect to, or control of, ERISA retirement plan assets, the bank becomes a fiduciary to the plan under ERISA.[17] In addition, bank fiduciaries are examined regularly by state and federal bank examiners for compliance with state and federal fiduciary laws and regulations.

---

[15]Judge Cardoza's famous quote in *Meinhard v. Salmon*, 249 N.Y. 458 at 464 (1928) exemplifies the standards to which bank fiduciaries are held: "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."

[16]*See*, OCC Handbook on Collective Investment Funds at 12 ("It is a bank's fundamental duty to administer its [collective funds] solely in the interest of the bank's fiduciary customers whose assets are invested in the funds. When a bank makes a determination that a CIF serves as a prudent alternative to an individualized investment strategy for a fiduciary account, it must ensure that the CIF used is appropriate for each account. The duty of loyalty is critical and underlies the administration of a CIF.). *See also,* OCC Handbook on Conflicts of Interest.

[17] Although municipal entities' pension plans are not covered by ERISA, they often invest in collective funds that are subject to ERISA (because other clients in the funds are). As a result, ERISA and its requirements for fiduciaries often apply to collective investment funds.

Pursuant to this regulatory regime, bank fiduciaries are already required to provide to clients disclosures of conflicts of interest, and fee and compensation arrangements. Bank fiduciaries typically enter into investment management agreements (or equivalent agreements) that document the client relationship, fees, conflicts of interest, duties and obligations, term, and termination arrangements. Banks are also required to undertake initial and periodic account reviews pursuant to 12 CFR Part 9, which are comparable to the suitability determinations described in draft Rule G-42.[18] Further, bank fiduciaries are required to maintain detailed records of fiduciary accounts and to "know their customer" under federal banking law and regulation.

Draft Rule G-42 would impose significant regulatory requirements that overlap but are not coextensive with the robust regulatory regime with which bank fiduciaries must currently comply. We are very concerned that applying the rule's requirement to bank fiduciaries would impose on bank fiduciaries a duplicative and conflicting regulatory regime with no observable benefit to fiduciary clients, who ultimately would bear the costs of such redundant regulation. In addition, bank fiduciaries would also be at a competitive disadvantage with RIAs who would not be subject to such duplicative regulation.

Accordingly, we strongly urge the MSRB to recognize that the existing regime of bank fiduciary regulation, under which bank fiduciaries are regularly examined for compliance by knowledgeable examiners, constitutes effective compliance with draft Rule G-42. We would be happy to provide additional detailed information on the bank fiduciary regulatory regime.

---

[18] Draft Rule G-42 would impose a suitability requirement to "only recommend a transaction or product that is in the [client's] best interest." However, the suitability considerations identified in the rule appear to be targeted at municipal securities transactions and products rather than the types of products provided by bank collective funds and separately management accounts that operate under investment guidelines. For example, it is unclear whether and how suitability requirements would be imposed on investment management recommendations or decisions by a trust bank (acting as trustee to a collective investment vehicle or as manager of a client's separate account). Clients typically retain a trust bank to perform discretionary investment management where the investment decisions are subject to investment guidelines applicable to a fund authorized by the client, or guidelines specifically agreed to by the client.

5. Other Issues

Draft Rule G-42 would require municipal advisors to disclose information concerning their professional liability insurance coverage. We believe that given the capital requirements and risk management programs at banks, as well as robust supervision by the banking regulators, disclosure of the amount of professional insurance is unnecessary. Moreover, we are concerned that the proposal might require banks to disclose proprietary information.

With respect to the economic analysis in draft Rule G-42, ABA is concerned that the MSRB has failed to take into account the costs to banking organizations of compliance as well as the impact on municipal entities and obligated persons from the consequent inability to access financial services and products. As just one example, should the MSRB apply the prohibition on principal transactions to all affiliates of a municipal advisor, banking organizations would incur enormous costs simply to try to track potential transactions with a municipal entity or obligated person across all affiliates. These increased costs would clearly be passed through to customers. We are happy to discuss these concerns further with the MSRB.

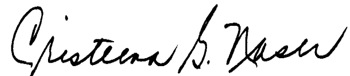
CONCLUSION

ABA has considerable concerns with draft Rule G-42. The complete prohibition on principal transactions must be substantially narrowed to exclude affiliates and to permit principal transactions with disclosure and consent. If not significantly modified, the rule would force banking organizations to choose whether to provide advisory services to municipal advisors and obligated persons, or provide the full range of loans, deposits and other banking products and services they offer to such clients; banks would be unable to offer both to their customers.

Any resulting reduction in the availability of services would disserve those clients for no public benefit. ABA believes that extending a municipal advisor's fiduciary duty to cover obligated persons is not authorized by Section 975 and is contrary to Congressional intent. We urge the MSRB to confirm that draft Rule G-42 does not apply to activities that have been excluded or exempted under the SEC's final municipal advisor rule. Moreover, no prohibition on principal transactions should extend beyond the advisory transaction or relationship.

We stand ready to provide additional information that may be useful to the MSRB, particularly with respect to bank fiduciary activities, as you move forward with this proposed rule. Please do not hesitate to contact me with any questions.

Sincerely,



Cristeena G. Naser

cc: Lynette Kelly, Executive Director
Municipal Securities Rulemaking Board

Ernesto Lanza, Deputy Executive Director
Municipal Securities Rulemaking Board

Gary Goldsholle, General Counsel
Municipal Securities Rulemaking Board

Michael Post, Deputy General Counsel.
Municipal Securities Rulemaking Board

Kathleen Miles, Associate General Counsel
Municipal Securities Rulemaking Board

John Cross, Director of Municipal Securities Office
Securities & Exchange Commission