

April 28, 2014

Via electronic submission

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

Re: MSRB Notice 2014-04 Request for Comment on Draft Rule G-44 on Supervisory and Compliance Obligations of Municipal Advisors and 2014-08 Request for Comment on Establishing Professional Requirements for Municipal Advisors

The Yuba Group appreciates the opportunity to provide comments in response to the Municipal Securities Rulemaking Board (“MSRB”) Request for Comments (“ROC”) on Proposed Rule G-44 on Supervisory and Compliance Obligations of Municipal Advisors, as well as MSRB Request for Comment on Establishing Professional Qualifications for Municipal Advisors. The Yuba Group commends the MSRB’s continued efforts in working with and listening to market participants as new MSRB Municipal Advisor (“MA”) rules are drafted. We have participated in the three webinars that have been offered on the new MA rules and previously submitted comments earlier this year on Draft Rule G-42 on Duties of Non-Solicitor Municipal Advisors.

Background

As stated in our comment letter on Draft Rule G-42, the Yuba Group is a seven-person advisory firm formed in 2010. Our work is focused solely on higher education and not-for-profit institutions. In addition to assisting with tax-exempt and taxable debt transactions, as well as interest rate swaps, we provide on-going services related to capital financing, debt policy/capacity and rating strategies.

Our clients include a range of public and private colleges and universities, as well as research, cultural and other types of not-for-profit institutions. Current clients include several Ivy League institutions and other major research universities – both public and private- as well as liberal arts schools and “niche” institutions. We do not advise any issuing authorities. Our partners and other personnel have many years of prior experience at investment banks, rating agency and other financial services and swap advisory firms.

Comments

Although the 2014-04 and 2014-08 ROCs were published separately, we are submitting a combined response to both since there are many overlapping issues included in the draft rules.

Although the MSRB has indicated on many occasions that it has taken into account small Municipal Advisor firms for all of the proposed rules, it is our view that the approach to the supervisory provisions and the professional requirements are still quite biased toward larger firms and do not make adequate accommodations for smaller and single-person firms. Simply put, larger firms are able to spread all of the actual and “opportunity” costs of compliance over a larger number of clients and employees. As stated in our comment letter on draft Rule G-42, the financial model of small MA firms is fairly straightforward; the “opportunity cost” of the time we spend on compliance issues is time that is not available to spend on client matters and directly impacts our “bottom line” negatively. With fewer people and no other business lines than our advisory work, smaller firms are impacted much more than larger ones by the proposed MA regulations. Below are some examples as well as some suggestions on how the MSRB might consider accommodating smaller and single person advisors by making the compliance process more efficient and less time-consuming.

1. Combine the MA tests. The two-tiered approach to initially imposing a requirement to pass a municipal advisor representative test in 2015 followed in the future by a municipal advisor principal test requires anyone who is engaged in a management or supervisory role to take two separate tests, effectively doubling both the fees and the time needed to prepare and take such tests. A few suggestions:
 - Roll out the supervisor test first, and if supervisor passes, then the individual test would be waived. Imposing a test first on supervisors would also be consistent with the MSRB’s proposed requirement for written supervisory procedures and the importance of adequate supervision. Additionally, one could argue that in a smaller firm, junior people are supervised more closely due to the more intimate nature of the work environment.
 - Consider eliminating the need for a representative and/or replace it by an apprenticeship period and self-imposed professional standards. If an advisor is being supervised adequately, a qualifying test for representatives would not be necessary.

We recommend that the MSRB make the supervisor test available before, or simultaneously with the representative test and eliminate the need for a supervisor to take both tests. For smaller firms, the MSRB could also consider eliminating the need for non supervisors to take the representative test if supervised closely or serving an apprentice period.

2. Reconsider “grandfathering” and/or developing a shorter test for previously registered supervisors and representatives. Although the MSRB has indicated that it is not permitting any individuals to be grandfathered, we continue to be concerned that the requirements unfairly impact smaller firms. Since many advisors were formerly investment bankers who may have been registered previously, could there be an abbreviated test which just deals with the regulatory issues and not fundamentals of municipal bonds?

We recommend that the MSRB reconsider the approach against grandfathering.

3. Combine proposed rules in fewer ROCs. Arguably, the proposed supervisor and professional qualifications could have been included in a single ROC publication since there are many overlapping issues and implications. Instead, two separate ROCs and webinars for such ROCs essentially have required twice the amount of time for all firms to review and participate. Even for those of us that may have engaged external compliance advisors, we still need to review all of the proposed rules, discuss them with our advisors and incorporate them into our practices. This has been an extremely time-consuming effort which in a smaller firm is felt more dramatically than larger ones. For example, the fees charged by a compliance consultant to a small firm are no less than those charged to a larger one, except for the number of MA-I forms that need to be reviewed, and the time spent in analyzing rules and establishing regulatory practices is also no less than for the larger ones. In addition, the actual costs and “opportunity costs” associated with our time are spread over a much smaller number of employees and clients.

We recommend the MSRB better accommodate smaller firms by consolidating regulatory communications and rules into fewer publications and webinars.

During the MSRB webinar on the professional qualifications, a MSRB representative stated that the test structure was deliberately designed to mirror that for the broker-dealers, which by nature are large firms. **We urge the MSRB to abandon the “mindset” of imposing the approach to broker-dealer regulations to MAs and consider more closely the perspective of a small firm and its time constraints and fee structure. In order to minimize the impact of the MA regulations on the fees we charge our clients, we are hopeful that the MSRB’s approach to regulating MAs will be done in the most efficient manner possible. Reducing the number of ROCs, tests, proposed rules and webinars involved in the implementation of the SEC and MSRB rules would certainly be a great start.**

Economic Analysis

In our comment letter on Proposed Rule G-42, we provided an estimate of approximately \$50,000 for the first six months of 2014 for our small firm, which included:

- Registration fees, time allocated to training staff, issuers;

- Outside consultant assistance for new rules and advice;
- Time allocation internally to learn the rules, discuss the rules, create internal documents, and prepare registration documents; and
- Time allocation for client education.

We would like to increase this estimate by an additional \$40,000 to reflect the following time and expenses associated with the actual implementation:

- Selection of outside consultant;
- Participation in three MSRB webinars and a Bond Buyer webinar;
- Review of additional MSRB ROCs;
- Preparation of MSRB comment letters;
- Drafting and review of draft written supervisory procedures (“WSP”);
- Drafting and review of revisions to engagement letters to reflect additional disclosures;
- Drafting and review of revisions to Employee Handbook to reflect regulatory issues;
- Preparing individual amendments to existing engagements;
- Firm training regarding content of WSP;
- Increase in email server fees to be able to comply with five-year record retention requirements;
- IT consultant fees to implement email server change; and
- Employee time required to implement computer changes to migrate email server.

This results in an estimated \$90,000 cost of implementation for the first six months of 2014 due to regulatory issues, or over \$12,000 per employee.

In addition, our comment letter on Rule G-42 included an estimate of \$89,000 for the future cost of the expected professional tests, time studying, and lost wages to the firm. Since at least three of us will also be required to take a supervisory test, the two-tiered approach to professional requirements increases our estimate by another \$38,000 to over \$125,000 just for the professional requirements.

We encourage the MSRB to continue considering the potential impact and costs of compliance on small firms as it develops professional standards and requirements, both with respect to increased out-of-pocket costs and the opportunity cost of our time.

In closing, we recognize the challenges of drafting rules that will impact advisors, bankers and issuers with varying degrees of expertise and resources, and appreciate the opportunity to respond to the MSRB. We are hopeful that the MSRB will take our comments into consideration.

Thank you.
Linda Fan
Managing Partner