



1031 S. Caldwell Street  
Suite 100  
Charlotte, NC 28203

Phone 704 • 373 • 1199  
Fax 704 • 373 • 1113

[www.raftelis.com](http://www.raftelis.com)

May 16, 2014

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

**Subject: Comments on Regulatory Notice 2014-08 on Establishing Professional Qualification Requirements for Municipal Advisors**

Dear Mr. Smith:

Thank you for the opportunity to comment on Regulatory Notice 2014-08 related to establishing professional qualification requirements for Municipal Advisors. We have already provided commentary on other aspects of the proposed MSRB rules for Municipal Advisors and how they may impact our firm given the specialized nature of the services we provide that fall within the definition of municipal advisory services. Our comments related to the contents of Regulatory Notice 2014-08 have to do with the following general areas:

- The types of materials and information to be covered in the qualification examination, and;
- Whether or not the qualification examination would be required for every person providing consulting services in our firm.

To provide some context for the comments to follow, our firms provides financial planning and rate consulting services primarily for government-owned water, wastewater and stormwater utilities. One of our primary service areas is the development of utility financial planning and rate models that provide forecasts of utility revenues and expected financial results, particularly as these results are impacted by various capital planning alternatives and debt financing strategies. The objective of these studies is to provide the information necessary to adjust utility rates and charges to ensure the financial sufficiency of the utility operations, which is typically operated as a separate government enterprise fund. This information often includes general assumptions related to funding sources to meet capital investment needs, including various forms of borrowing. However, this information is not represented as a recommendation to undertake a particular course of action or borrowing. Almost every professional consultant in our firms is involved in providing this type of assistance to our clients. This includes staff consultants working under the direction of a project manager, more senior personnel functioning in the project manager role, and other senior personnel (vice presidents and executive officers) who function as project managers, technical reviewers, or project directors.

In addition, our firms also provide assistance to government-owned utilities to develop financial forecasts and related documentation to support a specific debt issue or loan for the utility. This assistance may be in the form of a formal financial feasibility study report included as a component of the Official Statement for revenue bonds, or may take the form of a financial forecast included as part of the application and documentation required for private placement loans, State Revolving Fund Loans, or other types of borrowing. We do not provide the type of advice and expertise typically provided by an independent financial advisor (FA) and/or underwriter that address the specific parameters and terms for issuing debt. In the case of revenue bonds, we typically function as one member of a team of financial advisors (including the FA, underwriter, bond counsel, underwriter's counsel, and consulting engineers) engaged by a municipal entity to assist in issuing debt. Most of our professional consultants also provide this type of assistance, although not on a consistent basis, since only a relatively small portion of our projects address a specific bond issue or borrowing. Again, our firm provides services and assistance almost exclusively to government-owned utilities, which is a highly specialized and focused area of knowledge and expertise that does not have a lot in common with other areas of municipal finance and municipal advisory services.

Related to the proposed qualification examination, the information provided in Regulatory Notice 2014-08 only states that this test will "measure a candidate's knowledge of the business activities, as well as regulatory requirements, including MSRB rules, rule interpretations and federal laws applicable to a particular registration category". Since our firm is now, and plans to remain, registered only as a Municipal Advisor, and not as a broker/dealer, this language would seem to suggest that our personnel would be tested on their knowledge of the business activities applicable to a Municipal Advisor. This statement is so general and vague that it provides no guidance on the material that may be included.

Will the examination cover all the business activities associated with assisting a government entity with issuing debt, including the functions and services provided by a Financial Advisor or underwriter? If so, why should we have to know this information when it has no relevance to the services we provide? We rely on other professionals engaged by our clients to provide these services and this type of expertise, just as these other professionals rely on our firm to provide specific expertise and advice related to water and wastewater utility rate setting, associated rate structures, and forecasts of water, wastewater and stormwater revenues to support a proposed bond issue.

Will the examination cover specific areas of expertise that other Municipal Advisors may provide related to different types of government activities and services, such as borrowing to fund schools, hospitals or airports? Will the consultants who provide advice on revenue forecasts for airports also be tested on the business activities associated with government-owned water and wastewater utilities? We understand that the information provided in Regulatory Notice 2014-08 is preliminary and will be revised and enhanced, but the information provided to date raises more questions than it answers and, as a result, may serve to undermine the credibility and effectiveness of the MSRB and SEC in their efforts to produce rules and regulations that will actually help protect the interests of municipal entities seeking to borrow funds and individuals interested in purchasing municipal debt. If we have misinterpreted the intent and meaning of this

statement, then I apologize, but clearly significant clarification and additional information will be needed going forward.

The reality is that the current definition of Municipal Advisor and the criteria used to determine what constitutes “advice” as defined in the Final Rule adopted by the SEC amending Section 15B of the Securities Exchange Act (“Act”) covers a very broad range of services and expertise. Some of these areas of expertise may have nothing to do with other areas, depending on the particular type of financing under consideration. Developing a qualifications examination that treats all Municipal Advisors fairly, and that does not add a significant cost that will ultimately be passed on to the municipal entity, will be a challenging exercise. The more relevant question is whether the benefits provided to borrowers (municipal entities) and lenders (the public) are greater than these costs.

As to the second general area of concern, there has been little guidance provided to date to help our firms determine how many of our personnel may be required to take and pass a qualifications examination. We have provided comments and questions in previous correspondence addressing Draft Rule G-42 and Draft Rule G-44 expressing similar concerns. Almost all of our personnel provide some level of advice to municipal water and wastewater utilities related to funding of future capital investments, including the use of debt to fund various projects. This advice may or may not relate to a specific bond issue, and we do not make recommendations for a utility to pursue a specific course of action to borrow funds. We provide information to show the potential impacts of borrowing money, under a range of assumption, compared to using cash generated from utility rates or other funding sources to pay for future capital needs. The utility then uses that information, and advice from a Financial Advisor or underwriter, to determine the amount and timing of specific loans. It is unclear whether this type of assistance qualifies as “advice” under Section 15B of the Act.

Once a determination has been made to issue debt, our firms may then be engaged to provide a forecast and/or bond feasibility report based on the specific conditions of the proposed loan, as determined by the municipality and its other advisors. This type of assistance is typically entered into as a separate project or engagement, independent of more general rate consulting and financial planning services. We believe that this level of support and assistance does constitute municipal advisory services, as defined under Section 15B of the Act. The question is whether every professional consultant in our firms who provides assistance to municipal entity that issues debt, or may issue debt in the future (which essentially means all of our clients), is considered to be a Municipal Advisor and must be certified as such and pass the qualification examination. Or can we rely on a more narrow interpretation and comply with the regulations by ensuring that the personnel responsible for project management and supervision, plus any senior personnel who may be assigned as a technical reviewer, for each project that supports a specific bond or debt issues is certified as a Municipal Advisor and has passed the qualification examination? The first interpretation would impose a significant cost and administrative burden on our firms, and provide minimal additional benefit to our clients at a significant cost. The second interpretation is significantly more manageable and, in our opinion, is more consistent with the intent and purpose of the regulations for Municipal Advisors. Again, our conclusion is that this process and the rules and regulations affecting specialized firms like ours are currently inadequate, and have the potential to impose significant costs and constraints that will limit the effectiveness of certain

types of firms in providing useful, and necessary, advice to municipal entities seeking to borrow money.

We appreciate the opportunity to provide comments to the MSRB as you develop the rules and regulations affecting Municipal Advisors. We understand that our comments and concerns are very specific and address how the proposed rules and regulation may affect our business and our ability to continue to provide certain services to our clients, and that these services are highly specialized for a particular industry. If we can be of assistance in providing further information about the services we provide to government-owned water and wastewater utilities, please do not hesitate to contact me.

We have also shared our comments with another firm that is affiliated with ours and provides similar services as an independent sole proprietor, Woodcock and Associates, Inc. Mr. Woodcock is also registered as a Municipal Advisor and has reviewed and supports the comments we have provided and is added as a signatory to this letter.

Sincerely,  
***RAFTELIS FINANCIAL CONSULTANTS, INC.***



Alexis F. Warmath  
Vice President

WOODCOCK & ASSOCIATES, INC.



Christopher P.N. Woodcock  
President