August 25, 2014

Submitted electronically to
http://www.msrb.org/CommentForm.aspx

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

Re: **MSRB Regulatory Notice 2014-12 Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors**

Dear Mr. Smith:

The Financial Services Roundtable[1] ("FSR") appreciates the opportunity to comment on revised draft Municipal Securities Rulemaking Board ("MSRB") Rule G-42 ("Revised Draft Rule G-42"), which would specify the standards of conduct and duties of non-solicitor municipal advisors.[2]

I. Executive Summary

FSR commends the MSRB for its responsiveness to many of the concerns that commenters expressed about its initial draft of Rule G-42 ("Initial Draft Rule").[3]

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[1] *As advocates for a strong financial future*™, the Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $ 92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs. Learn more at FSRoundtable.org.

[2] *See* Regulatory Notice 2014-12; *Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors* (Jul. 23, 2014), *available at* http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2014-12.ashx?n=1 ("Regulatory Notice 2014-12").

[3] *See* MSRB Notice 2014-01, *Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors* (Jan. 9, 2014), *available at* http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2014-01.ashx?n=1.

Notwithstanding the modifications to Draft Rule G-42, FSR's members continue to have several concerns about the proposed rule.

i. Prohibition on Principal Transactions. When acting as a principal for one's own account, Revised Draft Rule G-42(e)(ii) would prohibit a municipal advisor from "selling to or purchasing from the municipal entity client any security or entering into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client." Although the MSRB drew upon the prohibition on principal transactions in Section 206(3) of the Investment Advisers Act of 1940 ("Advisers Act"), it did not include any of the alternative means of compliance with the statutory prohibition that have been provided by the Securities and Exchange Commission ("SEC").[4] FSR's members strongly believe that, as with the prohibition on principal transactions applicable to SEC-registered investment advisers pursuant to Section 206(3), the MSRB should include an alternative mechanism for municipal advisors that would permit them to engage in principal transactions with municipal entities subject to disclosure and consent requirements. Given that municipal entities do not give discretionary authority to municipal advisors when they are acting in such capacity, such relief would be consistent with the relief granted by Advisers Act Rule 206(3)-(3)T.

ii. Disclosure Requirements. Revised Draft Rule G-42 would require municipal advisors to provide full and fair written disclosure to a municipal entity or obligated person client of all material conflicts of interest, including disclosure of any of its affiliates that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by the disclosing municipal advisor. Municipal advisors are required to exercise reasonable diligence to identify material conflicts and, if none are identified, to provide disclosure to that effect to its clients. FSR's members are concerned that the requirement to disclose any advice, services or products provided indirectly by the municipal advisor as well as by any of its affiliates is vague and overly broad and would be very difficult for a municipal advisor to comply with if it is part of a large multi-service financial conglomerate.

Revised Draft Rule G-42 also would require a municipal advisor to provide written disclosure of 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; and a description of the type of legal and disciplinary event required on Form MA and Form MA-I. FSR's members respectfully request that the MSRB provide guidance that if a municipal advisor is current in its publicly-available disclosures, and provides each municipal entity or obligated person client with information about where the advisor's Form MA and Form MA-I are located, the requirements of Revised Draft Rule G-42 will have been satisfied.

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[4] *See, e.g.*, Rule 206(3)-3T under the Advisers Act.

II. Prohibition on Principal Transactions

Revised Draft Rule G-42(e)(ii) would prohibit a municipal advisor and its affiliates from "engaging in a principal transaction" directly related to the same municipal securities transaction or municipal financial product to which the municipal advisor is providing advice to the municipal entity client. "Engaging in a principal transaction" is proposed to be defined in paragraph (f)(i) of Revised Draft Rule G-42 to mean, "when acting as a principal for one's own account, selling to or purchasing from the municipal entity client any security or entering into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client."

Although the MSRB noted that the principal trading prohibition is modeled on the prohibition in Section 206(3) of the Adviser Act, the MSRB did not include alternatives to the prohibition, such as those that are included in Rule 206(3)-3(T), which permits principal transactions with certain clients; provided that the adviser complies with prescribed disclosure and consent requirements. The SEC's approach to principal transactions by registered investment advisers recognizes that, while certain principal transactions may present conflicts of interest, in many cases it is appropriate to manage those conflicts through disclosure to and waiver by the client, at its discretion. FSR's members believe that a similar approach is appropriate for municipal advisors' principal transactions.

The approach set forth in in Revised Draft Rule G-42 is overbroad and unnecessary, particularly when, as the MSRB noted, municipal advisors are subject to the MSRB's fundamental fair-practice rule, Rule G-17. A prohibition on principal transactions could deprive clients of access to certain products and services because a municipal advisor or its affiliates may be prohibited from transacting with a municipal entity that engages the municipal advisor to provide municipal advisory services. Rather than imposing such a broad brush prohibition, FSR's members recommend that the MSRB permit municipal advisors and their affiliates to manage conflicts through disclosure and consent, as appropriate under the circumstances. As currently drafted, this prohibition may cause some organizations to assess the economic impact of acting as a municipal advisor in comparison to the value of providing all other services and products to municipal clients.

To the extent the MSRB does not revise the prohibition on principal transactions to allow for disclosure of and consent to any potential conflicts rather than a complete ban, the MSRB should consider the extent to which this prohibition should apply to municipal advisor affiliates. It is common for large financial institutions to have operations spread across the globe with many affiliates performing various business activities. Even with the Revised Draft Rule G-42 limiting this prohibition to transactions "directly related" to the same municipal securities transactions or municipal financial products to which the municipal advisor is providing advice, a municipal advisor and its affiliates would be required to create a costly, ongoing infrastructure across entities to identify all municipal entities and possibly prohibited transactions.

III. Disclosure Requirements

Revised Draft Rule G-42(b)(i)(B) would require a municipal advisor to disclose to a client in writing all material conflicts of interest, including any affiliate of the advisor that provides "any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by the disclosing municipal advisor." Extending the disclosure requirement to "any advice, service, or product" that is indirectly related to the municipal advisory services creates a requirement that is so broad as to be vague, and would create significant uncertainty that will make compliance exceedingly difficult. Moreover, although the members recognize that the MSRB revised paragraph (b)(i)(G) of Revised Draft Rule G-42 to eliminate the requirement that municipal advisors provide information about "any other engagements or relationships" of any affiliate that might impair the advisor's ability to provide unbiased and competent advice to or on behalf of an obligated person client or to fulfill its fiduciary duty to a municipal entity client, the broadly drafted requirement of paragraph (b)(i)(G) limits the efficacy of the MSRB's revision.

FSR's members further believe that the proposed requirement in Revised Draft Rule G-42(b)(ii) to provide written disclosure of legal or disciplinary events that are material to a client's evaluation of the municipal advisor or the integrity of its management or personnel, and in Revised Draft Rule G-42(c)(iii) to describe the type of information regarding legal events and disciplinary history provided on Forms MA and MA-I is redundant in light of the same disclosures already required to be made by advisors on those forms. The members recommend that municipal advisors not be required to provide separate disclosure of legal or disciplinary events to clients, or proposed clients, if such disclosure is already available publicly, and that these disclosure requirements be deemed satisfied if an advisor provides information about where clients may access electronically the advisor's most recent Forms MA and MA-I, along with the date of the last material amendment to any legal or disciplinary event disclosure on such forms.

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FSR appreciates the opportunity to submit comments on the MSRB's request for comments on Draft Rule G-42. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact Richard.Foster@FSRoundtable.org.

Sincerely yours,

Richard Foster
Vice President and Senior Counsel for Regulatory and Legal Affairs
Financial Services Roundtable

With a copy to:

Municipal Securities Rulemaking Board
Lynette Kelly, Executive Director
Gary Goldsholle, General Counsel
Michael Post, Deputy General Counsel
Kathleen Miles, Associate General Counsel

Securities and Exchange Commission
John Cross, Director of the Office of Municipal Securities