

June 16, 2021

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-07 Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46

Dear Mr. Smith;

I am writing to you today on behalf of the Third-Party Marketer's Association ("3PM") to provide feedback on behalf of the Association's Regulatory Committee regarding the new Draft Rule G-46 proposed in MSRB Notice 2021-07.

3PM appreciates the MSRB's efforts to codify existing guidance offered under G-17 and other guidance issued specifically "solicitor municipal advisors" pertaining to the obligations of this group.

3PM is appreciative that the MSRB has made efforts to try to harmonize this rule proposal with the SEC's Marketing Rule which just became effective in May 2021. While most of the provisions of the two rules are consistent, there some differences in the MSRB's new draft requirements we would like to provide comments on below.

Specific Role Disclosures

We recognize the importance of providing a disclosure to a municipal entity regarding a solicitor municipal advisor's role in a solicitation, however, we believe that we should be allowed sufficient flexibility to customize the disclosure language regarding the specific role such the solicitor plays in the solicitation. Given that 3PM firms fall under FINRA purview and work with solicitor clients that fall under the SEC's purview, our preference would be to manage a single set of disclosures rather than a variety of different ones. In this light, we request that the MSRB consider permitting an MA to craft its own language provided the essential components are clearly included.

Solicitor Client Disclosures

3PM agrees with the MSRB in allowing solicitor municipal advisors to write their own solicitor client disclosure, and requests that MSRB provide guidance as to the essential components to be clearly included in such disclosures.

Timing and Manner of Disclosures

The draft requirements require a solicitor municipal advisor to make a disclosure “in writing to an official of the solicited entity that the solicitor municipal advisor reasonably believes had the authority to bind the solicited entity by contract.” The language goes on to say, “and that, to the knowledge of the solicitor municipal advisors, is not party to a disclosed conflict.” Additionally, the requirement provides further specifics on the timing of the provision of the disclosure and says “the disclosures would be required to be delivered at the time of the first solicitation of the solicited entity for that specific solicitor client.” This requirement is a substantial departure from the SEC’s marketing rule; compliance with the MSRB’s proposal would thus make compliance nearly impossible under current industry practices.

There are two ways in which a solicitor municipal advisor may solicit a municipal entity, either directly or through an intermediary.

- **Direct Solicitation to the Municipal Entity**

When a solicitor municipal advisor first approaches a municipal entity directly, it is likely they begin speaking with a staff member who handles “investment manager research” for the municipal entity. This individual is generally responsible for vetting the solicitor client’s product to ensure the strategy is appropriate given the entity’s investment policy statement guidelines and restrictions. It would be highly unusual to find a person in this role whose level would allow them to “bind the solicited entity by contract.” Additionally, this is typically a multi-year process that includes many board presentations, meetings, discussions, and paperwork directly between the solicitor client, in this case an investment manager, and the municipal entity.

While a disclosure could be given to a staff member at the time of the first solicitation, , it is not certain that this staff member would even understand the reasons for the disclosure at this stage of the process and would not likely pass the information to their manager or another superior at the entity that could “bind the solicited entity by contract.”

Furthermore, when speaking to an individual in investment manager research, it might be the first time the solicitor has met with the staff member. Even if a solicitor municipal advisor has worked with the research analyst before, the solicitor municipal advisor may not be aware of any conflicts or a disclosed conflict that analyst has with the solicitor client.

Accordingly, we would ask the MSRB to consider rephrasing the language regarding the provision of the disclosure to allow for some flexibility in the solicitation process & the timing of presenting such disclosures.

We believe that a solicitor municipal advisor should provide a disclosure to the member of municipal entity's staff who is present when the first solicitation to the municipal entity is made without regard to whether the staff member is able to bind the entity. If the initial solicitation should lead to a capital allocation to the solicitor client, then the solicitor client should send out a copy of the disclosure along with other new account paperwork. This would substantially increase the likelihood that a person at the municipal entity who is able to contractually obligate the entity has seen the disclosure.

It is our belief that in many instances, a solicitor municipal advisor can include language in its written agreement with a solicitor client that could compel the solicitor client to include the required disclosure to a municipal entity along with other required paperwork regarding the investment. There may however be instances when a solicitor clients may not agree to including this language in the written agreement between the parties or situations where a written agreement is already in place. Given this we believe that the MSRB should also allow the solicitor municipal advisor to send out the disclosure document to the appropriate person at the municipal entity if the solicitor client will not send it directly. This would help to ensure that the disclosure requirement has been met.

- **Direct Solicitation Through an Intermediary**

Often a solicitor municipal advisor will initially solicit a financial intermediary or an investment consultant (together "Intermediary") who is hired by a municipal entity to conduct searches and identify appropriate investment managers to meet a municipal entity's specific need. At the time of the first solicitation to an intermediary, the solicitor municipal advisor is generally unaware as to whether a solicitor client will be recommended to a municipal entity or another type of client of the Intermediary.

If the scenario arises where an Intermediary recommends a solicitor clients' advisory offering to a municipal entity, the municipal entity may decide to schedule a meeting to vet the solicitor client and determine whether to hire them. In some instances, the solicitor municipal advisor may participate in the meeting and can provide the municipal entity with the disclosure. Alternatively, a solicitor municipal advisor may not attend the meeting with the municipal entity and may never meet them. In such a scenario, it is not clear whether the provision of a disclosure would be required since the solicitor municipal advisor was not the one making a solicitation but would still be compensated for the work done with the Intermediary and ultimately the new account that they identified and as assisted the solicitor client in securing. We would appreciate the MSRB providing guidance on this issue.

Definitions

Both the definitions of Solicitor municipal advisor and Solicited entity include the term obligated persons. Given that a solicitor municipal advisor is not in a contractual relationship with a municipal entity, the solicitor municipal advisor may not always know the relationship between a municipal entity and an obligated person.

While including obligated persons in definitions for other business lines covered in the Municipal Advisor rule set may be appropriate, in the case of a solicitor municipal advisor that is also a municipal advisor third party solicitor, this inclusion of obligated persons is not relevant.

When 3PM's members are soliciting a municipal entity, the solicitation is to receive an allocation of capital for investment in a solicitor client's investment advisory offering or in a security offer by a fund sponsor. This allocation would come directly from the pension plan of that municipal entity rather than from bond proceeds or a municipal security offering. Given the definition of an obligated person, we believe inclusion of this language is potentially confusing.

We believe that the MSRB should either remove the term obligated person from the definition of a solicitor municipal advisor and solicited entity or provide guidance relating to the relevance and application of this term to solicitor municipal advisors that are also municipal advisor third party solicitor working on behalf of third investment advisors. In our opinion, the terms solicitor municipal advisor and municipal advisor third party solicitor are interchangeable in the business practices of our members and should be reflected as such in the proposal.

Recordkeeping

If a disclosure document is sent to a municipal entity electronically, it would not be a problem for the solicitor municipal advisor to maintain a copy of the electronic delivery receipt. The draft rule however, does not specify that the notice must be sent electronically. Alternatively, this means that the written disclosure may be provided in person to a municipal entity. In such a scenario, the solicitor municipal advisor would not have a delivery receipt to meet the record keeping requirement of the rule.

3PM suggests that the MSRB provide further clarification as to the ways the disclosure may be delivered and offer suggestions as to what may constitute acceptable "evidence that the disclosures" were delivered.

In addition to the information above, we respectfully submit the following comments on some of the questions posed in the request for comment.

- 1. Would codifying the G-17 Excerpt for Solicitor Municipal Advisors promote clearer regulatory expectations for solicitor municipal advisors?**

Yes. We firmly believe that all aspects of a rule should be contained within the ruleset. Any need to rely on guidance and other regulatory publications to see the full context of a rule adds confusion to fully understanding the requirement of a particular rule, particularly for municipal advisors as the rule set covers so many different and distinct business models under the same regulatory regime.

2. Would the additional standards regarding the timing and manner of delivery of the disclosures be helpful for solicitor municipal advisors in their efforts to comply with the obligations set forth in draft Rule G-46?

No, we believe that the additional standards and language contained in draft Rule G-46 will complicate a solicitor municipal advisor's effort to comply with its obligations. See comments above.

6. What are the benefits and burdens of draft Rule G-46? Are the burdens appropriately outweighed by the benefits?

We believe the burdens of draft rule G-46 outweigh the benefits to the municipal entities.

The Municipal Advisor rule set was established to protect a constituency that does not fall under the purview of the MSRB and thus rulemaking is challenging.

This indirect rulemaking not only challenges small firms and individuals operating in the industry, but it is our belief that the staff in the municipal entity's pension plans do not know about the MSRB's rules nor how to interpret them.

8. How is the scope of a solicitor municipal advisor's engagement typically decided upon? Are solicitor municipal advisors typically engaged to solicit a broad or specific set of entities? Is it always clear whether they can or will solicit municipal entities or obligated persons within the scope of a particular engagement? If not, at the time of an engagement, how do solicitor municipal advisors determine whether their engagement will be subject to MSRB rules? If yes, would a solicitor municipal advisor know which municipal entities and/or obligated persons it anticipates soliciting at the time of an engagement?

The scope of a municipal advisor's engagement is typically determined in consultation with the solicitor client; however, it is subject to change.

While the ultimate goal of most engagements is to raise assets for the solicitor client, the manner in which this is accomplished is diverse. Some engagements are extremely broad and allow a solicitor to explore the entire universe of institutional or retail investors. Others may outline the

specific distribution channels a solicitor can work in for example, public pension plans (municipal entities), corporate pension plans, endowments and foundations, consultants, subadvisors, wealth management, OCIO and/or Family Offices. Alternatively, some solicitor clients will ask the solicitor to provide a list of specific entities that they will provide outreach to.

Given the above, in some engagements, a solicitor municipal advisor may or may not know at the outset of the relationship whether they will solicit municipal entities. The fact that so many industry participants work through consultants and other intermediaries also complicates the situation. When working with an Intermediary it is never immediately known whether a solicitors' efforts will result in participation in a search nor which of their clients the search will be for.

Best practices would necessitate that a solicitor municipal advisor must ensure that they have the proper policies and procedures in place to cover the solicitation of a municipal entity and then will implement these procedures prior to the first solicitation to a municipal entity.

9. Do solicitor municipal advisors make payments (including in-kind) to other solicitor municipal advisors to facilitate solicitations of a municipal entity? If so, are there any special disclosures specific to the sub-contractor solicitation arrangement that would seem appropriate?

It is not unusual for solicitor municipal advisor to work with sub-contractor solicitation arrangements. In the event this should occur, we believe that it is the role of the solicitor municipal advisor to ensure all regulatory requirements are met, whether by their associated persons or by any sub-contractors they engage. This includes the provision of any required disclosures. Any such engagement would result in the solicitor municipal advisor supervising the role of the sub-contractor.

As a best practice, it would be anticipated that many in the industry may also refine the disclosure statement to show that the solicitor municipal advisor is a sub-contractor working under the supervision of the solicitor municipal advisor on behalf of the solicitor client. The disclosure may also include the fee both the solicitor municipal advisor receives as well as the fee the sub-contractor receives. We further believe that if the provisions of draft Rule G-46 were to be approved, that the conflict-of-interest section of the disclosure would necessitate inclusion of any conflicts for both the solicitor municipal advisor and the sub-contractor. As noted above, we believe these burdens outweigh the benefits to municipal entities.

11. Should solicitor municipal advisors be required to provide certain disclosures to their clients, including information pertaining to the solicitor municipal advisor's conflicts of interest and/or legal and disciplinary history? If so, should such disclosures be required in connection with engagement documentation with the client?

Most solicitor municipal advisors that fall under other regulatory regimes already provide this information to their clients. We believe it would be prudent for municipal advisors to also provide this information.

12. Is there any additional information pertaining to a solicitor municipal advisor's compensation that should specifically be required to be disclosed to a solicited entity?

Disclosures should provide a statement affirming who the solicitor's fees are paid by. As a best practice, currently many solicitors provide investors with the following additional line in their disclosures, "the fees paid to the solicitor is paid by the investment manager and does not increase the fee paid by the investor." This is likely to be information that would be helpful to the solicited entity.

14. Is it appropriate to require solicitor municipal advisors to disclose any material conflicts of interest to solicited entities since solicitor municipal advisors do not provide any advice to the entities that they solicit? Should the required disclosures instead be limited to conflicts disclosures related to the solicitor municipal advisor's compensation arrangement or the solicitor municipal advisor's relationship with its (municipal advisor or investment adviser) client? Would a conflicts disclosure requirement result in sufficient benefit to outweigh any potential burden? Is any additional guidance warranted in this area?

Many solicitor municipal advisors are also registered as investment advisors, so it is likely that many will be required to provide a conflicts disclosure. While in and of itself, we do not necessarily believe that a conflicts disclosure is necessary, the inclusion of a requirement that conforms to existing regulations and is not duplicative would harmonize regulation across a variety of regulatory authorities and eliminate confusion as to what disclosure items need to be provided for each regulator.

15. Should solicitor municipal advisors be required to make disclosures regarding their fiduciary status (or the lack thereof) in connection with the solicitation of a municipal entity or obligated person? Are solicitor municipal advisors sometimes deemed fiduciaries in connection with their solicitation activities pursuant to other regulatory regimes (e.g., state law)? If so, would a requirement to specifically state the solicitor municipal advisor's fiduciary status under the federal municipal advisor regime provide clarity or cause confusion to solicited entities?

Many solicitor municipal advisors are also registered as investment advisors and as such have a fiduciary responsibility to their clients. When applicable, this duty is disclosed to municipal entity clients under investment adviser regulations. As such we do not believe such disclosure would provide any meaningful benefit.

- 17. Should a municipal advisor client of a solicitor municipal advisor be required to make a bona fide effort to ascertain whether the solicitor municipal advisor has provided any or all of the disclosures related to the municipal advisor client to the solicited entities (e.g., the role and compensation disclosures required by draft Rule G-46(c)(i) and/or solicitor client disclosures required by draft Rule G-46(c)(iii))? For example, should the engagement documentation require the solicitor municipal advisor to contractually commit to provide the disclosures required by draft Rule G-46, and if so, should the municipal advisor client be required to undertake some level of diligence to confirm that the required disclosures are, in fact, made? Given that both the solicitor municipal advisor and all of its potential clients are regulated entities, would such a requirement appropriately further any policy goals? If so, would any burdens associated with such a requirement be outweighed by its potential benefits?**

We do not believe that the solicitor client should be required to undertake any level of diligence to confirm that the required disclosures are, in fact, made. As not all market participants are registered nor do most require registration, such a burden would unfairly disadvantage solicitor municipal advisors by making engaging with them more onerous than other sales and marketing professionals who are operating directly on behalf of the investment manager or within larger institutions that maintain registration exemptions.

- 18. Draft Rule G-46 currently specifies that the required disclosures must be disclosed in writing. Should the MSRB permit such disclosures to be made orally as long as the solicitor municipal advisor maintains a record that the oral disclosures were provided, the substance of what was provided, and when?**

With proper guidance from the MSRB as to the record requirements, we are in support of oral disclosures as an option to increase flexibility.

Thank you for the opportunity to share our thoughts with you regarding this proposal. Please feel free to reach out to me at (585) 364-3065 or by email at donna.dimaria@tesseractcapital.com should you have any questions or require additional information pertaining to the proposed CE Requirements for MAs.

Regards,

<<Donna DiMaria>>

Donna DiMaria
Chairman of the Board of Directors and Chair of the 3PM Regulatory Committee
Third Party Marketers Association

About The Third Party Marketers Association (3PM)

3PM is an association of independent, outsourced sales and marketing firms that support the investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness, and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more grown and represents members from around the globe.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent.

Members work with traditional separate account managers covering strategies such as domestic international and global equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds, infrastructure, real assets and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org.