



Municipal Securities Rulemaking Board

August 12, 2015

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 to SR-MSRB-2015-03

Dear Secretary:

On April 24, 2015, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC”) SR-MSRB-2015-03, a proposed rule change consisting of proposed new Rule G-42, on duties of non-solicitor municipal advisors, and proposed amendments to Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers (the “original proposed rule change”). The SEC published the original proposed rule change for comment in the Federal Register on May 8, 2015,¹ and received fifteen comment letters. On August 12, 2015, the MSRB filed Amendment No. 1 to SR-MSRB-2015-03, a partial amendment to the original proposed rule change (“Amendment No. 1”), and submitted its response to comments, which includes a detailed explanation of the several clarifying and other minor changes.

A copy of Amendment No. 1 is attached to this letter, and the changes to the rule text of the original proposed rule change can be found in the exhibits attached thereto.

If you have any questions regarding this matter, please contact me, Sharon Zackula, Associate General Counsel, or Benjamin A. Tecmire, Counsel, at (703) 797-6600.

Sincerely,

A handwritten signature in blue ink that reads "Michael L. Post" followed by a stylized flourish.

Michael L. Post
General Counsel – Regulatory Affairs

¹ See Release No. 34-74860 (May 4, 2015), 80 FR 26752 (May 8, 2015).

The Municipal Securities Rulemaking Board (“MSRB”) is filing this partial amendment (“Amendment No. 1”) to File No. SR-MSRB-2015-03, filed with the Securities and Exchange Commission (the “Commission” or “SEC”) on April 24, 2015, with respect to a proposed new rule concerning the duties of non-solicitor municipal advisors (hereinafter, “municipal advisors”) (the “original proposed rule change” and, together with this Amendment No. 1, the “proposed rule change”). The MSRB intends to make the proposed rule change effective six months after Commission approval of all changes.¹

The original proposed rule change consists of proposed new MSRB Rule G-42 (Duties of Non-Solicitor Municipal Advisors) (“Proposed Rule G-42”) and amendments to MSRB Rules G-8 (Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers and Municipal Advisors). The MSRB submitted the original proposed rule change to establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities.

The MSRB is proposing to delete, in Proposed Rule G-42(a)(ii), the phrase “, without limitation,” to address any ambiguity regarding the relationship between additional fiduciary duties and the specified duties of care and loyalty. The MSRB, however, emphasizes the proposed amendment in no respect narrows or otherwise substantively modifies the scope of the fiduciary duty to which a municipal advisor would be subject under Proposed Rule G-42. Under Proposed Rule G-42(a)(ii), a municipal advisor is subject to a fiduciary duty that includes a duty of loyalty and a duty of care. It has been the MSRB’s intent from the inception of this rulemaking initiative not to purport to comprehensively set forth every aspect of the fiduciary duty that may be owed under the broad principle that Congress determined should apply to municipal advisors to municipal entity clients. Instead, Proposed Rule G-42 is designed primarily to set forth the core principles of the fiduciary duty that a municipal advisor would owe to its municipal entity client, and address and provide guidance on certain conduct that is likely to occur and issues that are likely to arise in the provision of municipal advisory services. Although it is not possible for the MSRB to set forth every aspect of a fiduciary duty in Proposed Rule G-42 and the MSRB has not sought to do so, the MSRB nevertheless believes that the proposed rule change will provide municipal advisors with significant helpful guidance in understanding many aspects of their fiduciary duty and the conduct that is required of them.²

The MSRB is also proposing amendments to streamline the steps needed to comply with proposed sections (b) and (c) generally, which are also responsive to comments received regarding the combined requirements of the proposed paragraphs.³ In proposed Rule G-42(b), the MSRB proposes to combine the substantially similar disclosures of conflicts of interest in proposed paragraphs (b)(i)(A) and (b)(i)(G) as new proposed paragraph (b)(i)(F) and delete

¹ The MSRB this day also submitted a detailed response to commenters, which discusses the amendments contained herein and numerous other matters.

² See 80 FR 26752, at 26762.

³ See 80 FR 26752, at 26762-26763.

proposed paragraphs (b)(i)(A) and (b)(i)(G). The MSRB also would renumber proposed paragraphs (b)(i)(B) through (b)(i)(F), respectively, as proposed paragraphs (b)(i)(A) through (B)(i)(E).

The MSRB proposes amendments regarding proposed section (c), which requires the documentation of the municipal advisory relationship in writing, and, in proposed subsection (c)(ii), which provides that a municipal advisor must include in the documentation the disclosures of conflicts of interest and other information (i.e., information regarding certain legal or disciplinary events as specified in proposed subsection (b)(ii)). Under the proposed amendment, a municipal advisor would not be required to provide the disclosure of conflicts of interest and other information required under proposed subsection (c)(ii) if the municipal advisor previously fully complied with the requirements of proposed section (b) to disclose such information and proposed subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client. The MSRB believes that the proposed amendment, to be incorporated in Proposed Rule G-42 as the third sentence of new proposed paragraph .06 of the Supplementary Material, entitled “Relationship Documentation,” would permit a municipal advisor to avoid making duplicative disclosures regarding its conflicts of interest and other matters. The proposed amendment also would include, as the first two sentences of new proposed paragraph .06, the un-numbered paragraph previously located after proposed subsection (c)(vii). The MSRB believes that the material set forth in the un-numbered paragraph, which relates to updating and supplementing the relationship documentation, is more appropriately organized with the proposed amendment relating to proposed subsection (c)(ii) discussed above, and, therefore, proposes to organize such un-numbered paragraph in new proposed paragraph .06. Finally, with the incorporation of new proposed paragraph .06, proposed paragraphs .06 through .12 of the Supplementary Material would be renumbered, respectively, as proposed paragraphs .07 through .13 of the Supplementary Material.

The MSRB also proposes to amend, in response to comments, proposed subsection (c)(iv) of Rule G-42 of the original proposed rule change to require a municipal advisor, at the time of making the disclosures required under proposed subsections (c)(iii) and (c)(iv), to provide its clients with a brief explanation of the basis for the materiality of the change or addition to its Forms MA and MA-I. The proposed amendment would supplement a proposed requirement that the municipal advisor provide the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I to the client. The proposed amendment to include the explanation of materiality would allow a municipal advisor client to assess the effect that such change or addition may have on the municipal advisory relationship and evaluate whether it should seek or review additional information.

In response to a concern raised in the comments, the MSRB proposes to clarify, in proposed section (d), a specific requirement applicable to a recommendation made by a municipal advisor, and distinguish it from the requirements a municipal advisor is subject to when reviewing a recommendation made by another party. The proposed amendment to proposed section (d) would add a statement providing that “a municipal advisor making a recommendation must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client,” which would clarify the proposed requirement that the municipal advisor must determine, based on the

information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is suitable for the client. The proposed amendment would state more explicitly that a municipal advisor would be prohibited from making recommendations to clients regarding municipal securities transactions and municipal financial products that are unsuitable for such clients. To further clarify proposed section (d), the MSRB also proposes to modify proposed subsection (d)(ii) to provide that the requirement to inform the client that a recommendation is unsuitable potentially arises only in the context of the review of a recommendation of another, by adding the parenthetical phrase “(as may be applicable in the case of a review of a recommendation).”

The MSRB also proposes a minor amendment to clarify proposed Rule G-42(e)(i)(B), which prohibits a municipal advisor from delivering an invoice for fees or expenses for municipal advisory activities that do not accurately reflect the activities actually performed or the personnel that actually performed those activities. Specifically, as revised, the provision would prohibit the delivery of such an invoice if it “is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities.” The proposed clarification, which is responsive to comments that expressed concern regarding invoices containing minor or immaterial errors, would incorporate in the proposed provision an explicit, rather than implicit, limitation based on materiality, and is consistent with the MSRB’s explanation of the provision in the original proposed rule change.⁴

Finally, Amendment No. 1 would incorporate minor, non-substantive amendments to proposed subsections (e)(ii), regarding prohibited principal transactions. The proposed amendments to proposed subsection (e)(ii) would clarify the provision, to provide:

A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

Similarly, technical and non-substantive changes would be incorporated in proposed subsection (f)(i), defining the term, “Engaging in a principal transaction.” Finally, the proposed amendments to proposed paragraph .11 of the Supplementary Material would renumber the provision as proposed paragraph .12 of the Supplementary Material, as previously noted, and change the reference in the second line of the provision from ““engaging in a principal transaction”” to ““principal transaction”” to conform proposed renumbered paragraph .12 to proposed amended subsection (f)(i).

⁴ In the original proposed rule change, the MSRB noted that the scope of inaccuracy targeted by the proposed provision was “limited to the significant subjects of the services performed and personnel who performed those services.” See 80 FR 26752, at 26777.

In this Amendment No. 1, the MSRB does not propose to amend the previously filed proposed amendments to MSRB Rule G-8.

The changes made by this Amendment No.1 to the original proposed rule change are indicated in attached Exhibit 4. Material proposed to be added is underlined; material proposed to be deleted is enclosed in brackets.

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined; material proposed to be deleted is enclosed in brackets.

EXHIBIT 4**Rule G-42: Duties of Non-Solicitor Municipal Advisors**(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes[, without limitation,] a duty of loyalty and a duty of care.

(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

[(A) any actual or potential conflicts of interest of which it is aware after reasonable inquiry that could reasonably be anticipated to impair its ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable;]

[(B)A] any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

[(C)B] any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

[(D)C] any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

[(E)D] any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

[(F)E] any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

[(G)E] any other [engagements]actual or [relationships]potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or

on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) 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.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

[During the term of the municipal advisory relationship, the writing(s) must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor.]

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, or, if the review of a recommendation of another party is requested by the municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is suitable for the client, and a municipal advisor making a recommendation must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and

(iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

(e) *Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that [do not accurately reflect] is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or

qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible “normal business dealings” as described in Rule G-20.

(ii) A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the[same], municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

(f) *Definitions.*

(i) “[Engaging in a principal]Principal transaction” shall mean, for purposes of this rule, when acting as principal for one’s own account, [selling]a sale to or [purchasing]a purchase from the municipal entity client of any security or [entering]entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

(ii) “Advice” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(iii) “Affiliate of the municipal advisor” shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iv) “Municipal advisor” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations

thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(v) “Municipal advisory activities” shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.

(vi) A “municipal advisory relationship” shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vii) “Municipal entity” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(viii) “Obligated person” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(ix) “Official statement” shall, for purposes of this rule, have the same meaning as in Rule G-32(d)(vii).

---Supplementary Material:

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

- (a) any advice provided to or on behalf of a client;
- (b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities

transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other

information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

[.06].07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

[.07].08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

[.08].09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

[.09].10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" include those required to:

- (a) effectively service the municipal advisory relationship with the client;
- (b) act in accordance with any special directions from the client;
- (c) understand the authority of each person acting on behalf of the client; and
- (d) comply with applicable laws, regulations and rules.

[.10].11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

[.11].12 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(i) of this rule, which defines the term "[engaging in a]principal transaction," the phrase "other similar financial product" includes a bank loan, but only if it is in an aggregate principal amount of \$1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

[.12].13 529 College Savings Plans and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans and other

municipal fund securities. All references in this rule to an “official statement” include the plan disclosure document for a 529 college savings plan and the investment circular or information statement for a local government investment pool.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) No change.

(ii) Reserved.

(iii) Reserved.

(iv) *Records Concerning Duties of Non-Solicitor Municipal Advisors pursuant to Rule G-42.*

(A) A copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability.

(v) No change.

EXHIBIT 5**Rule G-42: Duties of Non-Solicitor Municipal Advisors****(a) Standards of Conduct.**

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

(b) Disclosure of Conflicts of Interest and Other Information. A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) 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.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, or, if the review of a recommendation of another party is requested by the municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities

transaction or municipal financial product is suitable for the client, and a municipal advisor making a recommendation must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and

(iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

(e) *Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or

obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible “normal business dealings” as described in Rule G-20.

(ii) A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

(f) Definitions.

(i) “Principal transaction” shall mean, for purposes of this rule, when acting as principal for one’s own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

(ii) “Advice” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(iii) “Affiliate of the municipal advisor” shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iv) “Municipal advisor” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(v) “Municipal advisory activities” shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.

(vi) A “municipal advisory relationship” shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal

advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vii) “Municipal entity” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(viii) “Obligated person” shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(ix) “Official statement” shall, for purposes of this rule, have the same meaning as in Rule G-32(d)(vii).

---Supplementary Material:

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(a) any advice provided to or on behalf of a client;

(b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client’s securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client’s best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage

or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

.07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that

municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

.08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

.09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

.10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts

concerning the client and concerning the authority of each person acting on behalf of such client. The facts “essential” to “knowing a client” include those required to:

- (a) effectively service the municipal advisory relationship with the client;
- (b) act in accordance with any special directions from the client;
- (c) understand the authority of each person acting on behalf of the client; and
- (d) comply with applicable laws, regulations and rules.

.11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor’s compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor’s compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor’s expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

.12 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(i) of this rule, which defines the term “principal transaction,” the phrase “other similar financial product” includes a bank loan, but only if it is in an aggregate principal amount of \$1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

.13 529 College Savings Plans and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans and other municipal fund securities. All references in this rule to an “official statement” include the plan disclosure document for a 529 college savings plan and the investment circular or information statement for a local government investment pool.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

- (i) No change.
- (ii) Reserved.
- (iii) Reserved.
- (iv) *Records Concerning Duties of Non-Solicitor Municipal Advisors pursuant to Rule G-42.*
 - (A) A copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability.
- (v) No change.