

Comment on Notice 2014-08

from Sonja Sullivan,

on Friday, May 16, 2014

Comment:

May 16, 2014

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street – Suite 600
Alexandria, VA 22314-3412

RE: Establishing Professional Qualification Requirements for Municipal Advisors
Regulatory Notice 2014-08

Dear Mr. Smith:

I am a CPA. I do occasional research for a small FINRA regulated firm. I have had an opportunity to review 3PM's comprehensive comments regarding the rules proposed by Regulatory Notice 2014-08 - Establishing Professional Qualification Requirements for Municipal Advisors. I urge the MSRB's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Respectfully yours,

Regards,

Sonja Sullivan, CPA

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3PM Comment to Reg Notice 2014-08.pdf

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Corporate Secretary
Municipal Securities Rulemaking Board
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***RE: Establishing Professional Qualification Requirements for Municipal Advisors
Regulatory Notice 2014-08***

Dear Mr. Smith:

The Third Party Marketers Association (“3PM”) supports MSRB’s initiative to establish a separate professional requirement for the recently created market participant profile of Municipal Advisor, which is outlined in the MSRB’s Regulatory Notice 2014-08.

While we understand the need for comprehensive and current registration requirements, we caution that there is a critical disconnect in the initial approach of MSRB’s Regulatory Notice 2014-08 - Establishing Professional Qualification Requirements for Municipal Advisors. Primarily, we believe the definition of Municipal Advisor extends beyond what is necessary because as written it would effectively require certain professionals who are already licensed, to be subject to another, duplicative, regime. Placement Agents who introduce alternative investment managers to public pensions are already required to be registered with FINRA as registered representatives of broker-dealers. These placement agents are already properly registered in the scope of their business activities as General Securities Representatives because they are participating in private securities transactions. The scope of their qualifications and training includes municipal securities.

According to the SEC’s Final Rule regarding Release No. 34-70462; File No. S7-45-10, “As discussed in the Proposal, until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated, and municipal advisors were generally not required to register with the Commission or any other federal, state, or self-regulatory entity with respect to their municipal advisory activities.”, it is clear to see the identification of municipal market participants which the MSRB is targeting for these professional qualification requirements. These municipal market participants are involved with the issuance of municipal securities and related matters.

The placement agents serving the U.S. alternative asset management industry are registered with broker-dealers regulated by the SEC and FINRA, and all of the placement agent firms operate in an environment of rigorous compliance oversight and controls. All U.S. placement agents must be registered with FINRA as General Securities Representatives by passing the Series 7 exam which contains a significant amount of content on municipal securities and related rules. In addition, all General Securities Representatives are required to complete Continuing Education requirements on a recurring

frequency which tests foundational and updated content knowledge.

As outlined in FINRA’s General Securities Representative Qualification Examination – Content Outline, the municipal securities content for the Series 7 examination is one of the top 2 focus topics for questions accounting for approximately 20% of the exam:

Subject area	Approximate number of	Percentage of exam
Options	50	20%
Municipal Securities	50	20%
Packaged Securities	20	8%
Direct participation programs	15	6%
Corporate Securities	15	6%
Securities industry regulations	15	6%
Exchange operation / NYSE	15	6%
Economics and securities analysis	15	6%
Margins	10	4%
US government securities	15	6%
Retirement plans and taxation	15	6%
Customer Accounts	15	6%

This data clearly supports the historical framework of proper qualification requirements being in place for placement agents who introduce alternative investment managers to public pensions. These market participants should not be required to meet additional professional qualification requirements which are not relevant to their business activities.

To overcome this disconnect, we strongly recommend that the MSRB focus on the relevant regulatory precedent set by FINRA in 2009 regarding the Series 79 – Limited Representative Investment Banking. Following the SEC’s approval, Rule 1032 (i) effectively developed a qualification examination for this category. Individuals who were registered as General Securities Representatives (Series 7) and engaged in the member firm’s investment banking business as described in Rule 1032 (i) were provisioned with a grandfathering clause to the new registration category which was given a timeframe of six months from the effective date of the Rule.

FINRA’s goal of establishing a special limited license category was effectively implemented by providing market participants who were already properly licensed and conducting business activity within the scope of the special license category with a transitional “Opt-In” Period as outlined in FINRA Regulatory Notice 09-41. This transitional period applied to both General Securities Representatives and General Securities Principals in supervisory roles.

FINRA is also currently considering comments to Regulatory Notice 14-09 which would create a separate registration category for limited purpose firms, such as placement agents, that offer securities to

“Qualified Investors”. Please see the appendix for a copy of 3PM’s comments to FINRA Regulatory Notice 14-09. Whether as a registrant under FINRA’s new regulatory scheme for limited purpose firms, or as broker-dealers who act as placement agents under the existing rules and regulations, we believe that the rule set(s) are adequately broad to encompass all broker-dealer activities, including municipal activities, and do not require redundant rules, regulations and licenses.

The MSRB’s current proposal for professional qualification requirement is to be applied to the newly created profile of Municipal Advisor which parallels the aforementioned scenario. The MSRB’s goal is to establish special professional qualification requirements for Municipal Advisors and those who are charged with supervising them. For those market participants, specifically General Securities Representatives and General Securities Principals, the MSRB should provide a transitional “Opt-In” period for the new professional qualifications proposed which follows the precedent and allows proper exemption to qualified and registered individuals.

The Commission rightly provides exemptive relief to market participants who are already registered with another national regulatory authority such as the SEC and the NFA, as one of the directives of the Municipal Advisor initiative is to ensure that all market participants which are conducting business activities relevant within the municipal securities industry are properly registered with a minimum of one national regulatory authority. This avoids duplicity in the layered regulatory framework which we all operate within while mitigating the practice of double-dipping market participants for fees and registration costs.

We strongly suggest that the MSRB and the Commission should extend this logical methodology to dedicated placement agents who are already registered with FINRA, the SEC and potentially other national regulatory authorities such as the NFA. This would allow the proposal of establishing professional requirements to target the specific market participants who are truly responsible for attaining and maintaining these professional proficiencies in knowledge and practice in the municipal securities arena, while ensuring that properly registered placement agents are not unfairly burdened with additional examination requirements which are not testing the proficiency of their skill sets which is in selling Reg D investment opportunities.

Placement agents who interface with public pensions have been incorrectly bucketed into the category of Municipal Advisors based on the fact that they may introduce pre-vetted investment managers and opportunities to these public pensions. Placement agents do not act in any fiduciary capacity to these public pensions, but rather serve as an informational channel that assists public pensions in identifying potential allocation targets. This construct is materially distinct from the description that the MSRB publically acknowledges on their website regarding the role of municipal advisors which reads as follows:

Municipal advisors act in a fiduciary capacity for issuers.

- Placement Agents do not act in a fiduciary capacity for issuers.

The strategic services offered by municipal advisors may include development of comprehensive financing plans; analysis and monitoring of client portfolios; advice on potential financing solutions and new financial products; and recommendations for tracking and achieving on-budget performance.

- Placement Agents do not offer these services.

Municipal advisors also provide advice on conditions of a new issue, such as structure, timing, marketing, fairness of pricing, terms and bond ratings.

- Placement Agents do not provide advice of any nature to prospective investors.

During the transaction, municipal advisors represent the interests of state and local governments in negotiations with underwriters, rating agencies, banks and others involved. Municipal advisors also assist state and local governments with preparing disclosure documents, including official statements and continuing disclosure documents.

- Placement Agents do not represent or engage in negotiations with underwriters or the other aforementioned counterparties.

It is critical that the MSRB consider that the SEC's final rule, as aforementioned, **provides exemptions provided under the rule which are based on the activities of the [Municipal] advisor rather than the type of market participant.** Placement Agents do not interface with public pensions regarding municipal securities, and do not advise public pensions or municipalities regarding portfolio construction, and do not need to have a specific level of understanding of municipal securities instruments as they do not directly relate to a placement agent's activities.

In addition to an examination for Municipal Advisor Representatives, the MSRB is also adding a new registration classification for Municipal Advisor Principals. We once again refer you to the arguments stated above and remind the MSRB that all Municipal Advisors that are already registered as representatives with FINRA are also supervised by the appropriately registered FINRA Principal.

Given that most placement agents who are also MAs are small firms, it is important to recognize the additional burdens the MSRB's proposed rules would place on these small firms. Not only will individuals in our firms have to sit for an examination, but sometime in the future, supervisors will also be required to sit for a MA Principal examination. We believe that this is unnecessary given the fact that we are already registered with FINRA, as both Representatives and Principals, for all of our private placement activities. Those of us who conduct municipal activities carry a specific municipal license, a general securities license, and (or are supervised by someone with) a principal license.

In addition to the registration examinations, it is unreasonable to believe that the MSRB will also be implementing new continuing education requirements for MAs which will further burden small firms who are already registered and subject to continuing education requirements. While this is not covered in Notice 2014-08, we believe that the entire picture must be taken into account to judge the addition impact on small firms.

We further believe that the MSRB's decision to design only one examination that would cover material relevant to all Municipal Advisors is faulty. As articulated earlier in this letter, the definition of Municipal Advisor is extremely broad in that it covers a number of constituencies whose business models vary dramatically from one another. Given this reality, Municipal Advisors will be required to learn material relating to one another's businesses that will be used solely for the purpose of passing the MA qualification examination and never in the course of our day-to-day business operations. This

requirement is time consuming and irrelevant to the MSRBs mission of investor protection is putting an undue burden on the small firms that are already licensed through FINRA.

Questions posed by the MSRB

The MSRB requested comment concerning the following issues:

- **Should all individuals engaged in municipal advisory activities demonstrate a minimum level of competence by taking and passing a general qualification examination?**

While we believe that all individuals engaged in municipal advisory activities demonstrate a minimum level of competence by taking and passing a qualification examination, we do not believe that this necessary entails that a new examination be written or administered. We believe that the MSRB has the responsibility to understand the specific activities undertaken by different types of Municipal Advisors, such as placement agents, and then to assess whether or not there are any existing examinations that cover these activities. We are confident that the MSRB will determine that placement agents are adequately licensed under the FINRA examination regime. Unless a gap exists, we do not believe a new examination should be required. In this instance, 3PM firmly believes that any of its members offering securities to Municipalities are already covered by FINRA's rules and their qualifying examinations. As such it is unnecessary for the MSRB to write a new examination for placement agents and subject our members to yet another qualifying examination. We believe that the MSRB's efforts should be focused on those Municipal Advisors that currently do not fall under the purview of existing regulatory authorities and that have not passed any type of qualifying examination.

- **Is the one-year grace period sufficient time for municipal advisor representatives to study and take (and, if necessary retake) the municipal advisor representative qualification examination?**

Given the fact that placement agents who are required to sit for the municipal advisor representative examination will need to learn a great deal of material that is irrelevant to our business activities, and the fact that most of our constituents are small businesses and require all of their representatives focused of generating new business, we do not feel that one year is sufficient time for representatives to study and take and if necessary retake the qualification examination.

- **Do dealers believe the current 90-day apprenticeship requirement for municipal securities representatives is beneficial?**

Since all of our members have been conducting business for several years, we do not believe that a 90-day apprenticeship requirement is necessary. An apprenticeship might be worthwhile for individuals that have never before worked in the industry, however, 3PM members are seasoned professionals with experience working in the financial services arena.

- **Would there be any negative consequences if the current municipal securities representative apprenticeship requirement were eliminated?**

No. It is the responsibility of each firm to ensure that their employees are properly trained to carry out their roles and are supervised in their activities.

- **Would dealers realize any cost savings if the current municipal securities representative apprenticeship requirement were eliminated?**

Yes, it is likely that firms will realize some cost savings although we are not experienced in this area to specifically comment on how this would be achieved.

- **Is there a benefit to having an apprenticeship period for municipal advisor representatives?**

No.

- **How should economic analysis apply to proposed new registration classifications and the establishment of a basic qualification examination?**

Economic analysis should be used on a firm level to assess the time required for individuals to learn, study and sit for (and re-take if necessary) the new qualifying examination. It should also be used to quantify the lost opportunities firms will face while their employees are focusing on the qualification examination rather than on new business generation. The analysis should also take into account the Principal examination which will be forth coming as well as any new continuing education requirements that will be proposed in subsequent rules.

We also believe that economic cost-benefit analysis should be performed because of the anticipated high costs to MSRB for implementation of what we believe to be, with respect to placement agents, a redundant or worse an irrelevant examination. Costs the MSRB will likely experience include convening industry groups to assess the need for qualification exams, the cost of MSRB staff to establish qualifying examinations and to test their efficacy as well as the time and effort of other MSRB staff such as the Office of General Counsel and senior staff members such as Lynnette Kelly who have taken the time to seek industry input on the examination. The time and effort taken up by this comment process and the time of the Board of Directors to debate this proposal is also, very likely, a significant expense.

Costs such as the implementation of the examination process should also be considered and applied not only to the regulatory perspective, but to the firm assessment as well since a portion of these costs will be passed on the firms whose employees will have to take a Representative and Principal examination and will likely have continuing education requirements as well.

Once the cost is determined, it should be then compared to the benefit the industry will gain – i.e. investor protection - by having MAs take the qualification examinations.

We believe that in the case of placement agents, who are already covered by FINRA rules and examinations, the benefit will be little. As such, the cost of this undertaking for constituents who are already registered with other Regulatory Authorities will far out-weigh any possible benefits that will be achieved through this process.

Overall, 3PM applauds the thoughtful approach the MSRB has taken towards rulemaking. From the outset, the MSRB has been sensitive to constituencies that are already subject to regulatory oversight and whenever possible has taken the steps to harmonize their new rules with existing rules. Furthermore, given that most of 3PM's constituents are small firms, we also truly appreciate the MSRB's sensitivity to the burdens faced by small firms and that where ever possible you have worked to minimize the impact any new rules have on small firms. We ask only that you take these initiatives one step further and apply them to this rule proposal.

3PM strongly believes that the current regulatory qualification framework in place regarding the specific business activity of placement agents satisfies the regulatory qualification standards which apply directly to a placement agent's business activity, and as such that any new and additional professional qualification requirements would be unduly applied to placement agents who currently satisfy several professional qualification requirements and are required to maintain these levels of professional qualification through continuing education. As such, we strongly recommend that the MSRB seeks to reconcile to current disconnect by reconsidering their position on the grandfathering provision for General Securities Representatives and General Securities Principals who are only focused on private securities transactions and NOT focused on municipal securities transactions.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (585) 203-1480 or by email at donna.dimaria@tesseractcapital.com.

Thank you in advance for your consideration.

Regards,

Donna DiMaria
Chairman of the Board of Directors
3PM Association

Appendix

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 than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

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 and international 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 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