



November 9, 2011

Chairman Mary Schapiro  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Room 10200  
Washington, DC 20549

Re: Municipal Advisory Services

Dear Chairman Schapiro:

The Board of the Municipal Securities Rulemaking Board (“MSRB”) appreciates the opportunity to have engaged in a discussion with you and your senior staff concerning issues of mutual concern in the municipal securities market.

We are following up with the information we promised you concerning one of those issues, the failure to register as municipal advisors by certain market participants who are performing traditional municipal advisory activities. As the Commission finalizes the definition of “municipal advisor” as part of its permanent municipal advisor registration rule, your staff may find the attached list of traditional municipal advisory activities to be useful. Please understand that this list is not intended to be an exhaustive list of all activities that would be viewed as municipal advisory activities under Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. For example, the list does not include activities that could be viewed as a solicitation of a municipal entity or obligated person. The list also does not include a comprehensive list of activities with respect to all forms of municipal financial products, which would be highly dependent on the range of activities to be included within the definition of investment strategies which is still under review by the Commission. Rather, this list is intended to provide a fuller understanding of the range of municipal advisory activities for which there can be little dispute as to whether those activities were intended to be covered by Section 975 of the Dodd-Frank Act.

Some aspects of the activities listed may also sometimes be undertaken by persons within the ambit of services traditionally provided by such persons as recognized professionals subject to enforceable legal or professional codes of ethics/conduct with respect to such specific activities, including persons engaged in professions for which an exception to the definition of municipal advisor is provided in Section 975 of the Dodd-Frank Act. Similarly, underwriters appropriately perform many of these activities, particularly those that are listed as transaction-related services,



Chairman Mary Schapiro

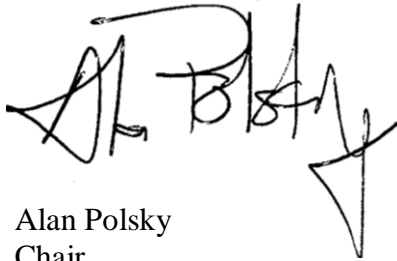
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in the course of their underwriting duties as integrally related activities necessary to fulfilling their function in a professional manner, consistent with the exception for underwriters in the definition of municipal advisor under Section 975 of the Dodd-Frank Act. Nonetheless, we are of the view that persons engaging in any such activities that are not integral to the undertaking of their professional or underwriting activities must be registered as municipal advisors subject to all federal securities laws and regulations applicable to municipal advisors. In particular, it is critical that laws and regulations requiring the attainment of a minimum standard of professional qualifications and providing for the attachment of a federal fiduciary duty when providing advice to a state or local governmental client clearly apply to persons engaging in such municipal advisory activities. Yet, since the publication of the Commission's interim registration rule for municipal advisors, the MSRB has become aware of firms that have not registered with the SEC or MSRB, even though they are engaged in some of the activities described on the attached list. In such instances, we transmit referrals of specific firms for which we have no record of registration to the Commission for further investigation and possible enforcement action.

We appreciate this opportunity to provide meaningful input to the Commission on this important topic. We look forward to working with you and the other members of the Commission as you proceed with municipal market reform. We are available to act as a resource to the Commission and encourage you and your staff to call upon our collective expertise on a regular basis in this area of endeavor. If you or the Commission's staff members have any questions, or if we can provide additional information, please feel free to call me or the Board's staff.

Very truly yours,

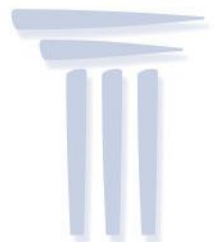


Alan Polsky  
Chair

Enclosure

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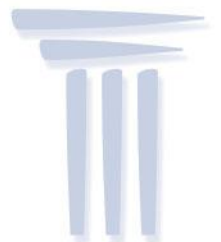
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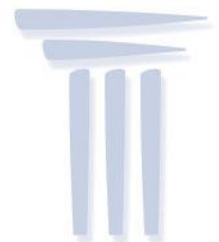
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**TRADITIONAL MUNICIPAL ADVISORY ACTIVITIES**

STRATEGIC SERVICES	TRANSACTION-RELATED SERVICES*
<ul style="list-style-type: none"> <li>• Development of comprehensive financing plans that include the use of various funding alternatives, including pay-as-you-go strategies, short/long term debt issuance, financing lease transactions, and public-private partnerships</li> <li>• Preparation of models to review debt capacity constraints under a series of revenue and economic scenarios</li> <li>• Development of recommendations on specific program steps to address capital and equipment financing needs and any related bond structuring</li> <li>• Project financial feasibility analysis</li> <li>• Analysis of and advice on new financial products</li> <li>• Analysis and review of numerous financing solutions, including variable rate debt, swaps, commercial paper, privately placed financings and callable bonds</li> <li>• Budget planning and analysis, particularly with respect to capital and other financial matters for which financing transactions could reasonably be considered as well as collateral budgetary impacts</li> <li>• Overall rating agency strategy, including in particular analysis, advice and actions taken on behalf of issuers with respect to rating agency matters between financing transactions</li> <li>• Analysis of issuer portfolio (to determine whether to recommend restructuring); monitoring of floating rate portfolio instruments</li> <li>• Assistance to issuers in establishing/monitoring implementation of financial controls as they relate to sources of repayment for and uses of proceeds of issuers' financing transactions</li> <li>• Setting periodic targets within each fiscal year and implementing corrective measures when necessary to assure on-budget performance for capital and other financial matters for which financing transactions could reasonably be considered</li> <li>• Identify funding alternatives, including a variety of structured products, bond banks, bank loans and public-private partnerships</li> <li>• Structure delinquent assets for sale – non-performers like tax and utility liens or vacant buildings</li> <li>• Assist in negotiation of contracts with significant financial terms that include the use of bonds or alternative funding sources</li> </ul>	<ul style="list-style-type: none"> <li>• Preparation of rating strategies and presentations for existing as well as new credits</li> <li>• Preparation of investor “road shows” and one-on-one investor discussions</li> <li>• Advising issuers regarding the method of sale for particular transactions, taking into account market conditions and other factors</li> <li>• Assisting issuers with the selection of underwriters, underwriter compensation issues, syndicate structure, and bond allocations</li> <li>• Assisting issuers with negotiated sales, including advice regarding retail order periods and institutional marketing, analysis of comparables and secondary market data</li> <li>• Assisting issuers with competitive bond sales, including bid verification, TIC calculations and reconciliations/verifications of bidding platform calculations, preparation of notice of sale, obtaining CUSIP numbers</li> <li>• Planning and coordinating bond closings; preparing post-sale reports of bond sales</li> <li>• Developing Requests for Proposals/Qualifications for underwriters, bond or disclosure counsel, credit enhancement facilities, investment products and other professional services</li> <li>• Development of investment guidelines for issuer and/or permitted investments for indentured funds</li> <li>• Preparation of preliminary cash flows/preliminary refunding analysis</li> <li>• Preparation of plan of finance and related transaction timetable</li> <li>• Assist in preparation of preliminary official statement, including coordinating updates from issuer (e.g., budget office, finance office, etc.)</li> <li>• Negotiation of various deal documents with underwriters, rating agency, obligated persons, fiduciaries (e.g., trustee, paying agent, tender agent), credit enhancers, and banks with respect to loans</li> <li>• Management of escrow bids</li> <li>• Supervision of SLGS applications</li> <li>• Provide cash flow calculations for verification of cash flows in a refunding</li> <li>• Analysis to determine whether to use SLGS, open markets and/or agency securities</li> <li>• Coordination with Depository Trust Company</li> <li>• Coordination of internal/external accountants, feasibility consultants, escrow agents</li> <li>• Assistance provided to issuers/obligated persons in addressing citizen concerns related to proposed project and related financing</li> <li>• Procurement: printers, verification agents, etc.</li> </ul>

**\* Underwriters also appropriately perform many of the transaction-related services.**



<u>DERIVATIVES SERVICES</u>	<u>POST-ISSUANCE SERVICES</u>
<ul style="list-style-type: none"><li>• Strategic advice regarding the use of swaps for both debt and assets, taking into account risks and benefits</li><li>• Evaluating financial aspects of derivative product proposals from underwriters and swap counterparties</li><li>• Monitoring the swap market and keeping clients informed of opportunities and issues</li><li>• Evaluating and monitoring the credit quality of potential and existing swap counterparties</li><li>• Swap transaction execution, such as pricing, termination and novation</li><li>• Negotiated and competitive swap pricing</li><li>• Negotiating financial terms and conditions and documentation of derivative arrangements</li><li>• Derivative valuation services and GASB 53 reporting</li><li>• Developing derivatives policies</li><li>• Working with boards of directors/issuers on derivatives education and policy development</li></ul>	<ul style="list-style-type: none"><li>• Monitoring secondary market trading activity</li><li>• Assistance provided to issuer/obligated persons regarding compliance with operating or coverage ratios</li><li>• Assistance to issuers in preparing and submitting continuing disclosures as they related to updated financial information</li><li>• Monitoring of reserve fund levels</li><li>• Restructuring and Bankruptcy Services<ul style="list-style-type: none"><li>• Restructure debt with complex credit structures</li><li>• Assist in sourcing debtor-in-possession financing</li><li>• Conduct credit analysis and ratings defense</li></ul></li><li>• Public-Private Partnership Services<ul style="list-style-type: none"><li>• Sell side engagements – work with the government sponsor to develop a financial structure that meets the stated goals</li><li>• Buy-side engagements – represent leading international infrastructure and financial investors in analyzing the value of projects and structuring bids to offer best value</li><li>• Broker engagements, representing the public interest, completing in-depth financial and policy review to respond to stakeholder concerns</li><li>• Valuation advisor for key assets and projects across asset classes</li></ul></li></ul>

