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March 10, 2014

VIA Electronic Mail

Municipal Standards Rulemaking Board
www.msrb.org

Ladies and Gentlemen:

This is in reference to your Regulatory Notice 2014-01 issued on January 9, 2014.

As a sole practiiciner municipal specific financial advisory firm since 1989, I am concerned with the impact the draft Rule will have on our practice and similarly situated firms, as well as the institutionalization it may promote in the field, to the detriment of municipal clients and conduit issuers, who will face less choice and options and higher costs for professional advice.

1. ECONOMIC ISSUES; REGULATORY SCOPE

The Notice correctly states that a consequence of the Rule may be a higher cost burden on smaller firms (at 25), and that the Act only permits regulatory burdens appropriate or consistent with the Act's purposes of preventing fraud and protecting statutorily protected parties. The genesis of the Act's provisions was inappropriate conduct by a small group of advisors, which the Act mitigates against by providing a strict fiduciary standard.

Perhaps it would be better to determine first, with the actual experience of time, whether the Act itself has resolved the issues Congress was concerned with before the MSRB resorts to the regulatory authority provided in the Act. Rather than burden the entire field of FA's with time-consuming and costly regulations, it may be appropriate to determine what, if any, abuses or inappropriate conduct remain requiring the regulatory surveillance of this Rule and others. Alternatively, the Board should consider initially limiting the Rule to an enumeration of prohibited forms of conduct and practices, rather than imposing extensive compliance, supervision, etc.

Assuming a specific need for action now can be demonstrated by the Board, the proposed Rule and its accompanying Notice do not provide appropriate data or a specific cost benefit analysis showing why the regulatory burdens, particularly on small firms, are justified, The Board concedes that it has little data, but justifies compliance with its own

policies and the Act's requirements through a listing of generalized non-specific benefits. It concedes that the cost burden may reduce competition, and increase costs to the FA firms and potentially their municipal clients, but does not propose any mitigation for this. Therefore, the Board may not have adequately satisfied its own policies in formulating certain provisions of the draft Rule.

There is no suggestion of a streamlined checklist from the Board to promote compliance/reduce costs or a sample timeline for firms to consider. No proposed forms to facilitate compliance are provided, and on a recent webinar, staff from the MSRB dismissed the suggestion of a baseline compliance manual to reduce administrative costs for smaller firms. No estimate of the time or expense for compliance is provided, as is applicable to other federal agencies such as the IRS through the OMB. Rather, the Board considers FA firms like the larger broker-dealers it administers, with their larger profit margins and embedded compliance staff. However, unlike broker-dealers, FA firms do not handle client funds or direct client investments—they only offer advice and guidance to their principals (the municipal clients), which is a more restricted template for regulation. This distinction should be considered further.

Accordingly, the Board needs to address in more concrete detail specific costs of the proposed Rule, especially on small shops, and whether the benefits accruing are specifically (and not in a generalized manner) material enough to impose the burdens, as recognized by the Congressional draftsmen in the statute.

2. COMPETITIVE IMPACTS

As more entrepreneurial in nature, smaller and one-person firms can be more flexible in their terms and arrangements with clients, and can offer services on a more cost effective basis, without compromising quality. In many cases, professionals from the larger FA firms or broker dealers populate these entities, offering the same level of expertise that they provided at the larger entities. As smaller firms are not controlled by larger financial institutions, with bonus pools and parent companies to consider, they can be more accommodating on services and rates. For example, as a member of my Town's citizen's finance committee, I offer free FA services to the Town, saving it over $150,000 in FA fees, as well as $140,000 from negotiating a reduction in swap trade profits with the Town's broker-dealer I also provide discounted rates to my local elementary school district.

Furthermore, when Trinity County in Northern California faced a potential TRAN default and Chapter 9 filing, at the County Treasurer's request I organized a team of 3 FA's to provide services to replace the County's debt with a longer term obligation, with reduced FA fees, closing a very difficult transaction the day before the potential default. The amount of services required did not justify the fee for the assignment, which larger broker-dealer firms had declined. Two of the FA's subsequently used their expertise to assist Vallejo and Stockton with their bankruptcy problems.

The Board is correct in its assumption that negative competitive consequences may flow from the Rule for smaller firms, and lead to consolidations or exit from the field, apart from those whose exit is welcomed. Should the Rule require an extensive formalized policy and procedure ritual, even for one-person operations, this burden may diminish the pool of firms and individuals available, and lessen competition. It could also lead to the institutionalization of the field, where larger firms, akin to oligarchies, dominate, and where alternatives and ideas available to issuers are limited to those accepted by larger institutions. For example, in 1996 I was asked to assist a Christian school to finance a new junior high-high school campus on a 40 acre site in San Jose. Despite the negative feedback from one large bond counsel, through a lengthy two year process we were able to arrange an initial $28 million tax-exempt private placement financing, avoiding closure of the school as its lease of public facilities had lapsed. It is now a 2000+ student facility. The initial negative reading (which differed from that of other large bond counsel) and extensive time commitment would have made this difficult to undertake in a larger, more bureaucratized setting.

3. INSURANCE MANDATES

The market for FA e&o insurtance is very sparse and spotty, particularly for small firms, which do not generate significant premium income to insurers. Deductibles and premiums have increased, and in the case of my carrier, policy terms have been cut from three years to two years, which could herald their exit (I have a zero controversy and claims history). The Act was not intended to address such administrative issues, as its emphasis was preventing fraud, and the Board's focus should remain there.

The Board can be helpful by fostering and approving insurance pools for smaller firms and estabilishing a national database on claims to provide insurers with industry-wide data that hopefully indicate this is a profitable line of business.

No mandate for insurance should be required of FA's and disclosure of insurance terms should be voluntary with the issuers, much as it is now with individualized requirements by issuers in each FA RFP, etc.

4. EXTENSION OF RULES TO DODD-FRANK ACT NON-LISTED PARTIES

This concept is again broadening the scope of the statute, without Congressional evidence of concern here, as well as having mischievous consequences respecting multiple fiduciary relationships. For example, in conduit transactions, the FA usually is engaged by the borrower, not issuer. In fact, the obligation is non-recourse to the issuer, whose involvement is principally for the upfront fee income and smaller annual payments. If the FA is obligated to both parties, not by their choice but by regulatory fiat, this may lead to conflicts that potentially may not be waivable, as well as extra expense. For FA's to operate most effectively, they need to be answerable to one client per transaction.

5. OFFICIAL STATEMENT REVIEW

Any action by the Board on this topic vis-à-vis FA's only adds additional requirements and cost where clear lines of responsibility already exist. Disclosure counsel is responsible for the Official Statement, both its drafting and content. To the extent it is based upon information provided by the issuer or borrower, this is frequently noted in a disclaimer by the Disclosure Counsel in the Official Statement. While most FA's review it, adding regulatory responsibility will create unnecessary potential conflicts among the financing team, including potential impasses regarding language or revisions, and add cost to the issue. It also potentially makes the FA a guarantor of the issuer and the disclosure counsel, which position is not appropriate to the FA's role (and for which it is not being compensated).

Many FA's now add a statement in their fee paragraph as to their involvement, which should suffice to guide investors, without further mandates from the Board. . A corollary consequence is that this imposition potentially diminishes insurance availability for FA's given the uncertainties it creates in responsibility, liability and risk.

6. FEASIBILITY STUDY/ANCILLARY DOCUMENT REVIEW

The FA's role is not to guarantee the financing, the Issuer, the borrower or the work of bond counsel or disclosure counsel, which may be a potential consequence of your proposal on feasibility study evaluation. The FA's role is more limited in nature, to review of financial structures, cashflows, financial assumptions, financial risk to the issuer or its enterprise and similar questions.

The FA is not acting as, nor is capable of serving as, supervisory engineer, architect, zoning administrator, attorney, real estate professional or appraiser, and it is inappropriate to require these responsibilities of FA's. Nor are they expert enough to be legally able to evaluate the bonafides of these professionals. As a matter of caution, FA's may review these documents, but mandating review creates a legal liability that merges the FA's role to that of supervisory professional over the other participants. This is beyond the scope and purpose of the statute, and the FA's expertise. It creates the very circumstances for FA's that the Board should want to avoid.

7. FEE SPLITTING

Smaller FA firms may outsource some of their back office tasks, such as computer run generation, to other entities, which may include FA's. This may be done on a per project or per hour basis, and payment to the entity would typically not be dependent upon successful conclusion of the financing or payment to the FA of its fee. As the payments are made by the FA firms for discrete services, akin to payments to a temporary employment agency or consultant, they should **not** be considered within the concept of fee splitting.

Similarly, where two FA firms contract with the issuer to perform services for a predetermined fee, that is disclosed to the issuer (similar to what was required by keep Trinity County from a Chapter 9 filing), this type of arrangement should be permissible under the Board's rules.

8. TIMING OF FA CONTRACT APPROVAL; IMPLIED CONFLICT WAIVER

Issuers prefer to approve all documents, including fee agreements, at one time, which may be close to the date the POS is released. Potentially the draft rule imposes a new timeline, requiring the FA fee agreement approval first, before any other steps are taken. This doubles the internal work for the issuer's staff.

To avoid unnecessary additional steps, the Board should clarify that so long as an issuer is provided the specifics of the fee arrangement in writing ab initio by the FA, which ratification can occur subsequently, this will satisfy the Rule.

Similarly, FA's may provide computer runs and other financing strategy materials to a prospective issuer, as part of the outreach efforts of the FA. This also may arise in the context of presentations to an issuer or multiple issuers on debt alternatives or specific potential debt issuances; The Board should clarify that this does not constitute the performance of FA services for purposes of timing of fee disclosures, until the issuer(s) consent(s) to proceed.

Regarding conflicts of interest arising from compensation arrangements, all fee arrangements or services contracts by definition involve adverse interests between parties. Other personnel in the municipal finance business, subject to similar SEC anti-fraud rules, do not have written conflicts disclosure. What is the justification or need for action here? Ditto for the issuer "consent" mandate under consideration by the Board.

"Common sense" says that logically the parties to a fee agreement, just like an underwriting purchase agreement, by definition have adverse interests, without further need for disclosure.

9. RECORD RETENTION/POLICY MANUALS

To avoid unnecessary costs and duplication for one-person and small FA shops, the Board should clarify that maintenance of drafts of documents and emails on the firm's email site or through their ISP (such as gmail, Microsoft, facebook, yahoo, aol, etc.) will comply with the records retention requirements. Absent this clarification, smaller firms may feel compelled to invest in duplicative services, incurring needless expense.

To reduce costs of compliance for smaller firms, the Board should also provide a draft of a prototype baseline policy and procedures guide that smaller FA firms can adopt or modify, as needed, or assist FA user groups with this type of endeavor.

This will reduce potential deficiencies in any later supervision or examination of FA firms through the Board's rules.

10. COST RECOVERY; MAINTAINING FA PROFESSIONALS

Depending upon the level of support from the Board or its staff, the costs of compliance could become very large and extensive. My firm does not "nickel and dime" its clients with charges for each item or request,, but rather seeks long-term relationships.

However, should the costs for compliance be significant, which I fear will occur under the draft's current version, I will need to surcharge for regulatory compliance, much like San Francisco restaurants now do for City-imposed health care insurance on restaurant personnel. <u>This will be an economic disadvantage for smaller firms.</u>

As fewer firms translate to less competition and potentially greater institutionalization, (possibly leading to an oligarchy), the Board should review the economic and competitive consequences of the draft Rule in more detail before proceeding.

Higher cost will also create a barrier to entry for newer FA's or those transitioning from other fields, particularly if the proposed exam is not properly designed and implemented. Ditto for any supervision rules. The touchstone of Dodd-Frank was fraudulent or improper behavior, and the Board should not wander from this specific purpose with myriad other proposals.

11. ADMINSTRATIVE- QUESTIONS POSED (AT 25-28)

#1 The Board should not list the required deliverables, as they are customized to each client.
#4 Obligated person expansion discussed in Para. 4 above.
#6 , 7 ;and 9 Discussed above. All should be as simple as possible and use existing technology or information disclosures already available.
#10 and 11. Discussed in separate paragraphs above, including Para. 3 and 9. .
#12 Extensive oversight activities will likely reduce the willingness of FA's to consider creative solutions—rather adopting "run of the mill" responses.
#13 and 15. See Para 10 above.
#14. I believe the very fact of a registration requirement, which can be revoked, has already promoted FA utility among issuers. Further strictures will at most provide minor incremental benefits.
#16 and 17. Negative.
#20 See Para. 1, 2 and 10 above.
#21. See Para. 10 above. Remember that we are competing for new blood against hedge funds and potentially more lucrative industries.
#24 and 25. Draft Rule G-42 will create advantages for larger firms, whose economic consequence has not been sufficiently addressed by staff, other than a mention in passing.

The Board should wait for some period of time to determine how the Act is ameliorating the problem with which Congress was concerned. There is always time later to create and implement new regulations. See above generally.

As a 25 year veteran of this industry, at the tail end of my career, the concerns above are only partially for me. Much of my cautionary suggestions are intended to alert the Board to long-term deleterious effects its rulemaking may have. The vitality and vibrancy of this "niche" depend upon an appropriate regulatory matrix not impacting adversely the desirability for both present and future participants.

While Congress gave the Board rulemaking authority, it should be used judiciously, timely, efficiently and effectively, and should work to sustain and leverage on the benefits obtained from this industry, whose vast majority of participants provide appropriate financial and economic advice to issuers.

Respectfully Submitted,

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