Government Finance Officers Association
1301 Pennsylvania Avenue, NW Suite 309
Washington, DC 20004
(202) 393-8020

March 13, 2014

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

Re: Draft MSRB Rule G-42 – Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith:

Thank you for the opportunity to comment on the important topic of the Municipal Securities Rulemaking Board's (MSRB) draft Rule G-42, pertaining to the duties of non-solicitor municipal advisors (MAs). The MSRB's development of regulations related to the SEC's final Municipal Advisor Rule is of great interest to many of our members, as issuers will be affected by the proposed regulatory framework for these professionals, particularly with regard to fiduciary duty.

Members of the Government Finance Officers Association's (GFOA) Governmental Debt Management Committee helped develop these comments, and remain concerned about the fiduciary responsibilities of MAs as discussed in the draft rule, as well as the roles that MAs should serve as defined and referred to throughout the rule.

Below are our comments on the specific provisions in the proposed rule that relate to our members.

Principal Transactions

This section is one of the most important parts of the proposed rulemaking but one that we find confusing. Before we can provide more substantive comments on this issue, we request clarity on the MSRB's definition of a *principal transaction.* While the rule should specifically identify material conflicts and prohibit the MA firm from acting in a separate capacity that could create or cause a conflict, it is unclear exactly where the proposed rule draws the line. Again we request further clarification on this issue including examples of prohibited and acceptable practices before we can further comment.

Municipal Advisor/Issuer Relationship and Scope of Work

We understand and support the MSRB's responsibilities to develop regulations for MAs. A recurring issue throughout the proposed rule is whether the MSRB should develop specific criteria governing the type of work a MA should provide to an issuer. Rather than having the MSRB dictate the scope of work between MAs and issuers, we believe the issuer should set the standard for the scope of work and control the engagement with the MA. In this regard, the issuer should determine whether it wishes to have the MA review the official statement or assist in its development. In addition, the issuer could define the scope of work to include review of feasibility studies and financing strategies provided by other professionals. We agree that the MA/issuer relationship should be stated in writing, which allows the issuer to clearly delineate the scope of work that it intends for its MA.

Recommendations to Clients/Suitability and Duties

We support the proposed rule's standards for suitability, duty of care, duty of loyalty, and to know your client regarding financing strategies. These should be maintained in subsequent revisions of the rule.

Prohibited Activities/Conflicts of Interest

As we noted above regarding principal transactions, we request further explanation of the term *principal transaction* and greater clarity on when a firm may serve as an MA and also be party to other transactions of a municipal entity. We support the list of prohibited activities on page 13 of the release. We also support the need for municipal advisors to disclose conflicts of interest. However, the MA's fiduciary duty to the client should remain the dominant feature of the rule. While the issuer should acknowledge any conflicts that may exist with the MA firm, we would expect the rule to incorporate how the acknowledgements of such conflicts relate to the MAs fiduciary duty. Of note, we agree that fee splitting appears to be an inherent conflict, and should be avoided.

Fee Structure Used by MAs with their Issuer Clients

On the topic of fees paid to the MA by the issuer, we would like to reference GFOA's best practice on *Selecting and Managing the Engagement of Municipal Advisors*[1]. While the Best Practice discusses concerns with the common practice of paying municipal advisors on a contingency basis, we do not support having the MSRB mandate the manner in which an MA charges for its services. Rather, as we noted above, the issuer should determine the manner and amount of the MA compensation.

MSRB Fees Imposed on MAs

We request that the MSRB include similar language in the rule that is in place for bond dealers that prohibits fees from being passed through to issuers.

Request for Re-proposing this Rulemaking

We strongly urge the MSRB to re-propose the rule for comment following review of comment letters and the Board's subsequent updates to this proposed version. Due to the importance as the first set of major rulemaking governing MAs, it would be helpful to all municipal market stakeholders, including the MSRB, to allow market participants to further review how comments are clarified by the Board prior to the proposed rulemaking submission to the SEC.

Thank you again for the opportunity to comment on this important rulemaking.

Sincerely,

Dustin McDonald
Director, Federal Liaison Center

[1] *Selecting and Managing the Engagement of Municipal Advisors* - **Basis of Compensation**. Fees paid to municipal advisors should be on an hourly or retainer basis, reflecting the nature of the services to the issuer. Generally, municipal advisory fees should not be paid on a contingent basis to remove the potential incentive for the municipal advisor to provide advice that might unnecessarily lead to the issuance of bonds. GFOA recognizes, however, that this may be difficult given the financial constraints of many issuers. In the case of contingent compensation arrangements, issuers should undertake ongoing due diligence to ensure that the financing plan remains appropriate for the issuer's needs. Issuers should include a provision in the RFP prohibiting any firm from engaging in activities on behalf of the issuer that produce a direct or indirect financial gain for the municipal advisor, other than the agreed-upon compensation, without the issuer's informed consent.