



The PFM Group

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March 10, 2014

Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314
Attention: Ronald W. Smith, Corporate Secretary

Re: Request for Comment: MSRB Notice 2014-01

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

Dear MSRB Board Members and Staff:

Although the Municipal Securities Rulemaking Board (“MSRB”) in the captioned draft MSRB Rule G-42 (“Rule G-42”) has given interested persons an opportunity to submit comments, Public Financial Management, Inc. (“PFM”) believes that the implementation of Rule G-42 in its current form will substantially improve the municipal marketplace. This is realized by formalizing the issuer protections which reputable, qualified and independent Municipal Advisors provide, enhancing the clarity of the regulation supporting the role of the Municipal Advisor in municipal securities transactions, and prescribing certain conventions of the issuer - Municipal Advisor relationship. For PFM’s part, unless the perfect is to be allowed to become the enemy of the good in securities regulation, Rule G-42 should be allowed to become effective.

PFM anticipates that the thousands of issuers of municipal securities present such a vast range of circumstances associated with the issuance process that the MSRB’s determinations about a Municipal Advisor’s satisfaction of Rule G-42 will necessarily rely on the facts associated with each issue and the Municipal Advisor’s demonstrated ability to perform fiduciary responsibilities to the issuer. It is the unqualified, resource-constrained and conflict-ridden Municipal Advisor who should be very concerned about complying with Rule G-42, whereas qualified and appropriately resourced Municipal Advisors should not have such concerns and this can help strengthen the municipal marketplace.

The MSRB has asked many questions in its Request for Comment on Draft MSRB Rule G-42. PFM respectfully offers the following comments for some of the topics addressed by the MSRB’s questions and the central features of the draft Rule G-42:



1. A qualified Municipal Advisor should have no hesitation in serving as a fiduciary to all of its clients, issuers and obligated persons alike.
2. It is difficult if not impossible for a Municipal Advisor to properly serve its client when advising on the issuance of municipal securities without reviewing the official statement and related or referenced transaction materials. While independent verification of all of the information in the official statement is not practical or necessary for a Municipal Advisor to fulfill its fiduciary duty to the issuer, the scope of the Municipal Advisor's engagement with the issuer needs to be sufficient to make the Municipal Advisor's review of the official statement relevant.
3. Compensation received by a Municipal Advisor and any allocation of fees among joint ventures and Municipal Advisor teams should be clearly disclosed to the issuer; there is no reason for an issuer to accept anything less than full disclosure and documentation of all fees associated with a municipal securities transaction.
4. Conflicts of interest are not always knowable at the outset of a municipal securities transaction, but once any become known, the Municipal Advisor as well as any other participant to the transaction should disclose any such actual or potential conflict(s). Principal transactions in securities should not be permitted and the prohibition should apply to Municipal Advisors with or without a fiduciary duty to the client.
5. Given the wide range of experience, capabilities and legal structures among Municipal Advisors, professional liability insurance should be required to adequately protect issuers from the mistakes of their Municipal Advisors. Reputable Municipal Advisors with the resources required to properly advise issuers and obligated persons should readily purchase such coverage and issuers should question any advisor who is unwilling to provide such protection for its client.
6. The regulation of upholding a fiduciary standard and duty of loyalty within the registered Municipal Advisor community requires increased communication, clarity and formality amongst all parties engaged in municipal security activities on behalf of an issuer. In particular, the obligation to know one's client and provide suitable advice proves paramount in facilitating an efficient and effective transaction on behalf of a client. Evidence of knowing your client's circumstances and the corresponding offering of suitable transactional advice cannot be prescribed, and should, as Rule G-42 intends, rely instead on the particular facts or circumstances and the principles of reasonable care, inquiry, and diligence.



7. Rule G-42 will itself establish, and also advocates overall for, numerous areas of compliance implementation which undoubtedly represents additional occasion for interpretation of these provisions, the internal business or external transactional implications, and the corresponding Municipal Advisor professional standards. The Municipal Advisory profession will appropriately develop in accordance with the final SEC regulations and MSRB rules with a continual focus on the best interests of their issuer clients.

As always, we would welcome the opportunity to discuss these comments or otherwise assist the MSRB in finalizing draft Rule G-42 or any other feature of the Municipal Advisor regulations that hold the promise of bringing clarity, fiduciary standards, and additional protections to municipalities and non-profit institutions.

Respectfully submitted,

A handwritten signature in blue ink that reads "John H. Bonow". The signature is written in a cursive, flowing style.

John H. Bonow
Chief Executive Officer

cc: Daniel Heimowitz, Chair
Municipal Securities Rulemaking Board

Lynette Kelly, Executive Director
Municipal Securities Rulemaking Board

Ernesto Lanza, Deputy Executive Director
Municipal Securities Rulemaking Board

Gary Goldsholle, General Counsel
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Michael Post, Deputy General Counsel
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Kathleen Miles, Associate General Counsel
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John Cross, Director of Municipal Securities Office
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