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PUBLIC RESOURCES ADVISORY GROUP

March 10, 2014

Public Resources Advisory Group appreciates this opportunity to comment on draft Rule G-42 proposed by the Municipal Securities Rulemaking Board (MSRB). Our comments are included below.

1. With regard to your General Matters, Question 2, and Supplementary Material .01
   You have asked whether we agree that an advisor has an affirmative obligation to thoroughly review the entire official statement. The proposed rule sets thorough review of the official statement as a standard. While our advisory services usually include review of the official statement, from time to time clients do ask us to restrict our scope to certain prescribed tasks. Furthermore, whether or not we do review the official statement and irrespective of the level of our review, we do not always have the appropriate access to information to determine whether or not disclosure is adequate, appropriate and complete as that responsibility is with disclosure counsel or the issuer. We suggest that responsibilities with regard to the official statement be set forth in the documentation of the engagement between the advisor and the client and a thorough review should not be the presumption.
2. With regard to your General Matters, Question 4, and Section b(vi).
   The proposed rule requires specific disclosure of any conflict of interest that results from the method of compensation. In the hands of an unscrupulous advisor a conflict can result from any payment. Inclusion of this disclosure will result in the same kind of boilerplate disclosure that has characterized compliance with G-17. Disclosing the obvious does not improve disclosure.
3. With regard to your General Matters, Question 11.
   You have asked if the advisor should be required to review any feasibility study as part of the information considered in its evaluation of whether a transaction it recommends is suitable. We believe that this task should be performed if it is included in the scope of services.
4. Additional comments
   a. Section (c)(ii) of the proposed rule requires the advisor to document, in writing, the expected amount of compensation. Further language in the proposed rule requires that this written information be updated any time there is a material change in the compensation expected to be realized. With new clients, the amount of work to be performed is often unknown, and with existing clients tasks and scope can change quickly. We recognize that the language in the proposed rule includes the qualifier, "if known", but we think this language will create an undue burden with excessive amounts of time devoted to projecting expected billing amounts.
   b. Section g(i) of the proposed rule prohibits "compensation that is excessive in relation to the municipal advisory activities actually performed". As has been noted by other commenters, it is common practice for municipal entities to pay transaction based fees for services. In some circumstances the transaction fees are meant to compensate the advisor for other activities unrelated to the specific issuance or reoffering of municipal securities in connection with which the fee is being paid. Is this practice permitted?

Please let us know if we can provide additional information or clarification.

Sincerely,
Thomas Huestis