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SENT VIA ELECTONIC MAIL

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

Dear Mr. Smith:

I am pleased to submit this letter on behalf of Piper Jaffray in response to the MSRB's request for comment on proposed rule G-42 which specifies duties and responsibilities of municipal advisors as a follow up to the SEC's Municipal Advisor Rule.

I am responding as the Head of Public Finance for a firm that has a meaningful and varied public finance business where we serve many municipal issuers each year, including issuers of all sizes. We are among the leaders in both the number of senior managed underwritings that we complete each year as well as the number of issuers that we serve as a financial advisor. We also have significant specialty practices working with conduit borrowers including health care, senior living, higher education and other types of obligors. As a result, we bring a unique and broad perspective to the issues covered under proposed rule G-42.

General Perspective on the Proposed Rule

In general, we welcome regulation of financial advisors through the SEC's rule, particularly those who formerly were not part of any regulatory scheme, and believe that follow up with MSRB rules governing conduct standards and defining fiduciary duty is very appropriate. We would caution, however, that the SEC's approach in defining a "municipal advisor" in an activities based manner creates a level of complexity and change to what the market has historically considered a "financial advisor" which was based primarily on the role played in a transaction. As a result, we believe that the MSRB must be very careful in creating rules that govern the duties of "municipal advisors" in order to not create unintended consequences related to activities of various market participants.

Clearly what the market has considered a "financial advisor" would fit into the category of a "municipal advisor" but a "municipal advisor" includes many others as well. It could include a firm who typically seeks underwriting business who intentionally or unintentionally provides "advice" as defined under the SEC rule. It could also include a financial advisory firm who provides "advice" while seeking a financial

advisory assignment for which it is not ultimately selected. It could also include other professionals on a transaction who intentionally or unintentionally provide "advice" related to securities issuance outside the scope of their respective roles. It could also include a broker dealer who gives advice on the investment of bond proceeds but has no other connection to the issuance process. Our point is that this can get complicated and that influences some of our comments on the MSRB's proposed rule. Many of the requirements under the proposed rule only make sense for a "municipal advisor" who has actually been hired by an issuer to assist the issuer with a new issue transaction and do not make sense for a firm that has become a "municipal advisor" but is not actually engaged by or working with an issuer on a transaction.

Prohibitions on Principal Transactions

We have questions and concerns over section (f) of the proposed rule which prohibits principal transactions for a municipal advisor and its affiliates. First, it is confusing and unclear exactly what is meant by the phrase "except an activity that is expressly permitted under Rule G-23". Second, a blanket prohibition on all principal transactions for an entity and any of its affiliates is extremely broad and could include a wide variety of activities that have no connection to the matter on which advice was rendered. Third, and this gets back to the point that we made above, it makes no sense to extend any blanket prohibition of principal transactions to matters beyond the transaction where advice was rendered that made an entity a municipal advisor.

Here is an example of the confusion. Say our firm became a municipal advisor by inadvertently rendering advice related to a particular matter while seeking underwriting business (or in the alternative, say we became a municipal advisor when we rendered advice while seeking financial advisory business which we were not selected for and are not engaged on). Under the SEC's interpretive guidance, it would be inconsistent for our firm to then proceed to be an underwriter "with respect to an issuance of municipal securities" for which we gave advice and became a municipal advisor. The SEC's guidance limits our prohibition on conducting business as a result of a conflict to the particular issue on which the advice was provided and the conflict arose.

The MSRB's proposed rule potentially goes much farther which we do not believe is appropriate. And since in this example, although we gave "advice", we were never actually engaged by the issuer as a municipal advisor and there is no definitive end point under which our firm is no longer a municipal advisor to that issuer. In theory, under the MSRB's proposed rule, we could be banned forever from conducting any principal activities for this issuer who never actually engaged us. We are assuming that this is not what was intended.

We believe that a ban on principal transactions for municipal advisors only makes sense if the ban is limited to transactions on which the advice was rendered that made the firm a municipal advisor. This is consistent with the SEC's interpretive guidance and would prevent a long list of potential prohibited transactions that would unduly restrict an issuer's choice of service providers and impact any bank or broker dealer firm which provides municipal advice.

Obligated Persons

You are asking for input as to whether proposed rule G-42 should also extend the fiduciary duty of a municipal advisor "to its obligated person clients". We are not in favor of this extension for a number of reasons. Obligated persons consist of a wide range of different types of corporations, not for profits, limited liability corporations and other entities who have the ability to become obligors on municipal transactions. This potential wide base of "obligors" vary significantly in their make-up, legal structure, financial capabilities and regulatory requirements.

We believe that it becomes problematic to incorporate all of these entities into a rule for which, in our opinion, there is no particular need or, importantly, no particular want from these obligors. It also seems to be extending a potentially confusing rule beyond its legislative mandate. We have found that all of the potential obligors who we have spoken with, once informed of details of this rule and its potential consequences, are not advocates of being included in the regulatory scheme that has been created for municipal issuers. In particular, the limitations on flow of information from underwriters that would result from a fiduciary duty being placed on the activities based municipal advisor definition is problematic and would not be desired by these entities. Many of these "obligors" have complex transactional needs of which a municipal issuance approach is only one of a number of potential solutions. It would be inconsistent for an underwriter to be able to talk and give advice to an obligor related to several options for securities issuance but not be able to provide similar advice related to a municipal issuance approach.

We do not believe that it is wise to extend the fiduciary duty at this time to municipal advisors for entities who are beyond the Dodd-Frank legislative mandate (which was limited to protections for municipal issuers) and beyond the scope of the duties and outcomes created by the SEC under the Municipal Advisor Rule. At a minimum, we believe that the MSRB should consider this issue in more detail, get input from obligors and assure that all of the unintended consequences of whatever final rule is passed are determined before making any decision to extend the fiduciary duty of municipal advisors to obligors.

Documentation of a Municipal Advisory Relationship

The proposed rule calls for the documentation in writing of each municipal advisory relationship. While we have operated under Rule G-23 which requires a written agreement for a financial advisory relationship, our concern with the proposal under G-42 is that municipal advisory relationships are activity based and can be created when no on-going relationship with the municipal issuer exists. Again, consider the example of providing "advice" in the context of seeking municipal advisory business that our firm does not get selected for. In this instance, we would be deemed a "municipal advisor" to the issuer but it would make no sense to have a written agreement with the issuer. If this requirement for a written agreement is clearly limited to those instances where the issuer actually selects a firm to be its municipal advisor on a securities issuance, then we have no issue with the requirement of a written agreement and the requirements for that agreement listed in the proposed rule.

Obligations of a Municipal Advisor on Official Statements

You asked about whether a municipal advisor should have an obligation to "review thoroughly" the entire official statement for a client and whether this obligation could be limited by the scope of the advisor's engagement. On the second point, we clearly believe that a municipal advisor should be able to limit the scope of its engagement to certain activities as agreed upon with its issuer client and therefore be able to limit any obligation to assist the issuer in the review of the issuer's official statement. There will be many instances where an issuer engages its bond counsel or a disclosure counsel to assist with the review and preparation of its official statement. The issuer may simply desire to hire a municipal advisor in a limited capacity for certain elements of a transaction rather than be involved in all aspects of the issue.

We do believe however, that when a municipal advisor is engaged to have a role in assisting the issuer with the preparation or review of the official statement, then that advisor should have a duty to perform a reasonable review the official statement. This review should not rise to the level of a due diligence review of all of the content in the official statement but should be a more general review of content. The municipal advisor could be expected to have dialog with the issuer relative to assuring that the issuer understands its obligations relative to the official statement and understands what types of items the issuer should consider including as content relative to the transaction being undertaken. An advisor should not be able to contractually limit its engagement relative to the official statement but then still be the primary entity involved in assisting the issuer in the preparation of that document. It is important, however, that regardless of the role of the advisor in preparing the official statement that the issuer still have overall responsibility for the contents of that document.

Liability Insurance for Municipal Advisors

The proposed rule requires disclosure of the amount and scope of liability insurance of the municipal advisor. While we believe the ability of the municipal advisor to back its fiduciary duty with financial resources is something that an issuer should understand, we do have some comments on the rule as drafted.

As a broker dealer who has a significant amount of firm capital, we believe that disclosure for municipal advisors should start with the amount of capital that the firm has available. If a firm does not have capital or has capital below a set threshold (we would suggest $5 MM of excess net capital be the threshold level), then it should be required to disclose whether it has professional liability insurance and the amount and type of coverage.

We do believe that municipal advisory firms who lack a minimum threshold amount of capital should be required to carry some minimum amount of professional liability insurance. Issuers should clearly be aware through disclosure of the financial capacity of the firm they are engaging and should have some minimum financial protection backing the work of their advisor. We acknowledge that we do not know the costs, availability or consequences of requiring every municipal advisory firm not meeting a threshold capital requirement to purchase this insurance. It is possible that the availability and cost of this insurance could vary meaningfully over time.

Specified Prohibited Activities for Municipal Advisors

The draft rule has a list of specified prohibitions for municipal advisors. We have one technical comment and a couple of proposed additions to this section of the rule.

Under (g)(iv), there is a prohibition on "making any fee-splitting arrangements with underwriters". We agree that no municipal advisor should be able to make a fee-splitting arrangement with underwriters on any issue for which it is serving as a municipal advisor. However, our technical comment would be that this section needs to include language that limits the fee-splitting to advisory fees and does not inadvertently include any unrelated fee splitting that an underwriter would typically have as part of an underwriting agreement. We would assume that it is not your intention to prohibit our firm (a broker dealer) from serving as a financial advisor to a municipal issuer and then entering into an arrangement for another issuer (unrelated to our advisory engagement) where we are splitting fees with another underwriter. This would preclude us from being involved as an underwriter as part of any syndicate or entering into any agreement among underwriters if we are serving as a municipal advisor to any issuer. We are confident that this is not what is intended but therefore a limitation in the scope of this prohibition to the advisory fees on the transaction/engagement the advisor is serving on is required.

Additional Prohibited Activities

There are two "troublesome practices" that have concerned me over the years in our business that I believe based on the experiences that we have had should be added to the list of prohibited activities. The first is that it should be a prohibited activity for any municipal advisor to take into account whether it competes with other firms in its recommendations to an issuer about who they should hire as an underwriter.

As a broker dealer who does a meaningful volume of both underwriting and financial advisory work for issuers, we have had many instances in the past where other advisory firms have threatened us or told us directly that they would not allow their issuer clients to hire us as an underwriter because we compete with them for various advisory engagements. We had an instance recently where an advisory firm had an issuer send us a letter to drop us from their underwriting team the next day after we were hired as an advisor by another issuer who had formerly been a client of theirs. They had previously told us that they would do this if we proceeded to take on that assignment.

It should be clearly understood that this type of conduct by a municipal advisor does not meet the fiduciary standard spelled out under the duty of loyalty under the rule where the advisor must "act in the client's best interests without regard to the financial or other interests of the municipal advisor". However, because of the numerous instances that we have seen of this type of behavior and the directness with which many advisors have told us that they would consider competitive factors in advising their clients on selection of underwriters, we believe that this prohibition needs to be stated clearly in the rule as a prohibited activity.

My second request for an addition to the prohibited activities is relative to the use of the term "independent". This term has been used for a long time by many non-dealer advisors. The term

"independent" is used primarily to indicate to municipal issuers that a non-dealer advisory firm is free from conflicts. It is a term that is specifically used in an attempt to indicate that broker dealer firms who provide advisory business have an inherent conflict because they are a broker dealer and are involved in other types of activities related to the municipal market while the non-dealer advisor by not conducting these activities is purportedly free of conflicts and hence "independent".

Under the new rule G-42, the MSRB is defining the regulatory obligations of all advisors to disclose actual and potential conflicts when being engaged as a municipal advisor. We are supportive of this disclosure requirement. A broker dealer who serves as a municipal advisor may have certain "actual or potential conflicts of interest" which are required to be disclosed. Non-dealer advisors, many of whom provide a range of services to their issuer clients which could include such items as accounting services, feasibility analysis, fee-based money management products and executive search services will have to make their own determination as to which services present "actual or potential conflicts of interest".

As a result, we do not believe that it is appropriate for any firm seeking municipal advisory services to use the term "independent" in a manner that attempts to convey to potential clients that it does not have any potential conflicts of interest. Given the long history of the use of this term, we believe that a prohibited activity should be added that bans municipal advisors from using of the term "independent" in this context. In addition, the SEC municipal advisory rule creates a definition of the term "independent" for purposes of the IRMA exemption. The continued use of the term "independent" to connote freedom from conflicts would create confusion relative to the SEC definition of an independent advisor for purposes of this exemption.

Suitability

As a general matter, we are somewhat concerned about how to make suitability determinations as a municipal advisor as proposed under the rule. The language in Section .08 on "Suitability" describes an approach that appears to be focused on a municipal issue that is "product" based. There are some instances where an advisor is evaluating a particular product such as a variable rate demand bond, a SIFMA based floating rate note or a transactions that incorporates swaps where there are product characteristics that must be understood and evaluated relative to that issuer. In this context, the determination around "suitability" and the concept of assuring that the risks of a transaction structure are understood and appropriate for a particular client makes sense.

More often when serving as a municipal advisor, we find that issuer clients are not faced with a product suitability issue that is particularly complex but are faced with various issues and policy implications that may be very complex. The product that most municipal issuers utilize is a fixed rate bond issue which is typically relatively straightforward in terms of structure. However, there may be many complex policy issues that an issuer may deal with including such items as how much to borrow, how long to borrow, risks and consequences if the primary revenue source of the issue has a shortfall, and whether a project ultimately will have the benefits to the community that are expected among others. These policy determinations may make sense to the decision makers at the time of an issue but be subject to questioning after the transaction has been completed.

As an advisor we are often asked to comment on these types of items but a transaction based "suitability" determination on these types of policy issues is very difficult to make and cannot be made outside the policy directives of the issuer. We believe that the rule should either limit the requirement of a "transaction" based suitability determination or have more specificity on what it means to make this type of determination. The rule should make clear that this determination can incorporate the policy directives and decisions of the issuer at the time the issue is undertaken.

Feasibility Studies

In one of your questions you ask whether an advisor should be required to review any feasibility study that is part of a transaction. We believe that an advisor should only be required to review the feasibility study if this is part of the advisor's contractual duties as agreed to with the issuer or is necessary as part of the advisor's ability to meet the suitability determination for the issue. We do not believe that a financial advisor should generally have a duty to review every feasibility study or to become an expert on evaluating these studies particularly if the study is related to a complex project for which an expert was selected to provide the study. This would be analogous to requiring a municipal advisor to have the expertise to review and question the legal reasoning behind an opinion an issuer receives from a bond or tax counsel.

Economic Analysis

We are not completely familiar with the process for completing an economic cost benefit analysis related to proposed rule G-42 and therefore will limit our comments on this matter. We would like to comment on a statement and request that you have made relative to being sensitive to the impact of the rule on smaller municipal advisory firms. While we understand that it is not your intention to impact the competitive landscape as a result of your rulemaking, we strongly believe that smaller municipal advisory firms should not receive any exemptions from or different treatment under the rule.

While many smaller firms provide solid advice, there are a number of smaller firms or sole practitioners who do not have strong capabilities, possess limited resources and do not provide advice that meets the standards that the industry should expect and that you should require. Some of these firms and advisors and their practices were exactly what Congress was targeting when the Dodd-Frank bill was passed to regulate municipal advisors. Smaller broker dealers do not get any exemptions from rules on dealers and smaller advisors should still need to comply with all of the advisory rules.

Our other comment is relative to your assumption that any increase in municipal advisor fees would be "minimal". We believe that the added requirements of the rule, particularly the added care that advisors must take relative to recommendations and suitability determinations and the additional recordkeeping requirements, will result in added costs to issuers. While it is difficult to quantify the amount of this fee increase, we believe that this cost will be more than minimal over time.

Summary

We hope that we have provided some helpful thoughts and context relative to your request for comments on proposed Rule G-42. We strongly suggest that you consider our thoughts on these matters. In particular, you should assure that you are fully recognizing the complexities of the SEC's activity based definition of a municipal advisor when finalizing the approach to Rule G-42 so that you do not create unintended consequences relative to this new and complex SEC rule that we are still all working to fully understand.

Sincerely,

Frank Fairman
Managing Director
Head of Public Finance Services