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March 10, 2014

Via E-mail to http://www.msrb.org/CommentForm.aspx

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

RE: MSRB Notice 2014-01 Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors

Dear Mr. Smith:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB" or "the Board") Draft Rule G-42, on Duties of Non-Solicitor Municipal Advisors.[1] WFA commends the Board for its effort to elaborate on the duties of municipal advisors to municipal entities and obligated persons.

WFA consists of brokerage operations that administer almost $1.4 trillion in client assets. It employs approximately 15,280 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in retail stores across the United States. [2] WFA offers a range of fixed income solutions, including municipal securities, to its clients.

Although WFA is not a municipal advisor, it offers this brief comment to express concern about the breadth of the principal trading prohibition in Draft Rule G-42.

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[1] MSRB Notice 2014-01 Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisor (January 9, 2014), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2014-01.ashx?n=1

[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has more than 264,000 team members across more than 80 businesses. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC ("WFAFN") and First Clearing, LLC, which provides clearing services to 78 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

I. G-42 Should Not Prohibit Principal Transactions by Affiliates of a Municipal Advisor.

Draft Rule G-42 would prohibit municipal advisors and their affiliates from "engaging in any transaction in a principal capacity" with a municipal entity or obligated person.[3] WFA believes that a prohibition extending to affiliates is overly broad and would be unduly burdensome to municipal advisors and their affiliates.

Large financial institutions, such as Wells Fargo, may have numerous affiliates conducting business with municipal entities and obligated persons. Some such affiliates may be municipal advisors, but under Draft Rule G-42, any affiliate of a municipal advisor would be subject to a ban on principal transactions with municipal entities or obligated persons. In order for a municipal advisor to avoid a violation of the principal transaction prohibition in Draft Rule G-42, the financial institution would need to identify whether any of its affiliates has a business relationship with any of the municipal advisor affiliate's clients and scrutinize the nature of this activity to determine whether principal trading may occur. The development of systems to enable tracking and analysis of affiliate relationships with municipal advisor clients would be unduly burdensome and costly to implement. Moreover, the restriction of principal trading by affiliates would not provide tangible benefit to the municipal entity or obligated person client.

The rule could amount to an outright prohibition on a non-municipal advisor's business with a municipal entity or obligated person client if generally conducted on a principal basis. In some cases a municipal entity or obligated person may have been a long-time client of the non-municipal advisor affiliate while the entity's relationship with a municipal advisor affiliate may be short-lived or episodic. Nevertheless, by applying the principal transaction prohibition to affiliates, the municipal entity or obligated person client may be forced to move business that would not otherwise be covered by the municipal advisor scheme to an unrelated entity regardless of the client's needs and preferences.

Moreover, as drafted, Rule G-42 would prohibit any principal transactions by an affiliate with a municipal advisor client regardless of the extent of connection between the non-municipal advisor affiliate to the municipal advisor relationship. Affiliates of large financial institutions often offer substantially different services, operate with distinct governance structures and employ information barriers. If, based on such factors, a non-municipal advisor affiliate is not connected to the municipal advisor relationship, the risk of a conflict of interest in a principal transaction between a municipal advisory client and the non-municipal advisor affiliate is significantly diminished.

WFA appreciates the intent of the MSRB to protect municipal entities and obligated persons from potential conflicts of interest. However, for the reasons stated above, WFA respectfully recommends that the prohibition on principal transactions should not extend to municipal advisor affiliates. At a minimum, the prohibition should be limited to principal transactions of affiliates that are directly related to the municipal advisory relationship that the municipal advisor affiliate has with the municipal entity or obligated person.

[3] Notice at 12.

II. Prohibition on Principal Transactions Should be Narrowed.

The provision prohibiting principal transactions covers any transaction engaged in by either the municipal advisor or an affiliate with a municipal entity or an obligated person.[4] WFA believes this standard is too strict and that some potential conflicts may be properly disclosed and waived by an informed municipal entity or obligated person client.

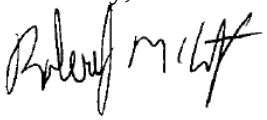
The Investment Advisers Act of 1940 recognizes that a client may give informed consent to permit a principal transaction notwithstanding a potential conflict of interest. For example, although investment advisers are subject to a fiduciary duty in dealing with their clients[5], an investment adviser may transact as principal after providing proper disclosure of the potential conflict and receiving client consent.[6] Furthermore, in contemplating a potential uniform fiduciary standard for brokers, dealers and investment advisers providing investment advice about securities to retail investors Congress made clear that a broker or dealer's practice of selling proprietary products is not a per se violation of a uniform fiduciary standard.[7] At the same time, it authorized the SEC to engage in a rulemaking to require brokers or dealers to provide notice and receive consent or acknowledgment from retail customers prior to transacting in proprietary products. By contrast, the MSRB asserts it is "questionable" municipal advisor clients could consent to any conflict presented by a principal transaction "given the high potential for self – dealing."[8]

WFA urges the Board to reconsider its strict principal transaction prohibition in light of other fiduciary standards that recognize the ability to cure a potential conflict with appropriate disclosure and client consent. Doing so would protect client access to a broader range of products offered by municipal advisors and their affiliates.

CONCLUSION

WFA appreciates the opportunity to share its views regarding the duties of non-solicitor advisors and commends the Board for its effort to elaborate on the duties of municipal advisors. For the foregoing reasons, WFA respectfully requests that MSRB reconsider the principal trading prohibition to remove the restriction for affiliates of a municipal advisor and to permit certain principal transactions with proper disclosures and consent. If you would like to further discuss WFA's position on this matter, please do not hesitate to contact me.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

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[4] *Id.* at 12-13. The prohibition does include an exception for activities permitted by underwriters under Rule G-23.
[5] *SEC v. Capital Gains Research Bureau,* 375 U.S. 180, 194 (1963).
[6] Investment Advisers Act §206(3).
[7] Dodd-Frank Act Wall Street Reform and Consumer Protection Act, Title IX §913(g)
[8] *Id.* at 13.