ZIONS BANK®

March 10, 2014

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

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

Dear Mr. Smith:

Zions First National Bank ("Zions Bank") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board ("MSRB") pertaining to Proposed Rule G-42 regarding enhanced standards of conduct and duties of municipal advisors when engaged in municipal advisory activities (the "Proposed Rule"). We would like to focus our comments on the broad blanket prohibition contained in the Proposed Rule against principal transactions between municipal entities and their municipal advisors.

We believe that such a prohibition should be applied on a transaction by transaction basis, and only to those transactions for which the municipal advisor actually serves as advisor to the municipal entity. We also believe that the prohibition should continue to reflect the kinds of exceptions that have consistently been articulated by the MSRB, as well as the Securities and Exchange Commission ("SEC"), ever since these enhanced standards of conduct and duties have been under consideration, including particularly the exceptions for traditional banking activities such as those that were described by the MSRB as "bank loans" and "true loans" in its filing of proposed amendments to Rule G-23 with the SEC [SEC Release No. 34-63946 (February 22, 2011) at pp. 35-36]. Further, we note that banks providing advice with respect to traditional banking services, which include but are not limited to "Any extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account" [240 CFR Section 15Ba1-1(d)(3)(iii)(B)], are not engaged in municipal advisory activities under the SEC's municipal advisor registration rules.

As we have mentioned in previous comment letters pertaining to these enhanced standards of conduct and duties, Zions Bank and its affiliates have provided, and continue to provide, a variety of traditional banking services to municipal entities throughout the western United States including deposit accounts, checking accounts, financial advisory services, and direct loans. We have spent a great amount of time and resources establishing the expertise necessary to provide these services to our municipal customers. Municipal entities are often some of the best customers banks like ours can have.

We believe that if a municipal entity selects a bank to provide it with banking services including financial advisory services, the municipal entity should be free to borrow from the bank, and the bank should be free to make a direct loan to the municipal entity, if the municipal entity deems it to be in its best interests to do so. Thus we believe that Proposed Rule G-42 should not be interpreted or applied in any way that would prevent a municipal entity which has hired a bank or its affiliate to provide it with financial advisory services, from borrowing moneys directly from, or receiving other traditional banking services from, that bank, and that the language of the Proposed Rule should be revised to provide an explicit exemption for these services.

It would be profoundly paradoxical to suggest that individuals can be allowed to borrow money from the same banks that also serve as their fiduciary, for example in the capacity of a trustee for a personal trust, but that municipal entities – which levy, collect, and spend hundreds of thousands, millions, hundreds of millions, and even billions of dollars that they collect from their taxpayers and ratepayers – require the protection of an absolute prohibition against principal transactions like direct loans or other traditional banking services from banks that also serve as their financial advisor.

Banks often may be the sole source of certain types of financings for smaller municipal entities. And as mentioned above, municipal entities are often some of the best borrowing customers banks can have. During the recent financial downturn, municipal loans performed better than other types of loans for many banks. In addition, many of the direct loans we make to smaller and more remote municipal entities for which we also serve as financial advisor on unrelated issuances of municipal securities, qualify for Community Reinvestment Act ("CRA") credit from our banking regulators. Many of these borrowers are so small that their access to the capital markets is quite limited, and direct bank loans may be the only source of efficient and economic solutions for their capital needs. If adopted as proposed, Rule G-42 would likely increase costs to these entities.

The CRA requirements are designed to insure that banking organizations provide sufficient services to under-served individuals and communities in three specifically targeted areas: (i) loans, (ii) investments, and (iii) financial services. A bank must provide a sufficient amount of services under each of those three categories, to under-served individuals and communities in the geographic area which is served by the bank. A failure to meet the requirements in any one of the three categories is a failure to meet CRA requirements as a whole. If a bank serves as a municipal advisor in connection with bonds issued and sold publicly by a small, remote municipal entity in an under-served area, thus providing that under-served municipal entity with services which fall under the financial services CRA category, and the bank also provides direct loans to the municipal entity and purchases municipal obligations directly from the municipal entity for the bank's own investment portfolio, thus providing the under-served municipal entity with services which fall under both the loan and the investments categories as well, it would be unfair, uncompetitive and burdensome to the municipal entity, and contrary to the clear intent of CRA, to require the municipal entity to have to choose whether to obtain either financial services, or loans and investments, but not both, from its bank. We recommend that any proposal that might have the effect of curtailing the ability of banks to make loans to their municipal customers, and of municipal entities to obtain competitive, favorable loans from their banks, including those in under-served areas, should weigh these factors very carefully.

Some of the commentaries surrounding these enhanced standards of conduct and duties of municipal advisors have focused on when a municipal obligation acquired by a bank would constitute a security, and when it would constitute a loan for these purposes. As we have mentioned in our previous comment letters on the subject, in order for a municipal entity's promise to repay a direct loan from a bank (or from anyone else) to be legally enforceable under state constitutional and statutory municipal debt limitations and restrictions, the loan documents must contain the same basic provisions that conform to such limitations and restrictions as do the municipal bonds which have been designed to fit the particular type of municipal financial transaction that is involved. Thus, municipal loan and bond documents must of legal necessity often look essentially the same.

Nevertheless, it should be easy to differentiate between a municipal security and a direct loan for the purposes discussed in this letter. A simple test, consistent with established law, would be to determine whether a municipal obligation has been acquired by a bank with or without an intent to distribute it. If a bank acquires a municipal obligation directly from a municipality with the intent to distribute it, the obligation should be treated as a security. However, if a bank acquires a municipal obligation directly from a municipality for its own portfolio and investment, with no intent to distribute it, the obligation should be treated as a direct loan, even if the obligation is booked as a security on the bank's books. In addition to being consistent with established law, this test is simple to apply because any pattern of distribution in contravention of a stated intent not to distribute could easily be detected and dealt with appropriately. In this regard it should be remembered that banks are highly regulated and audited entities.

To our knowledge, Zions Bank has never transferred to a third party any municipal obligation it has purchased directly from a municipality for its own portfolio and investment. Even if the Bank later wanted to transfer it, there is usually a strong accounting disincentive to do so. When Zions Bank purchases municipal obligations directly for its own portfolio, the vast majority of such obligations are immediately received into, and must be maintained in, a "held-to-maturity" ("HTM") account. Zions Bank routinely holds upwards of $1 billion or so of municipal obligations in its HTM accounts. If the Bank were to transfer any municipal obligation out of an HTM account, that transfer alone could vitiate treatment as held-to-maturity for all obligations held in that account (not just the one being transferred), which would subject all such obligations to mark-to-market requirements that could pose significant financial disadvantages to the Bank. So in addition to Zions Bank's having no intent to distribute municipal obligations it purchases directly from municipalities for its own portfolio, there are also significant accounting and financial disincentives to distributing, selling, or otherwise transferring any such municipal obligation from its HTM portfolio.

In conclusion, as a national banking organization serving a wide variety of municipal customers throughout the western United States for over a hundred years, we believe that our extensive knowledge and experience in helping municipal customers to meet all of their financial needs gives us the broad range of expertise that is necessary to provide them with adequate and complete financial advisory services. We wonder whether entities with less capital and resources have the expertise necessary to provide comparable services.

We believe our position on this matter is correct and would welcome an opportunity to discuss this issue further. We hope our comments will provide additional context and insight into an important and challenging issue.

We participated in the development of the American Bankers Association's comments to you on the Proposed Rule [letter from Cristeena G. Naser, dated March 4, 2014] and wish to express our support for and endorsement of those comments.

Because they may be interested in the final outcome of these issues, in addition to forwarding a copy of this letter to the SEC, we have also forwarded copies to the primary regulators of our banking affiliates – the Board of Governors of the Federal Reserve System ("Federal Reserve") in the case of our bank holding company, the Office of the Comptroller of the Currency ("OCC") in the case of our national banks, and the Federal Deposit Insurance Corporation ("FDIC") in the case of our state chartered banks.

If you have any questions concerning this letter or would like to discuss these observations further, please feel free to contact Gary Hansen at Zions First National Bank, Investment Division, One South Main, 17th Floor, Salt Lake City, Utah 84133; Telephone: 801-844-7762; E-Mail: Gary.Hansen@zionsbank.com. Given our broad background in municipal finance, we have many examples we could describe in detail that would reflect our actual experience, and the importance to our municipal customers of the comprehensive banking services we provide to them. We would welcome the opportunity to talk with you.

Very truly yours,

ZIONS FIRST NATIONAL BANK

By _____
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