LEWIS YOUNG
ROBERTSON & BURNINGHAM, INC.
AN INDEPENDENT MUNICIPAL FINANCIAL ADVISORY
AND CONSULTING FIRM

August 25, 2014

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314
Via electronic delivery to: http://www.msrb.org/CommentForm.aspx

Re: MSRB Notice 2014-12, Request for Comment on Revised Draft MSRB Rule G-42

Ladies and Gentlemen:

Lewis Young Robertson & Burningham ("LYRB") is pleased to submit comments on the above-referenced Notice.

LYRB is an independent financial advisory firm which has elected, since its inception 18 years ago, to be regulated as a broker dealer and, therefore, has been and remains subject to MSRB regulations. We are now also registered as a municipal advisor with the Securities and Exchange Commission and the MSRB pursuant to Rule 15Ba1-2 of the Commission.

LYRB does not underwrite or purchase securities for our own account or for sale to others nor do we carry customer accounts of any kind. We do not participate as a co-manager or member of selling groups and do not act as a remarketing agent. We are a major financial advisor in the State of Utah and work in some other states as well. LYRB has acted as a financial advisor on hundreds of transactions with a volume of over $7 billion. These transactions run the gamut from small to large, and include general obligation bonds, various types of revenue and tax backed bonds, revenue and bond anticipation notes, and taxable and tax-exempt (including Build America Bonds) bonds in both fixed rate and variable rate structures.

The Revised Draft of Proposed Rule G-42 ("Revised Draft") generally covers the subject matter of Proposed Rule G-36, which was later withdrawn. We commented on that proposal in a letter to you dated April 11, 2011. We commented on the originally distributed Draft Rule G-42 in a letter to you dated March 3, 2014. While the Revised Draft represents an improvement in numerous respects over the original Proposed Rule G-42, we nevertheless have several comments and concerns.

Comments on Proposed G-42(b)

In section (b)(i)(G) we suggest replacing the word "might" with "would". Many times we will have arrangements with entities which we do not expect will create conflicts, but which could create a conflict if circumstances we do not expect to occur in fact arise at a later point. It would be impossible to address all such hypothetical contingencies in advance without overly elaborate (and likely confusing, to less sophisticated clients) disclosures.

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Comments on Proposed G-42(c)

The addition of new clause (c)(vii)creates a potential unintended consequence. We surmise the addition of this clause was to cover instances in which a municipal advisor advising a municipal entity needs to withdraw for some reason (e.g. an unresolveable conflict which arose in the midst of an ongoing project), but must supply ongoing services until a suitable replacement can be selected, similar to rules governing lawyers. This seems fine. However, we believe that some broker dealers who also act as municipal advisors can and will use this rule to escape the consequences of Rule G-23 as recently amended. If a municipal advisor has a term contract covering all debt of an issue for say, the next 5 years, and includes a withdrawal provision in their contract pursuant to clause (c)(vii), which in effect says "we can withdraw for any individual bond issue so long as we have not begun to give you 'advice' on that issue yet, and act as an underwriter", then the engagement for "all issues" ceases to become a barrier to that dealer's trading on its fiduciary relationship to "shift" roles and act as an underwriter. This is, in general, what the recent amendments to Rule G-23 were designed to prevent. While navigating the many potential issues such a course might have for an MA/underwriter might prove difficult or even problematic for them, we are sure there will be those who will try this and claim cover for doing so based on this rule. We suggest (c)(vii) be modified or withdrawn altogether.

Comments on Proposed G-42(e)

This rule is unnecessary, as it is covered by Proposed G-42(a) and is a basic part of a generally engaged financial advisor's work. If you must approach it this way, we suggest that Proposed 42(e) may be better referenced in the Supplementary Material, so as not to detract from the breadth of the basic rule.

More specifically, we comment on new (e)(ii). Your principal transaction prohibition has gone from too broad to too narrow. A bank operating under this rule could claim that it is not prohibited from *both* giving "fiduciary" advice, putting the client's interests ahead of its own, and for its own (or an affiliate's) account, making a loan to a municipal entity in the form of a privately placed bond sale. For state law purposes, such a loan would typically take the form of a bond or a note, but may not be a "security" for federal law purposes. Usually, such a loan is considered in juxtaposition to issuance of publicly offered securities for the same purpose and is an *integral part* of what the advisor discussed with its municipal client. Making such a loan is incompatible with the bank's fiduciary obligation as a municipal advisor. If allowing bankers to do this is your intention, we believe it violates the mandate of the Dodd-Frank Act that a fiduciary standard apply to municipal advisors as there is no difference between a loan and a security from the borrower's perspective, when the borrower is relying on a fiduciary for advice. No court would agree that principal transactions with a client which are the subject of fiduciary advice owed that client can be done as a fiduciary without a conflict of interest, as buyer and seller *always* have competing interests and it is impossible to set those aside to fill the fiduciary duty. Your rule should be consistent with this concept.

One final thought which we provided in our earlier comments, but which has not, as yet, been addressed in the Proposed Rule: an orderly transition provision or phased effective date is necessary. While we see no issues with providing financial advisory agreements to our clients

for new engagements on and after the effective date of the Proposed Rule G-42 that meet the requirements of paragraph (c), we believe that the Rule should include a transitional provision that recognized that financial advisory agreements are binding bilateral contracts and explicitly confirms that existing agreements are not required to be amended until they expire in accordance with their terms. Such a transitional provision could include a requirement that a municipal advisor with financial advisory agreements in existence as of the effective date of the Rule provide, as supplemental disclosures to its clients, the information required by paragraph (c)(ii), (iii) and (iv) of Proposed Rule G-42. At a minimum, we believe that the Board should recognize that many Financial Advisory engagements are longer-term arrangements and advisors should be provided with a reasonable opportunity to conform existing agreements to the requirements of Proposed Rule G-42 when they are renewed or after a reasonable phase-in period after Rule G-42 is approved by the SEC. The approval of amendments to an existing financial advisory agreement as well as the approval of a new financial advisory agreement frequently involves extended internal review processes by municipal entities as well as governing body approval. The timing for a municipal entity's review and approval process is, of course, outside of the control of a municipal advisor and accordingly, an advisor should be held to a commercially reasonable efforts standard in this regard as opposed to a mandated deadline, particularly with regard to existing financial advisory agreements.

Lewis Young Robertson & Burningham, Inc.

By: Laura D. Lewis
Principal