PiperJaffray

800 Nicollet Mall, Mailstop J12NPF, Minneapolis, Minnesota 55402
(612)303-6657 (800) 333-6000 Fax (612)303-1032
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August 25, 2014

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 request for comment on the MSRB's revised draft of Rule G-42 which specifies duties and responsibilities of municipal advisors.

I am responding as the Head of Public Finance for a firm that has a meaningful and varied public finance business. 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. As a result, we bring a unique and broad perspective to the issues covered under proposed rule G-42.

General Perspective on the Revisions to the Proposed Rule

First, I want to thank the MSRB for a number of the changes that were made to the initial draft of Rule G-42. It is clear that you listened to and evaluated many of the comments that were made relative to the concerns expressed about the initial draft. In particular, I appreciate the direction of the MSRB's change to the prohibition on principal transactions when serving as a municipal advisor which limits this prohibition only to the transactions directly related to the transaction on which advice is being provided. While I still have some concerns and comments relative to this section of the rule and the term "directly related to", this change more closely aligns Rule G-42 with the interpretive guidance from the SEC's municipal advisor rule. I also agreed with and appreciated the MSRB's decision not to extend the fiduciary duty of a municipal advisor to obligated persons.

I do still have some comments, questions and areas of uncertainty about the revised draft of the rule that are shared below for your consideration.

Obligated Persons

As I stated above, I agree with and appreciate the MSRB's decision to limit the duty of a municipal advisor to an obligated person to a "duty of care" rather than a "fiduciary duty". We view obligated persons as fundamentally different entities from municipal entities in many respects and believe that this difference in duty when serving as an advisor makes sense.

Limitations on Principal Transactions

While the changes that the MSRB has made related to the prohibition on principal transactions in G-42 (e) (ii) are an improvement, I still believe that there is significant confusion related to using the term "directly related to" in defining the transactions that are subject to this prohibition. The SEC in its interpretive guidance on "role switching" stated that the fiduciary duty (and therefore the prohibition on role switching) is related to the transaction or issuance where the broker dealer served as a municipal advisor. I believe that it would make most sense for the revised version of G-42 to be in synch with the SEC guidance and limit its prohibition to a transaction or issuance where a firm served as a municipal advisor and about which advice was rendered.

The language in the revised G-42 (e) (ii) contains a prohibition on not only the transaction for which a municipal advisor gave advice but also to any "directly related" transactions. I am not sure what a "directly related" transaction is and this broader language could prohibit a variety of different principal transactions where I do not believe there is any conflict of interest.

For example, many comments were made about the initial draft of G-42 regarding concerns over the principal transaction ban preventing a firm who serves as a municipal advisor to an issuer from providing investments as a principal to the issuing entity. Does the term "directly related" transaction include selling investments as a principal to an issuer of their bond proceeds after serving as an advisor on that issue even if no advice was provided related to investments? Does the answer differ if the investments are being sold shortly after closing as opposed to being sold a year after the issue was closed? Does the answer vary if the investments are being bid out by a third party advisor?

If the scenario on investment of bond proceeds were reversed and a broker dealer served as an underwriter of the bonds and then was selected in an advisory capacity on a separate transaction to bid out the investment of an escrow or serve as an investment advisor for bond proceeds, does this result in a prohibition? Is this true even if the firm was not selected until after the bond transaction was closed or completed or even if the selection was through a competitive process?

Another example of potential confusion would include two separate issues of bonds for a school district that are completed several years apart but were authorized under the same voter authorization. Would these issues be considered "directly related" because they are part of the same voter authorization even though they are completely different issues separated by multiple years? Would a refunding of an issue that is completed a number of years after the initial issuance be considered "directly related" to the initial issue? I would hope that the answer to these questions would be no, that these issues were not "directly related" to the initial issue and would not create a prohibition on a principal transaction if a firm had served as an advisor for that issuer previously.

As stated above, I believe that the prohibition should be limited to an issue or transaction on which advice was rendered by a firm while serving as a municipal advisor. If the board feels that this prohibition needs to use the term "directly related", it is important to more fully define this term and to limit its definition. It would make more sense and be more clear to use the term "directly related" in connection with transactions directly related to the advice given rather than directly related to the transaction itself (which is more ambiguous). It would be a mistake to create prohibitions or uncertainty

about potential prohibitions on transactions that are completely separate from the advice that was given by the firm as a municipal advisor and do not present any particular conflict of interest.

Disclosure of Conflicts of Interest & Documentation of a Municipal Advisory Relationship

The proposed rule calls separately for a disclosure of conflicts of interest and for the documentation of each municipal advisory relationship. It appears that the rule has intentionally set forth these two requirements as separate disclosures because the requirement for each of these disclosures may "kick in" at different stages in the communication of a municipal advisor with an issuer. I think that I understand the differences in these two requirements and the possible rationale for these differences, but it might be simpler and less confusing if a these requirements were combined into the written agreement at the establishment of the municipal advisory relationship.

Let me provide an example and you can determine if I understand the rule and its intention correctly. In preliminary discussions with an issuer, a municipal advisor may provide analysis or recommendations that would be considered "advice". A municipal advisor is permitted to do even if not yet engaged by that issuer but under G-42 must provide appropriate conflict disclosures along with this "advice" that are consistent with the requirements under G-42 (b). In this case, disclosure related to compensation under G-42 (b) (i) (F) would not make sense because the municipal advisor has not yet been hired and may not yet have talked about a fee arrangement.

If and when the municipal advisor is actually hired by the issuer, then the municipal advisor would have to evidence this "municipal advisory relationship" in writing in compliance with G-42 (c) and may have to supplement its conflict disclosures under G-42 (b) to reflect any additional information not known when the initial conflict disclosure was provided (such as any conflicts related to compensation).

Ultimately, my question is whether it is the intention of the board to assure that municipal advisors must provide conflicts disclosure when providing information that would constitute "advice" prior to be engaged. In general, I believe that it would be simpler and less confusing to issuers to require municipal advisors to provide both the conflict disclosures and the documentation of the municipal advisory relationship at the same time when the advisor is selected by the issuer to provide it with advice. The issuer would have the opportunity to review and discuss these conflicts before proceeding to enter into its written agreement.

Lastly, I still do not believe that it is beneficial or appropriate to single out a written conflict disclosure requirement related to compensation that is contingent on the closing or size of a transaction. I believe that all forms of compensation have some theoretical form of conflict. As an example, hourly fees have the potential conflict that an advisor may have incentive to spend more time than necessary related to its duties. I believe that the potential conflicts of different fee arrangements are generally knowable and that there is no good reason to require their written disclosure or to require disclosure related to only one form of compensation (which happens to be the most common form used by municipal advisors).

Recommendations and Review of Recommendations of Other Parties

I believe that the changes that have been made to G-42 (d) are improvements over the initial draft, however, I am still trying to determine exactly what our firm will need to do as a municipal advisor to

make a suitability determination and what documentation we will need as part of our obligation to "inform the client" of the various material risks and alternatives to a particular transaction.

As I commented in my previous letter, these requirements all make more sense when contemplating a "product" such as a variable rate financing or a synthetic fixed rate issuance as an alternative to a more standard fixed rate issue. It is easier in this instance to determine how to think through whether the features of the proposed transaction are appropriate for an issuer and to walk the issuer through risks and potential benefits versus potential alternatives including the use of a fixed rate issuance structure.

However, most financings do utilize a fixed rate structure. While there are usually (but not always) far less concerns about suitability and risks related to a fixed rate financing, there are many smaller decisions including such items as the trade-offs in marketing the bonds of using a ten year par call rather than a ten year call at 102, or whether to utilize a premium bond structure that has a lower yield to call as opposed to a par bond structure that has a higher yield to call but a lower yield to maturity. There are many other examples of decisions that are routinely made on many fixed rate issues. It is not clear to me what G-42 (d) is requiring relative to decisions about, communication of and documentation of all of these various types of "smaller" decisions that are made on every issue.

Specified Prohibitions

Although you did not include the two "troublesome practices" that I mentioned in my comment letter on the initial draft of Rule G-42, I will again recommend consideration of inclusion in G-42 (e) of one of these two items that has concerned me over the years in the marketplace. I believe that it should be spelled out as 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 recommend that their issuer clients hire us as an underwriter because we compete with them for various advisory engagements. I believe that this practice is wrong, not aligned with the duty of a municipal advisor to its client and should be specifically prohibited.

Summary

I have again attempted to provide thoughtful and practical comments related to the revised draft of Rule G-42. I hope that these comments are helpful to you as you work to finalize this rule.

Sincerely,

Frank Fairman
Managing Director
Head of Public Finance Services