National Association of Municipal Advisors
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December 8, 2014

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

Re: MSRB Notice 2014-18 Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board ("MSRB") on the proposed amendments to MSRB Rule G-20 to extend its provisions to municipal advisors.

On October 9, 2014, the National Association of Independent Public Finance Advisors ("NAIPFA") membership voted to amend its By-Laws and change its name from NAIPFA to the National Association of Municipal Advisors ("NAMA"). A primary focus of the historic change is expansion of membership categories to include all Municipal Advisors. Like its predecessor organization, NAMA will continue to be an organization of firm members, but the new organization provides for the membership of all registered Municipal Advisors in good standing with the SEC and the MSRB.

General Comment

In principle, NAMA supports any rule that bans or curtails the ability of regulated entities to influence a municipal entity's decision-making process through gifts, political contributions, entertainment or the like. NAMA welcomes the proposed amendments to Rule G-20 (the "Rule"), which attempts to limit the practice of gaining influence through the use of gifts and gratuities. However, NAMA believes that the Rule does not go far enough and leaves open many opportunities for abuse and, therefore, should be further amended. In addition, certain aspects of the Rule, and in particular the incorporation of FINRA guidance need additional clarification.

Comments on Specific Aspects of the Proposed Rule

Definitions

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The term "municipal securities activities" is not defined.

Proposed Rule G-20(c)

This general limitation is confusingly written because it purports to apply only to gifts or gratuities that relate to the "municipal securities or municipal advisory activities" of the "employer of the recipient." For the most part, municipal entities and obligated persons do not engage in either "municipal advisory activities" as defined by MSRB Rule D-13 or to municipal securities business as proposed to be defined by MSRB Rule G-37 and therefore it appears that the rule would not apply to gifts given to employees or officials of municipal entities or obligated persons. This language needs to be changed.

Proposed Rule G-20(d)

Under proposed Rule G-20(c), regulated entities may give gifts and gratuities that have a value up to $100 per year. However, the proposed Rule G-20(d) allows for many different types of gifts that are not subject to the $100 limit. Most notably, proposed Rule G-20(i) states that "occasional gifts" of things such as "meals or tickets to theatrical, sporting or other entertainments" are exempt from the $100 per year per person cap. By exempting items such as meals and tickets to theatrical, sporting and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse particularly because the associated books and records requirement does not even require that regulated entities maintain records of gifts provided under proposed Rule G-20(d). Although the proposed Rule limits the meals and tickets that may be provided by the qualifying term "occasional", and further states that such gifts may not be so "frequent or extensive as to raise any question of propriety or to give rise to any apparent or actual material conflict of interest," the proposed rule and the associated recordkeeping requirements do not provide any effective mechanism for ensuring that is the case. Thus, the possibility exists that at any given time an individual could receive gifts and gratuities well in excess of $100. For example, a $100 item could be given as a gift to a municipal official, while such official is sitting down for an expensive dinner with a regulated entity after having been treated to 18 holes of golf by that regulated entity. The aggregate value of the gift, meal and entertainment given to this individual would be well in excess of the $100 limit **but would be acceptable** under the Rule and the most expensive items would not even have to be reported nor would records have to be maintained. The potential for pay-to-play is further enhanced by the fact that this individual could be the recipient of additional meals and entertainment throughout the year. The effect of this reality is that regulated entities that are willing to provide gifts and gratuities exempt from the $100 per year per person limit, will likely be able influence decisions without violating the Rule.

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Accordingly, because of the likelihood that pay-to-play has occurred under current Rule G-20 and will continue to occur under the proposed amendments to Rule G-20, NAIPFA proposes that the MSRB include additional Supplementary Material with respect to proposed Rule G-20(d(i) which states:

"Supplementary Material

.03 **Normal Business Dealings.** Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, and the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses will be presumed to be so extensive as to raise a question of propriety if they exceed [$250] in any year in conjunction with any gifts or gratuities provided under MSRB Rule G-20(c)."

NAMA believes that an effective aggregate gift and gratuities total of [$250] per year per person, when incorporating gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, will strike the appropriate balance and will address NAMA's and the MSRB's desire to limit pay-to-play. In addition, the suggested $250 limit is consistent with the approach taken by the MSRB in drafting Rule G-37, which limits contributions to individuals seeking elected office to $250 if the contributor is able to vote for the individual seeking office. Unlike proposed Rule G-20, which places a low dollar threshold on gifts and gratuities while allowing generous and plentiful exclusions, Rule G-37 places a clear limit of $250 on contributions. The MSRB has determined that a $250 contribution limit is appropriate because it addresses the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. Since the purpose of Rule G-20 and the purpose of G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue influence through gifts and gratuities, or contributions (i.e., pay-to-play), NAMA believes that the rules should be written similarly. In addition, the gifts and gratuities at issue in Rule G-20 do not enjoy the same level of free speech protection as the political contributions that are limited by MSRB Rule G-37. Therefore, because the MSRB has already determined that a $250 cap is appropriate to curtail abuses relating to political contribution, and because current Rule G- 20 allows for gifts and gratuities well in excess of $100 and even in excess of $250, proposed Rule G-20 should be amended accordingly.

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Recordkeeping Requirements

These rules should be amended to require maintenance of any gift or gratuity referred to in Rule G-20(c) or Rule G-20(d)(i) regardless of whether the MSRB adopts the $250 limitation proposed by NAMA. Because gifts included in Rule G-20(d)(i) are required to be recognized as legitimate business expenses by the IRS and because certain municipal entities (such as municipal entities in California) require recordkeeping regarding such gifts, the imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest. Again, in order to provide for meaningful enforcement, the MSRB should also require a regulated entity to keep records of any gifts given pursuant to proposed Rule G-20(d)(vi) that were paid for, directly or indirectly, by the regulated entity.

Incorporation of FINRA Interpretive Guidance and Amendment of MSRB Interpretive Guidance

NAIPFA appreciates the MSRB's efforts to streamline and incorporate existing MSRB and FINRA guidance into the proposed amendments to MSRB Rule G-20. However, in Regulatory Notice 2014-18, the MSRB did note that "[o]there MSRB guidance, and portions of applicable FINRA interpretive guidance that are not codified by the draft amendments, would continue to be applicable to the comparable provisions of Rule G-20.

As the MSRB is aware, the majority of registered municipal advisors are not FINRA members and are not required to be FINRA members. In addition, unlike the more user-friendly MSRB website, the FINRA website does not clearly link interpretive guidance to its existing rules and tracking down guidance to NASD Rule 3060 (now FINRA Rule 3220) is not an easy task. Finally, non-FINRA member municipal advisors would not have notice of further changes to such interpretive guidance.

Therefore, NAIPFA believes that the MSRB should clearly state which existing FINRA guidance applies to Rule G-20 by explicitly incorporating it as MSRB guidance under these amendments to Rule G-20. Regulated entities (and particularly non-FINRA members) should not have to pick through the history of FINRA interpretive guidance in order to determine what interpretive guidance is applicable to MSRB Rule G-20. NAMA is sympathetic to those registered municipal advisors that must also comply with FINRA Rule 3220 and recognizes the value of harmonization of interpretive guidance in that regard. However, the MSRB has a unique opportunity at this moment to make such

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harmonization more concrete while also not posing an undue regulatory burden on non-FINRA members. Going forward, the MSRB and FINRA could proceed on parallel tracks with respect to further interpretive guidance on MSRB Rule G-20 and FINRA Rule 3220 to the extent it was warranted but MSRB Rule G-20 should no longer incorporate FINRA interpretive guidance by reference – it should affirmatively adopt the guidance in order to provide clarity to all regulated entities.

Responses to Specific Questions Posed by the MSRB

1) *How prevalent are "gift giving," entertainment practices, the use of non-cash compensation in relation to primary offerings and the other practices addressed in Rule G-20 and the draft amendments ("gift giving and other practices") involving municipal advisors in the municipal securities market? What is the effect of real or perceived gift giving and other practices involving municipal advisors on the municipal securities market? Please provide specific examples of gift giving and other practices not currently addressed in Rule G-20 or the draft amendments involving municipal advisors and that may warrant consideration*.

NAMA respectfully requests that further guidance and clarification be made with regard to charitable contributions that are made either (i) as a result of a solicitation from an employee or elected official of a municipal entity, or (ii) with a view toward influencing the decision- making of an employee or elected official of a municipal entity.

2) Do the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors, while appropriately accommodating for the differences between these regulated entities? If not, where are differences in treatment warranted that are not reflected in the draft amendments? Conversely, do the draft amendments overemphasize the differences between the regulated entities in a way that is not warranted or desirable?

NAMA believes that, in general, the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors subject to the concern expressed above about the incorporation by reference of FINRA guidance with respect to FINRA Rule 3220 (former NASD Rule 3060). The MSRB could achieve the same goal of harmonization for FINRA-member dealers without unduly and unfairly adding to the regulatory burden for non-FINRA member advisors by explicitly adopting all of the previously issued FINRA guidance that it intends to adopt.

3) Are the exceptions to the $100 limit appropriate? Should some or all of them be drafted more broadly or narrowly? Should any of them be eliminated?

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As noted above, NAIPFA believes that the exception for normal business dealings is too broad and provides ample opportunity for abuse, particularly because no records are required to be kept with respect to those contributions.

4) *Are the various baselines proposed to be used for the purposes of economic analysis appropriate baselines? Are there other relevant baselines that the MSRB should consider?*

No comment.

5) *If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?*

If the draft amendments were adopted, particularly with the amendments recommended by NAMA, there would be a positive effect on competition, efficiency and capital formation because all regulated entities would be subject to the same rules and the rules would appropriately protect against improper influence that can lead to inefficient capital formation by municipal entities and obligated persons.

6) *Is the proposed extension of the provisions regarding non-cash compensation in connection with primary offerings to municipal advisors appropriate?*

This extension would appear to be inapplicable to the activities of municipal advisors that are not dealers and therefore does not appear to be needed.

7) *Do commenters believe that the draft amendments explicit prohibition of seeking and or obtaining reimbursement for entertainment expenses from the proceeds on an issuance of municipal securities is appropriate? Is the term, "entertainment expenses," which is defined for the purposes of this prohibition, appropriately tailored?*

The portion of the draft amendments prohibiting seeking or obtaining reimbursement for entertainment expenses is definitely appropriate and furthers the intent of the proposed Rule. In this case the definition of entertainment expenses might more appropriately be tied to necessary expenses for meals that comply with the expense guidelines of the municipal entity for their personnel (and any amounts in excess of that would not be reimbursable and would be subject to the limitations suggested above).

8) *Are the recordkeeping requirements that apply to dealers in existing Rule G-20 and*

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the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain information that is relevant for the purposes of Rule G-20? Are there additional costs or benefits to the recordkeeping obligations that the MSRB should consider?

As noted above, the fact that recordkeeping requirements do not extend to gifts and gratuities under proposed Rule G-20(d)(i) means that regulators would not an effective way to determine whether such gifts raise questions as to propriety or material conflict of interest.

9) *What would be the effect of draft amended Rule G-20 for dealers that have instituted long-standing compliance programs? Do dealers or dealer-municipal advisors anticipate that any of the draft amendments to Rule G-20 would increase or decrease either the occurrence of, or the perception of, gift giving and other practices addressed in Rule G-20 and the draft amendments in order to obtain or retain municipal securities or municipal advisory business in the municipal securities market?*

No comment.

10) *What alternative methods should the MSRB consider in addressing the potential for improprieties related to gift giving and other practices addressed in current Rule G-20 and the draft amendments to Rule G-20?*

As noted above, the MSRB should provide specific limitations on the aggregate amount of gifts and gratuities permitted pursuant to Rule G-20(c) and Rule G-20(d)(i) and should require recordkeeping with respect to gifts given pursuant to Rule G-20(d)(i) regardless of whether the limits proposed by NAMA are adopted.

Conclusion

The MSRB acknowledges that its mandate now extends to the "protection of municipal entities". NAMA believes that this new mandate is the key to constructing amendments to Rule G- 20. If the practices of prior Rule G- 20 are allowed to continue (i.e., if firms and individuals are allowed to continue to give gifts and gratuities far in excess of other monetary limits ($250) that have been recognized to have a corrupting influence (see MSRN Rule G-37) as long as they are characterized as "normal business dealings"), the MSRB will fail in its attempt to fulfill its mandate. When employees and elected officials make business decisions that are not based on matters such as qualifications or cost, and instead based on who has given the most lavish gift or gratuity, it is the municipal entity

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itself and its tax and rate payers that ultimately suffer. Therefore, the MSRB must seek to limit the likelihood that business decisions will be made based on the gifts and gratuities received by employees and elected officials of a municipal entity.

NAMA once again expresses its appreciation for the opportunity to submit its views on the MSRB's proposed Rule G-20. Please feel free to contact me if you have any questions or if further clarification of NAMA's comments is necessary.

Sincerely,

Terri Heaton, CIPFA
President, National Association of Municipal Advisors

cc:

The Honorable Mary Jo White, Chair,
The Honorable Luis A. Aguilar, Commissioner,
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Michael Piwowar, Commissioner
Jessica Kane, Deputy Director, SEC Office of Municipal Securities
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board