

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2011 - \* 13

Amendment No. (req. for Amendments \*)

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*



Amendment \*



Withdrawal



Section 19(b)(2) \*



Section 19(b)(3)(A) \*



Section 19(b)(3)(B) \*



Rule

Pilot

Extension of Time Period  
for Commission Action \*

Date Expires \*

☐ 19b-4(f)(1)☐ 19b-4(f)(4)☐ 19b-4(f)(2)☐ 19b-4(f)(5)☐ 19b-4(f)(3)☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed MSRB Rule G-44, on supervision of municipal advisory activities, along with related proposed amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Peg

Last Name \* Henry

Title \* General Counsel, Market Regulation

E-mail \* phenry@msrb.org

Telephone \* (703) 797-6600

Fax

(703) 797-6700

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/22/2011

By Ronald W. Smith

(Name \*)

Corporate Secretary

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change (the “proposed rule change”) consisting of proposed MSRB Rule G-44 (on supervision of municipal advisory activities), along with related proposed amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The MSRB requests that the proposed rule change be made effective on the date that rules defining the term “municipal advisor” under the Securities Exchange Act of 1934 (the “Exchange Act”) are first approved by the Commission or such later date as the Commission approves the proposed rule change.

The text of the proposed rule change is set forth below:<sup>1</sup>

\* \* \*

### **Rule G-44: Supervision of Municipal Advisory Activities**

**(a) *Obligation to Supervise.* Each municipal advisor shall supervise the conduct of the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable Board rules and the applicable provisions of the Act and rules thereunder (“applicable rules”). For the purposes of this rule, “municipal advisory activities” shall mean those municipal advisory activities not otherwise subject to supervision pursuant to Rule G-27.**

**(b) *Supervisory System.* Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules. Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor's supervisory system shall provide, at a minimum, for the following:**

**(i) *The establishment and maintenance of written procedures as required by sections (c) and (e) of this rule.***

**(ii) (A) *General.* The designation of one or more associated person(s) as municipal advisor principal(s) to be responsible for the supervision of the municipal advisory activities of the municipal advisor and its associated persons as required by this rule.**

**(B) *Written Record.* A written record of each supervisory designation and of the designated principal's responsibilities under this rule shall be maintained as required under Rule G-8.**

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<sup>1</sup> Underlining indicates additions.

(C) *Appropriate Principal.* The designation of the municipal advisor principal(s) responsible for supervision under this rule.

(iii) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities with respect to municipal advisory activities.

(iv) The participation of each associated person, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the municipal advisor at which compliance matters relevant to the municipal advisory activities of the associated persons are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters. A record of the content of the interview or meeting, as well as a list of attendees, must be maintained.

(c) *Written Supervisory Procedures.*

(i) *General Provisions.* Each municipal advisor shall adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance as required in section (a) of this rule. Such procedures shall document the municipal advisor's supervisory system for ensuring compliance with applicable rules and, at a minimum, shall establish procedures:

(A) that state how a designated principal shall monitor for compliance by the municipal advisor with all applicable rules and supervise the municipal advisory activities of associated persons;

(B) for the periodic review, no less frequently than every three years, by a designated principal of each office that engages in municipal advisory activities pursuant to section (d) of this rule;

(C) for the maintenance and preservation, by a designated principal, of the books and records required to be maintained and preserved by municipal advisors under Rules G-8 and G-9 of the Board; and

(D) for the maintenance of the written supervisory procedures for a period of no less than three years from the date that the municipal advisor establishes and implements the procedures required by the provisions of this subsection.

(ii) *Availability of and Revisions to Written Supervisory Procedures.* A copy of a municipal advisor's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained, either electronically

or in hard copy, in each office of the municipal advisor and at each location where supervisory activities with respect to municipal advisory activities are conducted on behalf of the municipal advisor. Each municipal advisor shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in Board or other applicable rules and as changes occur in its supervisory system, and each municipal advisor shall be responsible for training its associated persons on the changes to such procedures within a reasonable time after such changes occur.

(d) *Internal Inspections.* Each municipal advisor shall conduct a review, at least annually, of the municipal advisory activities in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable rules. The municipal advisor shall retain a record of each annual review.

(e) *Correspondence.*

(i) *Review.* Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the review by a municipal advisor principal of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence relating to its municipal advisory activities.

(ii) *Recordkeeping.* Each municipal advisor shall keep records of:

(A) the correspondence described in subsection (e)(i) of this rule, and

(B) any other written and electronic communications received or sent, including interoffice memoranda, of associated persons related to its municipal advisory activities.

The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records, and the retained records shall be readily available, upon request, to the appropriate regulatory agency.

\* \* \* \* \*

**Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors**

(a) - (g) No change.

(h) *Municipal Advisor Records.* Each municipal advisor shall maintain:

(i) Reserved.

(ii) Reserved.

**(iii) Records Concerning Compliance with Rule G-44.**

**For each municipal advisor that is subject to Rule G-44, a record of:**

**(A) each person designated as responsible for supervision of the municipal advisory activities of the municipal advisor and the designated principal's supervisory responsibilities as required by Rule G-44(b)(ii)(B); and**

**(B) the records required under Rule G-44(b)(iv), (c), (d) and (e).**

(i) Reserved.

\* \* \* \* \*

#### **Rule G-9: Preservation of Records**

(a) - (g) No change.

(h) *Municipal Advisor Records.* Every municipal advisor shall preserve for no less than six years:

(i) Reserved.

(ii) Reserved.

**(iii) the records required by Rule G-8(h)(iii)(A), provided that such record shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.**

Such records shall be accessible and available as required by subsection (d) of this rule and retained in the manner required by subsection (e) of this rule.

**(i) Municipal Advisor Records. Every municipal advisor shall preserve for no less than three years:**

**(i) to the extent made or received by such municipal advisor in connection with its business as a municipal advisor and not otherwise described in this rule, the records required to be maintained pursuant to Rule G-8(h)(iii)(B).**

**Such records shall be accessible and available as required by subsection (d) of this rule and retained in the manner required by subsection (e) of this rule.**

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was adopted by the MSRB at its July 27-29, 2011 meeting. Questions concerning this filing may be directed to Peg Henry, General Counsel, Market Regulation, or Karen Du Brul, Associate General Counsel, at 703-797-6600.

## **3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) **Proposed MSRB Rule G-44.** Rule G-27 (on supervision) requires the supervision of brokers, dealers, and municipal securities dealers ("dealers") and their associated persons engaged in municipal securities activities, including financial advisory activities. The purpose of Rule G-27 is to help ensure that such dealers and their associated persons comply with MSRB rules. Rule G-27 does not include all municipal advisory activities now subject to MSRB rules, even if engaged in by dealers. For example, swap advisory activities and solicitations of business on behalf of others are not subject to supervision under Rule G-27. Furthermore, municipal advisors that are not dealer financial advisors are not subject to supervision under Rule G-27.

Proposed Rule G-44 would require all municipal advisors to adopt a basic supervisory structure for municipal advisory activities not already subject to supervision under Rule G-27. Dealer financial advisory activities would continue to be supervised under Rule G-27. The establishment of a basic supervisory structure for municipal advisors is particularly important as the MSRB adopts rules for municipal advisors and municipal advisors must educate themselves about these new rules and adopt procedures for compliance. The MSRB does not consider it necessary at this time to extend the more detailed supervisory structure required by Rule G-27 to other municipal advisory activities. For example, the creation of "offices of municipal supervisory jurisdiction" in the case of municipal advisors with multiple offices is not recommended by the MSRB at this time. Similarly, many of the provisions of Rule G-27 concern dealer relationships with customers (e.g., the handling of customer complaints), which do not have a municipal advisor counterpart.

Proposed Rule G-44(a) would set forth the obligation of municipal advisors to supervise the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable MSRB and SEC rules ("applicable rules").

Proposed Rule G-44(b) would require a municipal advisor to establish and maintain a system to supervise the municipal advisory activities of each associated person designed to achieve compliance with applicable rules. The minimum requirements of a municipal advisor's supervisory system include:

- establishing and maintaining written supervisory procedures;
- designating one or more municipal advisor principal(s) qualified by virtue of experience or training to carry out their supervisory responsibilities;<sup>2</sup>
- maintaining a written record of the designation of the municipal advisor principals and their responsibilities regarding supervision; and
- conducting an annual compliance interview or meeting to discuss compliance matters relevant to the municipal advisory activities of associated persons.

Proposed Rule G-44(c) would require municipal advisors to adopt, maintain and enforce written supervisory procedures designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The minimum requirements of the written supervisory procedures would include procedures relating to:

- the manner in which a designated principal shall monitor compliance and supervise municipal advisory activities;
- the periodic review by a designated principal of each office that engages in municipal advisory activities;
- the maintenance and preservation of books and records; and
- the maintenance of the written supervisory procedures, a copy of which would be required to be made available in each office of the municipal advisor and in each office where supervisory activities with respect to municipal advisory activities are conducted.

Proposed Rule G-44(d) would require an annual review of the municipal advisory activities of the firm. The purpose of the review is to assist in detecting and preventing violations of, and achieving compliance with, applicable rules.

Proposed Rule G-44(e) would address the requirements of municipal advisors with regard to the review and recordkeeping of correspondence.

The MSRB notes that, in the case of a small municipal advisor firm or a firm that engages in limited municipal advisory activities, it may be necessary for an individual municipal advisor that engages in municipal advisory activities to also supervise those activities. However, the procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc.

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<sup>2</sup> At this time, there are no professional qualifications examinations for municipal advisor principals. The MSRB notes, however, under Rule G-27 and Rule G-3(b)(i)(B), supervisors of dealer financial advisory activities must be qualified as municipal securities principals.



**Proposed Amendments to MSRB Rules G-8 and G-9.** Proposed Rule G-44 would necessitate related amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rules G-8 and G-9 would require records to be kept of:

- the designations of municipal advisor principals and their responsibilities;
- the content of each annual compliance interview or meeting and a list of attendees;
- the written supervisory procedures;
- the results of the designated principal(s) annual review of the municipal advisory activities of the firm; and
- correspondence and any other written and electronic communications of associated persons.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it is designed to adopt a basic supervisory structure for municipal advisors in order to ensure knowledge of, and compliance with, MSRB rules and to provide for recordkeeping and records preservation to facilitate enforcement of proposed Rule G-44, as well as other MSRB rules.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

While the proposed rule change will affect all municipal advisors, it would be a necessary regulatory burden in order to assure compliance with MSRB rules. Proposed Rule G-44 would afford sufficient flexibility to sole and small practitioners and would not impose unfair burdens on such practitioners. Proposed Rule G-44(b) would provide that: “Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules.” The procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in.

Additionally, the MSRB notes that many dealers are small and, in some cases, individuals. Rule G-27 (on supervision) applies to them as it does to large dealers. Proposed Rule G-44 would permit a municipal advisor principal to conduct the inspections required by proposed Rule G-44(d), just as Rule G-27(d)(iii) permits inspections by principals under its “limited in size and resources” rule for small dealers. Furthermore, proposed Rule G-44(e)(i) already recognizes the need for special rules for small advisors. It would provide that: “Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the review by a municipal advisor principal of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence relating to its municipal advisory activities.” All municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they will achieve compliance with MSRB rules.

Finally, the MSRB has posted on its website a sample supervisory checklist, which small municipal advisors may find useful in the development of their written supervisory procedures for compliance with MSRB rules. The MSRB plans to update that checklist as new MSRB rules are adopted.

#### **4. Self-Regulatory Organization’s Statement on Burden on Competition**

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all municipal advisors to the extent their municipal advisory activities are not already supervised under Rule G-27.

## 5. Self-Regulatory Organization’s Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others.

On May 25, 2011, the MSRB requested comment on a draft of Rule G-44 (“draft Rule G-44”) and associated draft amendments to Rules G-8 and G-9.<sup>3</sup> A copy of the Notice is attached as Exhibit 2. The Notice generated seven comment letters from the following commenters: (1) Bond Dealers of America (“BDA”); (2) Bradley Payne LLC (“Bradley Payne”); (3) Dixworks LLC (“Dixworks”); (4) First Southwest Company (“First Southwest”); (5) LeighFisher (“LeighFisher”); (6) the National Association of Independent Public Finance Advisors (“NAIPFA”); and (7) the Securities Industry and Financial Markets Association (“SIFMA”). A copy of the comment letters is attached as Exhibit 2.

The comment letters are summarized by topic as follows:

- **Timing of Rulemaking**

**Comments.** First Southwest, LeighFisher, BDA and SIFMA said that adopting a rule relating to supervision of municipal advisors was premature because the SEC had not published its final rule on the definition of “municipal advisor.” LeighFisher and SIFMA requested an extended comment period for draft Rule G-44 following a final determination by the SEC concerning the definition of a municipal advisor. SIFMA also requested an extended implementation period.

**MSRB Response.** The MSRB has requested that the proposed rule change be made effective on the date the SEC approves its definition of the term “municipal advisor” or such later date as the SEC approves the proposed rule change. The MSRB has requested, or will request, that other proposed rules that apply to municipal advisors be made effective on later dates. This difference in effective dates will allow municipal advisors time to have written supervisory procedures for compliance with MSRB rules in place as those rules become effective.

- **Use Same Supervisory Structure For Municipal Advisors and Dealers**

**Comments.** First Southwest and BDA said that the Rule should require designation of a chief compliance officer and said that this position is an important part of effective compliance. Both of these commenters said that, without a chief compliance officer, there may be no one charged with monitoring compliance with MSRB rules. First Southwest and BDA also suggested adding a requirement for a supervisory report to management in addition to an annual review. SIFMA also suggested that all municipal advisors (whether dealer advisors or otherwise) be subject to the same regulatory structure.

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<sup>3</sup> See MSRB Notice 2011-28 (May 25, 2011) (“Notice”).

**MSRB Response.** The MSRB has decided not to make the changes requested by these commenters at this time. The MSRB believes that the requirements of proposed Rule G-44 for a municipal advisor to designate a principal or principals with responsibilities to supervise performance of municipal advisory activities and to conduct and document an annual meeting would be sufficient to ensure compliance with MSRB rules. At this time, the most important goal is to make sure that municipal advisors have a supervisory structure in place that is adequate to enable them to achieve compliance with the new MSRB rules and interpretive notices that are applicable to them. The MSRB has decided to defer any consideration of the extension to municipal advisors of some of the more detailed rules to which dealers are subject until municipal advisors have had some experience with this basic structure.

The MSRB also notes that some of the additional rules referred to by these commenters are rules of the Financial Industry Regulatory Authority (“FINRA”), rather than MSRB rules. For example, while FINRA Rule 3130 requires the designation of a Chief Compliance Officer, who must meet with the dealer’s Chief Executive Officer at least annually, Rule G-27 does not. If the Board were to consider drafting comparable rules for municipal advisors, it would likely also consider creating comparable MSRB rules for dealers. The MSRB notes that creation of a comparable rule for dealers would affect bank dealers, which are not required to be FINRA members.

- **Obligation to Supervise and Supervisory System; Exemption for Sole and Small Municipal Advisors**

**Comment.** NAIPFA requested clarification with respect to the amount of flexibility that a municipal advisor would have in designing and implementing a supervisory structure appropriate for its firm. NAIPFA also requested that the MSRB exempt sole practitioners from the requirements to designate a supervisor; to determine that supervisors are qualified by experience or training; to conduct an annual compliance meeting; and to review correspondence.

**MSRB Response.** The MSRB has decided to make no changes at this time in response to these comments. The MSRB recognizes the special concerns of sole and small practitioners and drafted proposed Rule G-44 and the MSRB’s sample supervisory checklist with their concerns in mind. Further, the MSRB believes that proposed Rule G-44 as drafted would afford sufficient flexibility to sole and small practitioners and does not believe that it would impose unfair burdens on small practitioners.

Proposed Rule G-44(b) would provide that: “Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules.” In its request for comment on draft Rule G-44, the MSRB explained that “the procedures would vary depending on factors, such as the size

of the firm, number of offices, type of municipal advisory activities engaged in, etc.” Because the activities of small advisors will vary, each advisor would have a certain amount of flexibility in preparing its supervisory procedures and addressing the relevant portions of the sample supervisory checklist.

Additionally, the MSRB notes that many dealers are small and, in some cases, individuals. Rule G-27 (on supervision) applies to them as it does to large broker-dealers. Proposed Rule G-44 would permit a municipal advisor principal to conduct the inspections required by proposed Rule G-44(d), just as Rule G-27(d)(iii) permits principals to conduct inspections under its “limited in size and resources” rule for small dealers. Furthermore, proposed Rule G-44(e)(i) already recognizes the need for special rules for small advisors. It would provide that: “Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the review by a municipal advisor principal of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence relating to its municipal advisory activities.”

The MSRB believes that it would be inappropriate to exempt sole practitioners from the requirements of the proposed rule change. All municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they will achieve compliance with MSRB rules. As stated in the Notice, it is important that municipal advisors educate themselves about the new rules being adopted for municipal advisors and develop procedures for compliance. Exempting small municipal advisors from compliance with the Rule would not serve this purpose.

- **Qualification as Principal**

**Comment.** Dixworks asked for clarification on whether a sole practitioner, who might not otherwise currently qualify as a “principal” under MSRB Rules, could designate himself or herself as a “principal” under draft Rule G-44. Dixworks also asked for clarification on the documentation required for a sole practitioner conducting an annual review. Finally, Dixworks asked whether a sole practitioner, whose expertise was limited to certain areas, could qualify to supervise municipal advisory activities. NAIPFA noted that it will be difficult to effectively supervise a small firm with few professionals in scattered offices.

**MSRB Response.** Since the MSRB does not currently have separate qualification requirements for either a municipal advisor representative or a municipal advisor principal, a sole practitioner could designate himself or herself as the supervisory principal for purposes of proposed Rule G-44. With respect to documenting an annual review, a sole practitioner could maintain a record of any issues arising in connection with matters listed on the supervisory checklist, and the resolution of such issues, as well as any changes in the nature of the municipal advisory activities conducted. The sole practitioner would only be supervising the municipal advisory activities engaged in, which it should have the expertise to

conduct. The MSRB notes that many dealers allow individuals (e.g., investment bankers) to work from their homes. Rule G-27 provides that certain types of activities must be conducted in “offices of municipal supervisory jurisdiction,” each of which must have a designated principal. Those offices must be inspected periodically. In the case of dealers that are so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews required by the rule, the reviews may be conducted by a principal who is sufficiently knowledgeable of the dealer’s supervisory control procedures. In drafting proposed Rule G-44, the MSRB struck a balance between the need to have a supervisory review of the activities engaged in by municipal advisors in various offices with the need to accommodate the economics of many small municipal advisors that might not be able to afford to hire a separate compliance officer.

- **Written Supervisory Procedures**

**Comment.** Dixworks requested clarification about the preparation and application of written supervisory procedures for practitioners without associated persons. Dixworks also said that establishing and maintaining written procedures could be time consuming and burdensome but that it could be accomplished.

**MSRB Response.** The MSRB recognizes that it has a responsibility not to place a regulatory burden on small advisory firms that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. For that reason, it developed a sample supervisory checklist to assist small advisors in developing their supervisory procedures. It is posted on the MSRB website.

- **Correspondence; Recordkeeping**

**Comment.** NAIPFA requested clarification about the types of correspondence that must be maintained and which types of memoranda must be reviewed. NAIPFA said that the SEC’s proposed rule concerning municipal advisor recordkeeping was inconsistent with the MSRB’s rules and requested that the MSRB conform its recordkeeping rules to those proposed by the SEC or explain its rationale.

**MSRB Response.** Proposed Rule G-44(e)(ii) (on recordkeeping of correspondence) would include the additional communications described in Rule G-9(b)(viii)(C), which requires dealers to maintain records of “all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities.” The recordkeeping rules for municipal advisors were structured in the same manner as the recordkeeping rules for dealers because so many municipal advisors are

dealers. In its letter to the SEC on the SEC's proposed rule for municipal advisors, the Board noted the disparity between the dealer recordkeeping rules and the SEC draft rules, which were modeled on the investment adviser recordkeeping rules. In its letter to the SEC, the MSRB said that it did not recommend adopting a different rule for municipal advisors unless the FINRA rules for dealers were modified as well. The MSRB is still of that view and, accordingly, has not modified proposed Rule G-44 or the proposed amendments to Rules G-8 and G-9 in the manner requested by NAIPFA.

**Comment.** NAIPFA requested that the MSRB clarify which pieces of correspondence must be reviewed by a principal and how its rules would apply to various forms of electronic media, including text messages and other communications sent via Facebook, Twitter, etc.

**MSRB Response.** Proposed Rule G-44(e)(i) would require that incoming and outgoing written (i.e., non-electronic) and electronic correspondence relating to a municipal advisor's municipal advisory activities be reviewed by a designated principal. The MSRB is in the process of considering how its rules should be applied to communications via social media and expects to issue guidance on that subject in the future.

- **Need For Additional Requirements for Municipal Advisors**

**Comment.** First Southwest suggested that the same rigorous compliance standards that exist for dealer firms should be consistently applied to newly registered municipal advisors to eliminate what it perceived to be a double standard. Further, First Southwest noted that municipal advisors that are not dealers are not subject to capital requirements and said that they do not carry professional liability insurance at the level of their dealer counterparts. Both First Southwest and BDA suggested that more than a "basic" supervisory structure was justified because municipal advisors dealt with investors in private placements.

**MSRB Response.** The MSRB notes that dealer net capital requirements are imposed by SEC rule, not by an MSRB or FINRA rule. Moreover, neither the MSRB nor FINRA requires professional liability insurance, although some dealers elect to maintain such insurance. The MSRB continues to consider it appropriate to impose only a basic supervisory structure on municipal advisors at this time.

- **Licensing of Principals**

**Comment.** Bradley Payne said that the MSRB should consider grandfathering of supervisory licensing for advisors with certain qualifications, including the Series 53 examination.

**MSRB Response.** The MSRB is currently developing professional qualification standards for testing and considering whether to recognize prior qualifications and special expertise. The MSRB will continue to consider these and other alternatives.

**6. Extension of Time Period of Commission Action**

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

1. Federal Register Notice
2. Notice Requesting Comment and Comment Letters



## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(RELEASE NO. 34- ; File No. SR-MSRB-2011-13)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule G-44, on Supervision of Municipal Advisory Activities, Along with Related Proposed Amendments to Rule G-8, on Books and Records, and G-9, on Preservation of Records

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“the Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 2011, the Municipal Securities Rulemaking Board (“Board” or “MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of proposed Rule G-44 (on supervision of municipal advisory activities), along with related proposed amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The MSRB requests that the proposed rule change be made effective on the date that rules defining the term “municipal advisor” under the Exchange Act are first approved by the Commission or such later date as the Commission approves the proposed rule change.

The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed MSRB Rule G-44. Rule G-27 (on supervision) requires the supervision of brokers, dealers, and municipal securities dealers ("dealers") and their associated persons engaged in municipal securities activities, including financial advisory activities. The purpose of Rule G-27 is to help ensure that such dealers and their associated persons comply with MSRB rules. Rule G-27 does not include all municipal advisory activities now subject to MSRB rules, even if engaged in by dealers. For example, swap advisory activities and solicitations of business on behalf of others are not subject to supervision under Rule G-27. Furthermore, municipal advisors that are not dealer financial advisors are not subject to supervision under Rule G-27.

Proposed Rule G-44 would require all municipal advisors to adopt a basic supervisory structure for municipal advisory activities not already subject to supervision under Rule G-27. Dealer financial advisory activities would continue to be supervised under Rule G-27. The establishment of a basic supervisory structure for municipal advisors is particularly important as the MSRB adopts rules for municipal advisors and municipal advisors must educate themselves

about these new rules and adopt procedures for compliance. The MSRB does not consider it necessary at this time to extend the more detailed supervisory structure required by Rule G-27 to other municipal advisory activities. For example, the creation of “offices of municipal supervisory jurisdiction” in the case of municipal advisors with multiple offices is not recommended by the MSRB at this time. Similarly, many of the provisions of Rule G-27 concern dealer relationships with customers (e.g., the handling of customer complaints), which do not have a municipal advisor counterpart.

Proposed Rule G-44(a) would set forth the obligation of municipal advisors to supervise the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable MSRB and SEC rules (“applicable rules”).

Proposed Rule G-44(b) would require a municipal advisor to establish and maintain a system to supervise the municipal advisory activities of each associated person designed to achieve compliance with applicable rules. The minimum requirements of a municipal advisor’s supervisory system include:

- establishing and maintaining written supervisory procedures;
- designating one or more municipal advisor principal(s) qualified by virtue of experience or training to carry out their supervisory responsibilities;<sup>3</sup>
- maintaining a written record of the designation of the municipal advisor principals and their responsibilities regarding supervision; and
- conducting an annual compliance interview or meeting to discuss compliance matters relevant to the municipal advisory activities of associated persons.

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<sup>3</sup> At this time, there are no professional qualifications examinations for municipal advisor principals. The MSRB notes, however, under Rule G-27 and Rule G-3(b)(i)(B), supervisors of dealer financial advisory activities must be qualified as municipal securities principals.

Proposed Rule G-44(c) would require municipal advisors to adopt, maintain and enforce written supervisory procedures designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The minimum requirements of the written supervisory procedures would include procedures relating to:

- the manner in which a designated principal shall monitor compliance and supervise municipal advisory activities;
- the periodic review by a designated principal of each office that engages in municipal advisory activities;
- the maintenance and preservation of books and records; and
- the maintenance of the written supervisory procedures, a copy of which would be required to be made available in each office of the municipal advisor and in each office where supervisory activities with respect to municipal advisory activities are conducted.

Proposed Rule G-44(d) would require an annual review of the municipal advisory activities of the firm. The purpose of the review is to assist in detecting and preventing violations of, and achieving compliance with, applicable rules.

Proposed Rule G-44(e) would address the requirements of municipal advisors with regard to the review and recordkeeping of correspondence.

The MSRB notes that, in the case of a small municipal advisor firm or a firm that engages in limited municipal advisory activities, it may be necessary for an individual municipal advisor that engages in municipal advisory activities to also supervise those activities. However, the procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc.

Proposed Amendments to MSRB Rules G-8 and G-9. Proposed Rule G-44 would necessitate related amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rules G-8 and G-9 would require records to be kept of:

- the designations of municipal advisor principals and their responsibilities;
- the content of each annual compliance interview or meeting and a list of attendees;
- the written supervisory procedures;
- the results of the designated principal(s) annual review of the municipal advisory activities of the firm; and
- correspondence and any other written and electronic communications of associated persons.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in

general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it is designed to adopt a basic supervisory structure for municipal advisors in order to ensure knowledge of, and compliance with MSRB rules and to provide for recordkeeping and records preservation to facilitate enforcement of proposed Rule G-44, as well as other MSRB rules.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

While the proposed rule change will affect all municipal advisors, it would be a necessary regulatory burden in order to assure compliance with MSRB rules. Proposed Rule G-44 would afford sufficient flexibility to sole and small practitioners and would not impose unfair burdens on such practitioners. Proposed Rule G-44(b) would provide that: “Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules.” The procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in.

Additionally, the MSRB notes that many dealers are small and, in some cases, individuals. Rule G-27 (on supervision) applies to them as it does to large dealers. Proposed Rule G-44 would permit a municipal advisor principal to conduct the inspections required by proposed Rule G-44(d), just as Rule G-27(d)(iii) permits inspections by principals under its “limited in size and resources” rule for small dealers. Furthermore, proposed Rule G-44(e)(i)

already recognizes the need for special rules for small advisors. It would provide that: “Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the review by a municipal advisor principal of incoming and outgoing written (i.e., non-electronic) and electronic correspondence relating to its municipal advisory activities.” All municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they will achieve compliance with MSRB rules.

Finally, the MSRB has posted on its website a sample supervisory checklist, which small municipal advisors may find useful in the development of their written supervisory procedures for compliance with MSRB rules. The MSRB plans to update that checklist as new MSRB rules are adopted.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all municipal advisors to the extent their municipal advisory activities are not already supervised under Rule G-27.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On May 25, 2011, the MSRB requested comment on a draft of Rule G-44 (“draft Rule G-44”) and associated draft amendments to Rules G-8 and G-9.<sup>4</sup> The Notice generated seven comment letters from the following commenters: (1) Bond Dealers of America (“BDA”); (2) Bradley Payne LLC (“Bradley Payne”); (3) Dixworks LLC (“Dixworks”); (4) First Southwest Company (“First Southwest”); (5) LeighFisher (“LeighFisher”); (6) the National Association of

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<sup>4</sup> See MSRB Notice 2011-28 (May 25, 2011) (“Notice”).

Independent Public Finance Advisors (“NAIPFA”); and (7) the Securities Industry and Financial Markets Association (“SIFMA”).

The comment letters are summarized by topic as follows:

- Timing of Rulemaking

Comments. First Southwest, LeighFisher, BDA and SIFMA said that adopting a rule relating to supervision of municipal advisors was premature because the SEC had not published its final rule on the definition of “municipal advisor.”

LeighFisher and SIFMA requested an extended comment period for draft Rule G-44 following a final determination by the SEC concerning the definition of a municipal advisor. SIFMA also requested an extended implementation period.

MSRB Response. The MSRB has requested that the proposed rule change be made effective on the date the SEC approves its definition of the term “municipal advisor” or such later date as the SEC approves the proposed rule change. The MSRB has requested, or will request, that other proposed rules that apply to municipal advisors be made effective on later dates. This difference in effective dates will allow municipal advisors time to have written supervisory procedures for compliance with MSRB rules in place as those rules become effective.

- Use Same Supervisory Structure For Municipal Advisors and Dealers

Comments. First Southwest and BDA said that the Rule should require designation of a chief compliance officer and said that this position is an important part of effective compliance. Both of these commenters said that, without a chief compliance officer, there may be no one charged with monitoring compliance with MSRB rules. First Southwest and BDA also suggested adding a



requirement for a supervisory report to management in addition to an annual review. SIFMA also suggested that all municipal advisors (whether dealer advisors or otherwise) be subject to the same regulatory structure.

MSRB Response. The MSRB has decided not to make the changes requested by these commenters at this time. The MSRB believes that the requirements of proposed Rule G-44 for a municipal advisor to designate a principal or principals with responsibilities to supervise performance of municipal advisory activities and to conduct and document an annual meeting would be sufficient to ensure compliance with MSRB rules. At this time, the most important goal is to make sure that municipal advisors have a supervisory structure in place that is adequate to enable them to achieve compliance with the new MSRB rules and interpretive notices that are applicable to them. The MSRB has decided to defer any consideration of the extension to municipal advisors of some of the more detailed rules to which dealers are subject until municipal advisors have had some experience with this basic structure.

The MSRB also notes that some of the additional rules referred to by these commenters are rules of the Financial Industry Regulatory Authority (“FINRA”), rather than MSRB rules. For example, while FINRA Rule 3130 requires the designation of a Chief Compliance Officer, who must meet with the dealer’s Chief Executive Officer at least annually, Rule G-27 does not. If the Board were to consider drafting comparable rules for municipal advisors, it would likely also consider creating comparable MSRB rules for dealers. The MSRB notes that creation of a comparable rule for dealers would affect bank dealers, which are not required to be FINRA members.

- Obligation to Supervise and Supervisory System; Exemption for Sole and Small Municipal Advisors

Comment. NAIPFA requested clarification with respect to the amount of flexibility that a municipal advisor would have in designing and implementing a supervisory structure appropriate for its firm. NAIPFA also requested that the MSRB exempt sole practitioners from the requirements to designate a supervisor; to determine that supervisors are qualified by experience or training; to conduct an annual compliance meeting; and to review correspondence.

MSRB Response. The MSRB has decided to make no changes at this time in response to these comments. The MSRB recognizes the special concerns of sole and small practitioners and drafted proposed Rule G-44 and the MSRB's sample supervisory checklist with their concerns in mind. Further, the MSRB believes that proposed Rule G-44 as drafted would afford sufficient flexibility to sole and small practitioners and does not believe that it would impose unfair burdens on small practitioners.

Proposed Rule G-44(b) would provide that: "Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules." In its request for comment on draft Rule G-44, the MSRB explained that "the procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc." Because the activities of small advisors will vary, each advisor would have a certain amount of flexibility in preparing its supervisory procedures and addressing the relevant portions of the sample supervisory checklist.

Additionally, the MSRB notes that many dealers are small and, in some cases, individuals. Rule G-27 (on supervision) applies to them as it does to large broker-dealers. Proposed Rule G-44 would permit a municipal advisor principal to conduct the inspections required by proposed Rule G-44(d), just as Rule G-27(d)(iii) permits principals to conduct inspections under its “limited in size and resources” rule for small dealers. Furthermore, proposed Rule G-44(e)(i) already recognizes the need for special rules for small advisors. It would provide that: “Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the review by a municipal advisor principal of incoming and outgoing written (i.e., non-electronic) and electronic correspondence relating to its municipal advisory activities.”

The MSRB believes that it would be inappropriate to exempt sole practitioners from the requirements of the proposed rule change. All municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they will achieve compliance with MSRB rules. As stated in the Notice, it is important that municipal advisors educate themselves about the new rules being adopted for municipal advisors and develop procedures for compliance. Exempting small municipal advisors from compliance with the Rule would not serve this purpose.

- Qualification as Principal

Comment. Dixworks asked for clarification on whether a sole practitioner, who might not otherwise currently qualify as a “principal” under MSRB Rules, could designate himself or herself as a “principal” under draft Rule G-44. Dixworks also asked for clarification on the documentation required for a sole practitioner conducting an annual

review. Finally, Dixworks asked whether a sole practitioner, whose expertise was limited to certain areas, could qualify to supervise municipal advisory activities. NAIPFA noted that it will be difficult to effectively supervise a small firm with few professionals in scattered offices.

MSRB Response. Since the MSRB does not currently have separate qualification requirements for either a municipal advisor representative or a municipal advisor principal, a sole practitioner could designate himself or herself as the supervisory principal for purposes of proposed Rule G-44. With respect to documenting an annual review, a sole practitioner could maintain a record of any issues arising in connection with matters listed on the supervisory checklist, and the resolution of such issues, as well as any changes in the nature of the municipal advisory activities conducted. The sole practitioner would only be supervising the municipal advisory activities engaged in, which it should have the expertise to conduct. The MSRB notes that many dealers allow individuals (e.g., investment bankers) to work from their homes. Rule G-27 provides that certain types of activities must be conducted in “offices of municipal supervisory jurisdiction,” each of which must have a designated principal. Those offices must be inspected periodically. In the case of dealers that are so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews required by the rule, the reviews may be conducted by a principal who is sufficiently knowledgeable of the dealer’s supervisory control procedures. In drafting proposed Rule G-44, the MSRB struck a balance between the need to have a supervisory review of the activities engaged in by municipal advisors in

various offices with the need to accommodate the economics of many small municipal advisors that might not be able to afford to hire a separate compliance officer.

- Written Supervisory Procedures

Comment. Dixworks requested clarification about the preparation and application of written supervisory procedures for practitioners without associated persons. Dixworks also said that establishing and maintaining written procedures could be time consuming and burdensome but that it could be accomplished.

MSRB Response. The MSRB recognizes that it has a responsibility not to place a regulatory burden on small advisory firms that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. For that reason, it developed a sample supervisory checklist to assist small advisors in developing their supervisory procedures. It is posted on the MSRB website.

- Correspondence; Recordkeeping

Comment. NAIPFA requested clarification about the types of correspondence that must be maintained and which types of memoranda must be reviewed. NAIPFA said that the SEC's proposed rule concerning municipal advisor recordkeeping was inconsistent with the MSRB's rules and requested that the MSRB conform its recordkeeping rules to those proposed by the SEC or explain its rationale.

MSRB Response. Proposed Rule G-44(e)(ii) (on recordkeeping of correspondence) would include the additional communications described in Rule G-9(b)(viii)(C), which requires dealers to maintain records of "all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the

activities of such municipal securities broker or municipal securities dealer with respect to municipal securities.” The recordkeeping rules for municipal advisors were structured in the same manner as the recordkeeping rules for dealers because so many municipal advisors are dealers. In its letter to the SEC on the SEC’s proposed rule for municipal advisors, the Board noted the disparity between the dealer recordkeeping rules and the SEC draft rules, which were modeled on the investment adviser recordkeeping rules. In its letter to the SEC, the MSRB said that it did not recommend adopting a different rule for municipal advisors unless the FINRA rules for dealers were modified as well. The MSRB is still of that view and, accordingly, has not modified proposed Rule G-44 or the proposed amendments to Rules G-8 and G-9 in the manner requested by NAIPFA.

Comment. NAIPFA requested that the MSRB clarify which pieces of correspondence must be reviewed by a principal and how its rules would apply to various forms of electronic media, including text messages and other communications sent via Facebook, Twitter, etc.

MSRB Response. Proposed Rule G-44(e)(i) would require that incoming and outgoing written (i.e., non-electronic) and electronic correspondence relating to a municipal advisor’s municipal advisory activities be reviewed by a designated principal. The MSRB is in the process of considering how its rules should be applied to communications via social media and expects to issue guidance on that subject in the future.

- Need For Additional Requirements for Municipal Advisors

Comment. First Southwest suggested that the same rigorous compliance standards that exist for dealer firms should be consistently applied to newly registered municipal advisors to eliminate what it perceived to be a double standard. Further, First Southwest

noted that municipal advisors that are not dealers are not subject to capital requirements and said that they do not carry professional liability insurance at the level of their dealer counterparts. Both First Southwest and BDA suggested that more than a “basic” supervisory structure was justified because municipal advisors dealt with investors in private placements.

MSRB Response. The MSRB notes that dealer net capital requirements are imposed by SEC rule, not by an MSRB or FINRA rule. Moreover, neither the MSRB nor FINRA requires professional liability insurance, although some dealers elect to maintain such insurance. The MSRB continues to consider it appropriate to impose only a basic supervisory structure on municipal advisors at this time.

- Licensing of Principals

Comment. Bradley Payne said that the MSRB should consider grandfathering of supervisory licensing for advisors with certain qualifications, including the Series 53 examination.

MSRB Response. The MSRB is currently developing professional qualification standards for testing and considering whether to recognize prior qualifications and special expertise. The MSRB will continue to consider these and other alternatives.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2011-13 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2011-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm.



Copies of such filing also will be available for inspection and copying at the MSRB's offices.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2011-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Elizabeth M. Murphy  
Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).



## MSRB NOTICE 2011-28 (MAY 25, 2011)

### REQUEST FOR COMMENT ON DRAFT RULE G-44 (ON SUPERVISION OF MUNICIPAL ADVISORY ACTIVITIES) AND ASSOCIATED AMENDMENTS TO RULES G-8 (ON BOOKS AND RECORDS) AND G-9 (ON PRESERVATION OF RECORDS)

The Municipal Securities Rulemaking Board ("MSRB") is requesting comment on draft Rule G-44 (on supervision of municipal advisory activities), as well as associated draft amendments to Rule G-8 (on books and records) and G-9 (on records preservation). Comments should be submitted no later than June 24, 2011. Comments should be sent via email to [CommentLetters@msrb.org](mailto:CommentLetters@msrb.org). Please indicate the notice number in the subject line of the email and if possible, send comments in PDF format. Written comments should be sent to Ronald W. Smith, Corporate Secretary, 1900 Duke Street, Suite 600, Alexandria, VA 22314. Written comments will be available for public inspection on the MSRB's web site.

Questions about this notice should be directed to Peg Henry, Deputy General Counsel, at 703-797-6600, or Karen Du Brul, Associate General Counsel, at 703-797-6600.

#### BACKGROUND

Rule G-27 (on supervision) requires the supervision of brokers, dealers, and municipal securities dealers ("dealers") and their associated persons engaged in municipal securities activities, including financial advisory activities. The purpose of Rule G-27 is to help ensure that such dealers and their associated persons comply with MSRB rules. Rule G-27 does not include all municipal advisory activities now subject to MSRB rules. Municipal advisors that are not dealer financial advisors are not currently subject to a comparable MSRB rule.

Draft Rule G-44 would require all municipal advisors to adopt a basic supervisory structure for municipal advisory activities not already subject to supervision under Rule G-27. Dealer financial advisory activities would continue to be supervised under Rule G-27. The establishment of a basic supervisory structure for municipal advisors is particularly important as the MSRB adopts rules for municipal advisors and municipal advisors must educate themselves about these new rules and adopt procedures for compliance. The MSRB does not consider it necessary at this time to extend the more detailed supervisory structure required by Rule G-27 to other municipal advisory activities. For example, the creation of "offices of municipal supervisory jurisdiction" in the case of municipal advisors with multiple offices is not recommended by the MSRB at this time. Similarly, many of the provisions of Rule G-27 concern dealer relationships with customers (e.g., the handling of customer complaints), which do not have a municipal advisor counterpart.

The MSRB notes that, in the case of a small municipal advisor firm or a firm that engages in limited municipal advisory activities, it may be necessary for an individual municipal advisor that engages in municipal advisory activities to also supervise those activities. However, the procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc.

#### SUMMARY OF DRAFT RULE G-44

Draft Rule G-44(a) sets forth the obligation of municipal advisors to supervise the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable MSRB and SEC rules ("applicable rules").

Draft Rule G-44(b) would require a municipal advisor to establish and maintain a system to supervise the municipal advisory activities of each associated person designed to achieve compliance with applicable rules. The minimum requirements of a municipal advisor's supervisory system include:

- establishing and maintaining written procedures;
- designating one or more municipal advisor principal(s) based on experience or training;<sup>[1]</sup>
- maintaining a written record of the designation of the municipal advisor principals and their responsibilities regarding supervision; and

- conducting an annual compliance interview or meeting to discuss compliance matters relevant to the municipal advisory activities of associated persons.

Draft Rule G-44(c) would require municipal advisors to adopt, maintain and enforce written supervisory procedures designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The minimum requirements of the written supervisory procedures include procedures relating to:

- the manner in which a designated principal shall monitor compliance and supervise municipal advisory activities;
- the periodic review by a designated principal of each office that engages in municipal advisory activities;
- the maintenance and preservation of books and records; and
- the maintenance of the written supervisory procedures, a copy of which must be made available in each office of the municipal advisor and in each office where supervisory activities with respect to municipal advisory activities are conducted.

Draft Rule G-44(d) would require an annual review of the municipal advisory activities of the firm. The purpose of the review is to assist in detecting and preventing violations of, and achieving compliance with, applicable rules.

Draft Rule G-44(e) addresses the requirements of municipal advisors with regard to the review and recordkeeping of correspondence.

### **SUMMARY OF DRAFT AMENDMENTS TO RULES G-8 AND G-9**

The draft amendments to Rules G-8 and G-9 would require records to be kept of:

- the designations of municipal advisor principals and their responsibilities;
- the written supervisory procedures;
- the results of the designated principal(s) annual review of the municipal advisory activities of the firm.

### **SAMPLE CHECKLIST**

A sample checklist is provided below for use by a designated municipal advisor principal based on pending MSRB rule proposals. It is illustrative only, and municipal advisors would not be required to use the checklist. It is also not intended as a substitute for a municipal advisor's written supervisory procedures, which would provide more detail on how the municipal advisor and its associated persons are to comply with each rule. For example, the written supervisory procedures would be expected to provide specific instructions regarding actions that municipal advisor professionals and appropriately designated principals would undertake to ensure compliance with Rule G-42. Such written supervisory procedures would also describe how the municipal advisor would compile the information on political contributions and municipal advisory engagements that would be required to be reported quarterly to the MSRB under draft Rule G-42. The procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc.

### **REQUEST FOR COMMENT**

The MSRB requests comments on (i) draft Rule G-44 and (ii) the draft amendments to Rules G-8 and G-9.

May 25, 2011

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### **TEXT OF DRAFT RULE G-44**

#### **Rule G-44: Supervision of Municipal Advisory Activities**

(a) *Obligation to Supervise.* Each municipal advisor shall supervise the conduct of the municipal advisory activities of the municipal advisor and its associated persons to ensure compliance with applicable Board rules and the applicable provisions of the Act and rules thereunder ("applicable rules"). For the purposes of this rule, "municipal advisory activities" shall mean those municipal

advisory activities not otherwise subject to supervision pursuant to Rule G-27.

(b) *Supervisory System.* Each municipal advisor shall establish and maintain a system to supervise the municipal advisory activities of each associated person that is reasonably designed to achieve compliance with applicable rules. Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor's supervisory system shall provide, at a minimum, for the following:

(i) The establishment and maintenance of written procedures as required by sections (c) and (e) of this rule.

(ii) (A) *General.* The designation of one or more associated person(s) as municipal advisor principal(s) to be responsible for the supervision of the municipal advisory activities of the municipal advisor and its associated persons as required by this rule.

(B) *Written Record.* A written record of each supervisory designation and of the designated principal's responsibilities under this rule shall be maintained and updated as required under Rule G-8.

(C) *Appropriate Principal.* The designation of the municipal advisor principal(s) responsible for supervision under this rule.

(iii) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities with respect to municipal advisory activities.

(iv) The participation of each associated person, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the municipal advisor at which compliance matters relevant to the municipal advisory activities of the associated persons are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters.

(c) *Written Supervisory Procedures.*

(i) *General Provisions.* Each municipal advisor shall adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance as required in section (a) of this rule. Such procedures shall document the municipal advisor's supervisory system for ensuring compliance with applicable rules and, at a minimum, shall establish procedures:

(A) that state how a designated principal shall monitor for compliance by the municipal advisor with all applicable rules and supervise the municipal advisory activities of associated persons;

(B) for the periodic review, no less frequently than every three years, by a designated principal of each office that engages in municipal advisory activities pursuant to section (d) of this rule;

(C) for the maintenance and preservation, by a designated principal, of the books and records required to be maintained and preserved by municipal advisors under Rules G-8 and G-9 of the Board; and

(D) for the maintenance of the written supervisory procedures for a period of no less than three years from the date that the municipal advisor establishes and implements the procedures required by the provisions of this subsection.

(ii) *Availability of and Revisions to Written Supervisory Procedures.* A copy of a municipal advisor's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained, either electronically or in hard copy, in each office of the municipal advisor and at each location where supervisory activities with respect to municipal advisory activities are conducted on behalf of the municipal advisor. Each municipal advisor shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in Board or other applicable rules and as changes occur in its supervisory system, and each municipal advisor shall be responsible for training its associated persons on the changes to such procedures within a reasonable time after

such changes occur.

(d) *Internal Inspections.*

Each municipal advisor shall conduct a review, at least annually, of the municipal advisory activities in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable rules. The municipal advisor shall retain a record of each annual review as required by Rule G-8(h)(iii).

(e) *Correspondence.*

(i) *Review.* Each municipal advisor shall develop written procedures that are appropriate to its business, size, structure, and clients for the post-use review by a municipal advisor principal of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence relating to its municipal advisory activities.

(ii) *Recordkeeping.* Each municipal advisor shall keep records of correspondence of associated persons related to its municipal advisory activities, as provided in Rule G-8(h)(iii). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records, and the retained records shall be readily available, upon request, to the appropriate regulatory agency.

\* \* \* \* \*

**TEXT OF DRAFT AMENDMENTS TO RULES G-8 AND G-9 [2]**

**Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers, and Municipal Advisors**

(a) - (g) No change.

**(h) *Municipal Advisor Records.* Each municipal advisor shall maintain the following records in the manner described in section (b) of this rule:**

(i)-(ii) [No change to record keeping proposals set forth in MSRB Notices 2011-04 (on draft Rule G-42) and 2011-16 (on draft amendments to Rule G-20)]

**(iii) *Records Concerning Compliance with Rule G-44.***

**For each municipal advisor that is subject to Rule G-44, a record of:**

**(A) each person designated as responsible for supervision of the municipal advisory activities of the municipal advisor and the designated principal's supervisory responsibilities as required by Rule G-44(b)(ii)(B); and**

**(B) the records required under Rule G-44(c), (d) and (e).**

\* \* \* \* \*

**Rule G-9: Preservation of Records**

(a) - (g) No change.

**(h) *Municipal Advisor Records.***

**(i) *Records to be Preserved for Six Years.* Every municipal advisor shall preserve for no less than six years:**

(A)-(B) [No change to records preservation proposals set forth in MSRB Notices 2011-04 (on draft Rule G-42) and on 2011-16 (on draft amendments to Rule G-20).]

**(C) the records required by Rule G-8(h)(iii)(A).**

**(ii) *Records to be Preserved for Three Years.* Every municipal advisor shall preserve for no less than three years:**

**(A) to the extent made or received by such municipal advisor in connection**

with its business as such municipal advisor and not otherwise described in this rule, the records required to be maintained pursuant to Rule G-8(h)(iii)(B).

(iii) *Method of Record Retention.* Such records shall be accessible and available as required by subsection (d) of this rule and retained in the manner required by subsection (e) of this rule.

\* \* \* \* \*

#### Checklist for Written Supervisory Procedures<sup>[3]</sup>

The following is a sample checklist of the MSRB rules to be addressed in written supervisory procedures to be established and maintained by a municipal advisor pursuant to proposed Rule G-44.

***IMPORTANT NOTE: This checklist is not all-inclusive and does not necessarily represent all areas that are required to be addressed in the municipal advisor's written supervisory procedures. This checklist is not a safe harbor with respect to potential deficiencies in a municipal advisor's supervisory procedures, and is offered only as an aid in preparing such written supervisory procedures. Any written supervisory procedures must be updated when and as necessary to reflect new or amended MSRB rules.***

Rule	Activity
G-44(b)	Supervisory System
	<p>Establish and maintain supervisory system:</p> <ul style="list-style-type: none"> <li>• Designate qualified municipal advisor principal(s) (“designated principal”) for each supervisory responsibility.</li> <li>• Keep record of written designation.</li> <li>• Conduct annual compliance meeting.</li> </ul>
G-44(c)	Written Supervisory Procedures
	<p>Develop written supervisory procedures to describe how the designated principal(s) will monitor and enforce compliance with applicable MSRB rules, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Books and records (G-8, G-9) concerning, among other things: <ul style="list-style-type: none"> <li>○ gifts and gratuities</li> <li>○ political contributions</li> </ul> </li> <li>• Annual MSRB fees (A-14)</li> <li>• Notification of change in status (A-15)</li> <li>• Fiduciary duty and fair dealing (G-36, G-17) including reasonable inquiry about: <ul style="list-style-type: none"> <li>○ qualification of personnel;</li> <li>○ delivery of required disclosures, including but not limited to: <ul style="list-style-type: none"> <li>▪ conflicts of interest</li> <li>▪ compensation;</li> <li>▪ material risks and characteristics of products and transactions</li> </ul> </li> </ul> </li> <li>• Gifts and gratuities (G-20)</li> <li>• Political contributions (G-42)</li> <li>• Establishment and maintenance of MSRB electronic mail account and appointment of primary electronic mail contact (G-40)</li> <li>• Correspondence (G-44)(e)</li> <li>• Procedure for review of new or amended MSRB rules and appropriate amendment of policies and procedures</li> </ul>
G-44(d)	Internal Inspections
	Develop schedule for internal review of municipal activities to ensure compliance with applicable MSRB rules.

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[1] At this time, there are no professional qualifications examinations for municipal advisor principals. The MSRB notes, however, that supervisors of dealer financial advisory activities under Rule G-27 must have passed the Series 53 examination (municipal securities principal).

[2] Underlining indicates additions; strikethrough indicates deletions.

[3] This checklist is illustrative only. Much of the content of this checklist consists of items that have been published by the MSRB for comment and have not yet become effective.

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**Alphabetical List of Comment Letters on MSRB Notice 2011-28 (May 25, 2011)**

1. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated June 24, 2011.
2. Bradley Payne LLC: Letter from John B. Payne, Principal, dated May 25, 2011.
3. Dixworks LLC: Letter from Dennis Dix, Jr., Principal, dated June 1, 2011.
4. First Southwest: Letter from Robert Coulter, Senior Vice President, Chief Administrative Officer, dated June 23, 2011.
5. Leigh Fisher: Letter from Nicholas Davidson, President, dated June 22, 2011.
6. National Association of Independent Public Finance Advisors: Letter from Colette J. Irwin-Knott, President, dated June 24, 2011.
7. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated June 24, 2011.



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June 24, 2011

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

Via email

RE: MSRB NOTICE 2011-28

Dear Mr. Smith:

The Bond Dealers of America (BDA) appreciates the opportunity to comment on MSRB Notice 2011-28 (the Notice), which would establish a new Rule G-44 regarding the supervision of municipal advisors. The BDA is a nationwide organization of middle-market broker-dealers in the U.S. fixed income markets, including especially the municipal market. Many of our members also are financial advisors to state and local governments and perform the same functions as the newly-regulated municipal advisors, to which proposed G-44 would apply.

Our members, because they are broker-dealers, have long been subject to Rule G-27. But the proposed Rule G-44 would create a two-tiered system, with municipal advisors at broker-dealers being subject to stricter requirements than stand-alone municipal advisors. This two-tiered system would not only create a competitive advantage to municipal advisors that have a stand-alone business model, but would also provide issuers with less protection when they deal with stand-alone municipal advisors. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) required the regulation of such stand-alone municipal advisors precisely because there had been a dual standard. The MSRB rules should cure that dual standard rather than perpetuate it and should not favor one business model over another.

In particular, the BDA strongly urges the MSRB to require all municipal advisors to have a designated Chief Compliance Officer. This is common practice in the financial industry and is an indispensable element to ensure that someone in a firm is charged with keeping track of and ensuring compliance with the rules and regulations governing the firm. Without such a designated person, there would not necessarily be a person responsible for and tasked with compliance. There needs to be such a responsible person to assure accountability.

The BDA also strongly urges the MSRB to require an annual compliance report to the firm's senior management. Such a report is the minimum that should be done to assure compliance with the MSRB's rules. As with the appointment of a Chief Compliance Officer, this is a commonly required practice in the financial sector and stand-alone municipal advisors should not be exempt from such a basic compliance requirement.

Finally, one of the justifications given in the Notice for differing standards between municipal advisors at a broker-dealer and stand-alone municipal advisors is that the stand-alone municipal advisors do not have “customers.” However, we note that municipal advisors, contrary to the assertion in the Notice, do have “customers” in the sense that they engage in private placements. We believe that it is not correct for the MSRB to treat those investors as if they are beyond the protections afforded to other investors and so object to any distinction on that basis between municipal advisors associated with broker-dealers and stand-alone municipal advisors.

We note, as we have in other recent comments, that the MSRB is proposing regulation of municipal advisors before the definition of exactly who is a municipal advisor is settled. We believe this is not advisable and may have additional comments when the definition is settled.

Dodd-Frank required the regulation of municipal advisors in order to protect issuers and require a level playing field among all those who engage in municipal advice. The MSRB has done a great deal in a short time toward those goals. We urge you to take the additional steps outlined here in order to more closely achieve those goals.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marcia L. Williams".

Chief Executive Officer

***Comment Letter***

RE: MSRB NOTICE 2011-28 (MAY 25, 2011)  
REQUEST FOR COMMENT ON DRAFT RULE G-44 (ON SUPERVISION OF  
MUNICIPAL ADVISORY ACTIVITIES) AND ASSOCIATED AMENDMENTS TO RULES  
G-8 (ON BOOKS AND RECORDS) AND G-9 (ON PRESERVATION OF RECORDS)

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***May 25, 2011***

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Regarding draft rule G27, please consider providing a grandfathering of supervisory licensing or pre-qualification testing for former registered securities advisors with Series 53 designation. I left a full service broker-dealer in 2009 to start my financial advisory business. I had a Series 53 in good standing and was a manager of bankers in that firm. I do not see the need after twenty-five years of banking with a spotless record to go through remedial testing again.

John B. Payne  
Principal  
Bradley Payne LLC

**DIXWORKS LLC****Dennis Dix, Jr., Principal**

Phone: (860) 676-0609

Fax: (860) 676-1649

Email: [dixworks@comcast.net](mailto:dixworks@comcast.net)**Memo: Comment Letters@msrb.org****Date: June 1, 2011****Re: Draft Rule G-44; G-8, and G-9 Amendments**

I write as a sole practitioner single member LLC who has been a Municipal Financial Advisor for 40 years, the last 10 being as above. I would like to state, that while not required to do so until October 1, 2010, I did observe the various MSRB rules that might have been applicable, and that are now official, such as the limitation on political contributions, the limitation on gifts, and the assumption of fiduciary responsibility. The mandating of such compliance imposes no exceptional burden and would not impair my ability to fully function as a municipal financial advisor.

I am sure a number of sole practitioner Financial Advisors are now wondering, as am I, how can we comply with directives for formal supervision when we are supervising ourselves? I hope the Board is willing to address the possibility that some of the directives cannot reasonably be complied with in a single person firm.

Some specific points re Rule G-44:

(b)(i): The establishment and maintenance of written procedures could be time consuming and burdensome, but it can be done.

(b)(ii)(A - C): While I call myself a "Principal" as my title (I did pass the Series 52 and 53 exams many years ago), I would not qualify as such today under MSRB rules. Thus even if I did designated myself as responsible for supervision of myself (does this make sense?), it would not qualify under the rule as written, and I could not comply.

(b)(iii) Self-supervision in the past has guided me from areas in which I have no expertise (federal and state housing, for example, or very complex variable rate, swaps, or highly structured transactions). I would deem myself qualified after 40 years in practice, but under the rule, I would not be qualified to do so.

(b)(iv): I regularly monitor myself as to compliance, so an annual compliance review would be somewhat redundant. I am not sure what documentation would be sufficient to comply with this paragraph.

(c)(i)(A and B): With no principal on staff, compliance with the letter of these provisions would not be feasible. Again, self-supervision and ongoing compliance awareness would comply with the spirit of the paragraph.

(c)(i)(C and D): Lack of a principal notwithstanding, compliance with rules G-8 and G-9 is possible. Maintenance of supervisory procedures hinges on how such directives might be interpreted and applied to a sole practitioner.

(c)(ii): Depending on how such supervisory procedures are defined for a sole practitioner, I see no reason why this provision should create a problem

(d): No comment

(e): No comment

Rules G-8 and G-9: No comment.

I hope my comments reflect the inherent incongruities of self-supervision as promulgated under the proposed changes to Rule G-44. I look forward to the Board's thoughts as to how such directives might be reasonably observed by those such as myself.

Thank you for your attention.



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**Robert Coulter**  
Senior Vice President  
Chief Administrative Officer

robert.coulter@firstsw.com

June 23, 2011

Mr. Ronald W. Smith  
Corporate Secretary  
MSRB  
1900 Duke Street  
Suite 600  
Alexandria, VA 22314

Sent via email to [CommentLetters@msrb.org](mailto:CommentLetters@msrb.org)

**Re: MSRB Notice 2011-28**

Dear Mr. Smith:

Thank you for the opportunity to comment on proposed MSRB Rule G-44. FirstSouthwest has long been an advocate of rules that are applied universally to all municipal financial advisory firms, many of which were unregulated prior to the Dodd-Frank Act. Regulations such as G-44 should ensure that all municipal advisory firms compete on a level playing field and establish consistent standards of compliance for all firms that serve as municipal advisors.

First and foremost, FirstSouthwest feels that the proposal of a municipal advisor supervision rule is premature at this time. A formal definition of "municipal advisor" has not been established as of yet. Before supervision of municipal advisors can be discussed, regulators must establish who would be subject to the proposed rule. Nevertheless, FirstSouthwest offers the following comments on the rule as it is written.

In our position as both a municipal advisor and a broker-dealer, FirstSouthwest has operated under the regulations of the SEC and FINRA (f/k/a NASD) for many years. As such, FirstSouthwest is familiar with many of the provisions of Rule G-44, including written supervisory procedures, the designation of principals, the maintenance of records, the delivery of annual compliance training, performing internal inspections and the review and maintenance of both electronic and non-electronic communications.

There are, however, critical components to effective supervision and compliance that we feel are absent in the proposed rule.

The first is the designation of a Chief Compliance Officer (“CCO”) for all municipal advisory firms. In recent years, other participants in the financial industry such as broker-dealers, investment advisors organized under the Advisors Act of 1940, mutual funds, registered hedge funds, and municipal securities dealers (under MSRB Rule G-27 (f) (i)) have all been required to designate a CCO. The designation of a CCO is an important part of effective compliance, as it establishes an individual who is directly responsible for ensuring the firm’s procedures are functioning effectively and in compliance with applicable rules and regulations. This centralization of authority and responsibility is critical in preventing, detecting and addressing misconduct, and promoting a culture of compliance.

The second element that is absent is an annual compliance report to the organization’s senior management. Such reports detail the entity’s supervisory controls, summarize compliance test results, and discuss new or amended procedures. This is also standard across many types of financial services organizations. This report is a critical element to an effective compliance program as it establishes a formal means of communication of material supervisory and compliance matters, and documents such communication.

FirstSouthwest believes that both the designation of a CCO and the production of an annual compliance report would support the goal of effective supervision and compliance at all municipal advisors and stress the need for serious attention to such matters.

The same rigorous compliance standards that exist for dealer firms must be consistently applied to the newly registered advisors to eliminate the double standard that has previously been in effect. A consistent set of rules for both dealer firms and municipal advisors is critical to the protection of issuers. As you are aware, non-dealer municipal advisors are not subject to capital requirements like their dealer counterparts. When harm is caused to an issuer through the actions of an advisor, it can be difficult for the wronged party to seek financial recourse through the court system, as there may be very little capital in the advisor. Similarly, many advisors do not carry professional liability insurance coverage at the levels of dealer firms. Such differences in the models between dealer and non-dealer advisors make it critical that protections afforded to issuers and investors are consistent across the industry, whenever possible.

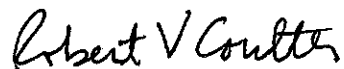
Furthermore, FirstSouthwest takes exception to the language in MSRB Notice 2011-28 which states, “Draft Rule G-44 would require all municipal advisors to adopt a **basic** (emphasis added) supervisory structure for municipal activities not already subject to supervision under Rule G-27.” It is unclear why a “basic” supervisory structure is appropriate for municipal advisors. It is important that municipal advisors are held to a high standard of supervision and compliance, whether the supervisory structure is “basic” or complex.

Some of the reasoning for a more “basic” supervisory structure it seems is explained later in the same paragraph, “...many of the provisions of Rule G-27 concern dealer relationships with customers...which do not have a municipal advisor counterpart.” Please be advised that there are instances where such firms deal with investors. One example is in the context of private placements, where many municipal advisors interact with potential purchasers of securities. In this context, sales-related provisions are not only appropriate, they are essential to protect the interests of such investors. FirstSouthwest believes the definition and application of the term “placement agent” should be reviewed particularly as it relates to the newly registered advisors.



Thank you again for the opportunity to address this proposed rule. Please contact me directly if you have any questions or wish for me to expand on my comments.

Sincerely yours,

A handwritten signature in black ink, reading "Robert V. Coulter". The signature is written in a cursive style with a large, stylized "V" and "C".

Robert Coulter  
Senior Vice President  
Chief Administrative Officer

June 22, 2011

*Via email to [CommentLetters@msrb.org](mailto:CommentLetters@msrb.org)*

Mr. Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1600 Duke Street, Suite 600  
Alexandria, VA 22314

Re: Comment on Rule G-44, Rule G-8 and Rule G-9

Dear Mr. Smith:

LeighFisher provided comments earlier this year to the Securities and Exchange Commission regarding its proposed rule related to registration of municipal advisors. The SEC has not issued its final rule, although we understand that SEC's final rule is likely to be issued in the upcoming months.

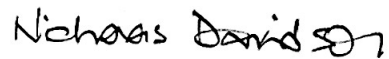
Of particular importance to us is whether the final rule will modify the definition of municipal advisor in a manner that would exclude LeighFisher. We are aware of a number of other companies in a similar situation.

MSRB's proposed modifications of Rules G-44, G-8, and G-9 will be matters of importance or of no consequence to us depending on the SEC's final rule.

We respectfully request that MSRB consider either extending the comment deadline on its draft rule and amendments until a reasonable time following SEC's issuance of its final rule, or to allow firms who filed comments with the SEC on its proposed rule to offer comments for a specified period following SEC's issuance of its final rule.

We would be pleased to discuss this matter with you.

Respectfully submitted,



Nicholas Davidson  
President

JNRD/sb



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June 24, 2011

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

Re: MSRB Notice No. 2011-28

The National Association of Independent Public Financial Advisors (“NAIPFA”) appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board (“MSRB”) on the MSRB’s proposed Rule G-44 and related changes to Rules G-8 and G-9 (the “Supervisory Rules”).

NAIPFA, founded 21 years ago, is a professional organization composed of independent public finance advisory firms located across the nation. Our member firms solely and aggressively represent the interests of issuers of municipal securities.

**PRELIMINARY STATEMENT:**

The MSRB is proposing the Supervisory Rules to establish a basic supervisory structure for municipal advisors who are not broker-dealers already subject to Rule G-27. NAIPFA appreciates the MSRB’s recognition of the differences between broker-dealers and independent advisors and its efforts to tailor the Supervisory Rules to the business and business model of independent municipal advisors. In particular, NAIPFA appreciates the MSRB’s prior recognition that regulations should not place an undue burden on small advisory firms and its acknowledgment in the current proposal that (i) small advisory firms - which describes most of NAIPFA’s members - will likely be in the position of having persons who are engaging in advisory activities having supervisory responsibility for those same activities, and (ii) that the procedures firms adopt would necessarily vary depending on their business, size, structure and clients.

It is because the MSRB recognizes the unique nature of municipal advisors that NAIPFA generally supports the Supervisory Rules as proposed. NAIPFA would, however, ask that the MSRB be even more explicit than it has already been that each firm should have the flexibility to adopt a supervisory regime that makes sense for that firm so that the SEC or any



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entity to which it delegates examination and enforcement authority will not expect or require uniformity of approach among the municipal advisory firms. In addition, NAIPFA asks that the MSRB clarify

With respect to all firms,

- Whether the correspondence or other records that must be maintained include inter-office communications; and
- that the requirement to review correspondence after it has been received or sent does not mean that all correspondence must be reviewed; and

that an advisory firm operating with only a single individual who is required to register as a municipal advisor (“sole practitioners”) would be exempt from the requirements to

- formally designate one or more supervisors;
- determine that supervisors are qualified “by virtue of experience or training;”
- conduct an annual compliance meeting; and
- review correspondence.

**COMMENT:**

NAIPFA recognizes and supports the need to establish a supervisory regime that will apply to municipal advisors. NAIPFA believes the MSRB’s approach is a reasonable one and generally supports the Supervisory Rules, as written. However, NAIPFA seeks clarification on a few points.

**Flexibility**

In its proposal, the

MSRB notes that, in the case of a small municipal advisor firm or a firm that engages in limited municipal advisory activities, it may be necessary for an individual municipal advisor that engages in municipal advisory activities to also supervise those activities. However, the procedures would vary depending on factors, such as the size of the firm, number of offices, type of municipal advisory activities engaged in, etc.

NAIPFA understands this to mean that firms should have significant flexibility to develop a compliance regime designed to ensure compliance with the substantive rules it must follow, and that it would be less important – particularly in the case of the smallest firms – that they adopt the costly and technically sophisticated systems one might expect in a large broker-



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dealer or registered investment advisory firm. NAIPFA would appreciate confirmation that it is correct in its belief. Such confirmation might take the form of a more explicit recognition by the MSRB in its submission to the SEC of the Supervisory Rules that “the MSRB recognizes the mandate of Dodd-Frank not to impose an undue regulatory burden on small firms and, accordingly, intends by these rules to grant municipal advisory firms significant flexibility in designing and implementing a supervisory structure appropriate for their firm.” Of course, if NAIPFA mis-reads the MSRB’s intent, NAIPFA would appreciate clarification so there is no misunderstanding.

In considering this request, the MSRB might note what NAIPFA understands to be a fairly common arrangement in municipal advisory firms, which is two or three professionals (sometimes equal partners in the firm), each operating out of their own office, linked only by the internet. Even if the professionals were able to agree on which would be designated the supervisor, it would be difficult, at best, for the supervisor to effectively supervise the activities of the other(s).

### **Recordkeeping**

NAIPFA notes that the SEC’s proposed Rule 15Ba1-7 would require municipal advisors to maintain “originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications.”

Proposed Rule G-44(e)(i) would require that each municipal advisor “develop written procedures that are appropriate to its business, size, structure and clients for the post-use review by a municipal advisor principal of incoming and outgoing written (i.e., non-electronic) and electronic correspondence relating to its municipal advisory activities. Proposed Rule G-44(e)(ii) would require each municipal advisor to “keep records of correspondence of associated persons related to its municipal advisory activities, as provided in Rule G-8(h)(iii).” Proposed Rule G-8(h)(iii)(B), however, simply refers to the records required to be kept under, among other provisions, Rule G-44(e).

As it stands now, if both the SEC proposed rule and the Supervisory Rules are adopted in their present form, municipal advisors will be subject to (at least) two similar but not identical recordkeeping requirements relating to correspondence. NAIPFA requests that the MSRB either conform its rules to the SEC’s rules with respect to the records to be maintained



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or identify the differences, if any, that it perceives in its proposed Supervisory Rules and the rationale for such differences.

NAIPFA further asks that the MSRB make clear what appears to be implicit in its proposed Rule G-44(e)(i), that not every piece of “incoming and outgoing correspondence” must be reviewed by a principal. The MSRB should similarly make clear its views with respect to the applicability of its rules to various electronic media, including text messages or communications sent or received on social media sites such as Facebook, LinkedIn and Twitter. In this regard, the MSRB might offer guidance similar to the guidance it offered relating to Rule G-27<sup>1</sup> or that offered by FINRA in its Regulatory Notice 07-59.<sup>2</sup> NAIPFA would welcome such guidance, and the opportunity to comment before it is made final.

### **Sole Practitioners**

The MSRB acknowledges the difficulties inherent in establishing a supervisory system for small firms. Those difficulties are even more pronounced when the firm has only one employee who is engaged in municipal advisory services requiring registration pursuant to SEC rules. Accordingly, NAIPFA requests that the MSRB expressly exempt sole practitioners from some of its requirements. Specifically, sole practitioners should not be required to

- formally designate one or more principals, as set forth in proposed Rule G-44(b)(ii);
- use reasonable efforts to determine that supervisory personnel are qualified, as set forth in Proposed Rule G-44(b)(iii);
- conduct an annual compliance meeting, as set forth in proposed Rule G-44(b)(iv); and
- review correspondence, as set forth in proposed Rule G-44(e)(i).

NAIPFA believes the other requirements of the Supervisory Rules are sufficient to ensure that the sole practitioner has procedures in place reasonably designed to “ensure compliance with applicable Board Rules.”

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<sup>1</sup> See MSRB Interpretive Notice dated March 24, 2000 *Supervisory Procedures for the Review of Correspondence with the Public* [http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-27.aspx?tab=2#\\_9724CF47-6EC0-4DAD-AC4A-5C1960AFE221](http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-27.aspx?tab=2#_9724CF47-6EC0-4DAD-AC4A-5C1960AFE221)

<sup>2</sup> See Regulatory Notice 07-59 (December 2007)  
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p037553.pdf>



**National Association of Independent  
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**CONCLUSION:**

NAIPFA appreciates the MSRB's efforts to develop rules that take into account the business and structure of municipal advisors. We believe the Supervisory Rules generally represent a reasonable approach to supervision but believe certain aspects of the Supervisory Rules could be made clearer and, in the case of sole practitioners, eliminated altogether. We would be happy to discuss our views further with the MSRB or its staff if that would be helpful.

Sincerely,

Colette J. Irwin-Knott, CIPFA  
President, National Association of Independent Public Finance Advisors

cc: The Honorable Mary L. Schapiro, Commissioner  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
Michael Coe, Counsel to Commissioner Aguilar  
Martha Haines, Assistant Director and Chief, Office of Municipal Securities  
Lynnette Hotchkiss, Executive Director, Municipal Securities Rulemaking Board



June 24, 2011

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

**Re: MSRB Notice 2011-28 – Draft MSRB Rule G-44 (On Supervision of Municipal Advisory Activities) and Associated Amendments to Rules G-8 (On Books and Records) and G-9 (On Preservation of Records) (May 25, 2011)**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) draft Rule G-44 (On Supervision of Municipal Advisory Activities) and Associated Amendments to Rules G-8 (On Books and Records) and G-9 (On Preservation of Records) (May 25, 2011) (collectively, the “Proposal”).

## **I. Executive Summary**

SIFMA supports the MSRB’s efforts to ensure that municipal advisors are properly supervised and that all municipal advisors adopt a supervisory structure for municipal activities not already subject to supervision under Rule G-27. As discussed in SIFMA’s comment letters submitted previously to the MSRB in response to other proposed MSRB rule changes<sup>2</sup>, since the Securities and Exchange Commission (“SEC”) has not yet adopted final rules that would define

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> See Comment Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB (April 11, 2011) at 3-5, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-14/SIFMA.ashx>; and Comment Letter from Leslie M. Norwood, SIFMA to Ronald W. Smith, MSRB (February 25, 2011) at 4-5, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-04/SIFMA.ashx>.



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Municipal Securities Rulemaking Board  
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the scope of activities that trigger municipal advisor registration<sup>3</sup>, and therefore the universe of potential registrants, the Proposal to establish a supervisory system for such activity is premature and may be an inefficient use of resources. Accordingly, SIFMA requests an opportunity to provide further comments once the SEC has completed its rulemaking defining the scope of activities subject to municipal advisor registration – and supervision. Once the SEC has completed its rulemaking defining the scope of personnel and activities subject to municipal advisor registration, we would expect the MSRB to propose a supervisory regime for non-dealer municipal advisors of similar robustness as the requirements of G-27 which covers dealer advisors.

## **II. The MSRB Should Delay its Rulemaking Until the SEC Determines the Definition of “Municipal Advisor”**

The MSRB should delay its rulemaking regarding the supervision of non-dealer municipal advisors and their duties until the SEC adopts final rules defining what activities require registration as a “municipal advisor.” At this time, SIFMA is unable to fully and meaningfully comment on the Proposal without knowing to whom, and for what activities, the duties would apply. While SIFMA appreciates the MSRB’s attempt to provide supervisory guidance, it seems unproductive to propose rules that would apply to a supervisor of an as yet undefined class of persons and activities.

On its face, the Proposal appears not to impact dealer advisors, as supervisory rules for all dealer advisor activity is already covered under Rule G-27. However, many SIFMA member firms have affiliates, subsidiaries and related banks that employ personnel outside their municipal securities broker or dealer. For example, SIFMA members are concerned that investment management personnel, swap marketers, and retail banking personnel may have to register as municipal advisors, considering the broad scope of the SEC’s current proposed definition. These types of personnel are not currently covered by Rule G-27, and may be covered by proposed Rule G-44.

Therefore requiring the development and implementation of a new supervisory structure prior to the SEC completing its rulemaking defining the scope of activities triggering municipal advisor registration may result in confusion arising from multiple revisions to supervisory procedures in a short period of time. The resources needed to develop and implement supervisory procedures may be better directed at this time until the SEC has completed its rulemaking on this issue.

As we cannot analyze the full impact of proposed Rule G-44 at this time, once the SEC has issued its final rules, the MSRB should reopen the comment period on this Proposal. At that

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<sup>3</sup> See Exchange Act Release No. 63576 (Dec. 20, 2010).

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time SIFMA and others may more completely consider the implications of this Proposal in light of what activities are determined to require municipal adviser registration and supervision.

### **III. Level Regulatory Playing Field for All Municipal Advisors**

As currently proposed, Rule G-44 would cover municipal advisory activities not subject to Rule G-27 (which requires a “detailed”<sup>4</sup> supervisory system) and would require all non-dealer municipal advisors to adopt a “basic”<sup>5</sup> supervisory structure. SIFMA believes that all municipal advisory activity should be subject to the same level of regulation, whether it be “basic” or “detailed”. To ensure a level playing field, all market participants engaging in the same activity should be subject to the same standards.

### **IV. Implementation Period**

Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when a final Rule G-44 is adopted, the MSRB provides for a reasonable implementation period to develop and implement supervisory policies and procedures, as well as systems and controls, which would be no less than six months, before the Proposal becomes effective.

### **V. Conclusion**

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the MSRB’s efforts to ensure that all municipal advisors are properly supervised and that municipal advisors adopt a supervisory structure for municipal activities not subject to supervision under Rule G-27. However, as discussed above, SIFMA members feel that the MSRB Proposal is premature until the SEC has adopted final rules defining the type of personnel deemed to be a “municipal advisor” and the scope of activities that will constitute “advice.”

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours, ,



David L. Cohen  
Managing Director  
Associate General Counsel

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<sup>4</sup> MSRB Notice 2011-28 (May 25, 2011).

<sup>5</sup> MSRB Notice 2011-28 (May 25, 2011).

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Municipal Securities Rulemaking Board  
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cc:

***Municipal Securities Rulemaking Board***

Lynette Kelly Hotchkiss, Executive Director

Ernesto Lanza, Deputy Executive Director and General Counsel

Peg Henry, Deputy General Counsel

Karen Du Brul, Associate General Counsel