NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

March 15, 2022

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC. 20005

RE: 2021-18: Second Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46

Dear Mr. Smith:

Thank you for the opportunity to comment on MSRB Notice 2021-18 regarding Solicitor Municipal Advisors. NAMA represents independent municipal advisory firms and individual municipal advisors (MAs) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

We must begin our comments expressing extreme concern about the "Books and Records" discussion (for proposed rule G-46) on page 13 of the Notice. The Notice states that (by paraphrase) the MSRB proposes to include recordkeeping expectations into the text of the Rule itself rather than including it in MSRB Rule G-8, and that the MSRB will take a similar approach with respect to future MSRB rules or rule amendments with the goal of including books and records obligations to each MSRB rule in the text of each rule itself.

As far as we know the MSRB has not discussed this proposed change in its recordkeeping rulemaking approach and framework with stakeholders, nor has it proposed the change separately and within its own context. Finding a proposed change that impacts the entirety of MSRB recordkeeping rules within a rule about solicitors, and without specifically highlighting the larger implications of such a change, is very surprising. As a matter of principle, proposed broad changes to MSRB rulemaking should not be tucked away in unrelated proposed rulemaking.

The MSRB should have detailed and substantive discussions with stakeholders about its recordkeeping rule intentions and develop a formal proposal for public comment. This is especially true as the Notice states that these changes to the MSRB's recordkeeping approach "will be more helpful to stakeholders in the long run." Without input from stakeholders, and without stakeholder review and consideration of such a change, we are unclear how the MSRB has come to this conclusion.

As for the Notice, we agree in principle with the points made in the MSRB's summary of proposed rules for solicitors. We would suggest that, as with all MSRB rulemaking, the MSRB use existing rules and apply them when possible – or at least apply the baseline intents of them - uniformly. We noted previously that we believe this could be done by using the current rulemaking structure to highlight and include areas where rulemaking applies to solicitors and amend rules to add language specifically needed for solicitors. While we do not necessarily disagree that a new rule is out of place, we again

emphasize the need for MSRB rulemaking and guidance to be clear and especially in this case, avoid confusion between inter- and intra- agency rulemakings.

The only other comment we wish to make about the specific questions in the proposal relate to written disclosures. We support MSRB's proposal to have disclosures provided in writing and not be given orally. This overlays with MSRB rulemaking in this area for broker-dealers and municipal advisors and upholds a key MSRB mission to protect issuers.

We would also like to highlight another broader point raised in the Notice highlighting potential undue burdens the rulemaking places on small firms. This is a topic NAMA has raised consistently over the years and one that deserves further discussion. When the Dodd Frank Act was developed, there was specific effort to make sure that by regulating MA firms, the regulatory regime would not be overly burdensome and costly for small municipal advisors (Section 15B(2)(L)(iv)). We would welcome having conversations on the impact the regulatory regime has on MAs with the MSRB, and helping the MSRB understand these burdens.

Finally, we would like to note that (due to no actions of the authors or staff addressing this issue), the proposed rules apply to professionals that solicit on behalf of third-party professionals and where a government would rely on what is said to them. These professionals have nothing to do with municipal advisory work yet the "solicitor municipal advisor" phrasing implies that the professional involved is providing advice related to a municipal securities transaction. The real intention discussed in the Notice was to regulate "solicitor MAs" in order to have some type of regulatory regime, especially related to pay to play arrangements, over public pension placement agents. It is unfortunate that professionals unrelated to municipal advisory services causes confusion on the larger scale due to the naming convention used for these solicitor professionals.

We realize that the MSRB must address the application of MSRB rules to these professionals and undergo the arduous work to align them with SEC Investor Adviser rules AND MSRB Municipal Advisor rules, AND MSRB Broker-Dealer rules. We hope that this proposal will lead to finalizing the regulatory framework over solicitors and that going forward the MSRB can allocate its time and resources to rulemaking that applies to a larger, regulated profession audience.

Thank you for the opportunity to comment on proposed Rule G-46.

Sincerely,

Susan Gaffney
Executive Director

March 15, 2022

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-18 – Second Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46

Dear Mr. Smith,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to comment on Municipal Securities Rulemaking Board ("MSRB") Notice 2021-18 (the "Notice")[2] second request for comment on fair dealing solicitor municipal advisor obligations and new draft Rule G-46. We understand that new draft Rule G-46 would (i) codify interpretive guidance previously issued in 2017 that relates to the obligations of solicitor municipal advisors under Rule G-17 and (ii) add additional requirements that would align some of the obligations imposed on solicitor municipal advisors with those applicable to non-solicitor municipal advisors under Rule G-42, to duties of non-solicitor municipal advisors, to underwriters under Rule G-17 on fair dealing, and to certain solicitations undertaken on behalf of third-party investment advisers under the U.S. Securities and Exchange Commission's ("SEC") marketing rule for investment advisers.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org. SIFMA's members underwrite over 90% of new issues of municipal securities by volume.

[2] MSRB Notice 2021-18, Second Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46 (December 15, 2021).

SIFMA applauds the MSRB's efforts in revising its original proposal[3] in light of comments received[4] and in seeking a second round of public comment. In particular, we applaud the MSRB for clarifying the ambiguity regarding the standard of conduct that applies to solicitor municipal advisors.

We do, however, still have certain concerns with the (1) lack of solicitation prohibition for solicitor municipal advisors, (2) inconsistency with the SEC's Pay-to-Play Rule (as defined herein), (3) lack of safe harbor for inadvertent solicitation, and (4) recordkeeping requirements. Also, responses to the MSRB's specific questions are attached hereto as Appendix A.

I. Concerns with Lack of Solicitation Prohibition

1) Rule G-46 Should Include a Broad Solicitation Prohibition for Solicitor Municipal Advisors

Under Rule G-38, no dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of such dealer (the "Dealer Solicitation Ban").[5] To better align the obligations imposed on municipal advisors with those imposed by the Dealer Solicitation Ban, a broad solicitation ban, similar to Rule G-38, should equally apply to solicitor municipal advisors and such ban should be included in Rule G-46.

Solicitation has been an area of concern for regulators in both rulemaking and enforcement.[6] Importantly, the practice of paying municipal advisors for the solicitation of municipal advisory business could create material conflicts of interest and could give rise to circumstances suggesting quid pro quo corruption involving municipal entities resulting from such conflicted interests. Such practice could be damaging to the integrity of the municipal securities market.

The Dodd-Frank Act provided the MSRB with the authority to create rules for solicitor municipal advisors[7] and the inclusion of a broad solicitation ban in Rule G-46 would further the purpose of the Securities Exchange Act of 1934 by addressing an area of potential corruption, or appearance of corruption. We believe that it is critical that the MSRB continue to protect the

[3] MSRB Notice 2021-07, Request for Comment on Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46 (March 17, 2021).

[4] See Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 17, 2021, available at https://www.msrb.org/rfc/2021-07/SIFMA.pdf.

[5] See MSRB Rule G-38.

[6] See Report on the Municipal Securities Market, U.S. Securities and Exchange Commission (July 31, 2021), available at https://www.sec.gov/news/studies/2012/munireport073112.pdf.

[7] See Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), which broadened the mission of the MSRB to include the protection of municipal entities and obligated persons. The Dodd-Frank Act also expanded the MSRB's regulatory jurisdiction to cover municipal advisors who solicit business from municipal entities on behalf of others.

integrity of the municipal securities market by creating a broad solicitation ban for solicitor municipal advisors, similar to Rule G-38, and including such ban in new Rule G-46.

2) Rule G-46 Should Include a Narrow Solicitation Prohibition for Solicitor Municipal Advisors

In the event the MSRB does not include a broad solicitation ban, the MSRB should, at a minimum, include in proposed Rule G-46 a narrow solicitation prohibition on payments by municipal advisors to other non-affiliated municipal advisors for the solicitation of municipal advisory business, just as Rule G-38 currently prohibits dealers from paying other non-affiliated dealers to solicit municipal securities business.

As noted above, solicitation in connection with obtaining municipal advisory business could create material conflicts of interest and give rise to circumstances suggesting corruption. We believe adding a solicitation prohibition to Rule G-46 regarding non-affiliated municipal advisors, even though narrower than Rule G-38, is important and would help protect the integrity of the municipal securities market. Furthermore, SIFMA believes all market participants engaging in the same or similar activity should be subject to the same or similar standard. We also feel strongly that uniform rules for dealers and municipal advisors are critical to ensuring a level playing field for all municipal market participants.

II. Concerns with Inconsistency with SEC's Pay-to-Play Rule

1) Uniform Approach for Dealers and Solicitor Municipal Advisors

The MSRB adopted the Dealer Solicitation Ban because it was concerned that dealers were using solicitors not subject to MSRB rules as a way to avoid the limitations of Rule G-37.[8] SIFMA believes that the proposed draft Rule G-46 does not adequately address the same concern for solicitor municipal advisors.

If a broad or narrow solicitation prohibition is not included in Rule G-46, SIFMA recommends that the MSRB develop a uniform approach that allows both dealers and municipal advisors to use either affiliated or non-affiliated regulated persons to solicit municipal securities business and municipal advisory business, respectively, provided that such regulated persons are subject to comprehensive pay-to-play regulation. Such an approach is similar to and would align with the SEC's Pay-to-Play Rule.[9]

In proposing the SEC's Pay-to-Play Rule, the SEC reversed course from its initial rulemaking, which had originally included a complete ban on third-party solicitors (similar to Rule G-38).[10] The SEC's Pay-to-Play Rule, instead, allows investment advisers to compensate third-party "regulated persons" to solicit government entities, provided the "regulated persons" are

[8] See MSRB Notice 2011-04, Request for Comment on Pay to Play Rule For Municipal Advisors (January 14, 2011).

[9] See Political Contributions by Certain Investment Advisers; Final Rule, 75 Fed. Reg. 41,018 (July 14, 2010) ("SEC's Pay-to-Play Rule") (codified at 17 C.F.R § 275.206(4)-5).

[10] SEC's Pay-to-Play Rule, 75 Fed. Reg. at 41,036-41,041.

themselves (i) registered with the SEC and (ii) subject either to the SEC's Pay-to-Play Rule, or an equivalent pay-to-play regime. The SEC's Pay-to-Play Rule is an example of how a regulation can reduce the risk of pay-to-play while still allowing firms flexibility in choosing who solicits on their behalf.

III. Inadvertent Solicitation

1) Lack of Safe Harbor for Inadvertent Solicitation

The MSRB did not respond to our initial comment with respect to inadvertent solicitations. We continue to believe there could be scenarios, similar to Rule G-42 Supp. Material .07 Inadvertent Advice, where an inadvertent solicitation is provided to a solicited entity. For example, where a firm initially is soliciting the solicited entity on behalf of itself but the solicited entity unilaterally chooses not to engage the firm and, instead, seeks to engage a third party investment adviser and the firm earns compensation based on such engagement. If such an event were to occur, there could be an inadvertent solicitation.

We recommend that the MSRB include a safe harbor for inadvertent solicitations in Rule G-46, similar to the safe harbor under Rule G-42 Supp. Material .07 for inadvertent advice, to ensure that certain firms are not unintentionally brought into the solicitor municipal advisor regulatory regime due to no fault of their own. SIFMA believes that such a safe harbor has proved beneficial under Rule G-42 and would similarly be helpful under Rule G-46.

IV. Concerns with Recordkeeping Requirements

1) Streamlining of Rule G-8

In the rule text for draft Rule G-46(h), a solicitor municipal advisor is required to comply with certain recordkeeping requirements. We continue to believe that the substance of the recordkeeping requirements should not be contained in new draft Rule G-46(h). Instead, similar to Rule 15Ba1-8(a)(1)-(8), Rule G-20, Rule G-37, Rule G-42, Rule G-44, and Rule G-3, the recordkeeping requirements should be contained in Rule G-8(h). We believe a central location where all recordkeeping requirements can be found has proved beneficial in the past and has enhanced compliance.

While we understand the MSRB's effort to streamline Rule G-8, we do not believe such approach is helpful or beneficial. First, the approach could decrease operational efficiency by causing confusion of where the recordkeeping requirements can be found. Instead of directing firms to a single location (i.e., Rule G-8), the recordkeeping requirements will be peppered throughout the 400-plus page MSRB Rulebook. Second, for those without knowledge and experience with MSRB rules, such as new legal and compliance personnel, the search for the recordkeeping requirements could cause confusion and prove to be overly burdensome. Third, the approach would likely increase legal and compliance costs because firms would be required to amend written supervisory procedures and other firm resources. Lastly, we think the approach over time could lead to non-compliance with the recordkeeping requirements for certain firms, such as new registrants who may not have experience with MSRB rules and small firms who may not have legal or compliance personnel.

At a minimum, the MSRB should include a cross-reference, similar to Rule 15Ba1-8(a)(1)-(8), stating that there is a requirement in Rule G-46 to keep certain records. For example, rule text stating that "Records Concerning Compliance with Rule G-46: All books and records described in Rule G-46." We believe such cross reference would help assist our members in complying with the recordkeeping requirements while still providing the MSRB with a more streamlined approach to Rule G-8.

2) Streamlining Approach for Future MSRB Rules and Rule Amendments

In the Notice, the MSRB stated that it is proposing to take a similar approach with respect to future MSRB rules or rule amendments. The MSRB stated that the eventual goal would be to include the recordkeeping requirements applicable to each rule in the text of each rule itself, instead of Rule G-8.

We think the overall approach for future MSRB rules and rule amendments is a substantial change to the structure of the MSRB Rulebook and should be open for public comment. Municipal market participants and the public generally should be made aware of such change and presented with an opportunity to comment. The MSRB may find through the comment process that such approach could cause confusion, be overly burdensome, increase legal and compliance costs and decrease operational efficiency for many firms.

V. Coordinate with Market Participants

We continue to encourage the MSRB to coordinate and communicate with market participants in connection with the development of Rule G-46 and any other related compliance materials. We believe such coordination and communication between market participants and regulators is critical to the rulemaking process.

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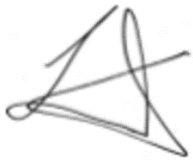
Thank you for considering SIFMA's comments. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,



Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Gail Marshall, Chief Regulatory Officer

Appendix A

Responses to the MSRB's Questions

The MSRB specifically seeks input on the following questions:

1) Do solicitor municipal advisors anticipate any challenges to implementation of draft Rule G-46? If yes, do commenters have any alternatives that they would like to propose for the MSRB's consideration? If so, please describe them.

    - Response: As with any new rulemaking, SIFMA expects certain challenges to develop in connection with the implementation of Rule G-46. We offer certain alternatives in this Response Letter.

2) Is there data or studies available to quantify the benefits and burdens of draft Rule G-46? Are the burdens appropriately outweighed by the benefits?

    - Response: SIFMA does not know of any other data or studies that are available. SIFMA has concerns that the economic analysis may not have have included the legal and compliance costs associated with amending written supervisory procedures. See Part I Section (1) of this Response Letter for more information.

3) Are the narrower standards regarding a solicitor municipal advisor's representations more workable for solicitor municipal advisors? Do these narrower standards provide solicited entities with sufficient protections?

    - Response: SIFMA applauds the MSRB for narrowing the standards, as suggested in our initial response letter.

4) Does new Supplementary Material .02 regarding fair dealing and fiduciary duty address commenter concerns regarding the application, or lack thereof, of a federal fiduciary duty to solicitor municipal advisors? Is further clarification necessary?

    - Response: SIFMA applauds the MSRB for new Supplementary Material .02, as suggested in our initial response letter.

5) Do commenters agree or disagree with the preliminary estimates set forth in this Request for Comment? To the extent possible, please provide evidence to support your assertions.

    - Response: See response to this Appendix A Question 2 above.

6) Would there be value in the MSRB providing additional detail regarding the "terms and amount of the compensation" that would be required to be disclosed in Rule G-46(c)? For example, would stakeholders find it helpful if the MSRB specified that the

solicitor should disclose whether the compensation arrangement is contingent, fixed, on a trailing basis, etc.?

- Response: SIFMA believes the current rule text adequately captures the description of the compensation arrangement.

7) Are the revised timing and manner of disclosure standards set forth in draft Rule G-46(f) workable for direct solicitations? Indirect solicitations? Is this approach more or less burdensome than the approach originally proposed in the First Request for Comment?

- Response: SIFMA believes the current approach is workable and less burdensome than the annual update requirement initially proposed.

8) Draft Rule G-46(g) would prohibit solicitor municipal advisors from receiving excessive compensation. Similar prohibitions that apply to underwriters and non-solicitor municipal advisors set forth factors that are relevant to whether the regulated entity's compensation is excessive. Should the MSRB provide similar guidance regarding the factors that are relevant to whether a solicitor municipal advisor's compensation is excessive? If so, what should those factors be? How do non-solicitor municipal advisors that use the services of solicitor municipal advisors ensure that they do not pay unreasonable fees to solicitor municipal advisors, as required by Rule G-42(e)(i)(E)? What are the compensation structures that are typically used by solicitors (e.g., contingent, flat fee, etc.)?

- Response: SIFMA suggests that the MSRB coordinate with solicitor municipal advisors to understand the factors that are relevant and recommends the MSRB provide guidance to assist in complying with the rule.

9) Should disclosures be permitted to be provided orally? Would an ability to provide oral disclosures increase harmonization with the IA Marketing Rule? Would such an ability increase the benefits or decrease the burdens associated with draft Rule G-46? What type of guidance from the MSRB would facilitate a solicitor municipal advisor's ability to provide such disclosures orally?

- Response: SIFMA believes that the required disclosures must be made in writing, similar to how dealers and municipal advisors are currently required to provide disclosures, for several reasons. First, the disclosures are critical to understanding and evaluating conflicts of interest and standards of conduct and, as such, must be made in writing. Second, permitting oral disclosures would likely cause confusion for solicited entities because they receive written disclosures from other regulated entities. Third, while the IA Marketing Rule allows for oral disclosures, the oral disclosures are only permitted in certain very limited circumstances that are not applicable in the context of Rule G-

46. Fourth, any benefit to oral disclosure would be vastly outweighed by the burden of trying to demonstrate compliance. Lastly, the MSRB has not permitted oral disclosures for any other of its rules and doing so would ensure an unlevel playing field for regulated entities.

10) Draft Rule G-46(e)(iii)(B) would require a solicitor municipal advisor soliciting on behalf of a third-party investment adviser to provide to the solicited entity, among other things, a description of how the solicited entity can obtain a copy of the solicitor client's Form ADV, Part 2. This obligation would apply whether the investment adviser client is an SEC registered investment adviser or a state-registered investment adviser. Are there any circumstances under which a solicitor municipal advisor would not be able to comply with this proposed requirement? For example, are there are any situations under which a solicitor municipal advisor's investment adviser client would not be obligated to file a Form ADV?

- Response: SIFMA's understanding is that investment advisers, including state registered investment advisers, file a Form ADV.

11) Should a municipal advisor client of a solicitor municipal advisor be required to make a bona fide effort to ascertain whether the solicitor municipal advisor has provided any or all of the disclosures related to the municipal advisor client to the solicited entities (e.g., the role and compensation disclosures and/or solicitor client disclosures required by draft Rule G-46(e))? For example, should the engagement documentation require the solicitor municipal advisor to contractually commit to provide the disclosures required by draft Rule G-46, and if so, should the municipal advisor client be required to undertake some level of diligence to confirm that the required disclosures are, in fact, made?

- Response: SIFMA needs more information from the MSRB to adequately respond to this question.

12) Do commenters believe that there is any value to solicited entities in receiving disclosures regarding the payments made by a solicitor municipal advisor to another solicitor municipal advisor to facilitate the solicitation? If so, does such value exceed the costs associated with making such disclosures?

- Response: SIFMA believes that such disclosures are important for transparency and for identifying any potential conflicts of interest.

13) Would the draft requirements of draft Rule G-46 result in a disproportionate and/or undue burden for small municipal advisors? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft rule? Please offer suggestions.

- Response: SIFMA has concerns with the books and records requirements and its impact on small municipal advisors. See Part I Section (1) of this Response Letter.

14) Would the draft requirements of draft Rule G-46 result in a disproportionate and/or undue burden on minority and women-owned business enterprise (MWBE), veteran-owned business enterprise (VBE) or other special designation municipal advisor firms? If so, do commenters have any specific recommendations to alleviate these burdens while still promoting the objectives of the draft rule? Please offer suggestions.

- Response: SIFMA is not aware of any disproportionate and/or undue burden on such firms.

March 15, 2022

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, Suite 1000
Washington, DC 20005

Re: **MSRB Notice 2021-18 Second Request for Comment on Fair Dealing solicitor municipal advisor Obligations and New Draft Rule G-46**

Dear Mr. Smith;

I am writing to you today on behalf of the Third-Party Marketer's Association ("3PM") to provide feedback on behalf of the 3PM Regulatory Committee regarding the second request for comment for Draft Rule G-46 proposed in MSRB Notice 2021-18.

3PM appreciates the MSRB's efforts to codify existing guidance offered under G-17 and other guidance issued specifically for solicitor municipal advisors.

3PM appreciates the extent to which this rule proposal harmonizes with the SEC's Marketing Rule which will became final in November 2022 as well as amendments that incorporate the input from the MA community regarding MSRB Notice 2021-07.

Below we provide our feedback on Revised Draft Rule G-46 and address the specific comments posed in the Notice.

Revised Draft Rule G-46

3PM generally agrees with the amendments provided in Notice 2021-18, however we offer the following comments to the revisions made to Draft Rule G-46.

- **Specified Prohibitions –** While we have no objections with the intent to harmonize the MSRBs rules nor to the addition of a prohibition that would prevent a solicitor municipal advisor from delivering a materially inaccurate invoice for fees or expense for municipal advisory activities performed, we do believe that the prohibition added to prevent a solicitor municipal advisor from receiving "excessive compensation" will be problematic.

Although we believe the rationale behind the prohibition to prevent a solicitor municipal advisor from receiving "excessive compensation" is sound, the determination of what is considered "excessive compensation" is left open to interpretation.

For non-solicitor municipal advisors and underwriters, the marketplace in which these firms operate is much more robust than the one that exists for solicitor municipal advisors

In the Economic Analysis of the Notice 2021-18, Table 1, Number of solicitor municipal advisor Firms, the MSRB states that there are only 105 firms whose business includes solicitation activities. This is far less than that number of firms that participate in either MA non-solicitation or underwriting activities.

In business activities where there is considerable supply and demand, the market is generally self-regulating in that buyers become aware of the general range of costs involved with the provision of certain services. Such a market does not exist for solicitor municipal advisors.

In addition to the sparse solicitor municipal advisor marketplace that exists, the market is severely fragmented and there are no accurate or reliable sources to track and determine the appropriate compensation a solicitor municipal advisor should earn.

Furthermore, there is not one set of services that a solicitor municipal advisor may provide their clients. For MA Non-solicitors and underwriters, there is enough history to understand what firms generally charge for certain services such that for these firms, "excessive compensation" is determinable.

Solicitor municipal advisors' business model vary considerably in terms of the range of services offered to solicitor municipal advisor Clients. Some firms provide the full gamut of services which could include a variety of marketing support services such as collateral materials, population of databases, answering of RFPs and DDQs, development of a website, inbound marketing campaigns, PR, etc. Some firms also provide their solicitor municipal advisor Clients on-going Client Service, where the firm will service any clients it brings to the solicitor municipal advisor Client. Alternatively, there are some firms that merely provide solicitation services to help a solicitor municipal advisor Client raise assets. The marketplace is filled with firms that offer some combinations of the services mentioned. In fact, a single solicitor municipal advisor may have a mix of clients who require different services.

There is also another significant difference between solicitor municipal advisors and MA Non-solicitors. This is the payer of the compensation. In the case of a MA Non-solicitor, a municipal entity is the one paying a fee to the MA Non-solicitor. Alternatively, when a solicitor municipal advisor earns a fee for assets raised, that fee is paid for by the solicitor municipal advisor Client and not the Municipal Entity that is investing with the solicitor municipal advisor Client.

3PM is available to share additional examples in which the proposed language regarding "excessive compensation" are unworkable for solicitor municipal advisors.

Given that the MSRB has a responsibility to protect municipal entities, we understand the need for the verbiage regarding "excessive compensation" when establishing rules for MA non-solicitors. However, the same is not true for solicitor municipal advisors. In the case of solicitor municipal advisors, municipal entities are not involved in paying any compensation provided to the solicitor. Compensation is the responsibility of the solicitor municipal advisor Client.

Given the above issues raised, we believe that the provision to prohibit "excessive compensation" should be excluded.

Alternatively, we request that the MSRB provide guidance as to how "excessive compensation" should be determined and who will be the arbiter deciding whether compensation earned by a solicitor municipal advisor was "excessive."

Request for Comments

3PM is pleased to provide some comments to the following questions included in MSRB Notice 2021-18.

6. **Would there be value in the MSRB providing additional detail regarding the "terms and amount of the compensation" that would be required to be disclosed in Rule G-46(c)? For example, would stakeholders find it helpful if the MSRB specified that the solicitor should disclose whether the compensation arrangement is contingent, fixed, on a trailing basis, etc.?**

   Yes. We believe that additional detail regarding the "terms and amount of the compensation" will allow solicitor municipal advisors to better understand what is being asked and leaves less room for interpretation amongst market participants.

7. **Are the revised timing and manner of disclosure standards set forth in draft Rule G-46(f) workable for direct solicitations? Indirect solicitations? Is this approach more or less burdensome than the approach originally proposed in the First Request for Comment?**

   We believe that the timing and disclosure standards set forth in draft Rule G-46(f) are workable for direct solicitations. We believe that the timing and disclosure standards set forth in draft Rule G-46(f) are workable for direct solicitations.

   In the case of indirect solicitations, the process is not as straightforward.

   While it appears that the proposed rule language accommodates for indirect solicitations, we would appreciate some clarification regarding whether the disclosure requirement would be met if a Solicitor municipal advisor first presents the disclosure to an investment consultant

or other intermediary (an indirect solicitation) and then to the Solicited entity at the time of engagement to an "official" who is reasonably believed to be able to bind the municipal entity.

When a Solicitor first approaches an investment consultant or intermediary, the Solicitor is trying to gain access to all clients of a consultant or intermediary. Consultants and intermediaries may have a mix of client types that they represent which may include corporate pension plans, endowments and foundations, unions, family office, high net individuals or municipal entities. As such, the initial discussion, or Solicitation, made indirectly to a consultant or intermediary is typically general in nature and not targeted to any specific client or type of client.

The manager research team at a consultant is typically involved in conducting due diligence on investment managers that are being considered for use in search conducted by the firm's clients. As such, their job will generally not require that they be familiar with the regulatory arena surrounding Solicitor municipal advisors. Most research analysts will not understand why a Solicitor was providing them with a disclosure at their initial meeting and before they were being considered for any client. Even at some point if the Solicitor client is considered for a search being conducted on behalf of a municipal entity, it is unlikely that the disclosure will be passed on from research to someone involved in the relationship with the municipal entity or to the municipal entity itself.

We believe that in either case, whether the solicitation is direct or indirect, it is very unlikely that the first presentation of the disclosure will make its way to an "official" of the municipal entity who the Solicitor reasonably believes is able to bind the entity and "is not party to a disclosed conflict." Given this, we would suggest elimination of the first presentation of the disclosure and instead relying solely on the presentation of the disclosure document at the time of engagement.

The proposed approach is less burdensome than the previous approach proposed in the First Request for Comment, however, eliminating the need to make a first presentation of the disclosure would streamline the process and eliminate yet another burden.

Draft Rule G-46(g) would prohibit solicitor municipal advisors from receiving excessive compensation. Similar prohibitions that apply to underwriters and non-solicitor municipal advisors set forth factors that are relevant to whether the regulated entity's compensation is excessive. Should the MSRB provide similar guidance regarding the factors that are relevant to whether a solicitor municipal advisor's compensation is excessive? If so, what should those factors be? How do non-solicitor municipal advisors that use the services of solicitor municipal advisors ensure that they do not pay unreasonable fees to solicitor municipal advisors, as required by Rule G-42(e)(i)(E)? What are the compensation structures that are typically used by solicitors (e.g., contingent, flat fee, etc.)?

Please see our comments above relating to "excessive compensation."

If the MSRB is adamant about including "excessive compensation" in some form, we would suggest that the determination of whether "excessive compensation" is received is based on the terms of compensation include in the agreement between the solicitor and the client rather than the total compensation earned by the solicitor.

While we mentioned above that there are no independent sources that provide for compensation information of solicitors, the terms of a solicitation engagement are common in the industry. This fact could at least provide an initial basis to determine whether the compensation is excessive or not.

As discussed, we do not believe that using total compensation for an engagement would be a fair determination of whether "excessive compensation" is received. For example, assume two solicitors earn the same incentive fee of 20% for 10 years. If Solicitor A raises only $10 million dollars, while Solicitor B raises $1 billion, the total compensation for each would be vastly different, even though both solicitors worked with the same incentive fee structure and would not be considered excessive. However, if we look at total compensation, would it be fair to say that Solicitor B received "excessive compensation" compared to Solicitor A just because the total compensation figure results in compensation of more than a million dollars for Solicitor B and only a few thousand dollars for Solicitor A? Solicitor B raised a far superior level of assets for its client, and we would say has earned its total compensation.

Compensation comes in several forms, but the typical industry structures are as follows:

- **Retainer:** In long-only, investment advisory accounts, a retainer is a fixed used by solicitors to offset expenses generated in its search for new business opportunities. It may include travel expenses, which are sometimes reimbursed separately.

  Retainers are based often based on the extent of marketing support required by the manager and / or how sellable the investment advisory product is. The more marketing support required, (collateral materials, population of databases, completion of RFPs, etc.) the higher the retainer fee.

  Products with short track records and/or low assets under management will often require a higher retainer due to the length of the sales cycle.

  In today's market, it could take 18-24 months to find an investor for a competitive product that is in demand and is above the minimum threshold required in assets. The sales cycle lengthens for each box not checked.

  Because most of a solicitor's compensation is earned through an incentive fee, the retainer is used to provide minimal income while the solicitor searches for investors.

Typical retainers range from: $0 – 150,000 per annum.

- **Expense Reimbursement** - Some clients may reimburse a solicitor for expenses generated in the search for new business, rather than pay a flat retainer fee. These expenses usually include travel and lodging while visiting prospects and clients.

- **Incentive Fee**: The incentive fee is a stated percentage of the fees generated on assets awarded to a MA Client based on the solicitor municipal advisor's efforts. An incentive fee is only paid if assets are raised.

  Typically, incentive fees are 20% of the management fee earned on assets raised because of the solicitor's efforts. The time this fee is paid varies by client and could vary anywhere from 3 years to perpetuity, or for as long as the investor remains a client of the MA Client.

  Solicitors may negotiate a higher fee payout or a longer term for an incentive payment if little or no retainer is paid up front. There is an inverse relationship between the retainer and the incentive fee. If a retainer is low then the incentive fee will likely be longer and/or higher than the traditional incentive fee.

- **Other payment terms**. Sometimes clients will compensate solicitors with equity or some other type of non-cash compensation. While these structures exist, they are not as prevalent as the other arrangements discussed above.

8. **Should disclosures be permitted to be provided orally? Would an ability to provide oral disclosures increase harmonization with the IA Marketing Rule? Would such an ability increase the benefits or decrease the burdens associated with draft Rule G-46? What type of guidance from the MSRB would facilitate a solicitor municipal advisor's ability to provide such disclosures orally?**

   While providing disclosure orally provides additional flexibility to a solicitor municipal advisor and does increase harmonization with the IA Marketing Rule, we believe that this flexibility does come with complication.

   In instances where a disclosure is given orally, how would a solicitor municipal advisor prove that they provided the disclosure? If the MSRB can provide proper guidance as to how to meet the books and record requirements of this provision then we would be in support of oral disclosures as an option of disclosure delivery.

11. **Should a municipal advisor client of a solicitor municipal advisor be required to make a bona fide effort to ascertain whether the solicitor municipal advisor has provided any or all of the disclosures related to the municipal advisor client to the solicited entities (e.g., the role and compensation disclosures and/or solicitor client disclosures required by draft Rule G-46(e))?**

For example, should the engagement documentation require the solicitor municipal advisor to contractually commit to provide the disclosures required by draft Rule G-46, and if so, should the municipal advisor client be required to undertake some level of diligence to confirm that the required disclosures are, in fact, made?

We believe that this provision is unreasonably burdensome for a Municipal Advisor Client and should be removed from the draft rule.

Most solicitor municipal advisors are diligent in their compliance requirements and will provide the required disclosures to the solicited entity as appropriate.

Under the proposed rule, the disclosure is to be presented at the first solicitation regardless of whether the person receiving the disclosure is knowledgeable about what the disclosure means or if they do not share this disclosure with a person who is able to bind the entity and will be the person signing the engagement with the MA Client.

To alleviate this issue, the MSRB has proposed a dual disclosure requirement which would require disclosures to be provided again at the time of engagement to someone who does have the authority to bind the solicited entity.

While this disclosure does contain valuable information, we believe that the information will be most useful to the person who is signing the agreement with the MA Client. To ensure that this person is the one who sees the disclosure and is aware of the information provided, the best way to effectively deliver this disclosure is at the time of engagement or promptly thereafter.

12. **Do commenters believe that there is any value to solicited entities in receiving disclosures regarding the payments made by a solicitor municipal advisor to another solicitor municipal advisor to facilitate the solicitation? If so, does such value exceed the costs associated with making such disclosures?**

Yes, we believe that disclosure regarding the payments made by a solicitor municipal advisor to another solicitor municipal advisor should be disclosed to the solicited entities so that these entities are fully aware of all parties that are a part of solicitation process event if the other solicitor municipal advisor did not directly solicit that entity. Full transparency allows all involved to understand more clearly who is involved in the process, make a more educated investment decision, and determine whether any conflicts of interest exist.

Thank you for the opportunity to share our thoughts with you regarding this proposal. Please feel free to reach out to me at (585) 364-3065 or by email at donna.dimaria@tesseracapital.com should you have any questions or require additional information pertaining to MSRB Notice 2021-18.

Regards,

<<Donna DiMaria>>

Donna DiMaria
Chairman of the Board of Directors and Chair of the 3PM Regulatory Committee
Third Party Marketers Association

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3PM began in 1998 with seven member-firms. Today, the Association has more grown and represents members from around the globe.

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Members work with traditional separate account managers covering strategies such as domestic international and global equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds, infrastructure, real assets, and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA. Some are State Registered Investment Advisers and some Municipal Advisors.

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