



**National Association of Independent
Public Finance Advisors**

P.O. Box 304
Montgomery, Illinois 60538.0304
630.896.1292 • 209.633.6265 Fax
www.naipfa.com

September 12, 2011

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

Re: MSRB Notice No. 2011-34

The National Association of Independent Public Financial Advisors (“NAIPFA”) appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board (“MSRB”) on the draft Form A-11 Survey (the “Survey”).

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

Comment

First and foremost, NAIPFA would like to commend the MSRB for establishing assessments relating to the secondary market. NAIPFA believes that such fees are an essential part of ensuring a fair and equitable distribution of costs. NAIPFA also appreciates the MSRB’s desire to gain a better understanding of the municipal advisor community as well as the MSRB’s efforts to determine a fair and equitable assessment.

As part of MSRB Notice 2011-43 (the “Notice”), the MSRB explains that the purpose for establishing the Survey is to:

collect information from municipal advisors on the nature of the municipal advisory activities they undertook as well as the manner and level of compensation received [...] The MSRB intends to use the findings from the draft survey to determine whether to replace the interim assessment with a permanent form of assessment on municipal advisors and, if so, the nature of such permanent assessment. Such permanent assessment would be designed so that, together with other MSRB assessments payable by municipal advisors, brokers, dealers and municipal securities dealers, it would provide for reasonable assessments that are fairly and equitably apportioned among all market participants [...] and do not impose an undue burden on small municipal advisors.

However, NAIPFA has a variety of concerns regarding (i) the content of the survey, (ii) the time period covered by the survey, (iii) the confidentiality of the survey, and (iv) the apparent inconsistencies between the data sought and the MSRB’s stated purpose.



**National Association of Independent
Public Finance Advisors**

P.O. Box 304
Montgomery, Illinois 60538.0304
630.896.1292 • 209.633.6265 Fax
www.naipfa.com

1. Content

NAIPFA opposes the scope of the Survey, and believes that the MSRB's stated purpose of establishing fair and equitable fees can be achieved through less intrusive means.

NAIPFA's concerns stem from the fact that many of the questions posed do not seem to bear a logical relationship to the MSRB's stated goal. For example, NAIPFA is not clear as to what insight will be gained from section 2 of the Survey? If the MSRB's goal is to determine the gross income of the average municipal advisory firm, NAIPFA believes that this information can be gleaned by simply asking for the total gross income from municipal advisory activities. In addition, NAIPFA is unclear as to the purpose of ascertaining the contingent or non-contingent nature of a fee or the manner of fee calculation.¹ Also, NAIPFA does not believe that ascertaining the "Average Transaction Size" will be of any value in determining fair and equitable fees.

The MSRB's ultimate determination of what is a fair and equitable fee structure does not seem to be related to the majority of the Survey's questions. Instead, the Survey seems overly broad. Therefore, NAIPFA respectfully requests that the MSRB amend the Survey. To that end, NAIPFA suggests that a more appropriate survey could consist of the following questions:

- (1) What is your firm's total gross income from municipal advisory activities?
- (2) Estimate the percentage of your firm's practice that is dedicated to each of the following categories of municipal advisory activities and the number of transactions completed for each category:²
 - (a) Financial Advisor
 - (b) Swap/Derivative Advisor
 - (c) GIC/Investment Broker/Advisor/Bidding Agent
 - (d) Solicitor/Finder
 - (e) Third-Party Marketer
 - (f) Other
- (3) List the states with which you have engaged in municipal advisory activities.
- (4) AFFILIATES (leave as is under the current Form A-11 Survey)

As an alternative to the proposed amended survey above, NAIPFA would welcome the opportunity to work with the MSRB on drafting a mutually acceptable survey.

¹ MSRB Form A-11 Survey, ITEM 3(M).

² NAIPFA believes that the category of "Placement Agent" should not be included in this Survey since acting as a Placement Agent is not a Municipal Advisory Activity and is instead a registered broker-dealer activity.



**National Association of Independent
Public Finance Advisors**

P.O. Box 304
Montgomery, Illinois 60538.0304
630.896.1292 • 209.633.6265 Fax
www.naipfa.com

2. Time Period Covered

Many municipal advisory firms do not currently maintain records in a format that is conducive to allowing proper completion of the Survey. In addition, because the Survey seeks information for the period of January 1, 2011 to December 31, 2011, many firms will experience an extreme burden in attempting to accurately complete the Survey.

In the event that the MSRB does not amend the Survey in the manner described above, NAIPFA respectfully requests that the time period covered by the Survey consist of the period from January 1, 2012 to December 31, 2012, with a submission date of February 28, 2013. NAIPFA also respectfully requests that a final version of the Survey be available by or before December 15, 2011. Both of these alterations will allow municipal advisors sufficient time to adjust the format of their record keeping practices without causing them to experience the undue burden of having to look backwards in time and retroactively adjust the format of their record keeping systems.

Conversely, if the MSRB adopts NAIPFA's suggested changes to the content of the survey noted in Section 1 above, NAIPFA would not be opposed to the time period and submission date currently set forth in the Survey.

3. Confidentiality

NAIPFA has serious concerns regarding the confidentiality of the information provided in the Survey. NAIPFA understands that since this is a mandatory survey, the MSRB must have a method for ascertaining whether a particular firm has submitted. NAIPFA is concerned that if this very private information were to be disclosed publicly, it could lead to anti-competitive practice. To alleviate these concerns, NAIPFA respectfully requests that the MSRB remove the requirement of a firm's name and MSRB registration number for the form, and instead put in place a more confidential and secure alternative for tracking whether a particular firm has submitted its survey.

For example, as an alternative method for tracking whether a particular registered firm has submitted the Survey, the MSRB could set up an online submission process whereby a firm would submit the Survey through EMMA utilizing their MSRB registration number, much in the same way firms are able to submit various types of disclosure documents currently. This would ensure tracking of submittals, via a firm's EMMA submission, but would remove the need for a firm name or MSRB registration number to appear on the form itself. Alternatively, firms could submit physical copies of the Survey along with a copy of the firm's letterhead. Once received by the MSRB, a record of the submission could be made and the firm's letterhead detached from the Survey and discarded. Again, such a method would eliminate the need for a firm name or MSRB registration number to appear on the Survey itself.

Regardless of the method of submission, however, NAIPFA cannot emphasize enough its concerns regarding the privacy and confidentiality of this information. Again, NAIPFA has



**National Association of Independent
Public Finance Advisors**

P.O. Box 304
Montgomery, Illinois 60538.0304
630.896.1292 • 209.633.6265 Fax
www.naipfa.com

serious concerns regarding the requirement that a firm's name and MSRB registration number appear on the Survey. Therefore, at a minimum, NAIPFA respectfully requests more details regarding the method and manner with which this information will be handled and the process by which the MSRB will ensure the confidentiality of this information.

4. Data Sought is Inconsistent with the Stated Purpose

In its current form, the Survey appears to encompass areas of information that go well beyond the MSRB's stated goal of determining a fair and equitable assessment for municipal advisors. Many of the questions posed, such as asking whether a municipal advisor acts as a "placement agent," could be utilized for some other regulatory purpose and are unrelated to the establishment of an assessment for municipal advisors. Therefore, in the event that the MSRB does not amend the Survey by removing the requirement of a firm's name and MSRB registration number, NAIPFA respectfully requests that the MSRB make clear that the information contained within the Survey will be utilized solely for the purpose of establishing fair and equitable assessments and that no firm will be investigated or reviewed based on the information contained within this Survey. NAIPFA believes that any use of information obtained via the Survey for a purpose other than what has been stated will undermine the integrity of the Board in the eyes of all market participants and could permanently damage the relationship between the municipal advisory community and the MSRB.

Conclusion

NAIPFA understands the necessity for the MSRB to obtain information on the fees charged by the municipal advisor community. However, NAIPFA is concerned with regard to the scope and the confidentiality of the survey. Yet, regardless of the MSRB's ultimate determination on how best to implement the Survey, NAIPFA would like to make clear that ultimately any fee assessed on a municipal advisor or broker-dealer will, directly or indirectly, be passed through to the municipal issuer in the form of higher fees. Therefore, NAIPFA hopes that the MSRB, especially in this time of austerity measures and budgetary cut backs, will be cognizant of the effect that any additional fee imposed will have on the issuers of municipal securities. To that end, NAIPFA believes that the \$300 assessment put forth in the Notice is sufficient to meet all of the MSRB's stated purpose, the establishment of fair and equitable fees, as well as its mandated purpose, the protection of the interests of municipal issuers.

NAIPFA once again expresses its appreciation for the opportunity to submit its views on the MSRB's draft Form A-11 Survey. Please feel free to contact me if you have any questions or if further clarification of NAIPFA's comments are necessary.

Sincerely,

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



**National Association of Independent
Public Finance Advisors**

P.O. Box 304

Montgomery, Illinois 60538.0304

630.896.1292 • 209.633.6265 Fax

www.naipfa.com

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Michael Coe, Counsel to Commissioner Aguilar
Lynnette Hotchkiss, Executive Director, Municipal Securities Rulemaking Board