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February 23, 2011

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

Re: Notice No. 2011-04 (Proposed Rule G-42)

Dear Members:

I am responding to the Board's request for comments to its Proposed Rule G-42 as explained in MSRB Notice 2011-04. I am a member of the Bar of the Commonwealth of Pennsylvania, and I devote a considerable portion of my practice to matters arising in the regulation of municipal securities.

My comments are framed in the following paragraphs:

1. Ambiguities in Proposed Rule G-42(c). It would be useful to registered municipal advisors if the Board were to address two ambiguities which Proposed Rule G-42 incorporates from Rule G-37.

   A. Paragraph (c)(i) of the Proposed Rule, like its Rule G-37 analog, prohibits the "solicitation" (not defined) of a "contribution" to an "official of a municipal entity" with whom the municipal advisor is seeking to engage in municipal advisory business. The Proposed Rule makes no attempt to define the period of time when the municipal advisor's "seeking" begins and ends. Municipal advisory services almost always are sold by direct contact with the prospective client. The municipal advisor's "seeking" presumably begins with some contact by the advisor, but it is important to the advisor to know when the "seeking" ends, because the acts of "solicitation" are undefined and doubtless are less identifiable than the making of a contribution. The expiration of the period that constitutes "seeking" necessarily is arbitrary, but finance professionals

deserve reasonable certainty, and I would suggest that Paragraph (c)(i) not apply to any activity occurring more than six months after the advisor's latest contact with the municipal entity looking toward an engagement. In those situations in which the municipal entity issues an RFP for the services in respect of which the advisor has made a contact, the "seeking" period of an advisor who submits a response to the RFP would continue up to the date the municipal entity issues a contract for the service to another firm and would not be deemed to resume until the next contact with the municipal entity initiated by the advisor. Contacts initiated by the municipal entity should not be taken into account because they are beyond the control of the municipal advisor.

B. Paragraph (c)(ii) of the Proposed Rule prohibits a municipal advisor and certain specified persons from soliciting (not defined) "payments" (defined) to "a political party of a state or locality where the municipal advisor is * * * seeking to engage in municipal advisory business * * *." The time period within which this suspension of solicitation would be in effect is the same issue as discussed above. Paragraph (c)(ii) presents the additional issue of identifying the embargoed "political party of a state or locality" where the municipal entity is situated. In suburban Philadelphia, for example, with which I am familiar, my political subdivision is Lower Merion Township. There are Republican and Democratic "party" organizations active in Lower Merion Township. Lower Merion Township is a legislatively-created political division of Montgomery County, and each major political party has a county organization. The configuration of Lower Merion Township, Montgomery County is replicated throughout the Commonwealth of Pennsylvania. Each major political party of course has a state-wide organized entity, and, in addition, there doubtless are other configurations of political organizations that comprehend several counties, such as, hypothetically, "Republicans of Southeastern Pennsylvania". There is no reason to expect that a similar multiplicity of "party" organizations is not replicated throughout the United States.

> Having those facts in mind, the ambiguity created by Paragraph (c)(ii) is whether the Board intends that the prohibition against solicitation of "payments" should apply to "payments" only to the party organization the constitutional boundaries of which most narrowly comprehend the governmental entity which is the subject of the advisor's marketing efforts, or whether the prohibition extends all the way to the State organization and all variations in between. For my part, I believe that the former interpretation makes the most sense in the light of the need to correct the evil that appears to be seen by the Board. That is so because the relationship between a distant political organization and a municipal entity seeking financial advice is clearly attenuated. But, in all events, the ambiguity should be corrected in Proposed Rule G-42 and in Rule G-37.

Finally, I would like to suggest that, as defined in draft Rule G-42 (and in Rule G-37), the word "payment" has a connotation which exceeds the purpose of the Rule. Specifically, the use of the word "payment" necessarily (and doubtless unintentionally) implicates all commercial transactions with a political party. In a case, say, where a local political party allows its document production equipment to be used by a community organization for a nominal reimbursement, if a municipal advisory professional should make a communication to the community organization that it should pay the agreed fee, that would constitute a completed violation of Rule G-42, with such consequences for the municipal advisory professional and his/her firm that, as of now, only the SEC knows. One would like to think that the foregoing example is an unusual case, but since it is possible that, under the analysis expressed in SEC Release 34-63576, a municipal advisor potentially could be anyone, and everyone, in the world (with a single exception), it is appropriate to correct the uncertainty. I suggest that the definition of "payment" be modified to include the concept of an amount in excess of the fair value of goods or services provided by the political party.

2. Third Party Business. If I correctly understand the objective and the effect of the "third-party business" provisions of Paragraph (b)(i) of the Proposed Rule, those provisions preclude an advisor from hiring itself out to seek business for a broker/dealer, investment advisor or another municipal advisor during the stand-down period after the first advisor has made a disallowed contribution. I would observe:

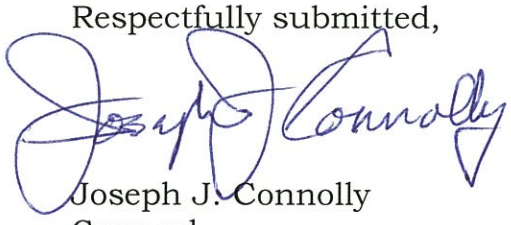
A. The acceptance of a compensable engagement by a municipal advisor subsumes the receipt of compensation by the advisor, thus making the receipt of the compensation as a trigger for enforcement consequences academic, except in the odd circumstances in which the advisor fails to follow the cardinal rule of getting paid up-front and its disallowed contribution is made in the interval between the solicitation and the receipt of the compensation. In all events, it would appear that the only effect of the solicitation/payment distinction is in the calendar interval covered by the stand-down period.

B. By using in the definition of "third-party business" the phrase "for or in connection with municipal financial products or the issuance of municipal securities" rather than the phrase "municipal advisory business" the Board, quite correctly, recognizes that there would be a high incentive for a broker/dealer seek to obtain highly profitable underwriting business through the intervention of an advisor that contributes to the election of issuer officials (particularly if Rule G-38 is tampered with, see below). It is a serious omission, therefore, that the Board has not included in the Proposed Rule some significant consequences on a broker that hires an advisor (in any circumstances not disallowed by Rule G-38) who makes a disallowed contribution after engagement by the broker.

3. Retention of Rule G-38. The Board's Notice asks for comment with respect to the effect on Rule G-38 which may be implied by Proposed Rule G-42. It plainly would be a mistake to repeal Rule G-38. The purposes to be accomplished by Rule G-38 remain entirely valid, and the elimination of Rule G-38 would leave unregulated the abuses which Rule G-38 was intended to prevent to the extent that broker/dealers can restructure certain practices to avoid (or hope to avoid) registration as municipal advisors under Section 15B(a) of the Exchange Act. The repeal of Rule G-38 would reopen the field to brokers' use of intermediaries' political contributions, because Rule G-42 and Rule G-37 contain no sanctions against a broker's (or a broker/advisor's) enjoying the benefit of an intermediaries' solicitation that is enhanced by a prohibited contribution. Finally, there appears to be no good reason why the Board

should not expand Rule G-38 to apply its prohibitions to the use of solicitors by municipal advisors.

Respectfully submitted,



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