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March 7, 2014

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

RE: Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisor

Dear Mr. Smith,

Thank you for the opportunity for First Southwest Company ("FirstSouthwest") to respond to the Proposed Rule G-42 (the "Rule") referenced above. We applaud the MSRB for taking prompt action regarding regulation of municipal advisors ("MA") once the final version of the Securities Exchange Commission definition of municipal advisor was promulgated. As former MSRB Chairmen, knowing first-hand the complexities and challenges of writing a rule that has many different facets, we will focus our comments on structural issues that we believe will help create a fair and efficient market for issuers and the professionals who practice in this area who will be affected by the Rule. As we have stated on many occasions, we are proponents of a fair and efficient marketplace that is not over burdened with regulation in terms of costs, but provides necessary protection to investors, issuers and creates a level playing field for professionals to compete on their merits. In general, we are supportive of the professional standards but are concerned that some of the standards and prohibitions could limit competition, increase costs to professionals and issuers and create standards that are simply not achievable. The public finance industry has demonstrated the benefits of any issuer who complies with the rules can access long term financing, giving them certainty of project cost. Overly burdening this market could have the adverse consequence of pushing issuers, small issuers in particular, to less transparent markets and with reduced long term certainty. We hope the MSRB can strike a balance between costs and issuer and investor protection.

With respect to market participants, we are concerned by some of the standards that are put forward that potentially create an uneven level of competition between professionals, through rewarding firms or MA's who have no ability to handle liability created in the course of providing financial advisory services will inevitably increase the cost of professional liability insurance to those who desire to have this level of protection. We are also concerned with the discrepancy between the MSRB's rules and regulations promulgated by the Commodities Future Trading Commission.

**Principal Transactions**

FirstSouthwest finds the proposed prohibition on principal transactions particularly troubling. As you know, the municipal market is large and diverse, with millions of individual CUSIPs, some of which can be traded for many years. Transacting in such securities may not necessarily be relevant or have any bearing on a current advisory engagement, as well as, potentially create higher costs or lower investment income for issuers that are investing with monies that are not attributable to the transaction that the MA has been engaged on. It is unclear how a blanket prohibition on a company or any affiliate of the advisor would serve the best interests of the issuer.

**Fiduciary Duty and the Suitability Standard**

While FirstSouthwest is supportive of improving the quality of advice to issuers through the implementation of a suitability standard for recommendations, there are a few important comments we wish to make. First, we feel that certain issuers are capable of independently evaluating risks in issuing municipal securities, and exercising independent judgment in evaluating recommendations of a municipal advisor. For this select group of issuers, it is appropriate to provide for an exemption to the suitability standard similar to the concept of "sophisticated municipal market professionals" exemption for large institutional investors.

Additionally, the extension of a duty of care to obligated persons in G-42(a)(i) is problematic and inconsistent with Dodd Frank and other SEC Rules. It is unclear why private parties would be subject to a fiduciary duty in this context. Additionally, such a provision would prove to be unduly burdensome on municipal advisors and hence increase costs.

**Scope of Services and Compensation**

Because of the complex realities in issuing municipal securities and serving governmental units, FirstSouthwest is a strong proponent of the idea that the scope of services should be determined through communication and negotiation between issuers and advisors. As such, we strongly disagree with any effort to prescribe services to be performed or regulate advisors' compensation for performing said services.

Specifically, the provisions in the Rule that impose upon the advisor an obligation to consider feasible alternatives, review third-party recommendations, and review official statements and feasibility studies, is inappropriate. In practice, this will result in advisors performing additional services that issuers may consider unnecessary and impose additional costs upon the issuer and evaluating unsolicited proposals that the issuer may not want to implement or require other professionals such as bond counsel to evaluate, for what may be minimal difference, and potentially increase risk to the issuer. Should an issuer pay for an evaluation of a proposal it is not comfortable with, such as an interest rate swap, which on paper may or may not be of financial benefit to the issuer. Furthermore, such a provision may violate pre-existing contracts between issuers and advisors where specific services have been negotiated or where other professionals are engaged such as disclosure and bond counsel. The standard or thorough review is vague and can lead to costly litigation, increase liability insurance costs and or reduce availability which could hurt issuer protection.

Additionally, FirstSouthwest has seen instances in the marketplace of municipal advisors facilitating private placements. When addressing scope of services under the Rule, is this considered an allowable duty or does it fall under the prohibition on principal transactions in the proposed G-42(f), in that it is considered an underwriting? The MSRB should be clear on this position because it affects all Municipal Advisors.

In the matter of compensation, the proposed G-42(g)(i) prohibits municipal advisors from receiving compensation that is "excessive". FirstSouthwest strongly objects to this language, as we feel it will lead to problems when comparing scope, quality, complexity of transactions and timeliness of services as well as differences in firm's resources or financial resources. "Excessive" is a subjective term, and changes over time and between individuals or firms. Issuers, at the time of negotiation, and not examiners or other third parties, are in the best position to judge the value of these services. Services provided and the level of expertise required varies greatly from issuance-to-issuance, and compensation should vary to reflect those differences. This is analogous to ranges in compensation for individuals in that there is no one right level for everyone because of differences in skills, experience and resources.

**Disclosure**

For some time, FirstSouthwest has felt that disclosure to issuers by some municipal advisors has been lacking and we applaud the MSRB for addressing these matters in the Rule. However, there are a few comments we would like to make on the Rule to assist the MSRB in arriving at a robust, fair and practical rule.

First, proposed Rule G-42(b)(ii) requires disclosure of "any affiliate of the municipal advisor that provides any advice, service or product to or on behalf of the client.... ." Because not *every* relationship rises to a level to create an irreconcilable conflict of interest or affect investors, we feel that there should be a materiality standard. Particularly in the case of large financial institutions, an advisor may have affiliated entities that provide any number of services to a client and/or their associated persons, such as brokerage, banking, insurance, or mortgage services. In the vast majority of these cases, the relationship is not of enough significance to create a true conflict of interest on the particular transaction or was secured through a competitive process where a governmental entity determined it was in the best interest to secure these services through a particular firm. The imposition of such a standard without a materiality provision would only create additional unnecessary administrative tasks when entering into a contract and thereafter, again ultimately increasing costs to the issuer.

We seek clarity for the requirement in G-42(b)(vii) to disclose other advisory engagements, which may not be appropriate and will dilute the value of disclosure. The section of the Rule "any other engagements or relationships of the municipal advisor or any affiliate of the municipal advisor that might impair the advisor's ability either to render unbiased and competent advice to or on behalf of the client or to fulfill its fiduciary duty to the client, as applicable... ." Because of the use of this standard of "might impair" used in conjunction with ability to fulfill its fiduciary duty creates an ambiguous standard and could be true in any circumstance that a firm has any client other than the client. Because of this standard, firms in an abundance of caution will disclose all their clients and this will in our opinion dilute the value of the disclosure. To our understanding neither lawyers nor accountants have this standard. Issuers when selecting

advisors evaluate experience and resources of a firm, as is evident in many issuers requesting experience and using ranking tables.

FirstSouthwest has long been a proponent of ensuring that issuers are contracting with municipal advisors with appropriate financial wherewithal as currently required by broker dealer municipal advisors, pursuant to SEC Rule 15c3-1. However, the proposed G-42(b)(vii) is concerning in that it requires the municipal advisor to disclose the existence and terms of advisors' professional liability insurance. Our fear is that such disclosure will result in a greater number of plaintiffs' firms targeting advisors with an eye on the advisor's insurance policy with the unintended result of either firm not having this protection, setting up special purpose entities with no resources, all of which would adversely affect the purpose of issuer protection. In our view, it is more appropriate to disclose the capital position of the firm, as required by SEC rules for other financial institutions such as broker-dealers.

Finally, the Rule's requirement to affirmatively state if the advisor has concluded that it has no material conflicts is troubling. If an undisclosed conflict is later discovered, it would surely be in violation of the very requirement to disclose it. Having an additional requirement to affirmatively state that there are no conflicts only serves to increase administrative requirements, and could provide an unnecessary "tack-on" violation in the event a conflict is later discovered.

In conclusion, we applaud the effort the MSRB is making to regulate municipal advisors, in a fair and efficient manner. We hope that our comments have illuminated issuers that may not have been considered during the drafting of the Rule. Please contact either of us directly at (214) 953-4128 or (713) 654-8641 if you have any questions regarding my comments or concerns.

Sincerely,

Hill A. Feinberg
Chairman and Chief Executive Officer

Michael G. Bartolotta
Vice Chairman