



**National Association of Independent Public Finance Advisors**

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April 28, 2014

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

Re: MSRB Notice 2014-04

The National Association of Independent Public Finance Advisors (“NAIPFA”) appreciates this opportunity to provide comments in connection with Municipal Securities Rulemaking Board (“MSRB”) Notice 2014-04 – Request for Comment on Draft MSRB Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors (the “Notice”).

The following numbered comments are provided in response to the questions bearing the same number as set forth in the Notice:

1. Proposed rule G-44 (the “Proposed Rule”) does strike the appropriate balance between a principles-based and a prescriptive approach to supervision. Notwithstanding the comments contained herein, NAIPFA strongly encourages the MSRB to retain the overall tone and structure of the Proposed Rule.

2. The Proposed Rule appropriately accommodates small and single person municipal advisors by, among other things, allowing supervisory systems to be tailored to the size of the firm. In addition, NAIPFA appreciates and supports the fact that the Proposed Rule allows Municipal Advisor Representatives to serve in the capacity of supervisor and/or chief compliance officer. NAIPFA is, however, unclear as to what the last portion of Supplementary Material Paragraph .02 Small Municipal Advisor requires in terms of the development of a compliance policy. The applicable portion of Paragraph .02 is as follows:

In the case of a municipal advisor with a single associated person, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.

From a compliance policy development stand point, this provision is vague and ambiguous, and would present a significant challenge for firms seeking to develop a sufficient policy. As such, NAIPFA requests that additional substantive guidance be provided. This additional guidance should address how a single associated person’s written supervisory procedures are to be prepared to accomplish this directive. In the absence of such additional guidance, it seems

unlikely that most firms will be able to draft appropriate policies to address the dictates of this provision.

3. We agree with the Proposed Rule that Municipal Advisors should be able to outsource the Chief Compliance Officer (“CCO”) function. We also agree that there should be no requirement that the CCO be either a principal or an associated person of a Municipal Advisor. This allows for flexibility within an industry where the size of firms can vary significantly from one firm to the next. As written, the Proposed Rule also ensures that small firms in particular will be afforded the ability to determine for themselves whether they have the financial capacity to employ a CCO or whether outsourcing such responsibilities is a better suited approach.

4. NAIPFA sees no value in requiring Municipal Advisors Representatives to complete a periodic self-certification. Such a requirement would appear to simply create an additional regulatory burden. Further, we do not believe that such a requirement will result in clients of a Municipal Advisor achieving any appreciable benefits. Therefore, NAIPFA opposes the creation of a self-certification requirement, unless some objective basis can be provided that indicate such a requirement would result in a decrease in the number of compliance violations.

5. To the best of our knowledge, since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) and the imposition of a federal fiduciary standard on Municipal Advisors, no enforcement actions have been brought against a Municipal Advisor for breach of fiduciary duty. Therefore, due to the lack of objective evidence indicating that firms have engaged in widespread violations of their fiduciary duties, NAIPFA does not believe that a need exists for the MSRB to articulate supervisory/compliance obligations at this time. In this regard, the costs, time and effort that will be required to be expended by Municipal Advisors will likely outweigh any incremental benefits that may be realized by municipal entities and obligated persons. That being said, to the extent that the MSRB believes that there is a need for it to articulate such obligations, we do believe that the Proposed Rule would adequately address that need.

6. With respect to Municipal Advisors who are not broker-dealers or investment advisors, the only baseline referenced within the Notice that appears applicable to this group is with respect to the Dodd-Frank Act. Notably, however, the discussion within the Notice relative to this baseline focuses more on the Dodd-Frank Act’s mandate that the MSRB develop a regulatory system for Municipal Advisors rather than on the economic baseline associated with the Dodd-Frank Act. This is important if, for purposes of the economic analysis, the Proposed Rule’s economic impact will be judged based upon the passage of the Dodd-Frank Act, because prior to the Dodd-Frank Act there existed no law or rule requiring a Municipal Advisor who was not otherwise a broker-dealer or investment advisor to maintain a supervisory system. Therefore, for purposes of determining the economic impact of the Proposed Rule, for many Municipal Advisors the economic baseline would be Zero Dollars (\$0). Thus, any dollar spent by such Municipal Advisors in complying with the Proposed Rule will represent a new, and potentially significant, financial burden upon them.



7. The costs of implementing any rule, both in terms of out of pocket expenses as well as in terms of the amount of time necessary for firms to engage in compliance related activities, will either directly or indirectly be passed on to municipal entities and obligated persons. Notably, these costs will be disproportionately borne by small municipal advisor firms and there is little likelihood that these firms have the financial capacity, or desire, to absorb these costs internally. Rather, it is much more likely that these costs will be passed on to their clients in order to allow these firms to continue to operate their businesses in a manner consistent with their past practices. Alternatively, these companies may be forced to consolidate or go out of business because, again, it is not likely that these firms will absorb these costs. However, regardless of whether firms pass these costs along, merge or go out of business, the net result will be an increase in the costs of issuance, either by way of increased fees or as a result of diminished competition due to the consolidation of Municipal Advisor firms.

8. Because the Proposed Rule is merely proposed at this time, and because Municipal Advisors who are not broker-dealers or investment advisors have not historically preserved books and records in the manner and to the extent required under the Proposed Rule or soon to be effective SEC Rule 15Ba1-8 (“15Ba1-8”), it is difficult to estimate at this time the full cost of compliance. That being said, from an administrative and ease of compliance standpoint, NAIPFA respectfully requests that proposed Rule G-9(h) be amended to state that the records described in Rule G-8(h)(iii)(B) and (D) only be required to be preserved for the duration of a person’s designation as a supervisor and/or chief compliance officer and for at least five years following any change in such designation. This would harmonize this portion of G-9 with the similar portions of 15Ba1-8 relating to items such as the requirement that firms retain records relating to the “names of persons who are currently, or within the past five years were, associated with the municipal advisor.” Since 15Ba1-8 mandates a five year retention period following any such person’s disassociation, it would make sense from an efficiency and compliance standpoint to impose a similar five year retention requirement under proposed rule G-9(h) absent some compelling justification to the contrary. Conversely, establishing a six year retention requirement when all other similar retention requirements are five years creates an inconsistent and overly complex regulatory regime that is not likely to achieve any appreciable benefit for municipal entities or obligated persons. Rather, proposed rule G-9(h) will likely unnecessarily increase compliance costs as well as unintentional compliance violations.

9. Since there have been no recorded breaches by Municipal Advisors of their fiduciary duty obligations since the enactment of the Dodd-Frank Act, it is unclear at this time whether the Proposed Rule will have any benefits in terms of protecting municipal entities, obligated persons or investors beyond the protections put in place by the Dodd-Frank Act itself. What is clear, however, is that the Proposed Rule’s mandates will result in Municipal Advisors having to incur compliance related expenses, which will in turn increase costs of issuance.

10. Except as otherwise discussed herein, NAIPFA does not believe there are any other costs or benefits that the MSRB should consider with respect to the Proposed Rule. That being said, the MSRB’s should in developing these or any other rules be concerned with whether their proposed rule will benefit municipal entities and obligated persons and, to the extent that there is



a quantifiable benefit, whether that benefit outweighs the potential costs to Municipal Advisors, taking into consideration the likelihood that such costs will, directly or indirectly, be passed on to municipal entities and obligated persons.

11. An alternative to the Proposed Rule that the MSRB may wish to consider is whether to refrain from implementing the Proposed Rule at this time. An additional alternative would be to exempt single person firms from developing a compliance manual to the extent that such firms are not otherwise required to maintain policies pursuant to any other applicable law, rule or regulation. Since sole proprietors will be obligated to monitor their own activities regardless of MSRB rulemaking and because such individuals will be disproportionately burdened by the Proposed Rule, NAIPFA does not believe that requiring sole proprietors to undertake such activities will result in any appreciable benefit to municipal entities or obligated persons.

12. The Proposed Rule may have a significant impact on competition. It may also have a significant impact on both market efficiency and capital formation. For example, the development and implementation of compliance systems may cause disruptions to firm business practices. This outcome will likely result in a slowdown in the capital formation process. In addition, firms may merge or simply cease engaging in municipal advisory activities, which will decrease competition. Further, regulations such as this that result in an increase in overhead expenditures will likely present a barrier to entry into the market that may dissuade otherwise willing and qualified individuals from becoming Municipal Advisors. This will in turn impede competition within the market. In light of the foregoing, we are concerned that the Proposed Rule has the potential to increase costs of issuance without any appreciable benefit to municipal entities and obligated persons beyond those benefits that have and will continue to arise out of the Dodd-Frank Act itself.

13. As noted in number 11 above, the imposition of supervisory obligations on sole proprietors is likely not necessary or appropriate since such individuals will be obligated to monitor their own compliance thereby making a requirement that they maintain supervisory procedures superfluous.

In addition to the foregoing comments, NAIPFA requests additional guidance on the Proposed Rule's effective date. Specifically, we would welcome a clarification with respect to when the Proposed Rule will be effective, or with respect to how the effective date will be determined following the Proposed Rule's enactment. In this regard, NAIPFA requests that the Proposed Rule have an effective date that is at least ninety (90) days following the date on which it is enacted.

Sincerely,



Jeanine Rodgers Caruso, CIPFA  
President, National Association of Independent Public Finance Advisors



cc: The Honorable Mary Jo White, Chairman  
The Honorable Kara Stein, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Michael Piwowar, Commissioner  
The Honorable Daniel M. Gallagher, Commissioner  
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

