MSRB
Municipal Securities Rulemaking Board

November 9, 2015

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 2 to SR-MSRB-2015-03

Dear Secretary:

On April 24, 2015, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") SR-MSRB-2015-03, a proposed rule change consisting of proposed new MSRB Rule G-42, on duties of non-solicitor municipal advisors, and proposed amendments to MSRB Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers (the "original proposed rule change"). The Commission published the original proposed rule change for comment in the Federal Register on May 8, 2015,[1] and received fifteen comment letters. On August 6, 2015, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change ("OIP").[2] On August 12, 2015, the MSRB filed Amendment No. 1 to SR-MSRB-2015-03, a partial amendment to the original proposed rule change ("Amendment No. 1"), and submitted its response to comments, which includes a detailed explanation of the several clarifying and other minor changes made by Amendment No. 1. The Commission published Amendment No. 1 for comment in the Federal Register on August 25, 2015.[3] The Commission received thirteen additional comment letters in response to the OIP or Amendment No. 1.

The MSRB is filing a second partial amendment to SR-MSRB-2015-03 ("Amendment No. 2"). The amendment adds, in response to commenters, a narrow exception to the specified prohibition in the proposed rule of certain principal transactions with municipal entity clients, and also makes minor, technical amendments. The exception generally would cover transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent. A copy of Amendment No. 2 is attached to this letter, and the revisions to the rule text of the proposed rule change can be found in the exhibits

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1 Release No. 34-74860 (May 4, 2015), 80 FR 26752 (May 8, 2015).

2 The OIP was published in the Federal Register for notice and comment on August 12, 2015. See Release No. 34-75628 (August 6, 2015), 80 FR 48355 (August 12, 2015).

3 Release No. 34-75737 (August 19, 2015), 80 FR 51645 (August 25, 2015).

attached thereto. The MSRB will address issues raised in the comment letters received in response to the OIP or Amendment No. 1 that are not addressed through Amendment No. 2 concurrently with its response to comment letters received, if any, in response to Amendment No. 2.

If you have any questions regarding this matter, please contact me, Sharon Zackula, Associate General Counsel, or Benjamin A. Tecmire, Counsel, at (703) 797-6700.

Sincerely,

Michael L. Post /ps

Michael L. Post
General Counsel--Regulatory Affairs

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board ("MSRB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a second partial amendment ("Amendment No. 2") to File No. SR-MSRB-2015-03, a proposed rule change consisting of proposed new Rule G-42, on duties of non-solicitor municipal advisors ("Proposed Rule G-42" or "proposed rule"), and related proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors. Proposed Rule G-42 would establish core standards of conduct and duties of non-solicitor municipal advisors when engaging in municipal advisory activities. Amendment No. 2 adds, in response to comments received by the Commission, a narrow exception to the specified prohibition in Proposed Rule G-42 of certain principal transactions with municipal entity clients, and also makes minor, technical amendments.

Background

On April 24, 2015, the MSRB filed with the SEC File No. SR-MSRB-2015-03.[3] On August 6, 2015, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change ("OIP").[4] On August 12, 2015, the MSRB filed with the Commission partial Amendment No. 1 to File No. SR-MSRB-2015-03,[5] and submitted a letter responding to the comments that were received by the Commission regarding the proposed rule change.[6] In response to the OIP or Amendment No. 1, the Commission received a total of thirteen additional comment letters.[7]

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 File No. SR-MSRB-2015-03 was published in the Federal Register for notice and comment on May 8, 2015. See Exchange Act Release No. 74860 (May 4, 2015), 80 FR 26752 (May 8, 2015). The Commission received fifteen comment letters in response to the notice of the proposed rule change.

4 The OIP was published in the Federal Register for notice and comment on August 12, 2015. See Exchange Act Release No. 75628 (August 6, 2015), 80 FR 48355 (August 12, 2015).

5 Amendment No. 1 was published for notice and comment on August 25, 2015. See Exchange Act Release No. 75737 (August 19, 2015), 80 FR 51645 (August 25, 2015).

6 Letter to Secretary, SEC, from Michael L. Post, General Counsel – Regulatory Affairs, Municipal Securities Rulemaking Board, Response to Comments on File No. SR-MSRB-2015-03, dated August 12, 2015, available at: http://www.sec.gov/comments/sr-msrb-2015-03/msrb201503.shtml ("first response to comments").

7 Letters from Michael Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated September 11, 2015 and November 4, 2015; John C. Melton, Sr.,

The MSRB is filing this second partial amendment ("Amendment No. 2") primarily to add paragraphs .14 and .15 of the Supplementary Material to Proposed Rule G-42. Proposed paragraph .14 would provide a narrow exception ("Exception") to the proposed prohibition on certain principal transactions in Proposed Rule G-42(e)(ii) for transactions in specified types of fixed income securities. Proposed paragraph .15 would define those types of fixed income securities. Amendment No. 2 also makes five minor technical changes to clarify or renumber proposed rule text.[8]

The MSRB requests that the proposed rule change be approved with an effective date six months after Commission approval of all changes.

Amendments

Exception to Proposed Prohibition of Certain Principal Transactions

Proposed Rule G-42 would establish core standards of conduct and duties of non-solicitor municipal advisors when engaging in municipal advisory activities. Proposed Rule G-42(a)(ii), consistent with the Exchange Act,[9] provides that a municipal advisor, in the conduct of all municipal advisory activities for a municipal entity client, is subject to a fiduciary duty that includes a duty of loyalty and a duty of care. Under proposed paragraph .02 of the

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Executive Vice President, Coastal Securities ("Coastal Securities"), dated September 11, 2015; Jeff White, Principal, Columbia Capital Management, LLC ("Columbia Capital"), dated September 10, 2015; Joshua Cooperman, Cooperman Associates ("Cooperman"), dated September 9, 2015; David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute ("FSI"), dated September 11, 2015; Dustin McDonald, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), dated September 14, 2015; Tamara K. Salmon, Associate General Counsel, Investment Company Institute ("ICI"), dated September 11, 2015; Lindsey K. Bell, Millar Jiles, LLP ("Millar Jiles"), dated September 11, 2015; Terri Heaton, President, National Association of Municipal Advisors ("NAMA"), dated September 11, 2015; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 11, 2015; Joy A. Howard, WM Financial Strategies ("WM Financial"), dated September 11, 2015; W. David Hemingway, Executive Vice President, Zions First National Bank ("Zions"), dated September 10, 2015.

8 The MSRB will address issues raised in the comment letters received in response to the OIP or Amendment No. 1 that are not addressed through this Amendment No. 2 concurrently with its response to comment letters received, if any, in response to this Amendment No. 2.

9 See Section 15B(c)(1) of the Exchange Act (15 U.S.C. 78o-4(c)(1)).

Supplementary Material to Proposed Rule G-42, the duty of loyalty requires, among other things, a municipal advisor to act in the municipal entity client's best interest without regard to the financial or other interests of the municipal advisor. In light of this fiduciary duty, and to prevent acts, practices or courses of business inconsistent with this duty, Proposed Rule G-42(e)(ii) would prohibit a municipal advisor, and any affiliate of such municipal advisor, from engaging with its municipal entity client in a principal transaction that is the same, or directly related to the, municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client ("principal transaction ban" or "ban").

The comment letters in response to the OIP or Amendment No. 1 that addressed the principal transaction ban generally expressed concerns about the breadth of the ban and the lack of any exception. They noted that fiduciaries governed by other regulatory regimes, such as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"),[10] are not flatly prohibited from engaging in principal transactions with their clients if proper disclosures are made and consent is obtained. Several commenters, including GFOA, FSI, SIFMA and BDA, generally urged the inclusion of an exception in cases, at a minimum, where the advice provided is in connection with the execution of a securities transaction by the municipal advisor on behalf of the municipal entity, the principal transaction is in a fixed income security, and the municipal entity client is involved in the process for the management of the relevant conflicts of interest. GFOA expressed concerns that the ban "could force small governments to open a more expensive fee-based arrangement with an outside advisor in order to receive this very limited type of advice on investments that are not considered to be risky."[11] Several other commenters, including BDA, FSI, Millar Jiles, SIFMA and Zions, commented on the importance of preserving a municipal entity's choices and access to services and products at favorable prices, preserving choices regarding financial advisors with whom they had relationships of trust, and avoiding increased costs to municipal entities.

Prior to the most recent set of comments, the MSRB consistently concluded that the principal transaction ban should be retained with the breadth as proposed. After carefully considering the additional comments, including those of GFOA, generally representative of a key class of entities that Proposed Rule G-42 is intended to protect, the MSRB has determined to incorporate the Exception into Proposed Rule G-42. The MSRB believes that the Exception will address the primary concerns expressed by commenters that, without an exception for transactions in certain fixed income securities when advice is given by the municipal advisor in connection with executing such transactions, the proposed ban would restrict the access of municipal entities to trusted financial advisors, limit their ability to obtain certain financial services and products, create undue burdens on competition, and impose unjustified costs for issuers.

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10 15 U.S.C. 80b-1 et seq.

11 GFOA, however, acknowledged that the ban would be appropriate in the context of a traditional financial advisor.

Significantly, the MSRB has developed Proposed Rule G-42 as a cornerstone of a regulatory framework that recognizes and is tailored to the unique characteristics of the municipal securities market, the special responsibilities of municipal entities in their financial matters and in their relationship to their constituents, and the particular role that municipal advisors play in the municipal securities market. The design of the proposed rule, as amended by Amendment No. 2, is in recognition that municipal advisors serve a diverse array of clients, and, in particular, municipal entity clients, which range from large state issuers to small school districts, special districts and other instrumentalities, public pension plans, and collective vehicles, such as local government investment pools ("LGIPs") and college savings plans that comply with Section 529 of the Internal Revenue Code.[12] The design of the proposed rule is also in recognition that municipal entity clients may have special needs of access to a range of services and particular types financial products from municipal advisors and affiliated financial intermediaries. At the same time, the MSRB believes that the proposed rule change, as amended, will further the protection of municipal entities, investors and the public interest.

Description. The Exception, to be incorporated as new proposed paragraph .14 of the Supplementary Material to Proposed Rule G-42, would provide a municipal advisor two options by which it might engage in certain principal transactions with a municipal entity client, provided the municipal advisor also complies with the first three requirements set forth in paragraph .14 (organized as sections (a) through (c)). A municipal advisor would have the option to act, on a transaction-by-transaction basis, in accordance with a short set of procedural requirements, some of which are drawn from and similar to the requirements set forth in Advisers Act Section 206(3).[13] Alternatively, a municipal advisor that wishes to satisfy procedural requirements on other than a transaction-by-transaction basis would be subject to more and different procedural requirements, including obtaining from the municipal entity client a prospective blanket, written consent. These procedural requirements are drawn from and similar to those set forth in Advisers Act Rule 206(3)-3T.[14]

Importantly, the Exception would operate only to take certain conduct out of the specified prohibition on certain principal transactions in proposed Rule G-42(e)(ii). It would not provide a safe harbor from complying with any other applicable law or rules. Thus, a municipal advisor engaging in a principal transaction in compliance with the Exception would need to continue to be mindful of, and comply with, its broader and foundational obligations owed to the client as a fiduciary under the Exchange Act and Proposed Rule G-42, as well as all other applicable provisions of the federal securities laws and state law.[15]

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12 See 26 U.S.C. 529.

13 15 U.S.C.80b-6(3).

14 17 CFR 275.206(3)-3T.

15 The MSRB's approach in this regard is consistent with that of the Commission with respect to principal transactions executed by investment advisers under Advisers Act

All of the requirements for the Exception take the form of various conditions and limitations. As provided in proposed section (a) of paragraph .14 of the Supplementary Material, a principal transaction could be excepted from the specified prohibition only if the municipal advisor also is a broker-dealer registered under Section 15 of the Exchange Act,[16] and each account for which the municipal advisor would be relying on the Exception is a brokerage account subject to the Exchange Act,[17] the rules thereunder, and the rules of the self-regulatory organizations(s) of which the broker-dealer is a member. In addition, the municipal advisor could not exercise investment discretion (as defined in Section 3(a)(35) of the Exchange Act)[18] with respect to the account, unless granted by the municipal entity client on a temporary or limited basis.[19]

Under proposed section (b) of paragraph .14 of the Supplementary Material, neither the municipal advisor nor any affiliate of the municipal advisor may be providing, or have provided, advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction, except advice as to another principal transaction that also meets all the other requirements of proposed paragraph .14. For example, a municipal advisor could not use the Exception to reinvest proceeds from an issue of municipal securities where it was a municipal advisor as to such issue. A municipal advisor could use the Exception, however, for two principal transactions with the same municipal entity client where the transactions are directly related to one another, so long as all of the conditions and limitations of the Exception are met as to each transaction.

Proposed section (c) of paragraph .14 of the Supplementary Material would limit a municipal advisor's principal transactions under the Exception to sales to or purchases from a municipal entity client of any U.S. Treasury security, agency debt security or corporate debt security. In addition, the proposed Exception would not be available for transactions involving municipal escrow investments as defined in Exchange Act Rule 15Ba1-1(h)[20] because the MSRB believes that this is an area of heightened risk where, historically, significant abuses have occurred. The inclusion in the Exception of transactions in this class of fixed income securities is

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Section 206(3) (15 U.S.C. 80b-6(3)) or Advisers Act Rule 206(3)-3T (17 CFR 275.206(3)-3T).

16 15 U.S.C. 78o.

17 15 U.S.C. 78a et seq.

18 15 U.S.C. 78(c)(a)(35).

19 The proposed requirements are similar to those found in Advisers Act Rule 206(3)-T(a)(7) and (1), respectively. 17 CFR 275.206(3)-3T(a)(7) and (1).

20 17 CFR 240.15Ba1-1(h).

intended to address the concerns of commenters that an absolute ban on principal transactions in fixed income securities, which are frequently sold by broker-dealers as principal or riskless principal, would be particularly problematic, and also addresses comments that an exception limited to these generally relatively liquid securities trading in relatively transparent markets would raise significantly less risk for municipal entity clients.[21] The proposed class of securities may be broader than what would be permitted by relevant bond documents or a particular municipal entity's investment policies, but, in such cases, the restrictions in the bond documents or the municipal entity's investment policies would appropriately control. The terms "U.S. Treasury security," "agency debt security" and "corporate debt security," and related terms, "agency," "government-sponsored enterprise," "money market instrument" and "securitized product" would be defined for purposes of proposed paragraphs .14 and .15 of the Supplementary Material in new proposed paragraph .15 of the Supplementary Material.

To comply with proposed section (d) of paragraph .14 of the Supplementary Material, a municipal advisor would have two options. These two options draw, as generally urged by commenters, upon the procedural requirements in Advisers Act Section 206(3)[22] and Advisers Act Rule 206(3)-3T(a),[23] respectively. Under the first option, which is set forth in proposed subsection (d)(1) of paragraph .14, a municipal advisor would be required, on a transaction-by-transaction basis, to disclose to the municipal entity client in writing before the completion of the principal transaction the capacity in which the municipal advisor is acting and obtain the consent of the client to such transaction. Consent would mean informed consent, and in order to make informed consent, the municipal advisor, consistent with its fiduciary duty, would be required to disclose specified information, including the price and other terms of the transaction, as well as the capacity in which the municipal advisor would be acting. "Before completion" would mean either prior to execution of the transaction, or after execution but prior to the settlement of the transaction.[24]

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21 For example, SIFMA noted the need for an exception to the ban was particularly acute with respect to transactions between a municipal advisor/broker-dealer and its municipal entity client in fixed income securities since "nearly all transactions in fixed-income securities are effected on a principal basis." GFOA noted that municipal entities might be subject to additional costs regarding advice on "investments that are not considered to be risky," and FSI specifically suggested that an exception to the ban for broker-dealers providing advice incidental to securities execution services be limited to transactions in a similar group of fixed income securities.

22 15 U.S.C.80b-6(3).

23 See 17 CFR 275.206(3)-3T(a).

24 These parameters are substantially similar to long-standing interpretive guidance regarding Advisers Act Section 206(3). See SEC Interpretation of Section 206(3) of the Investment Advisers Act of 1940, Rel. No. IA - 1732 (July 17, 1998) ("The protection provided to advisory clients by the consent requirement of Section 206(3) would be weakened, however, without sufficient disclosure of the potential conflicts of interest and

Alternatively, a municipal advisor could comply with proposed subsection (d)(2) of paragraph .14 by meeting six requirements, as set forth in proposed paragraphs (d)(2)(A) through (F) of paragraph .14 and summarized below. First, under proposed paragraph (d)(2)(A), neither the municipal advisor nor any of its affiliates could be the issuer, or the underwriter (as defined in Exchange Act Rule 15c2-12(f)(8)),[25] of a security that is the subject of the principal transaction.

Second, under proposed paragraph (d)(2)(B), the municipal advisor would be required to obtain from the municipal entity client an executed written, revocable consent that would prospectively authorize the municipal advisor directly or indirectly to act as principal for its own account in selling a security to or purchasing a security from the municipal entity client, so long as such written consent were obtained after written disclosure to the municipal entity client explaining: (i) the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with the municipal entity client's interests as a result of the transactions; and (iii) how the municipal advisor addresses those conflicts.

Third, under proposed paragraph (d)(2)(C), the municipal advisor, prior to the execution of each principal transaction, would be required to: (i) inform the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and (ii) obtain consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction.

Fourth, under proposed paragraph (d)(2)(D), a municipal advisor would be required to send a written confirmation at or before completion of each principal transaction that includes the information required by 17 CFR 240.10b-10 or MSRB Rule G-15, and a conspicuous, plain English statement informing the municipal entity client that the municipal advisor: (i) disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction and the client authorized the transaction and (ii) sold the security to, or bought the security from, the client for its own account.

Fifth, under proposed paragraph (d)(2)(E), a municipal advisor would be required to send its municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon this Exception, and the date and price of the transactions.

Sixth, under proposed paragraph (d)(2)(F), each written disclosure would be required to

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the terms of a transaction. In our view, to ensure that a client's consent to a Section 206(3) transaction is informed, Section 206(3) should be read together with Sections 206(1) and 206(2) to require the adviser to disclose facts necessary to alert the client to the adviser's potential conflicts of interest in a principal . . . transaction.").

25 17 CFR 240.15c2-12(f)(8).

include a conspicuous, plain English statement regarding the ability of the municipal entity client to revoke the prospective written consent to principal transactions without penalty at any time by written notice.

A municipal advisor's use and compliance with the requirements of the Exception would not be construed as relieving it in any way from acting in the best interests of its municipal entity client nor from any obligation that may be imposed by the Exchange Act, other provisions of Proposed Rule G-42 (other than subsection (e)(ii) of the proposed rule), or other applicable provisions of the federal securities laws and state law.

Other Amendments

In Amendment No. 2, the MSRB makes five minor, technical amendments, which would clarify, correct cross-references in, or renumber certain provisions of Proposed Rule G-42. First, the MSRB is making minor, technical changes to Proposed Rule G-42(d) regarding recommendations. These amendments set forth the initial text that precedes proposed subsection (d)(i) in two sentences rather than one. The purpose of this change is to clarify the requirements that would apply when a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product and when a municipal advisor reviews such a recommendation of another party. These amendments also clarify in the initial text that precedes proposed subsection (d)(i), consistent with Proposed Rule G-42(d)(ii), that a municipal advisor reviewing a recommendation of another party could determine that the recommended municipal securities transaction or municipal financial product is not suitable for the client.

Second, Amendment No. 2 revises proposed Rule G-42(e)(ii) to begin with the new clause, "Except as provided in paragraph .14 of the Supplementary Material of this rule," and then continue as previously proposed, except that the phrase "municipal securities transaction" is changed to "issue of municipal securities" in order to more closely track the relevant statutory language.[26] Third, to alphabetize the definitions set forth in proposed section (f), the proposed definition of the term "Principal transaction" is renumbered from subsection (f)(i) to subsection (f)(ix). The other eight definitions, set forth as subsections (f)(ii) through (f)(ix), are renumbered, accordingly, as subsections (f)(i) through (f)(viii). Fourth, in proposed paragraphs of the Supplementary Material, references to "this paragraph" are amended to include the appropriate paragraph number (e.g., in proposed paragraph .01 of the Supplementary Material, "this paragraph" is amended to read "this paragraph .01"). Fifth, the order of proposed paragraphs .12 and .13 of the Supplementary Material is reversed, which organizes the two paragraphs addressing principal transactions to appear consecutively and improves the readability of the rule. In addition, in proposed paragraph .13 (as renumbered), the cross-reference to the definition of the term "principal transaction" is corrected.

The changes made by Amendment No. 2 to the proposed rule change are indicated in attached Exhibit 4. Material proposed to be added is underlined; material proposed to be deleted is enclosed in brackets.

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26 See, e.g., 15 U.S.C. 78o-4(b)(2).

The text of the proposed rule change, as amended by Amendment No. 2, is attached as Exhibit 5. Material proposed to be added is underlined; material proposed to be deleted is enclosed in brackets.

EXHIBIT 4

Rule G-42: Duties of Non-Solicitor Municipal Advisors

(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, it must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client, based on the information obtained through the reasonable diligence of the municipal advisor.[or, i] If the review of a recommendation of another party is requested by the

municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is or is not suitable for the client[, and a municipal advisor making a recommendation must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client]. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and

(iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

(e) *Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

(ii) Except as provided for in paragraph .14 of the Supplementary Material of this rule, [A]a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, issue of municipal securities [transaction]or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

(f) *Definitions*.

[(i) "Principal transaction" shall mean, for purposes of this rule, when acting as principal for one's own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.]

(i)[(ii)] "Advice" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(ii)[(iii)] "Affiliate of the municipal advisor" shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iii)[(iv)] "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv)[(v)] "Municipal advisory activities" shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.

(v)[(vi)] A "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vi)[(vii)] "Municipal entity" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(vii)[(viii)] "Obligated person" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(viii)[(ix)] "Official statement" shall, for purposes of this rule, have the same meaning as in Rule G-32(d)(vii).

(ix) "Principal transaction" shall mean, for purposes of this rule, when acting as principal for one's own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

---Supplementary Material:

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph .01. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(a) any advice provided to or on behalf of a client;

(b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph .02. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

.07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

.08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

.09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or

municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

.10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" include those required to:

(a) effectively service the municipal advisory relationship with the client;

(b) act in accordance with any special directions from the client;

(c) understand the authority of each person acting on behalf of the client; and

(d) comply with applicable laws, regulations and rules.

.11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

.12 529 College Savings Plans and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans and other municipal fund securities. All references in this rule to an "official statement" include the plan disclosure document for a 529 college savings plan and the investment circular or information statement for a local government investment pool.

[.12].13 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(ix)[(i)] of this rule, which defines the term "principal transaction," the phrase "other similar financial product" includes a bank loan, but only if it is in an aggregate principal amount of $1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

[.13 529 College Savings Plans and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans and other municipal fund securities. All references in this rule to an "official statement" include the plan disclosure document for a 529 college savings plan and the investment circular or information statement for a local government investment pool.]

.14 Principal Transactions - Exception for Transactions in Specified Fixed Income Securities. Engaging in a principal transaction with a municipal entity client is not specifically prohibited under subsection (e)(ii) of this rule if:

(a) the municipal advisor is a broker-dealer registered under Section 15 of the Act, and each account as to which the municipal advisor relies on this paragraph .14 is a brokerage account subject to the Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, and is an account as to which the municipal advisor exercises no investment discretion (as defined in Section 3(a)(35) of the Act), except investment discretion granted by a municipal entity client on a temporary or limited basis;

(b) neither the municipal advisor, nor any affiliate of the municipal advisor, is providing or has provided advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice as to another principal transaction under circumstances meeting all the requirements of this paragraph .14);

(c) the principal transaction is a sale to or a purchase from the municipal entity client of any U.S. Treasury security, agency debt security, or corporate debt security (as defined in paragraph .15 of the Supplementary Material) and does not involve municipal escrow investments (as defined in 17 CFR 240.15Ba1-1(h)); and

(d) the municipal advisor either: (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction under circumstances meeting all of the following requirements:

(A) neither the municipal advisor nor any of its affiliates are the issuer of, or, at the time of the sale, an underwriter (as defined in 17 CFR 240.15c2-12(f)(8)) of, the security;

(B) the municipal entity client has executed a written, revocable consent prospectively authorizing the municipal advisor directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the municipal entity client, so long as such written consent is obtained after written disclosure to the municipal entity client explaining: the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; the nature and significance of conflicts with its municipal entity client's interests as a result of the transactions; and how the municipal advisor addresses those conflicts;

(C) the municipal advisor, prior to the execution of each principal transaction, informs the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and obtains consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction;

(D) the municipal advisor sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10 or Rule G-15, a conspicuous, plain English statement informing the municipal entity client that the municipal advisor disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction, the municipal entity client authorized the transaction, and the municipal advisor sold the security to, or bought the security from, the municipal entity client for its own account;

(E) the municipal advisor sends to the municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon subsection (d)(2) of this paragraph .14, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph .14 includes a conspicuous, plain English statement that the municipal entity client may revoke the written consent referred to in paragraph (d)(2)(B) of this paragraph .14 without penalty at any time by written notice to the municipal advisor.

This paragraph .14 shall not be construed as relieving in any way a municipal advisor from acting in the best interests of its municipal entity clients, nor shall it relieve the municipal advisor from any obligation that may be imposed by other applicable provisions of the federal securities laws and state law.

.15 Terms Relating to the Exception in Paragraph .14. For purposes of paragraph .14 and this paragraph .15 of the Supplementary Material:

(a) "agency" means a U.S. executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury securities;

(b) "agency debt security" means a debt security (i) issued or guaranteed by an agency, or (ii) issued or guaranteed by a government-sponsored enterprise, including a securitized product that is issued by an agency or a government-sponsored enterprise, or, for which, the principal or interest (or both) is guaranteed by an agency or a government-sponsored enterprise;

(c) "corporate debt security" means a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer and, if a "restricted security" as defined in 17 CFR 230.144(a)(3), sold pursuant to 17 CFR 230.144A, but does not include a money market instrument;

(d) "government-sponsored enterprise" has the same meaning as defined in 2 U.S.C. 622(8);

(e) "money market instrument" means a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an agency or a government-sponsored enterprise, a maturity of one calendar year and one day or less;

(f) "securitized product" means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes, but is not limited to, an asset-backed security, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is considered a debt security; and

(g) "U.S. Treasury security" means a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) No change.

(ii) Reserved.

(iii) Reserved.

(iv) *Records Concerning Duties of Non-Solicitor Municipal Advisors pursuant to Rule G-42.*

(A) A copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability.

(v) No change.

EXHIBIT 5

Rule G-42: Duties of Non-Solicitor Municipal Advisors

(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship.* A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, it must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client, based on the information obtained through the reasonable diligence of the municipal advisor. If the review of a recommendation of another party is requested by the

municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is or is not suitable for the client. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and

(iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

(e) *Specified Prohibitions.*

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the

municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

(ii) Except as provided for in paragraph .14 of the Supplementary Material of this rule, a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, issue of municipal securities or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

(f) *Definitions*.

(i) "Advice" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(ii) "Affiliate of the municipal advisor" shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv) "Municipal advisory activities" shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.

(v) A "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vi) "Municipal entity" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

(vii) "Obligated person" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(viii) "Official statement" shall, for purposes of this rule, have the same meaning as in Rule G-32(d)(vii).

(ix) "Principal transaction" shall mean, for purposes of this rule, when acting as principal for one's own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

---Supplementary Material:

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph .01. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(a) any advice provided to or on behalf of a client;

(b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph .02. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal

advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

.07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

.08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

.09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

.10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" include those required to:

(a) effectively service the municipal advisory relationship with the client;

(b) act in accordance with any special directions from the client;

(c) understand the authority of each person acting on behalf of the client; and

(d) comply with applicable laws, regulations and rules.

.11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

.12 529 College Savings Plans and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans and other municipal fund securities. All references in this rule to an "official statement" include the plan disclosure document for a 529 college savings plan and the investment circular or information statement for a local government investment pool.

.13 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(ix) of this rule, which defines the term "principal transaction," the phrase "other similar financial product" includes a bank loan, but only if it is in an aggregate principal amount of $1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

.14 Principal Transactions - Exception for Transactions in Specified Fixed Income Securities. Engaging in a principal transaction with a municipal entity client is not specifically prohibited under subsection (e)(ii) of this rule if:

(a) the municipal advisor is a broker-dealer registered under Section 15 of the Act, and each account as to which the municipal advisor relies on this paragraph .14 is a brokerage account subject to the Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, and is an account as to which the municipal advisor

exercises no investment discretion (as defined in Section 3(a)(35) of the Act), except investment discretion granted by a municipal entity client on a temporary or limited basis;

(b) neither the municipal advisor, nor any affiliate of the municipal advisor, is providing or has provided advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice as to another principal transaction under circumstances meeting all the requirements of this paragraph .14);

(c) the principal transaction is a sale to or a purchase from the municipal entity client of any U.S. Treasury security, agency debt security, or corporate debt security (as defined in paragraph .15 of the Supplementary Material) and does not involve municipal escrow investments (as defined in 17 CFR 240.15Ba1-1(h)); and

(d) the municipal advisor either: (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction under circumstances meeting all of the following requirements:

(A) neither the municipal advisor nor any of its affiliates are the issuer of, or, at the time of the sale, an underwriter (as defined in 17 CFR 240.15c2-12(f)(8)) of, the security;

(B) the municipal entity client has executed a written, revocable consent prospectively authorizing the municipal advisor directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the municipal entity client, so long as such written consent is obtained after written disclosure to the municipal entity client explaining: the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; the nature and significance of conflicts with its municipal entity client's interests as a result of the transactions; and how the municipal advisor addresses those conflicts;

(C) the municipal advisor, prior to the execution of each principal transaction, informs the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and obtains consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction;

(D) the municipal advisor sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10 or Rule G-15, a conspicuous, plain English statement informing the municipal entity client that the municipal advisor disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction, the municipal entity client authorized the transaction, and the municipal advisor sold the security to, or bought the security from, the municipal entity client for its own account;

(E) the municipal advisor sends to the municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon subsection (d)(2) of this paragraph .14, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph .14 includes a conspicuous, plain English statement that the municipal entity client may revoke the written consent referred to in paragraph (d)(2)(B) of this paragraph .14 without penalty at any time by written notice to the municipal advisor.

This paragraph .14 shall not be construed as relieving in any way a municipal advisor from acting in the best interest of its municipal entity clients, nor shall it relieve the municipal advisor from any obligation that may be imposed by other applicable provisions of the federal securities laws and state law.

.15 Terms Relating to the Exception in Paragraph .14. For purposes of paragraph .14 and this paragraph .15 of the Supplementary Material:

(a) "agency" means a U.S. executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury securities;

(b) "agency debt security" means a debt security (i) issued or guaranteed by an agency, or (ii) issued or guaranteed by a government-sponsored enterprise, including a securitized product that is issued by an agency or a government-sponsored enterprise, or, for which, the principal or interest (or both) is guaranteed by an agency or a government-sponsored enterprise;

(c) "corporate debt security" means a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer and, if a "restricted security" as defined in 17 CFR 230.144(a)(3), sold pursuant to 17 CFR 230.144A, but does not include a money market instrument;

(d) "government-sponsored enterprise" has the same meaning as defined in 2 U.S.C. 622(8);

(e) "money market instrument" means a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an agency or a government-sponsored enterprise, a maturity of one calendar year and one day or less;

(f) "securitized product" means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes, but is not limited to, an asset-backed security, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is considered a debt security; and

(g) "U.S. Treasury security" means a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.

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Rule G-8: Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

(a) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) No change.

(ii) Reserved.

(iii) Reserved.

(iv) *Records Concerning Duties of Non-Solicitor Municipal Advisors pursuant to Rule G-42.*

(A) A copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability.

(v) No change.