

MEMORANDUM

TO: File No. S7-45-10
FROM: Garrett Bishop
DATE: May 31, 2012
RE: Meeting with the National Association of Independent Public Finance Advisors

On May 31, 2012, Mary Simpkins, Dave Sanchez, Garrett Bishop and Daniel Scheeringa from the Division of Trading and Markets met with Steve Apfelbacher, Jeanine Rodgers Caruso, and Larry Kidwell, representatives from the National Association of Independent Public Finance Advisors (“NAIPFA”).

The NAIPFA representatives sought to discuss matters of interest to independent public finance advisors, including the Commission’s proposed rule on the registration of municipal advisors and, specifically, the Commission’s proposed record keeping rules for registered municipal advisors.

The attached materials were provided.

Comments provided by NAIPFA
Discussing What the SEC Recording Keeping Rule Means
May 31, 2012

Proposed SEC Recordkeeping Rules:

The SEC in their first draft on Registration of Municipal Advisors (release No. 34-63576; File No. S7-45-10) in December, 2010 on page 139 identified "Records to be Made by Municipal Advisors". On page 140 the release identifies a number of proposed records to be kept and includes these two items:

Item 1-Original or copies of all communications received, and originals or copies of all communications sent by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of the communications including Footnote 275: (Material posted on a municipal advisor's website relating to municipal advisory activities would be written communications sent by the municipal advisor for the purposes of this provision).

Item 2- Copy of any document created by the municipal advisor that was material to the making a recommendation to a municipal advisory client or that memorializes the basis for the recommendation

It is not completely clear as to the meaning of these two requirements. Page 140 goes on to list eight other requirements to be kept by the municipal advisor which are clearer as to their meaning. This comment letter will focus on these two requirements. Comments within this letter also assumes that MSRB Rules as previously proposed will be adopted which requires a fiduciary duty to the client and establishes advertising record keeping requirements for the municipal advisor.

Item 1- Original or copies of all communications:

NAIPFA is interpreting this to mean all documents prepared after the date the Municipal Advisor was hired or engaged by a client prepared for a specific financing engagement which include:

- Documents sent through the any delivery services such as the US Post Office or FedEx:
- All documents electronically transmitted to the client or send to other parties' related to this specific financing engagement.
- Documents or exhibits handed out or presented to a client at a meeting with the client
- Documents posted on the firm's website related to the specific financing engagement or other electronic hosting site set up for the client's specific financing engagement
- Contract or letter of engagement for the specific financing engagement
- Reports or letters of recommendation

It does not include:

- Social media postings
- Client telephone conversations or verbal meeting discussions

All documents prepared prior to the date the Municipal Advisor was hired or engaged would be considered marketing materials and covered by MSRB Rule G-21(Advertising) and not be part of this record keeping requirement.

Municipal Advisor firms' would need to organize their recordkeeping procedures to keep these documents for the required period of time.

Item 2- Copy of any documents relating to material that make a recommendation or memorializes/bases for the transaction:

NAIPFA believes that the numerous documents that memorialize or are the bases for the specific financing transaction would fit into the following sub categories. Each firm will however have different documents or document names which will make up these categories. We would hope the SEC would recognize these firm differences. The categories are

Client Transaction Engagement

1. Client Contractor or Letter of Engagement
2. Appropriate addendum for service including disclosure of conflicts of interests and affiliations.

Planning Documentation

3. Reports or debt service structuring presented to the client projecting various options for the client to consider.
4. Recommendation or report detailing the preferred option for consideration by the client
5. Modifications recommended to the recommendation or report that resulted in the final financing structure

Sale Documentation

6. Client Questionnaire (general information requested from the client)
7. Letter to client identifying other professionals involved in the transaction
8. Sale Details (as communicated to the Bond Attorney and others)
9. Preliminary Official Statement
10. Statutory required transcript/authorizing proceedings/transcript & credit enhancement documents
11. Rating Report if rated
12. Bid Tabulation
13. Sale day report – report to the client showing results of the sale
14. Final debt service structure & tax levy, if applicable
15. Executed Proposal Form
16. Resolution Awarding the Sale of Bonds
17. Addendum & Final Official Statement

Post Sale Documentation

18. Closing Memorandum
19. Executed Closing Documents and Legal Opinion (including Arbitrage Certificate, Escrow Agreement, and Purchaser's Certificate etc.)
20. Any Post Sale Report