Dave A. Sanchez, Attorney at Law

August 25, 2014

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SR-MSRB-2014-06

Dear Ms. Murphy:

Thank you for the opportunity to provide comments to the United States Securities and Exchange Commission (SEC) on the proposal of the Municipal Securities Rulemaking Board (MSRB) to adopt a new Rule G-44 to govern the supervisory and compliance obligations of municipal advisors.

These comments are informed by a background that includes, amongst other relevant experience, advising registered municipal advisors with respect to their compliance obligations and serving as general counsel to a municipal broker-dealer that was also registered as a municipal advisor. With that background, I note that the proposed rule generally strikes an appropriate balance between a principles-based approach and prescriptive approach. However, discrete portions of the proposed rule appear to be overly burdensome or not clearly targeted to an actual regulatory need.

Before proceeding to specific comments about the proposed rule, I believe a couple of over-arching observations bear mention as the MSRB proceeds in developing this new regulatory regime for municipal advisors. First, the SEC has stated that its final municipal advisor registration rule is "activity-based" rather than "status-based" and persons are subject to this regulatory regime for engaging in the activity of providing "municipal advice." Therefore, the Commission and the MSRB should consider the view that the regulatory regime for municipal advisors be designed to effectively regulate the specific business of providing municipal advice and not be designed, as a primary consideration, to parallel any other regulatory regime. Other than as noted herein, I do believe the MSRB has succeeded in approaching the regulation of municipal advisors in a manner appropriate to the activity. The presently proposed rule largely accomplishes this particularly because it is cast as a completely separate rule from MSRB Rule G-27. However, the point bears mention because several comment letters submitted with the MSRB's original proposal and certain of the justifications for aspects of the presently proposed rule appear to conflate the task of regulating municipal advisors with the task of regulating broker-dealers and/or investment advisers. While it is true that other regulatory schemes may properly inform this process, the Commission and the MSRB should consider the view that the regulatory regime for municipal advisors must be targeted to the business of being a municipal advisor. With that view in mind, it is not the case that

municipal advisors should be subject to "substantively similar" or "consistent" rules as those imposed on broker-dealers or investment advisers unless those rules actually make sense in the context of regulating municipal advisors. The SEC noted in passing its final rule that as of March 31, 2013 only 330 of the 1,130 Form MA-T registrants were also registered as investment advisers and/or broker-dealers. And, as the SEC noted, that minority of dual- or tri- registered firms has been largely unregulated with respect to their municipal advisory activity. That means that for these dual- or tri- registered entities, the MSRB will not be duplicating existing rules that govern the business of acting as a municipal advisor – regardless of their other registrations. In cases where it does make sense to have the same or similar rules for municipal advisors as have been promulgated for broker-dealers and/or investment advisors, the MSRB can proceed accordingly. The Commission and the MSRB certainly have methods (such as the ones implemented in proposed Rules G-44 (d) and (e)) to accomplish harmonization with other regulatory regimes without resorting to subjecting the vast majority of municipal advisors who are not FINRA members to a regulatory regime that is properly targeted to a different business activity. That would not result in regulatory regime for municipal advisors that is either effective or efficient.

The second "big picture" comment to consider is that on December 18, 2012, the MSRB published Notice 2012-63 that essentially sought input on ways to improve and streamline its current rulebook. This is a very laudable goal that should be kept in mind when developing the new regulatory regime for municipal advisors. Again, the Commission and the MSRB should consider the view that this cautions against importing the tangled web of regulation that has developed over the last 80 years with respect to different business activities (brokers/dealers) to the newly regulated municipal advisor activity.

My specific comments on the proposed rule are set forth below.

Proposed Rule G-44 (a)(i): Written Supervisory Procedures

The second sentence of this rule should be amended to track the responsibilities under MSRB Rule G-27(c)(iii). This appears to be one example where harmonization with an existing standard for registered broker-dealers appears prudent. The standard in MSRB Rule G-27(c)(iii) is more reasonable and will be less confusing for entities that are registered as both broker-dealers and municipal advisors. In any event, the current proposed standard of "prompt amendment" and "prompt communication" is vague and more burdensome than the standard the MSRB requires of other regulated activities without any apparent justification. In addition, this is one area where harmonization would be effective so that dual-registered entities do not have two different standards to follow for updating their written supervisory procedures. My suggested revisions are noted below:

The establishment, implementation, maintenance and enforcement of written supervisory procedures that are reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The written supervisory procedures shall ~~be promptly~~ amended as appropriate within a reasonable time after ~~to reflect~~ changes occur in the applicable rules and as changes occur in the municipal advisor's supervisory system, and ~~such procedures and amendments shall be promptly communicated to all associated persons to whom they are relevant based on their activities and responsibilities.~~each municipal advisor shall be responsible for communicating amendments through its organization.

Proposed Rule G-44 (d): Annual Certification

It is extremely unclear what the regulatory purpose of the Annual Certification is, particularly because the associated recordkeeping requirements in the proposed rule essentially require the equivalent of an annual certification.

Proposed Rule G-8(h)(v)(C) already requires a municipal advisor to maintain records of the reviews of written compliance policies and written supervisory policies that are required by Rule G-44(a) and (b). Because municipal advisors will already be required to maintain a track record of their compliance and supervisory review, it is unclear what additional benefit is provided by the annual certification. Proposed Rules G-8(h)(v)(C) and G-44(a) and (b) already achieve the important substantive requirement of ensuring that there is a documented periodic review of compliance and supervisory policies.

If the purpose of the annual certification is to foster discussion between persons responsible for compliance matters and upper management then the proposed Rule G-44(d) does not accomplish that goal because it is a simple certification executed by the chief executive officer. And, if that is the purpose the Commission and the MSRB should consider whether, in light of Section 15B(b)(2)(L)(iv) of the Exchange Act, such a provision is necessary for small municipal advisors (and sole proprietors in particular). These organizations are small enough to render such a requirement duplicative of proposed Rule G-8(h)(v)(C) and certainly not a "necessary or appropriate" regulatory burden on small municipal advisors that meet the small business threshold for municipal advisors identified by the Commission in the Commission's final municipal advisor rule.

It is also worth noting that the SEC had initially proposed an annual self-certification[1] as part of its proposed registration rule for municipal advisors that included a certification with respect to compliance with "all applicable regulatory

[1] See Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) at 848.

obligations." The SEC dropped that the requirement for self-certification in the final rule.

It is acknowledged that FINRA requires an annual certification from its members, however, the vast majority of registered municipal advisors are not FINRA members and there is no "harmonizing" benefit achieved by imposing such an obligation here, particularly when FINRA members are specifically exempted from proposed Rule G-44(d). Again, this is a new regulatory scheme and it should not be burdened with inefficiencies built into other existing regulatory schemes.

Supplementary Material .02

The third sentence of this supplementary material is confusing and probably unnecessary with respect to sole proprietors. It is rare in rule writing when a regulator can give total clarity but I believe it is possible in this case with respect to sole proprietors.

Note that the combination of proposed rules G-44(a) and (b) and Supplementary Material .04 require a solo municipal advisor to review (and possibly amend) their supervisory and compliance processes no less frequently than any time there is a change in applicable rules or a change in the conduct of their business and, at least annually, in light of compliance matters that arose since any prior review. When you are supervising yourself, short of any professional continuing education requirements, it is hard to imagine what additional *supervisory* processes are possible or reasonable. In that regard the last sentence of Supplementary Material .02 should be amended to say, "in the case of a municipal advisor with a single associated person, compliance with Rules G-44(a) and (b), Supplementary Material .04 and associated recordkeeping requirements shall be deemed to be a sufficient *supervisory system* under this rule." If that were not acceptable than deleting the last sentence of Supplementary Material .02 would be preferable. The proposed rule already requires that a solo municipal advisor review their processes whenever there is a rule change, whenever they enter a new line of business and whenever there is a compliance issue (which could be any of a customer complaint, a regulatory notice or even a comment from a colleague about a compliance issue). Their review and direction of their own work is constant and continual and it seems odd that this fact cannot be explicitly acknowledged. Such a change would also work to "not impose a regulatory burden on small municipal advisors that is not necessary or appropriate" as required by Section 15B(b)(2)(L)(iv) of the Exchange Act.

Rule G-8 (h)(v)(E) Record of Annual Certification

As discussed above, this requirement is duplicative of Rule G-8(h)(v)(C) and should be deleted.

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Rule G-9(h) Municipal Advisor Records

The proposed rule includes an extended period of record retention for designation of supervisory persons and chief compliance officers that is rationalized as being consistent with FINRA requirements.

I will note that one of the most difficult aspects of compliance I experienced as general counsel to a broker-dealer was the dizzying array of records retention requirements that may have once individually made sense but that are a compliance nightmare in the aggregate. As noted above, in late 2012, the MSRB started the laudable process of streamlining their rulebook and therefore should tread cautiously before introducing unnecessary complexity into this new regulatory regime for municipal advisors. In this case, the proposed additional year required to maintain these very specific records appears to be an unnecessary complexity. FINRA has a six-year eligibility for arbitrations that is presumably the reason for the six-year requirement for maintaining such records for FINRA members. However, there is no similar arbitration eligibility rule for non-FINRA members that comprise the vast majority of registered municipal advisors. It is true that FINRA members will continue to have this six-year recordkeeping requirement but they would have that requirement regardless of this rule and, again, those entities constitute a minority of registered municipal advisors.

Proposed Rule G-9(h) should be amended to have a consistent five-year requirement for all records described in Rule G-8(h).

I appreciate the opportunity to provide these comments. If you have any questions regarding these comments please feel free to contact me by phone at ([redacted]).

Sincerely,

/s/

Dave A. Sanchez