May 29, 2015

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **File Number SR-MSRB-2015-03: Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors**

Dear Mr. Fields:

Zions First National Bank ("Zions") appreciates this opportunity to provide comments to the Securities and Exchange Commission ("SEC") pertaining to the Municipal Securities Rulemaking Board's ("MSRB's") Proposed Rule G-42 regarding enhanced standards of conduct and duties of municipal advisors when engaged in municipal advisory activities (the "Proposed Rule"). We would like to focus our comments on the broad prohibition contained in the Proposed Rule against principal transactions between municipal entities and their municipal advisors.

Zions appreciates the MSRB's efforts to incorporate the comments of municipal market participants into the Proposed Rule prior seeking approval from the SEC, and believes the MSRB has made significant improvements to the Proposed Rule. However, it is Zions' position that the Proposed Rule is inconsistent with current federal regulation of investment advisers and banks, and creates undue restraint on municipal finance. At minimum, the exception for certain bank loan transactions should be expanded.

Under the Proposed Rule, "[a] municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice."[1]

I. Proposed Rule G-42 Should Be Consistent with Investment Adviser Regulation.

The Proposed Rule is inconsistent with federal regulation of investment advisers. Investment advisers are fiduciaries to their advisory clients.[2] Investment advisers are permitted under the

---

[1] Proposed Rule G-42(e)(ii).

[2] Investment Advisers Act of 1940 § 206; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963).

Investment Advisers Act of 1940 ("Advisers Act") to engage in principal transactions with clients, including municipal entity clients, if the adviser provides certain written disclosure regarding the conflict and obtains client consent.[3]

The SEC has provided helpful guidance on the proper balancing of interests in principal transactions of advisers with their clients.[4] While recognizing "the potential for conflicts between the interests of the adviser and those of the client," the SEC simultaneously acknowledged that "[a]dvisory clients can benefit from [principal] transactions, depending on the circumstances, ***by obtaining a more favorable transaction price for the securities being purchased or sold than otherwise available***."[5] The SEC provided guidance to advisers as it was "concerned that unless we clarify these issues, ***advisers will unnecessarily avoid engaging in principal and agency transactions that may serve their clients' best interests***."[6] The SEC and Congress provided protections for clients through disclosure and consent requirements, but still allowed for such clients to obtain the benefit of more favorable financing terms by not imposing an outright ban on principal transactions.

Further, investment advisers were specifically excluded from the definition of "municipal advisor" under the Securities Exchange Act of 1934 and under SEC Rule 15Ba1-1, as there are already adequate protections in place for municipal entities and obligated persons under the Advisers Act. There is no indication that Congress intended a municipal advisor's fiduciary duty to be somehow higher than that of an investment adviser's. Both sets of professionals owe a duty of loyalty and a duty of care to their clients. It would create legal confusion to allow investment advisers with fiduciary duties to engage in certain principal transactions with municipal entity clients, and prohibit municipal advisors from doing the same.[7]

Zions believes that the template for appropriate regulation of fiduciaries engaging in principal transactions with advisory clients has been established, and the MSRB should follow the SEC's and Congress' lead. As written, the Proposed Rule strips municipal entities of a potential benefit in obtaining the best financing terms available, which is clearly in a municipal entity's best interests. State and local governments oversee and direct billions of dollars worth of public funds as sovereign entities. Zions strongly believes state and local governments are able to understand conflicts of interest associated with principal transactions and to make their own decisions regarding waiver.

---

[3] Investment Advisers Act of 1940 § 206(3).

[4] SEC Interpretation of Section 206(3) of the Investment Advisers Act of 1940, Release No. IA-1732 (July 20, 1998).

[5] *Id.* (emphasis added).

[6] *Id.* (emphasis added).

[7] Moreover, as more fully described in Section II, banks acting in a principal capacity should not raise concern as their activities are already overseen by federal banking regulators.

We would quickly like to address the MSRB's recent Rule G-23 changes in the context of the principal transaction discussion above. MSRB Rule G-23 now prohibits role-switching from a financial advisor to an underwriter on the same municipal securities transaction due to potential conflicts of interest. Rule G-23 previously permitted such role-switching if disclosure and consent requirements were met. Investment adviser or municipal advisor principal transactions do not pose the same conflicts because, as fiduciaries, such professionals must act in the best interests of their clients throughout the engagement.

Thus, if the concern of the MSRB is that a municipal advisor will engage in conduct that is contrary to its municipal entity client's best interests, an outright ban on principal transactions is unnecessary. In circumstances where a municipal advisor does not act in its municipal entity client's bests interests, the SEC already has a sufficient basis—namely a federal fiduciary duty—on which to pursue an enforcement action. In fact, in some circumstances, an outright ban on principal transactions will prevent municipal advisors from engaging in transactions that will serve their municipal entity clients' best interests.

II. Alternatively, Proposed Rule G-42 Should Be Consistent with Federal Banking Regulation.

The Proposed Rule is also inconsistent with federal banking regulation of transactions with private companies and individuals. As an alternative to generally permitting principal transactions subject to disclosure and consent requirements, Zions believes bank loans should be excluded in their entirety from Proposed Rule G-42. The MSRB's Proposed Rule G-42 contains provisions that would prohibit a municipal advisor from engaging in a principal transaction related to the same municipal securities transaction or municipal financial product, which includes a bank loan in an aggregate principal amount of $1,000,000 or more that is economically equivalent to the purchase of one or more municipal securities.[8]

Banks have been making loans to private companies and individuals for hundreds of years while simultaneously serving as fiduciaries in trust situations with the same customers. Zions believes it would be paradoxical to suggest on one hand that individuals and private businesses can borrow money from the same banks that also serve as their fiduciaries, but that on the other hand municipal entities don't have the financial acumen required to borrow money from the same banks that also serve as their fiduciaries.

Prior to Zions acquiring a municipal obligation for its own portfolio in a direct loan transaction, Zions' experienced and skilled in-house municipal credit analytical department analyzes and internally rates the credit. If the credit is approved, the municipal obligation is acquired and held to maturity by Zions in a held-to-maturity account. Therefore, Zions retains the risk unlike other principal transactions where the purchaser acquires the obligation with intent to resell, and both parties in the loan transaction have an interest in the municipal entity's ability to repay its obligation.

---

[8] Proposed Rule, Supplementary Material Paragraph .11.

It is Zions' position that banks should be allowed to continue offering traditional banking services to municipal entities, including in a principal capacity. Such activities are highly-regulated and overseen by federal banking regulators. Zions believes that federal banking regulators are in the best position to regulate the lending activities of banks. Municipal entities should not be restricted from accessing the same types of financing options that are available to private entities and individuals.

III. At Minimum, the Threshold for the Bank Loan Exception Should Be Increased.

If the SEC approves of an MSRB rule that takes a position with respect to principal transactions that is inconsistent with other federal regulators—including the SEC—the threshold for the bank loan exception under the Proposed Rule should be increased. Banks often may be the sole source of certain types of financings for smaller municipal entities. Many of the direct loans Zions makes to smaller and more remote municipal entities for which Zions also serves as a financial advisor on unrelated issuances of municipal securities, qualify for Community Reinvestment Act ("CRA") credit from its banking regulators. Many of these borrowers are so small that their access to the capital markets is quite limited, and direct loans may be the only source of efficient and economic solutions for their capital needs. As such, the dollar threshold for the bank loan exception under the Proposed Rule should be consistent with bank qualified obligations under Section 265(b)(3) of the Internal Revenue Code, which is currently $10,000,000, for the same reasons the bank qualification exemption was originally adopted by Congress.

Congress' CRA requirements are designed and administered to ensure that banking organizations provide sufficient services to under-served individuals and communities in three specifically targeted categories: (i) Loans; (ii) Investments; and (iii) Financial Services. Banks are required to provide a sufficient amount of services in each of these three categories to under-served individuals and communities in the geographic areas served by the banks. The failure to meet the requirements in any one of these three categories is a failure to meet CRA requirements as a whole. Any rule or interpretation that would have a tendency of forcing banks to provide services to under-served municipalities and communities in less than all three of these categories would obviously run counter to Congress's clear intent to foster and require services under all three.

IV. Conclusion

Zions believes its position on the Proposed Rule is correct and would welcome an opportunity to discuss it further. We hope our comments will provide additional perspective on the appropriate level of municipal advisor regulation to ensure municipal entities are able to access the municipal market and obtain the best financing terms available to them.

We understand that other federal regulators may be interested in the outcome of the issues discussed herein and, therefore, have provided copies of this letter to the individuals listed below.

Zions participated in the development of the American Bankers Association's comments to the SEC on the Proposed Rule and wishes to express its support for and endorsement of those comments.

Thank you for your consideration. If you have any questions regarding this letter, please feel free to contact Gary Hansen at Zions First National Bank, One South Main, 17th Floor, Salt Lake City, Utah 84133, Telephone: [redacted], E-mail: [redacted].

Very truly yours,

ZIONS FIRST NATIONAL BANK

By _____
W. David Hemingway
Executive Vice President

Cc: Jessica Kane, Director, Office of Municipal Securities, SEC
Rebecca Olsen, Deputy Director, Office of Municipal Securities, SEC
Lynnette Kelly, Executive Director, MSRB
Ronald W. Smith, Corporate Secretary, MSRB
Robert Fippinger, Chief Legal Officer, MSRB
Michael L. Post, General Counsel, Regulatory Affairs, MSRB
Nestor Lim, Examiner Manager, Federal Reserve
Michael Brosnan, Examiner in Charge, OCC
Barbara Miller, National Bank Examiner, OCC
Barbara Ryan, Deputy to the Chairman and Chief Operating Officer, Chief of Staff, FDIC
Richard K. Ellis, Utah State Treasurer