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May 29, 2015

-Submitted Via Electronic Filing-

Securities and Exchange Commission
Attention: Ms. Elizabeth Murphy, Secretary
100 F Street, NE Washington, DC 20549-1090

Re: 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
File Reference Number SR-MSRB-2015-03

Dear Commissioners and Staff,

Public Financial Management Inc. ("PFM") appreciates the occasion to provide our comments to the proposed new Rule G-42 ("Proposed Rule") regarding the duties of non-solicitor Municipal Advisors and corresponding Rule G-8 amendments.

Our fundamental recommendation is that the Securities and Exchange Commission ("Commission") approves the Proposed Rule itself but take no further action with respect to the commentary which the MSRB ("Board") denominates as "Supplementary Material". Prior to finalization of the Proposed Rule, the Commission should remove the Supplementary Material section from the text. The Board instead should consider the separate issuance of written rule interpretive letter or interpretive notice content, as it does from time to time, regarding such complex areas of regulatory interpretation affording these topics more fittingly robust regulatory guidance. While providing such helpful regulatory guidance is appropriate and should prove useful to all Municipal Advisors, inserting such interpretive elements into the Rule itself (where more succinct definitional direction cannot be provided given their qualitative nature) will lead to inconsistent application by registrants and the potential for unintended consequences as a matter of the statute itself. Both the Commission



and the Board must recognize that the multitude of issuers of municipal securities present such a wide range of potential circumstances associated with the issuance process that the regulatory determinations about a Municipal Advisor's satisfaction of Rule G-42 will necessarily rely on the facts and circumstances associated with each issuance and the Municipal Advisor's demonstrated ability to perform such responsibilities.

We do not contend that the Supplementary Material is wrong, although we offer below a few areas in which the commentary seems incongruent with our understanding of the intent of Dodd-Frank. Rather, we submit that the Commission's regulatory responsibility is to assume that Self-Regulatory Organization ("SRO") Rules are faithful to the commands of the statute and are sufficiently precise so that they can be interpreted correctly and consistently by judicial officers. The Board can publish whatever it wishes regarding its rules, and, in fact, the Board has accumulated a substantial body of interpretive notices and other expressions of their views on market practices. These often may be useful to registrants and to their compliance professionals, but when commentary or "guidance" is stapled to a rule to be enforced by an administrative agency – particularly a rule originating from an SRO – it presents a concern that the rules, on their face, may lack the precision that should be expected of requirements that carry criminal consequences. It also should be noted that under these circumstances, judicial officers may conflate guidance and law.

In the Board submission presently before the Commission, for example, the text of the Proposed Rule in several instances require a Municipal Advisor to justify its conclusion that a recommended financing is "suitable" for the issuer client. Thus, "suitable" is a vital measure of performance and is only capable of definition by the totality of the circumstances at the time the recommendation is made. The Proposed Rule, however, attempts no elucidation or definition of the required conclusions by the Municipal Advisor – a "suitable" strategy. Instead, Section .08 of the Board's Supplementary Materials offers a perfunctory list of generic factors for consideration without providing Municipal Advisors with a clear definition of this important term.



We believe the “suitability” of the advice and the recommendations provided by a Municipal Advisor to their client serves as a cornerstone of the fiduciary relationship, and also begins to provide a regulatory and legal standard for use in the often retroactive examination of the advice provided by a Municipal Advisor. Clearly, definition is necessary for both the practical application intended among the municipal marketplace participants, and also to ensure more precise expectations for regulatory examiners or judicial officers.

PFM continues to believe that the ultimate implementation of Rule G-42 will substantially improve the municipal marketplace. This will be realized by formalizing the issuer protections which reputable, qualified and independent Municipal Advisors provide, enhancing the clarity of the regulation supporting the role of the Municipal Advisor in municipal securities transactions, and prescribing certain conventions of the relationship between the client and their Municipal Advisor.

We continue to welcome the opportunity to discuss these comments or otherwise assist the Commission in finalizing the Proposed Rules or any other feature of the Municipal Advisor regulations in furtherance of bringing clarity, standards, and additional protections to municipalities and non-profit institutions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "L. Karwejna", is written over the printed name.

Leo Karwejna

Chief Compliance Officer, Managing Director



cc: John Bonow, Chief Executive Officer, Public Financial Management, Inc.

Mary Jo White, Chairman, Securities and Exchange Commission

Luis A. Aguilar, Commissioner, Securities and Exchange Commission

Daniel M. Gallagher, Commissioner, Securities and Exchange Commission

Kara M. Stein, Commissioner, Securities and Exchange Commission

Michael S. Piwowar, Commissioner, Securities and Exchange Commission

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