FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

December 1, 2015

Robert W. Errett
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **File Number SR-MSRB-2015-03, Amendment No. 2 to Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors**

Dear Mr. Errett:

On November 17, 2015, the Securities and Exchange Commission (SEC) published its request for public comment on proposed amendments to the Municipal Securities Rulemaking Board's (MSRB) proposed new rule G-42 (Proposed Amendment).[1] The MSRB is proposing to add paragraphs .14 and .15 of the Supplementary Material to Proposed Rule G-42. The Proposed Amendment would provide an exception to the proposed principal transactions ban in Proposed Rule G-42(e)(ii) for transactions in specified types of fixed income securities.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. We appreciate the MSRB filing the Proposed Amendment and believe it will greatly benefit municipal entities. We previously requested a similar exception in comment letters filed on May 29, 2015 and September 11, 2015.[3] We believe such an exception is critical to ensuring municipal entity clients maintain access to the trusted financial advisors of their choosing and avoid increased investment costs. Nevertheless, we respectfully request a few changes to the exception to improve upon its utility to issuers.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

[1] 80 Fed. Reg. 71858 (Nov. 17, 2015).

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

[3] *See* Letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, FSI to Brent Fields, Secretary, SEC (May 29, 2015); Letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, FSI to Robert W. Errett, Deputy Secretary, SEC (Sept. 11, 2015).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

On May 8, 2015, the SEC requested public comment on Proposed MSRB Rule G-42 to establish duties and standards of conduct for non-solicitor municipal advisors. Proposed Rule G-42(e)(ii) prohibits a municipal advisor from transacting as a principal with a municipal entity client. On May 29, 2015, we submitted a comment letter requesting a narrow exception from the principal transactions ban for a municipal advisor providing advice on investments in certain fixed income securities that was incidental to securities execution services. We stated that such an exception would be consistent with Advisers Act Rule 206(3)-3T. Additionally, we noted that absent an exception, long standing trading relationships based on trust and a detailed understanding of the municipal entity's needs would be unnecessarily disrupted.

On August 6, 2015 the SEC issued an order instituting proceedings under Section 19(b)(2)(B) of the Securities Exchange Act of 1934 to determine whether to approve or disapprove of Proposed Rule G-42. On September 11, 2015 we again submitted a comment letter requesting an exception for municipal advisors dually registered as broker-dealers to transact as principals with their municipal entity clients in certain fixed income securities.

On November 17, 2015, the SEC requested public comment on the Proposed Amendment in response to these and other comments from both the brokerage and issuer communities. We commend the MSRB's effort to refine the Proposed Rule to the benefit of all parties. We request that the MSRB consider several enhancements that may help operationalize the exception and ensure issuers are able to maintain their existing relationships with the financial advisors of their choosing.

I. Proposed Paragraph .14 of the Supplementary Material to Proposed Rule G-42

A. Introduction

The Proposed Amendment authorizes principal transactions between municipal entities and municipal advisors dually registered as broker-dealers. All accounts relying on the exception must be non-discretionary brokerage accounts.[4] The securities eligible for the exception are limited to U.S. Treasury securities, agency debt securities, and corporate debt securities.[5] The Proposed

[4] Paragraph .14(a) of the Supplementary Material to Proposed Rule G-42.
[5] Id. at paragraph .14(c).

Amendment specifies that the exception is not available for escrow investments.[6] As such, only the proceeds of municipal issuances are eligible for the exception.

The Proposed Amendment offers a municipal advisor two options by which to engage in principal transactions with a municipal entity client. First, the municipal advisor may obtain the informed consent of the municipal entity on a transaction-by-transaction basis after providing written disclosures prior to the execution of the transaction.[7] Alternatively, the municipal advisor may obtain a prospective, blanket written consent so long as the municipal advisor complies with six requirements, all of which are identical to those required by Advisers Act Rule 206(3)-3T.[8]

B. The Proposed Amendment Should be Applicable to Escrow Investments

Broker-dealers must register as municipal advisors if any of their financial advisors provide advice on the investment of municipal bond proceeds or escrow funds, even if such advice is solely incidental to the execution of a securities transaction. The Proposed Amendment would, through the exception, authorize a broker-dealer that is also a municipal advisor to transact as a principal with a municipal entity so long as the invested funds are bond proceeds and not escrow investments. This dichotomy presents operational difficulties for broker-dealers and unnecessarily increases costs on municipal entities. Broker-dealers have already developed policies and procedures and implemented systems to determine whether funds held in accounts of municipal entities are bond proceeds and escrow investments. However, firms will be required to alter these systems to ensure that municipal entity trading accounts do not contain escrow investments. Additionally, municipal entities will face additional transaction costs and administrative expenses associated with finding solutions for investing escrow funds that are different from all other types of municipal entity funds. As such, we respectfully request the MSRB expand the exception such that all funds that implicate the municipal advisor rule are subject to the exception.

The MSRB states that it chose not to include escrow investments in the exception because transactions involving such funds present "an area of heightened risk where, historically, significant abuses have occurred."[9] The MSRB did not provide any explanation as to why the disclosure and consent requirements applicable to bond proceeds are insufficient, in its opinion, to protect against these abuses. We believe that as the exception is limited to relatively safe, liquid, low-risk securities and still requires a municipal advisor to act within the best interest of the client, there is no reason why escrow funds should be excluded from the exception. Ultimately, municipal entities would still face the same challenges regarding a reduction in choice and access that the Proposed Amendment is intending to address.

C. The MSRB Should Confirm with Issuers that the Annual Disclosure Would be Helpful

In order to avail itself of the prospective, blanket consent, a municipal advisor must provide a disclosure, at least annually, to the municipal entity client listing the date and price of all principal transactions. Such a disclosure is also required under the Advisers Act Temporary Rule. Prior to firms developing such a disclosure and creating the systems and processes to ensure compliance with the requirement, we suggest the MSRB confirm with issuers that such an annual disclosure would be useful to them. Providing such a disclosure would be a departure from current practice

[6] Id.
[7] Id. at paragraph .14(d)(1).
[8] Id. at paragraph .14(d)(2).
[9] 80 Fed. Reg. at 71860.

for such customers. Municipal entity clients will already receive transaction confirmations and account statements providing such information. Additionally, such entities undoubtedly receive documentation and records from additional sources, such as bank custodians, concerning their holdings. As such, we respectfully request the MSRB confirm that the annual disclosure would not be an additional recitation for the municipal entity of information it already fully comprehends.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC and the MSRB on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at [redacted].

Respectfully submitted,

David T. Bellaire, Esq.
Executive Vice President & General Counsel