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June 1, 2015

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Qualification & Testing Requirements for Municipal Advisors

Dear Mr. Smith:

I'm writing in support of the broad issues addressed in the letter dated May 8, 2015 that was submitted to the Municipal Securities Rulemaking Board (MSRB) by the Investment Company Institute (ICI). The letter raised numerous concerns relating to the qualification and testing requirements being imposed upon municipal advisors. A copy of the ICI letter is enclosed for your reference.

Specifically, I agree with the ICI's recommendation that a "one-size-fits-all examination" should be reconsidered and that "the MSRB utilize at least two examinations," although I suggest more than two are appropriate, recognizing that "the knowledge and competencies of an advisor may vary significantly depending on the type of advice it renders." The MSRB should recognize the wide-range of firms that have been drawn into the municipal advisor regulatory process, many being regulated for the first time, and develop qualification and testing requirements that are relevant and appropriate based on the specific advice being rendered by a municipal advisor.

By way of background, I bring a unique, and perhaps overlooked, perspective to the municipal advisor regulatory process. For over 20-years I've operated a one-person firm that facilitates tax-exempt and taxable financings for the benefit of private corporations, including nonprofit organizations, manufacturers and businesses involved in recycling and waste reuse activities. Most transactions are modest in size and the vast majority of my clients will complete only one tax-exempt financing. I do not provide advice relating to the sale of securities, investments, swaps or derivative financial products. Further, my clients are not municipal or governmental entities with taxing powers and transactions never create a repayment or credit obligation for the issuer or any taxpayer. From my perspective, the qualification and testing requirements are heavily biased towards measuring competencies relating to the issuance of general municipal securities - competencies that are not relevant to my clients and the advisory services I provide. The regulatory and qualification process has imposed a significant economic and administrative burden on my small business, and it appears that the majority of the testing requirements are not related to my advisory activities.

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I recommend that the MSRB develop a two tier testing system for municipal advisors. The first tier would test general competencies, ethics and responsibilities without regards to specific financial products or services (i.e. municipal bonds, underwriting, pricing, swaps, investments, derivatives, etc.) and a second tier consisting of multiple tests focused on competencies relating to the specific financial products or services being provided by individual financial advisors. This type of testing system would better match the regulatory objectives with the real-world competencies of municipal advisors.

I appreciate having the opportunity to submit these comments for consideration. Please do not hesitate to contact me if you or members of the MSRB staff have questions regarding this submission.

Regards,



Daniel Bronfman
President

Enclosure



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May 8, 2014

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: Qualification Requirements
For Municipal Advisors

Dear Mr. Smith:

The Investment Company Institute (ICI)¹ appreciates the opportunity to provide comments to the Municipal Securities Rulemaking Board (MSRB) on its proposal to revise MSRB Rules G-2 and G-3 relating to Standards of Professional Qualification and Testing Requirements.² As proposed, the MSRB would require (1) all municipal advisors to have at least one municipal advisory principal and (2) each municipal advisory principal and representative to pass a qualification examination.³ The MSRB plans to provide a one-year grace period from the time the qualification examination is available for registrants to satisfy the examination requirement.

The Institute supports the MSRB imposing qualification requirements on municipal advisors and their associated persons. We also support the MSRB's proposal to provide a one-year grace period

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$16.8 trillion and serve more than 90 million shareholders.

² See *Request for Comment on Establishing Professional Qualification Requirements for Municipal Advisors*, MSRB Notice No. 2014-08 (March 17, 2014) (the "Notice"), which is available at: <http://www.msrb.org/~//media/Files/Regulatory-Notices/RFCs/2014-08.ashx?n=1>.

³ According to the Notice, the MSRB will consider at a later date whether to create a separate examination for principals and whether the proposed examination requirement will apply without regard to whether the representative or principal has passed other MSRB-recognized examinations or been engaged in municipal advisory business.

for registrants to pass the examination.⁴ We strongly recommend, however, that the MSRB reconsider its plans to develop a single examination to qualify all persons to act as a municipal advisor representative without regard to such person's municipal advisory activities. Instead, we recommend that the MSRB utilize at least two examinations – one for representatives of a municipal advisor whose advisory activities are limited to municipal fund securities and one for representatives of all other municipal advisors.⁵ We are concerned that use of a one-size-fits-all examination will result in those representatives whose municipal advisory business is limited to municipal fund advice being required to pass a qualification examination that has little, if anything, to do with their advisory activities. As such, the examination would not appear to test competencies relevant to the needs of their advisory clients. By contrast, our recommendation would better serve the interests of the advisor's clients by testing relevant competencies and knowledge. Moreover, our recommendation also is consistent with the MSRB's authority under the Securities Exchange Act of 1934 ("Securities Exchange Act"), the manner in which the MSRB currently imposes examination requirements on representatives of municipal securities dealers, and the MSRB's *Policy on the Use of Economic Analysis in MSRB Rulemaking* ("Economic Policy"), as discussed in more detail below.

TESTING RELEVANT COMPETENCIES

Our recommendation that the MSRB tailor the examinations required of municipal fund advisors is intended to address the very significant differences between municipal advice relating to municipal fund securities, such as 529 college savings plans, and that relating to municipal securities other than municipal fund securities.⁶ Indeed, the knowledge and competencies of an advisor may vary significantly depending upon the type of advice it renders. For example, providing advice on municipal securities likely requires a representative to be knowledgeable about issues such as negotiated prices, debt limits and ratios, underwriting periods, agreements, par values, etc. – none of which would be relevant for a municipal advisor whose advisory business is limited to providing advice relating to a municipal fund security such as a 529 education savings plan. As such, testing the representative's competence in these areas would appear to be a mismatch with the services it provides to its clients.

In our view, imposing an examination requirement in order to ensure a minimum level of competency necessitates that the MSRB utilize examinations that are tailored to the municipal advisor's business – *i.e.*, one for municipal advisors whose business is limited to municipal fund securities and

⁴ We understand from the MSRB's staff that this one-year period will commence when the examination is available to registrants.

⁵ As discussed in more detail below, in lieu of developing a new, separate examination for the former, the MSRB could recognize the Series 6 examination as the required qualifying examination.

⁶ For the ease of discussion, as used in this letter subsequently, the term "municipal securities" is intended to mean municipal securities other than municipal fund securities.

one for advisers whose business involves providing advice on municipal securities.⁷ Tailoring the examinations in this way will better align the MSRB's competency requirements with the needs of the client and the business of the advisor.

CONSISTENCY WITH THE MSRB'S AUTHORITY AND CURRENT EXAMINATION REQUIREMENTS

While we recognize that this recommendation may result in the MSRB having to develop an additional examination tailored to those municipal advisors whose advice relates solely to municipal funds, the idea of multiple examinations tailored to a registrant's business is wholly consistent with the provisions of Section 15B(b)(2)(A) of the Securities Exchange Act, which expressly authorizes the MSRB to "appropriately classify . . . municipal advisors taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organizations . . ." in developing standards of competence and other qualifications for municipal advisors and their associated persons. This approach also would benefit investors by ensuring that the competencies tested on the qualification examination are relevant to the business conducted by the municipal advisor. As such, it would appear to better fulfill the MSRB's interest in protecting investors and advisory clients.

Moreover, this recommendation is consistent with the approach currently taken by the MSRB in imposing qualification requirements on representatives of municipal securities dealers. While MSRB Rule G-3(a)(ii) requires every municipal securities representative to pass the "Municipal Securities Representative Examination" (*i.e.*, the Series 52 examination), the rule provides an exception for any representative whose "activities with respect to municipal securities . . . are limited solely to municipal fund securities." In lieu of the Series 52 examination, such persons may instead satisfy the qualification requirements by passing the "Limited Representative – Investment Company and Variable Contracts Products Examination" (*i.e.*, the Series 6 examination). This exception was added to MSRB Rule G-3 in 2000. According to the filing the MSRB made with the SEC to effect this change:

The Board understands that municipal fund securities may not have features typically associated with more traditional municipal securities. Instead, their features are similar to those of investment company securities. Although Board rules generally have been drafted to accommodate the characteristics of debt securities, the Board believes that most current rules can appropriately be applied to municipal fund securities. Nonetheless, the Board feels that certain rules should be amended to recognize the unique characteristics of municipal fund securities.⁸

⁷ Representatives who provide advice on both municipal fund securities and municipal securities would be required to pass both examinations.

⁸ See *Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the MSRB Relating to Municipal Fund Securities*, SEC Release No. 34-43066 (July 21, 2000) at p. 46. A footnote to this excerpt provides in relevant part as follows: "Municipal fund securities generally provide investment return and are valued based on the investment performance of an underlying pool of assets having an aggregate value that may increase or decrease from day-to-day, rather

We believe the Board's recognition of the distinctions between municipal securities and municipal fund securities should similarly be addressed in the rules the MSRB develops to regulate municipal advisors and such rules should distinguish, where appropriate, advisors whose business is limited to rendering advice on municipal fund securities from other advisors. We believe the MSRB's examination requirements are an appropriate place to recognize such a distinction.

CONSISTENCY WITH THE MSRB'S ECONOMIC POLICY

The MSRB's Economic Policy provides in relevant part that the MSRB's "economic analysis is to be included at the earliest stage of the rulemaking process to influence the choice, design, and development of policy options before a specific regulatory course has been determined." It also provides that, in considering new rules or rule revisions, the MSRB should identify and discuss "reasonable potential alternatives to the proposed rule" such as "different rule specifications . . . or differing requirements for different market participants." While the Notice does not indicate whether the MSRB considered these provisions of the Economic Policy in developing its proposed amendments, we believe that our recommendation is consistent with these considerations. Proposing a separate examination for those municipal advisors whose business is limited to rendering advice on municipal fund securities is a "different rule specification[] . . . or differing requirement[] for different market participants." This approach to imposing qualification requirements] would appear more suited to assessing the advisor's competency than requiring such advisors to pass a test designed for municipal advisors that render advice relating to municipal securities. As such, we believe our recommendation regarding a separate examination for municipal fund advisors is consistent with the MSRB's Economic Policy and should be adopted for that reason as well.

RECONSIDERATION OF UTILIZING ONE EXAM AND GRANDFATHERING

Based on the above, we strongly recommend that the MSRB reconsider its plans to develop a "one-size-fits all" qualification examination for all municipal advisor representatives. We instead recommend that the MSRB utilize two examinations – one for those municipal advisors whose business is limited to the business of municipal fund securities and one for all other municipal advisors.

According to the Notice, in implementing this new examination requirement, the MSRB does not intend to recognize passage of other regulatory examinations in lieu of the new municipal advisor examination. While we appreciate the MSRB's interest in not grandfathering a representative based on passing a "general qualification examination," we believe passing the Series 6 Examination should not be viewed as passing a general qualification examination. The Series 6 is specifically tailored to the types of products on which a municipal advisor whose business is limited to municipal fund securities would render advice. As such, it is a wholly appropriate alternative to the MSRB's proposed "one-size-fits-all" examination that is unrelated to such advisor's business. For this reason, we recommend that, in lieu of

than providing interest payments at a stated rate or discount, as is the case for more traditional municipal securities. In addition, unlike traditional municipal securities, these interests do not have stated par values or maturity dates and cannot be priced based on yield or dollar price." *See* fn. 24.

