



November 14, 2016

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20005

RE: Regulatory Notice 2016-24: Establishing Continuing Education Requirements for Municipal Advisors

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA), representing Municipal Advisory Firms and Municipal Advisors (MAs) from across the country, is pleased to provide comments on the MSRB's new continuing education (CE) requirements for Municipal Advisors proposal.

NAMA supports qualification testing, including the Series 50 exam, and continuing education requirements. However, we believe the current proposal is premature. Therefore, we request that such CE standards on Municipal Advisors not be enacted until the various issues raised below are addressed and the proposal is strengthened and clarified.

An area of concern that NAMA continues to raise is that the MSRB should review how the new MA regulatory framework is functioning in practice before implementing even more additional rules such as new continuing education requirements for MAs. Additionally, for this proposal and others, the MSRB is specifically required by Section 15B(b)(2)(L)(iv) of the *Exchange Act* to consider the impact of its rules – including continuing education requirements – has on small MAs.

On the heels of numerous new MA rules, the Series 50 exam, and a forthcoming Series 54 exam, all within a short amount of time, we suggest that the MSRB step back and complete an analysis on the impact that the implementation of all of the new rules and qualification standards have on MAs, and then determine the scope of continuing education standards and what is best to include in Rule G-3 and supplemental guidance.

Economic Impact of the Proposal and Accommodating Small and Single Person Firms

In conjunction with an evaluation on the cumulative effect all rulemaking has on Municipal Advisors, and especially small firms, the economic impact of these continuing education requirements should be considered. The MSRB is specifically required by the *Exchange Act* to ensure that there are no undue burdens on smaller firms with the development of its rulemaking. This includes in the context of this proposal, the costs of developing an annual needs assessment, updating policies and procedures (for

many this includes hiring an outside advisor), and reviewing and implementing such plan on an annual basis. In particular, the MSRB should be cognizant that in the release accompanying the Final Municipal Advisor Rule the Commission specifically recognized the demonstrable economic value that municipal advisors provide to a client. *See* Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67467 (November 12, 2013) at footnote 1830 and accompanying text. Certain of those studies recognized the specific economic value provided by independent municipal advisors. Throughout the Final Municipal Advisor Rule, the Commission also weighed the impact of municipal advisory firms exiting the market. Central to their conclusion that exits from the market would not negatively impact the market was their expectation that over 100 new Municipal Advisors would register with the Commission each year with only 30 exiting per year. *See* Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67467 (November 12, 2013) at footnote 1719 and accompanying text. However, the net gain of municipal advisors in the last year has been significantly less than what the Commission expected in the Final Rule, and we have yet to see the full impact of MAs who may leave the business following the Series 50 testing deadline in September, 2017.

In evaluating the potential economic harm of the proposal may have on MAs, the MSRB should recognize the multiple roles a principal in a small MA firm or a sole-practitioner MA has to their clients and under the rulemaking regime already imposed by the MSRB. In addition to providing MA services to their clients, they serve as the Chief Compliance officer with multiple additional ongoing and annual responsibilities as well as adhering to documentation expectations for their transactions and other recordkeeping duties, and complying with professional qualification standards. The additional requirements of continuing education for all MAs and especially sole practitioners and smaller firms, should be considered along with the already existing regulatory burdens of the MSRB rulebook, and not create an overwhelming economic or administrative burden on these professionals.

Promoting Understanding and Compliance of Existing MSRB Regulations

The proposal specifically states that an annual ‘needs analysis’ must be completed, as well as a focus on fiduciary duty obligations within the training for MAs. While the proposal does not impose prescriptive criteria for MAs to meet, and allows for flexibility so that it can readily apply to firms of various sizes and practice, the proposal would benefit from additional details and expectations when firms develop the “needs analysis.” Such details and expectations could come in the form of several sample needs analysis, particularly for small MA firms that work primarily with municipal entities – the most common type of Municipal Advisor. Rather than having several hundred firms spend significant time and resources guessing as to what a “needs analysis” should look like – the MSRB could expend relatively minimal effort to provide representative samples or additional guidance based on experience with “needs analyses” for broker-dealer firms. Such additional information would promote a better understanding of and compliance with the MSRB Rulebook, and help firms more efficiently develop an appropriate and robust roadmap to promote professional development. As we have commented before on other rulemaking, additional guidance and information will assist with demonstrating the CE analysis is completed and the obligations determined in that analysis are met, when OCIE staff request documentation during an exam.

For your consideration, further description, options and/or guidance on the development of the “needs analysis’ would benefit MAs. These include –

- how Firms should identify and evaluate applicable training needs, including those related to the fiduciary duty standard and regulatory issues that arise with current practices for clients, as well as anticipated or forthcoming responsibilities for clients;
- what content should be included in a written plan;
- acceptable delivery mechanisms for meeting CE requirements; and
- how to document training was completed. On this issue, the Notice does not contain proposed changes to recordkeeping requirements (G-8/G-9), however, it is more than likely that MAs will be required to produce documentation to examiners that they are abiding by Rule G-3.

Other Items

- Because some Municipal Advisors have obligated persons clients and not municipal entity clients, we propose the following technical change to proposed Rule G-3(i)(ii)(B)(2)(a): (a) standards of conduct applicable to municipal entity and obligated person clients; and
- The proposal does not make a distinction for requirements applicable to supervisors, only for “covered persons.” Clarity on this item and notation if different standards will apply, would be helpful.

Continuing education requirements are imperative to ensuring that MAs are held to a professional standard that strengthens their professional responsibilities to municipal entities. NAMA is supportive of the effort to begin including CE within the regulatory framework applicable to registered and licensed MAs. However, this proposal would benefit from first a substantive and detailed evaluation of the application of all MSRB rulemaking on MAs in practice and use that information to provide guidance for implementing a needs analysis, as well as provide additional details on how best to develop such analysis. Only after these issues have been addressed and the proposal has been resubmitted for public comment should the MSRB implement new CE standards for MAs.

We would welcome the opportunity to work with the MSRB and identify ways to enhance the proposal to benefit MAs and the industry as a whole.

Sincerely,



Susan Gaffney
Executive Director