

MEMO# 27869

January 29, 2014

ICI Draft Comment Letter on MSRB Proposed Conduct Rule G-42; Comment Requested by February 21st; MSRB Webinar on Feb. 6th

[27869]

January 29, 2014

TO: INVESTMENT ADVISERS COMMITTEE No. 3-14
529 PLAN ADVISORY COMMITTEE No. 5-14 RE: ICI DRAFT COMMENT LETTER ON MSRB
PROPOSED CONDUCT RULE G-42; COMMENT REQUESTED BY FEBRUARY 21st; MSRB
WEBINAR ON FEB. 6th

As we previously informed you, the Municipal Securities Rulemaking Board (“MSRB”) recently proposed for comment a new Rule G-42 that would establish core standards of conduct and duties of municipal advisors. [\[1\]](#) Comments are due to the MSRB on the proposal by March 10th. Consistent with the views expressed during our January 16th call with members on the proposal, the Institute has prepared the attached draft comment letter, which is briefly summarized below.

Members with comments on or edits to the Institute’s draft letter should provide them to the undersigned by phone (202-326-5825) or email (tamara@ici.org) no later than Friday, February 21st.

Summary of the Institute’s Draft Letter

The letter notes that the views we express in it are limited to the impact the rule will have on those Institute members that must register as a municipal advisor due to their involvement in working with states on the states’ 529 college savings plans. [\[2\]](#) Accordingly, while the letter supports the MSRB’s proposed rule, we recommend that the MSRB clarify various issues arising from the rule’s impact on such advisors. Our recommendations, which are discussed in detail in the letter, are as follows:

- An advisor should not be required, as part of its duties of care and loyalty, to investigate the veracity and completeness of information provided to it by persons who are authorized by its municipal client to act on behalf of the state’s 529 college savings plan;

- In advising a state's 529 plan, an advisor should not be required to "investigate and consider other reasonably feasible alternatives" to the plan "that might also or alternatively serve the municipal entity client's objectives." If the MSRB does not exclude municipal advisors to 529 plans from this requirement, we recommend that it clarify what this requirement means in the context of the relationship between the advisor and the plan;
- An advisor's duty to disclose its conflict of interest should not: (1) require "negative" disclosure of non-existent conflicts; (2) require disclosure of the advisor's insurance coverage; nor (3) impose upon the advisor any duty to provide disclosure to investors in the 529 plan;
- An advisor should not be required to provide its municipal client a revised disclosure document whenever the information in such document has changed. Instead, only material changes to the document should trigger an update requirement; and
- Because the factors an adviser must consider to ensure that its recommendations to a municipal client are suitable appear to be drafted with a retail investor in mind, we recommend that the MSRB either clarify that these factors are inapplicable to advisors providing advice to a state's 529 plan or, alternatively, clarify how the MSRB intends them to apply to such relationships.

In addition, we recommend that the MSRB clarify that, once adopted, Rule G-42 will only apply prospectively – i.e., when a municipal advisor either enters into a new advisory relationship with a municipal client or recommends a new municipal securities transaction or municipal financial product to an existing client. This clarification will avoid disrupting existing relationships and contracts.

MSRB Webinar on Proposed Rule G-42

In addition to soliciting comment on proposed Rule G-42, the MSRB will be holding a webinar on February 6, 2014 at 3 p.m. [Eastern] to discuss the proposed rule. The webinar is free of charge and open to all interested persons. Persons wanting to listen to the webinar must register for it through the MSRB's website. [3]

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[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) No. 27825 (January 9, 2014) summarizing Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors, MSRB Notice No. 2014-01 (January 9, 2014). The MSRB's Notice is available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p413652.pdf>.

[2] The letter states that our members that render advice to municipal entities other than 529 college savings plans are not required to register as municipal advisors and will not be subject to the proposed rule.

[3] See <http://www.msrb.org/Home/News-and-Events/Upcoming-Events.aspx>,

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