

COMMENT LETTER

April 28, 2014

ICI Files Comment Letter Supporting Proposed MSRB Rule G-44 Relating to Supervisory and Compliance Obligations of Municipal Advisors (pdf)

April 15, 2014 Ronald W. Smith, Corporate Secretary Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600 Alexandria, Virginia 22314 Re: MSRB Notice 2014-04 Relating to Supervisory and Compliance Obligations of 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 adopt a new Rule G-44, which will subject municipal advisors to supervisory and compliance obligations.² The Institute supports the rule's adoption.³ We believe it is appropriate, and in the interest of municipal clients, for the MSRB to impose compliance and supervisory obligations on municipal advisors inasmuch as other securities professionals are subject to similar obligations. We commend the MSRB for undertaking this rulemaking and for seeking to ensure that its proposed requirements are substantively similar to or consistent with those imposed on Federally-registered broker-dealers and investment advisers. Such consistency is particularly important for our members that are also subject to oversight by the SEC and/or FINRA because it will enable them to leverage their existing policies, procedures, and systems to comply with the MSRB's requirements. 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 Draft MSRB Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors, MSRB Notice No. 2014-04 (Feb. 25, 2014), which is available at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-04.ashx?n=1>. 3 Our comments on the rule are limited to its impact on our members that must register as municipal advisors due to their involvement in a state's 529 college savings plan. In addition to supporting Rule G-44, we also support the revisions proposed to MSRB Rules G-8 and G-9, which would incorporate the records demonstrating an advisor's compliance with Rule G-44 into the MSRB's rules relating to required records and preservation of such records, respectively. Mr. Ronald W. Smith, Corporate Secretary April 15, 2014 Page 2 of 3 OVERVIEW OF PROPOSED RULE G-44 As proposed, Rule G-44 would consist of three substantive subdivisions and seven items of Supplementary Material. In summary, the three substantive subdivisions would require each registered municipal

advisor to: establish, implement, and maintain a supervisory system that meets certain criteria and designate one or more supervisory principals; implement policies to maintain, review, test, and modify the advisor's written supervisory and compliance policies and procedures; and designate a Chief Compliance Officer ("CCO"). The proposed rule's Supplementary Material would clarify a variety of issues relating to the rule including, among others, its application to smaller advisors, the importance of tailoring the advisor's policies and procedures to the adviser's business, and issues to consider in connection with designating principals and a CCO.

CONSISTENCY OF RULE G-44 WITH OTHER REGULATORY REQUIREMENTS

As noted above, the Institute supports the MSRB's proposal because its requirements are consistent with those imposed on other securities professionals under the Federal securities laws. In particular, the requirements of the rule are substantively similar to those of SEC Rule 206(4)-7 under the Investment Advisers Act of 1940, Compliance Procedures and Practices, which applies to all Federally-registered investment advisers, as well as to FINRA Rule 3110, Supervision, and FINRA Rule 3130, Annual Certification of Compliance and Supervisory Processes, which apply to FINRA members. Also, while the provisions of Rule G-44's Supplementary Material .01-.044 are not expressly addressed in the rules of the SEC or FINRA, they are consistent with such rules and will provide additional clarity to assist municipal advisors in complying with the MSRB's rule. As such, these provisions do not appear to be problematic for municipal advisors, nor would they appear to result in additional compliance burdens for such advisors. The provisions of Supplementary Material .05-.075 appear to be consistent with the requirements in Supplementary Material .05, .06, and .08 to FINRA Rule 3130, respectively. As such, these provisions would also not appear to raise concerns for municipal advisors.

4 This Supplementary Material provides as follows: .01 clarifies that the municipal advisor's written supervisory procedures should be tailored to the advisor's business and take into account any "red flags;" .02 provides guidance regarding the rule's application to small municipal advisors with one or a small number of associated persons; .03 clarifies the criteria a municipal advisor must consider in designating supervisory principals and it discusses their responsibility; and .04 discusses the minimum requirements of the advisor's required annual review of its compliance policies and supervisory procedures.

5 This Supplementary Materials provides as follows: .05 discusses the CCO's competence and the CCO's role within the advisory organization and clarifies that a CCO is not required to be an employee of the advisor; .06 expressly vests responsibility for the compliance functions of the rule in the CCO and provides that the advisor may have other employees participate in any aspect of the advisor's compliance program; and .07 clarifies that the advisor's CCO is not precluded from holding any other position within the municipal advisor, including serving in senior management or as a designated supervisory principal, provided the CCO can discharge all such responsibilities.

Mr. Ronald W. Smith, Corporate Secretary April 15, 2014 Page 3 of 3 ■ ■ ■ ■ ■

■ ■ For the reasons discussed above, we support adoption of Rule G-44. We recommend that, in adopting the rule, the MSRB provide municipal advisors a sufficient period of time within which to be fully compliant with its requirements. While, as noted above, the rule's requirements are largely consistent with existing regulatory requirements imposed on other SEC or FINRA registrants, in order to be fully compliant with Rule G-44, municipal advisors will need sufficient time to either adopt or revise any relevant existing compliance and supervisory policies, procedures (including testing processes), and systems to expressly accommodate the new rule's requirements, and hire or appoint necessary qualified personnel as CCO and supervisory principals. It should be remembered that, in implementing Rule G-44, municipal advisors may also be engaged in implementing other new rules and requirements imposed on municipal advisors by the MSRB. Accordingly, to avoid unduly straining the resources of such advisors, we recommend the MSRB provide advisors a minimum of 12 months to comply with the new rule. We appreciate the

opportunity to provide these comments and your consideration of them. If you have any questions, please contact the undersigned at (202)326-5825. Sincerely, /s/ Tamara K. Salmon Senior Associate Counsel

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