There is no denying that rules and the oversight of compliance with those rules add complexity and cost. In order to reduce the costs, we believe that it would be better if certain financial advisors rendering specific types of financial advisory work not be included within the definition of "Municipal Advisor."

Questions to which we do not understand:

1. What is/are the criteria under which a Municipal Advisor registration should be required?

2. If an entity is (via conduit) an "obligor" of municipal debt, does this mean the obligor must be serviced in all cases only by a registered Municipal Advisor?

3. It seems that the concept of "obligor" insinuates that the entity has an obligation to pay off debt evidenced by a municipal securities obligation. Prior to the issuance of such debt, a conduit borrower would not yet be an "obligor" of municipal debt. They would merely be a client eligible to use (via conduit) tax-exempt financing. This insinuates the notion of "obligor" is an after the fact testing requirement – i.e. the debt is issued which makes them an "obligor." On the other hand we understand that a financial advisor may not solicit municipal finance business without first being a registered Municipal Advisor. This is a before the fact type of testing. Which governs and why and when?

Our firm signed up as Municipal Advisors because our "via conduit" client is *or will become* an obligor of municipal debt and we cared to continue to solicit this form of municipal debt business (we do not solicit states or its political subdivisions per se). However we are completely unclear as to what constitutes our need to be a Municipal Advisor. For example:

4. If we were (as we often times are) engaged by our client to consider our client's options as to the use of conventional financing versus (via conduit) a tax-exempt municipal debt financing, are we rendering advice as a Municipal Advisor even if the client does not issue the municipal debt? Then what is the answer had our client decided to issue the tax-exempt debt?

5. As we understand the rules available now, we are not allowed to solicit business which may result in a municipal financing without first being registered as a Municipal Advisor. Does this mean only registered Municipal Advisors can solicit clients which are eligible to issue (via conduit) tax-exempt debt? If this were the case, virtually all commercial mortgage brokers should be required to become Municipal Advisors as, in most cases they will from time to time, run into entities which are "eligible to become" (via conduit) "obligors" of municipal debt. However most conventional mortgage brokers have no clue as how to structure and determine the costs involved in municipal debt structures.

6. To expand on this point, as we understand the rules available now, a Municipal Advisor is required to recommend (to the best of their ability) the best alternatives

for their clients (and without conflict of interest). If the client is examining its debt alternatives, and amongst those alternatives the client has available to it (via conduit) the capability of issuing tax-exempt debt, would a financial advisor not be remiss in undertaking an analysis of the tax-exempt capability – and to not do so would be in conflict of rendering the best advice for the client? If so, would this again not be cause to require that the financial advisor be registered as a Municipal Advisor? (Again delivering the idea that all commercial mortgage brokers would need to be Municipal Advisors – and all commercial mortgage brokers would need to have people on staff trained in such municipal finance matters such that they could reasonably render such advice)?

Our Position:
The SEC/MSRB should carefully consider which parties are to be considered "Municipal Advisors." And if, as we suspect, the definition of Municipal Advisor remains rather broad, the SEC/MSRB should consider a hierarchy of rules reflective of the risks any particular Municipal Advisor's activities may pose to the marketplace. To a great degree, we feel the use of the word "obligor" within the definition of Municipal Advisor is very broad and perhaps encompasses unintended parties. We advocate herein that despite the use of the word "obligor," the SEC/MSRB should consider rules granting those advisors working with certain "obligors" to have more regulation and oversight than if the advisor had been dealing with other forms of "obligors." By doing so, we believe the cost burdens imposed by monitoring compliance with the rules would be lessened and be most reflective of the risks involved.

From our perspective the main intent of the Dodd-Frank Act was to protect the economy from unscrupulous market participants and to create rules intended to prevent future systemic risks by those considered "too big to fail." In many ways both of these main intents are addressed by attempting to add more transparency to financial transactions and in the monitoring of marketplace participants. The ultimate end game: To keep our markets functional by fostering an environment of trust (in the marketplace) and to reduce the risk that taxpayer dollars would once again be put at risk in an effort to prevent a cataclysmic economic collapse due to a dysfunctional financial marketplace.

Specifically within the municipal market, we believe the Dodd-Frank Act was most directed toward the concepts of 1) adding transparency thereby creating a greater sense of trust of the municipal market place - and as an adjunct to this, it further highlighted the need to (perhaps enhance but definitely) enforce the existing "pay to play" and 15c2-12 rules (we will use the term "Transparency" for this concept); and 2) otherwise eliminating all other forms of abuses where state and municipal revenues may have been inappropriately diverted or lost to private persons (either by faulty recommendation, via fraud and/or other abuse) (we will use the term "Misappropriation" for this concept).

In defining who should be required to register as a Municipal Advisor an assessment should be made as to any financial advisor's motivations and ability to potentially violate the above described Transparency and Misappropriation concepts.

To make such assessment, we propose the SEC/MSRB adopt the development of a three dimensional matrix. One axis ("Axis 1") of the matrix would describe the nature of the client being served by the financial advisor (i.e. is it a municipality, a conduit borrower, a public-private partnership, etc.). On another axis ("Axis 2") the matrix would consider the nature of the advisory services being rendered (is it advice as to the structure and issuance of debt, or is it a derivative product, an investment product, etc.). This axis would include describing the level and authority involved within in the financial advisors relationship with its client. On the third axis ("Axis 3") there would be an assessment of (a) the potential, and (b) the ability for a financial advisor to violate either or both of the Transparency or Misappropriations concepts. This third axis should include an assessment of (and these are listed in the order of their importance), that given the cross between Axis 1 and Axis 2: (i) how egregious could an offense be (perhaps measured by one or more of: dollars, the number of people who may be effected, the risk to taxpayer dollars, etc.); and (ii) what the potential likelihood that this offense would actually be committed by a financial advisor (meaning assessing the motivations a financial advisor may have to undertake the unscrupulous act). Obviously some higher degree of culpability should be made if a financial advisor has a history of several complaints and/or actual findings made against it.

Scenario 1:
A party be acting as a financial advisor:

A. To a municipal entity (Axis 1) (perhaps defined as an entity where the assets of such municipality and its obligations to pay are directly linked to its ability to raise and collect taxpayer revenue dollars); AND
B. The financial advisory services relates to the provision of advice respecting the structuring and placement of debt capital to purchase or construct an essential purpose asset that will be used by the municipality (Axis 2); THEN
C. (Axis 3) would reflect that such an advisor has the highest potential to violate the concepts of Misappropriation (at a potential egregious level) and such advisor has a higher motivation to potentially violate, say, the pay to play (Transparency) rules. Please note that in this instance the borrower is a state or a political subdivision thereof and the borrower ("obligor" – as such word is used in the definition of Municipal Advisor) is indeed the municipal entity (which is separately identified in such definition).

Given these three factors one may conclude that the financial advisor soliciting and executing this type of work should clearly fall under the greatest degree of rulemaking scrutiny intended of any Registered Municipal Advisor.

Scenario 2:
By contrast should a party be acting as a financial advisor:

A. To a borrower contemplating a conduit tax-exempt financing (Axis 1) (and perhaps defined as an entity being wholly responsible for the repayment of all debt from the revenues derived from the "project," and the "obligor" has provided all "normal indemnification provisions" to the issuing authority, and there is an

explicit understanding that the repayment of the debt shall not be derived by any taxing authority of the state or any other political subdivision); AND

B. The financial advisory services relates to advice about the structuring and placement of debt (for say, an apartment building), perhaps it includes the negotiations respecting equity investment in the project, and involves the identification and coordination of the professionals involved in the execution of the transaction (Axis 2); THEN

C. (Axis 3) would reflect that such an advisor has a low potential to violate the concepts of Misappropriation (but if it were violated, the offense clearly would be less egregious due to the fact less people are effected and no tax-payer dollars were at risk) and the financial advisor has a low capacity of risk in violating, say, certain risk disclosures relative to the potential success of the apartment building (Transparency). Please note that in this instance the "obligor" (as such word is used in the definition of Municipal Advisor) is not a state or political subdivision thereof.

Given these three factors we conclude that the financial advisor soliciting and executing this type of work exhibits low risk and that the cost of oversight would highly outweigh the benefits to be gained by requiring this financial advisor to become a registered Municipal Advisor. If a financial advisor performing this work is still intended to be a Registered Municipal Advisor, the burden of many of the rules governing this type of financial advisor should be greatly reduced.

Other Scenarios:

There would be many varying types of clients (Axis 1) and many types of possible engagement types (Axis 2) listed within the matrix. It will take greater input than our own to determine all the types of parties and services which would need to be listed.

However let us make a case in point about another potential service. Take our same clients as in Scenarios 1 and 2 above, except now the financial advisor has limited discretionary control over say, investments the client maintains. How does this affect the risk factors listed on the third axis? We would conclude in Scenario 1 such advisor should still be subject to the fullest scrutiny and be required to be registered as a Municipal Advisor. While on the other hand, in Scenario 2 this advisor is likely dealing with the private assets of a partnerships or sole proprietor. In this second case, why should this advisor have any need to be a Registered Municipal Advisor? (Yet the client is an "obligor").

Executives (i.e. Chief Financial Officers) of 501(c)3 entities (i.e. by definition the entity is an eligible conduit borrower) by way of example, pose little risk as to the central ideas of Misappropriation. When they do issue debt, by written agreement they are subjected to up front and ongoing disclosure requirements (15c2-12) and we see little other potential ways to violate Transparency. We are hopeful these parties are not intended to be governed by the Municipal Advisor rules, but as it now stands, it appears there is some risk that they may be.

The Degree of SEC/MSRB Oversight:
We are a small firm with significant expertise in municipal bond finance (and we also provide derivative and investment product advice related thereto). Our clients however have been exclusively conduit borrower "obligors" (mostly in "4%" low income housing transactions, transactions involving industrial development revenue bonds, facilities being located in enterprise zones, and some 501(c)3 private educational, cultural arts and healthcare related issuances).

We are not a Broker/Dealer, nor are we a Registered Investment Advisor. We work with our private (non-municipal) clients to identify the providers of these services and aid our clients in negotiating contractual relationships with such providers. We run side by side quantitative analyses with these service/product providers to monitor on behalf of our clients the significant economic negotiating points involved in such transactions. We further aid our clients in assessing the qualitative factors of such financing from a financial point of view. We recommend which products and services we believe best suite our client's need and interest. And we do so without bias or prejudice as to the use of any given product or provider. It is our focus to aid our client in getting the best product or service available for their given need.

We would describe our practice as one where our motivation to commit an act of Misappropriation or to violate Transparency to be zero. We align our interests with those of our client, and if anything we are aiding our client from not being subject to Misappropriation by the product/service providers selected. As to Transparency, we either aid our clients in negotiating their transactions with large "big boy" sophisticated parties who craft into the transactions their own requirements for information (upfront and ongoing), or we engage municipal underwriters to sell the debt, in which case all 15c2-12 and other agreements are drafted as part of the transaction's requirements.

We see no difference – except for the fact our clients may use a tax advantaged financing vehicle – between our services and that of being a regular commercial mortgage broker. We note that there seemingly is no intention to create oversight of commercial mortgage brokers. And we fail to understand why oversight is necessary in our line of business. As is however, we have complied, and are currently registered as a Municipal Advisor. We are hopeful however a finding will be made which would allow us to de-register, and we anxiously await decisions respecting any requirements which may be of impact to our practice.

A Summary of the Questions:
At first we registered as a Municipal Advisor because our clients were (via conduit) "obligors" (or would become obligors). But based on the factors outlined in this commentary and questioning, we now again ask - is it the client being an "obligor" that triggers the need for their financial advisor to be registered as a Municipal Advisor? Is it that the client has the <u>potential</u> (via conduit) to issue tax exempt debt that triggers this need? Is it the form of advice that triggers this need? And is this advice tested before or after the fact of actually issuing the debt? Based on today's rules would not everyone rendering this advice be required to be a registered Financial Advisor?

Our Conclusion:
But for our concern about what has been delivered so far and causing us to register as a Municipal Advisor - we do not believe we should be included in this registration requirement. We hope you agree.