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Ronald W. Smith
Corporate Secretary, MSRB
1300 I Street NW
Washington, DC 20005

Dear Mr. Smith:

Wulff, Hansen & Co. is a broker/dealer and registered municipal advisor. We are writing in response to the MSRB's request for comment (2016-11) on a concept proposal involving disclosure of direct purchases and bank loans. The proposal would require municipal advisors to provide immediate public disclosures regarding the activities of their issuer clients regardless of the clients' wishes.

We are not responding in detail to the specific questions in the concept release because we believe the idea itself is fatally flawed. While we completely agree that investors and the marketplace would benefit from improved disclosure of municipal borrowings from banks, we respectfully submit that requiring municipal advisors to provide this service would put the advisors in an impossible ethical position.

Municipal advisors have a fiduciary duty to their clients, and this duty must come ahead of any other considerations. An issuer, for reasons of its own, may not wish to immediately disclose details of its borrowings until such time as they appear in its audited financial statements. Requiring an advisor to make those disclosures at a time of MSRB's choosing would force the advisor to choose between violating its duty to the issuer or violating the MSRB rule requiring it to do so. The advisor can and should attempt to convince its client to think otherwise, but if the issuer is not persuaded we believe that the advisor is legally and ethically bound to honor what the client believes to be its best interest.

Forcing a municipal advisor, or anyone else, to violate a legal and ethical duty to an issuer is not an appropriate way to accomplish the undoubtedly desirable purpose of improving disclosures about the borrowings in question.

If sound public policy requires such disclosure there are better means of accomplishing it. For example, the banking authorities could require that direct lenders file such disclosures in a manner analogous to that currently in use by broker/dealers who purchase or place municipal securities. That would introduce symmetry between the respective regulatory treatments of banks and broker/dealers and would not require a violation of fiduciary duty by anyone.

Alternatively, if Congress shares the MSRB's perception of the matter's importance perhaps it could require such disclosures as an additional condition for receiving the tax exemption or some other Federal benefit which is a privilege, not a right. This approach has been used successfully to modify the behavior of public entities in other matters such as the drinking age, speed limits, and so forth. Such an act would arguably not be inconsistent with the Tower Amendment (the transaction could still take place regardless), but would act as a powerful incentive for disclosure in the vast majority of issuances.

We are sure there are many workable approaches to the problem, not least of which would be to let the market penalize those issuers who remain opaque, but forcing municipal advisors to betray their clients, however ill-conceived the client's notions may be, is simply wrong.

Very truly yours,

Chris Charles
President