

September 24, 2010

Leslie Carey  
Associate General Counsel  
MSRB

Re: Comment on G-23 Draft Rule Change

Dear Ms. Carey:

DeWaay Financial Network is a licensed broker/dealer and municipal financial advisor requesting to make public comment on the proposed G-23 Draft Rule Change. DeWaay Financial Network is opposed to the rule change due to the fact that we do not believe the rule change will help our clients (primarily municipalities).

DeWaay Financial Network proposes to outline our opposition to the rule change by responding to the seven questions detailed by MSRB under the Request for Comment on the proposed rule change.

- 1. Should a dealer be precluded for a specific timeframe from entering into a financial advisory relationship with an issuer after serving as an underwriter on one of the issuer's prior offerings of securities?**

Comment: DeWaay Financial Networks works with small issuers of municipal securities. Many of our underwritings are under \$10,000,000 in size, with a large portion under \$5,000,000. When DeWaay underwrites an issue for a client we develop an understanding of the client's needs and issues. We believe after underwriting an issue for a new client it is an opportune time to create a financial advisory relationship because we have gained an understanding of the client that will lead to better service as a financial advisor.

- 2. If the MSRB were to amend Rule G-23 to prohibit dealers from serving as underwriter on transactions for which they have served as financial advisor to the issuer, should there be an exception for competitively bid transactions? Would it matter if the notice of sale was made available 5-7 business days before a competitive bid transaction to allow additional time for other competing firms to conduct due diligence? Should a financial advisor be allowed to bid in a competitively bid transaction in which a failed bid had occurred? How would the situation be handled in which there is a failed bid and the financial advisor cannot step in to buy the bonds because of prohibition? Is this a common occurrence?**

Comment: DeWaay Financial Networks believes that a minimum threshold for competitively bid issues should be set in these situations. In Kansas, any primary offering of a General Obligation Bond entirely (new bond proceeds without any refunding involved) is required to be competitively bid if in excess of \$2,000,000. DeWaay acts as a financial advisor and submits bids in these situations. During one recent competitive sale DeWaay was an unsuccessful bidder. Bond Counsel reported the bids to the issuer and the bid was awarded to the underwriter with the lowest interest costs. The bond issuance was completed with the assistance of DeWaay and the successful bidder worked closely with DeWaay to close the issue.

DeWaay Financial Network has seen situations where no bids were placed in certain situations. Many broker/dealers simply will not bid on certain entities bonds because their direct or overlapping debt does not fall within the broker/dealers ratio guidelines for public debt. DeWaay Financial Network has been the sole bidder in several situations in Kansas in the past decade and has served an important role in helping those highly leveraged local government's gain access to capital. In some situations the issuer has been in a financial advisory relationship with DeWaay.

**3. Are there small and/or infrequent issuers that will be negatively affected by proposed prohibition? What are the alternatives and costs for such issuers should the MSRB adopt the proposed draft rule amendment?**

Comment: DeWaay Financial Network is the Financial Advisor for 4 cities with less than 2,000 people. DeWaay is highly involved in the financial analysis of these communities. DeWaay's ability to work as the FA/Underwriter has enabled us to help two of these communities save \$50,000-\$60,000 thru refundings in the past two years. This is significant savings for a municipality that has less than a million dollars in cash at the end of a fiscal year.

DeWaay Financial Network could not afford to devote the amount of time we currently spend with these communities if we did not have the ability to underwrite their debt issues. DeWaay's intimate knowledge of these communities' finances has helped us aid one community in the collection of delinquent special assessments. DeWaay's work in this area has gained the community over \$200,000 of special assessments taxes that would have otherwise gone uncollected. DeWaay has refunded issues for another community that thru a broker/dealer strict assessment would not appear to generate great savings for the community. However, knowing the communities finances as well as DeWaay does, our company was able to save \$30,000 in this communities Bond & Interest fund in the 2010 budget year, which is significant considering the municipality finished with less than \$2,000 in their bond and interest fund at the end of 2009.

Our philosophy at DeWaay Financial Network is to work with a limited number of cities providing extensive service and financial advice that these smaller communities could normally not receive from full time staff. The ability to underwrite and perform financial advisory service for these communities justifies the amount of time spent with each municipality by DeWaay Financial Network as Financial Advisor/Underwriter.

DeWaay would suggest as an alternative to eliminating the ability of Financial Advisory company to underwrite issues, that MSRB established a minimum threshold for when a debt issue should be competitively bid. DeWaay Financial Network would recommend that minimum threshold be set at the Bank Qualified criteria of \$10,000,000 (Prior to 2010).

**4. Is it appropriate for a dealer to serve as financial advisor to an issuer at the same time that it serves as underwriter on a separate issue for the same issuer?**

Comment: DeWaay Financial Network believes that for smaller and infrequent issuers that is not an issue to have the financial advisor server as the underwriter on a separate issue. Smaller issuers need a more in-depth assistance with their finances and the structuring of their debt than large issuers. Further, the Financial Advisor and the issuer have the ability to decide together with the input of bond counsel as to when it is appropriate for the Financial Advisor to server as underwriter.

**5. As it relates to current practices, are there instances in competitively bid transactions in which a financial advisor should resign in order to “officially” bid on a competitive new issue transaction as an underwriter. Is there ever a time when the financial advisor does not conduct the bid process for the issuer, such as the use of electronic bidding platforms where the process of collecting bids is done by a third party on behalf of the issuer? It is an uncommon practice for the bid process to be handled by the issuer?**

Comment: The current process is effective because the requirements to open bidding to numerous underwriting organization allows competition. The issuer has the ability to review the bid list and review submitted bids. Recently, DeWaay Financial Network facilitated the bidding process for a General Obligation Bond for a client and was the unsuccessful bidder. Bond Counsel presented the bids to the City Council and the financial institution with the low bid was the successful bidder. The process was transparent and the results of the bids were recorded in the minutes of the City Council meeting.

Electronic bidding platforms are a viable option if those services are readily available to an issuer at a cost that is not prohibitive. DeWaay Financial Network would emphasize the size of the issuer and the issue should be considered before MSRB mandates the use of an electronic bidding platform.

**6. In the context of primary offering, should the exception found in Rule G23 (d) (iii) be limited to situations in which a financial advisor purchases bonds from underwriters who won a competitive bid for the bonds in which multiple bids were received?**

Comment: DeWaay Financial Network believes there is no need to restrict the Financial Advisory Company to purchasing bonds from a different underwriting company as long as the bid process for the primary offering is transparent and open to all bidders.

7. In a competitive bid transactions, are there situations where the issuer may hire a financial advisor to serve on a specific issue and then, at some point, hire a second financial advisor to oversee the competitive bid process in order to allow the original financial advisor to bid on the issue.

Comment: DeWaay Financial Network believes there is no need for additional Financial Advisors to be involved in a competitive bid process. We believe this will just lead to additional fees for the issuer and will not further the transparency of the process. As long as the MSRB regulations require notification procedures and bid process transparency, there should be no need for an additional Financial Advisor to be involved.

We respectfully commit our comments for the consideration of MSRB. Thank you for your time and review of this issue.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Detter', with a stylized flourish at the end.

Mark Detter  
Vice-President  
DeWaay Financial Network