Eastern Bank
CAPITAL MARKETS

September 29, 2010

Municipal Securities Rulemaking Board
Ronald W. Smith, Senior Legal Counsel
Lesley Carey, Associate General Counsel
1900 Duke Street, Suite 600
Alexandria, VA 22314

Comments on Proposed Revisions to MSRB Rule G-23

Dear Mr. Smith and Ms. Carey:

Eastern Bank strongly opposes any amendments to Rule G-23 and believes that creating blanket prohibitions would ultimately hurt issuers, investors and the public interest. Firms could be forced to consider whether they would keep their underwriting/dealer areas or their financial advisory groups. Limiting underwriters, who provide liquidity to the marketplace, would result in fewer bids to the issuers and make the underwriting process less competitive and thus more expensive to the issuer.

In a competitive transaction, there is a sealed bid process which is so transparent that it affords no probability of offering any one dealer an advantage over another. Frequently, third party platforms, such as IPREO, are utilized to collect the bids and any violations would easily be scrutinized. There should be no prohibition on this activity. If this rule were to be amended, a dominant underwriter who provides market access to issuers needing financing at the lowest interest rates could be excluded from the bidding process, thereby possibly increasing the issuer's borrowing costs. A specific example of where amendments to Rule G-23 can raise borrowing costs for issuers is the Regional Transportation Authority debt in the Commonwealth of Massachusetts. These entities issue debt via the short term market to fund transportation needs in different parts of the state and do not have bond or note ratings. There are 15 such authorities in the Commonwealth of Massachusetts and they frequently receive only 2 bids on their loans. If Eastern Bank were prohibited from bidding as a result of changes to Rule G-23, these issuers could pay substantially higher rates. We have been the successful bidder on many of these financings and if our financial advisors brought the deal, we would be eliminated from the bidding process. In addition, limiting the number of financial advisors as a result of potential changes to this rule could be harmful to issuers, as fewer financial advisors could translate into higher fees with the potential for fewer services to be provided to those issuers – often small municipalities.

In terms of negotiated financings, Rule G-23 should remain unchanged since the Rule currently in force does prevent conflicts of interest. From a local standpoint, we frequently have smaller communities who need to borrow money in the short term market while incurring minimum issuance costs. These small, often non-rated issuers would not necessarily attract bidders and our dealer desk can provide liquidity to these issuers, while ensuring that no conflicts of interest occur. In addition, some smaller municipalities may need to borrow with little advanced notice and the dealer desk can expedite the financing for them. More complex credits and financings on longer issues can frequently obtain a more favorable interest rate via a negotiated transaction, particularly as related to refundings and/or more troubled credits. This allows more time to be devoted to pre-marketing and analysis, while maintaining the appropriate financing structure for the municipality. During the recent credit crunch in 2008, which extended into 2009, many issuers were unable to tap the credit markets except through the negotiated route. Eastern Bank, in its role as a dealer, offered a valuable service to its' financial advisory clients and many other municipalities

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throughout the Commonwealth by providing them with liquidity in an environment where there was little ability to access the markets, except through a negotiated sale.

It is essential that Rule G-23 is left unchanged. Doing otherwise will hurt issuers, particularly smaller ones, by making the market less competitive. Removing options from the issuer would result in higher borrowing costs as some underwriters are eliminated from the bidding process.

Should some of the proposed amendments be enacted, at the very least, exemptions should be considered for smaller municipal issues. In addition, municipal note issues of one year or less should be exempt.

Our comments on the seven questions are listed below:

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?***

No, once a syndicate is closed and bonds become free trade, syndicate members are released from liability, ending the relationship between the issuer and underwriters. The new transaction is a separate event and poses no inherent conflict.

2(a). ***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?***

There is no conflict in the competitive bidding process with broker dealers and issuers with whom they have a financial advisory relationship and there should be no prohibition on bidding on competitive issues. There exists a sealed bid transaction process which is fully transparent and with many competitive bids being done on third party platforms such as Parity.

If Rule G-23 were to be amended, you could exclude dominant underwriters who provide liquidity and this would make the process less competitive and disadvantageous to issuers. Rule G-23, as it stands prior to any amendments, covers any potential conflicts and should not be changed with respect to both negotiated and competitive underwritings.

2(b). ***Would it matter if the notice of sale was made available 5-7 business days before a competitively bid transaction to allow additional time for other competing firms to conduct due diligence?***

Information is distributed simultaneously to all vendors and competing firms. The time frame of 5-7 business days is generally used, as sufficient time is required by rating agencies, analysts and investors to approve and/or qualify the issue.

2(c). ***Should a financial advisor be allowed to bid in a competitively bid transaction in which a failed bid had occurred?***

Yes. If the dealer area can provide a bid to the issuer, they should not be excluded. Market access and liquidity are key to investors and issuers alike.

2(d). ***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 the prohibition?***

The financial advisor would have to initiate contacts in the dealer community in order to engage a firm which it could hire to handle the financing.

2(e). Is this [failed bid] a common occurrence?

Not as a general rule. Inability to obtain financing became a problem for issuers during the credit crunch in 2008. In those cases, the FA worked diligently to obtain bids for issuers, utilizing both the street and their own broker dealers.

3(a). Are there small and/or infrequent issuers that will be negatively affected by the proposed prohibition?

The existing rule relating to negotiated transactions should remain unchanged. Local issuers need to borrow short term funds while incurring minimal issuance costs. These small, often unrated loans would not necessarily attract bidders and the BD can provide liquidity to these smaller municipalities. In addition, they frequently need to borrow with little advance notice and the BD can expedite the financing.

Issuers with more complex financings and also those of weaker credits on longer loans can frequently obtain a more favorable interest rate via a negotiated financing, as more time can be devoted to pre-marketing and analysis. Smaller issuers frequently need more assistance in formulating their financings and structuring their debt. The dealer arm of the financial advisor should not be precluded from negotiating the deal or bidding competitively, provided the potential conflicts are identified and the current procedures are followed. When this is done, the issuer benefits by lower borrowing costs.

During the recent credit crunch in 2008 many issuers would have been unable to borrow money had they not been able to use the negotiated financing route and, in some cases, utilized their broker/dealer desks. We at Eastern Bank were able to support many of our smaller municipalities by either negotiating their loans, or bidding competitively, sometimes as the only bidder.

3(b). What are the alternatives and costs for such issuers should the MSRB adopt the proposed draft rule amendment?

In many instances, the firms would probably opt to maintain the underwriting option, which would lessen the competition among the financial advisors and could affect pricing and fees. If the firm decided to keep FA side, then the number of prospective bidders would be reduced, which could raise borrowing costs.

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?

If the current (non-amended) procedures on Rule G-23 are adhered to by the firm, then it is appropriate and can be a valuable and cost-effective service to smaller municipalities in particular.

5(a). 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?

No, the competitive bidding process is extremely transparent and the bidding requirements mitigate any irregularities that would harm the issuer. The bidding process, due to its transparency, should be open to all bidders.

5(b). 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?

Yes, the most common platform is IPREO, which serves as a third party. Also, Grant Street has a platform as well.

5(c). ***Is it an uncommon practice for the bid process to be handled internally by the issuer?***

Yes, it is an uncommon practice. Most issuers rely on their advisors to be the third party in the bidding process.

6. ***In the context of a primary offering, should the exception found in Rule G-23(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?***

No, the way the current Rule G-23 stands does provide sufficient protection for the issuer.

7. ***In competitively 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?***

The transparency of the competitive bidding process precludes any advantage to any dealer bidding on the loan. In most cases, a third party platform is used and the financial advisor reports the results. Hiring another financial advisor would simply lead to additional fees for the issuer, without any added benefit. Many municipalities are struggling in this difficult economic environment and do not need added costs without added benefits.

Respectfully submitted,

James N. Fox

James N. Fox
Senior Vice President and Managing Director
Eastern Bank Capital Markets

617.235.8113 Direct
j.fox@easternbank.com