



September 30, 2010

Municipal Securities Rulemaking Board  
1900 Duke Street Suite 600  
Alexandria, Virginia 22314

Attn: Leslie Carey, Esq.

**Re: MSRB Request for Comment on Rule G-23**

Dear Ms. Carey:

As an independent financial advisor, registered with the Texas State Securities Board, and currently subject to MSRB Rule G-37 (among other MSRB Rules) pursuant to Texas State Statute, we hereby submit our comments to the proposed changes to MSRB Rule G-23.

**Question 1: A dealer financial advisor should be restricted from serving as underwriter for any primary offering of an issuer for a period of two years following the termination of its financial advisory relationship with such issuer.**

We believe that a financial advisor should be precluded from serving as underwriter to an issuer for a period of time sufficient to isolate advice provided to an issuer from any specific issuer transaction. As deals in the public finance realm can often take years from the date they are first conceived until they are actually financed, the appropriate time frame should be something in excess of one year.

Under Rule G-37, when a broker-dealer makes certain political contributions, the firm is banned from underwriting the securities of that issuer for a period of two years. In this case, a certain “waiting period” standard seems to have been adopted by the MSRB regarding whether the selection of an underwriter was “independent” of any undue influence.

Likewise, we believe a financial advisor can be considered “independent” if barred from serving as an underwriter for a period of two years from the end of the financial advisory relationship. This practice of “switching” represents a conflict of interest that is inconsistent with the fiduciary duty owed to every financial advisory client.

**Question 2: There should be no additional exceptions permitted for competitive sales.**

While electronic bidding platforms may allow a competitive sale to be conducted with complete pricing integrity by eliminating any means by which a dealer financial advisor might undercut another firm’s bid to its own advantage, we do not believe any exception to Rule G-23 should be permitted for competitive sales.

We believe an inherent conflict of interest attaches to a dealer financial advisor’s ability to structure the bid parameters for a given sale in a way that could favor his or her own firm wishing to bid competitively. Such preferential design might not be deliberate, but simply a function of overreliance on

the dealer financial advisor's own underwriting desk for market views. Either way, the integrity of the competitive sale process is exposed to financial advisor preference. Bid specifications should be designed to best accommodate the issuer's needs. Any temptation to adjust bid parameters to favor anything other than the issuer's best interests should be discouraged. Similarly, a financial advisor may also control or influence the credit enhancement and ratings process. Whether to apply for insurance or a rating, which ratings service to use and structural considerations like reserve or coverage requirements can all impact the outcome of a competitive sale. The dealer financial advisor should not be exposed to even the appearance of the conflict of interest inherent in this ability to handicap a competitive sale in his or her own interest.

We do not see how a 5 to 7 days Notice of Sale publication requirement would mitigate the conflict of interest described above. As for allowing an exception for failed bids (which occur very infrequently, in our experience), we would oppose this for similar reasons. In our view, the temptation to manipulate bid specifications would actually be increased under such an exception. This "failed bid" exception would also seem to imply that all deals are marketable and that an issuer's dealer financial advisor should occupy the role of lender of last resort. We believe this approach would compromise financial advisor independence and, in the extreme, could promote lax credit standards. Finally, for the dealer that wins a competitive sale for a financial advisory client, a conflict could arise between sale and delivery that would pit the financial advisor against his or her own firm. If, for any number of reasons, the dealer would have a problem taking delivery of the issue purchased at competitive sale from financial advisory client, then the financial advisor would become a compromised advocate for the issuer on the question of firm delivery.

**Question 3: There should be no additional exceptions permitted for small issuers.**

As a firm that represents a large number of small and infrequent issuers, we believe all of the above points apply equally to large, small, frequent and infrequent issuers. In our experience, the smaller, infrequent issuers have ample access to the market if the credit is sound. The financial advisor's guiding principle should be to structure a marketable issue. There should be no incentive, nor opportunity to handicap a given sale by devising bid parameters that will ensure a failed bid in order to trigger an exception to the Rule.

**Question 4: It would not be appropriate to allow a financial advisor to simultaneously serve as underwriter on separate issues for the same issuer.**

We believe that a financial advisor should be precluded from serving as underwriter to an issuer for a period of time sufficient to isolate advice provided to an issuer from any specific issuer transaction. The opportunity for the dealer financial advisor to provide advice to an issuer that might benefit the dealer as underwriter, even on a separate issue, cannot be eliminated from this situation.

In addition, the dealer financial advisor in this situation could be required to split loyalties regarding the delivery of securities purchased from a financial advisory client. For instance, if an issue is purchased with insurance from a provider that is downgraded between the pricing and the delivery dates, the interests of the issuer and the underwriting desk of the dealer financial advisor might be unavoidably split. Once again, we believe the fiduciary duty required by the Dodd-Frank Act cannot be reconciled with such an exception.

**Question 5: There should be no additional exceptions permitted for competitive sales.**

Please see our answer to Question 2 above.

**Question 6: The exception permitted in G-23 (d) (iii) should be restricted to situations where multiple competitive bids were received for the primary sale.**

We believe G-23 (d) (iii) would be strengthened by the addition of a multiple bid requirement.

**Question 7: There should be no additional exceptions permitted for competitive sales.**

Please see our answer to Questions 1 and 2 above.

**Conclusion:**

In summary, we believe the proposed rule changes to be a well-conceived and timely attempt to increase accountability and professionalism among financial advisors. Financial advisors, whether independent or affiliated with a broker-dealer, occupy a unique control position. We believe the need to protect issuers from the potential for any abuse of this position should outweigh the natural inclination to expand the issuer's underwriting options. We appreciate this opportunity to provide comments on the proposed changes to MSRB Rule G-23.

Sincerely,



Garry R. Kimball  
President