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Municipal Securities Rulemaking Board
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Via email at:

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RE : Comments in Response to MSRB Notice 2010-27 Regarding Rule G-23

Springsted Incorporated has operated as an independent financial advisory firm for almost sixty years, assisting issuers with nearly \$4 billion in financings in 2009. Springsted is a charter member of the National Association of Independent Public Finance Advisors (NAIPFA) which has long sought changes to Rule G-23. The modifications currently proposed to Rule G-23 are consistent with Springsted's belief that there is a significant difference between the responsibilities of a financial advisor and those of an underwriter and for a firm to serve in both capacities in a given time frame presents a conflict of interests.

Independent advisors are not alone in having this perspective. In 2007 the Government Finance Officers Association ("GFOA") released a revision to its method of sale Best Practice, "Selecting and Managing the Method of Sale of State and Local Government Bonds". The introductory language states in part, "There is also a lack of understanding among many debt issuers about the appropriate roles of underwriters and financial advisors and the fiduciary relationship that each has or does not have with respect to state and local government issuers. The relationship between issuer and financial advisor is one of 'trust and confidence' which is in the 'nature of a fiduciary relationship'. This is in contrast to the relationship between the issuer and underwriter where the relationship is one of some common purposes but also some competing objectives, especially at the time of bond pricing." The Best Practice goes on to offer guidance on how an issuer can protect its interests in the process of issuing debt, encouraging the exclusion of a firm acting as underwriter on a transaction from serving in the role of a financial advisor on the same transaction. It encourages issuers to consider whether they will allow any crossover of roles, even on unrelated transactions, and if they do, to adopt a specific policy defining under what circumstances an underwriter on a transaction can serve the issuer as a financial advisor on other transactions during the same period of time.

We maintain that no serious participant in the municipal market believes a financial advisor can serve as an underwriter without engaging in direct conflicts of interest with the issuer. Actual and direct financial conflicts exist at

numerous points in bond transactions that only the frequent, sophisticated issuer will be able to identify. Ironically, these issuers often engage the services of a financial advisor distinct from the underwriter on their transaction/s.

The balance of this letter addresses the questions posed by MSRB on specific topics.

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?

Yes. We suggest a period of two years, which is consistent with the standard set by MSRB in Rule G-37 as breaking the nexus between a pay-to-play contribution and securing a business relationship with an issuer.

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 competitively 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 the prohibition? Is this a common occurrence?

Allowing a broker/dealer advisor to re-enter a transaction as an underwriter defeats the purpose of the proposed modifications and will invite game playing. Requiring that a notice of sale be made available X days prior to a sale could assist, but not alleviate, the problem. How is it made available? To how large and audience is it made available? Do the terms of issuance meet threshold marketability standards? In our practice, the choice of whether to competitively bid or negotiate a transaction is made deliberately up-front, which serves to significantly limit the potential for failed bids. In the event of a failed bid, issuers still have options if the transaction meets threshold marketability requirements and if it doesn't meet those requirements, there are significant other matters that need to be addressed.

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

The real question is whether basic marketability standards are met, not whether an issuer is working with a particular underwriter or not. There are always reasonable alternatives for issuers with the means and will to repay their debt, regardless of size or frequency of issuance.

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?

No. It is difficult to imagine how a rule would be crafted that prevents abuses if this is permitted.

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? Is it an uncommon practice for the bid process to be handled internally by the issuer?

It is uncommon, but there are some instances where an issuer will run its own bid process. However, the question of whether the price on the bonds being offered is appropriate is only one component of the problem presented by allowing a financial advisor to bid on the bonds it advises on. The terms and conditions of the sale as well as the issuer credit will dictate the ultimate price. Those terms and conditions should be influenced by perceived market preferences, but only as a counterbalance to the issuer's needs. Permitting a carve-out of the bidding process and assigning it to a separate advisor does not resolve conflicts that could arise related to how the issue is structured and secured. A clear case in point occurs in Minnesota where some issues can only be negotiated if an independent advisor is involved. Certain firms have the issuer engage a third party at a nominal fee to comment on pricing to skirt the intent of the law, which this practice effectively does. It does not offer any resolution of the original point of the statute, which is that transactions are complex and an issuer needs to either have sufficient in-house expertise or rely on a professional independent of the underwriting function for advice.

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?

Yes, it should be limited. We have an internal policy that discourages employees or their family members from buying any bonds for which the firm serves as financial advisor. It says in part, "Springsted has a very strong influence on the structure, call provisions, security and other matters affecting the interest rates and quality of a bond issue. We also can affect a refunding or prepayment of a bond issue." Our objective is to preclude actual or perceived conflict in performing our duties as financial advisor.

An alternative approach may be to require that an extended period of time lapse between the pricing of the bonds and the purchase by a financial advisor, either for the firm's account or personal investment.

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?

These situations may occur, however, we are not directly aware of any.

We appreciate the opportunity to comment on this important subject.

Sincerely,



Kathleen A. Aho, CIPFA
President