KPM FINANCIAL

JAY SAUNDERS, Director
11121 Carmel Commons Blvd., Suite 250
Charlotte, NC 28226
Office: (980) 313-4371
Email: jsaunders@kpm-financial.com

Municipal Securities Rulemaking Board
Attn: Mr. Ronald W. Smith, Corporate Secretary
1300 I Street NW
Washington, DC 20005

Re: Response to Comments on MSRB Rule G-23

Dear Mr. Secretary:

On May 20, 2019, the Municipal Securities Rulemaking Board ("MSRB") published a Request for Comment on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors. We intend to provide comments relating to the practice of acting as either Placement Agent or Underwriter (collectively "Underwriter") to the issuer of municipal securities ("Issuer") while contemporaneously acting as Financial Advisor to the Obligated Person on the same issue. While we believe Rule G-23, in conjunction with Rule G-17 and the Municipal Advisory Regulations, has benefited the municipal marketplace in general, we feel that there remain "loop holes" in the regulations that negatively impact the integrity of the MSRB rules. In particular, the way MSRB regulations are currently written, some firms continue to act as both Underwriter and Financial Advisor on the same issuance of municipal securities.

MSRB rules currently prohibit municipal professionals from acting as both Underwriter and Financial Advisor to an Issuer relating to the same issuance of municipal securities. Providing advice directly to an Issuer while also serving as Underwriter on the same issuance would create too many unavoidable conflicts of interest including, but not limited to, advice given to the Issuer regarding, (i) whether the bond sale should be competitive or negotiated, (ii) whether an Underwriter is required if placing bonds directly with an investor, (iii) whether the Underwriter's fees are fair and reasonable, and (iv) whether the pricing or structure of the securities is fair and reasonable. Typically under an Obligated Person structure, the Obligated Person's Financial Advisor is the only party to a transaction providing "advice" in that transaction. Even though the Financial Advisor technically is engaged by the Obligated Person, they are providing the same advice they would if engaged by the Issuer directly.

Interpretive guidance on rule G-23 makes it clear that the rule is only applicable to rendering advice to *Issuers*. This same guidance makes clear that in most cases advice provided to Obligated Persons would not be deemed as advice to the Issuer. This distinction between Issuers and Obligated Persons allows the same firm to be engaged as Underwriter to an Issuer while acting as Financial Advisor to the Obligated Person. In theory, as Advisor to the Obligated Person, the firm cannot negotiate directly with the purchaser(s) of the municipal securities as this would make them an Advisor to the same Issuer with whom they are serving as Underwriter. This role is reserved for the Underwriter or a Financial Advisor to the Issuer, should one exist.

This does not prevent the Financial Advisor to the Obligated Person from negotiating directly with the purchaser of the securities regarding the placement of Municipal Financial Products integrally relating to the same issuance. The provider of Municipal Financial Products is often the same as the purchaser of the municipal securities. This creates a situation where the Advisor to the Obligated Person can negotiate directly with the potential purchaser of the securities without running afoul of the existing regulations. The MSRB has recognized that the fiduciary responsibility owned by an advisor to an Issuer would make this conflict of interest too difficult to mitigate through disclosures and consents; however, the same dual-role situation can exist by simply engaging with the Obligated Person as Financial Advisor rather than the Issuer directly.

We believe this loop hole in the rules reduces the effectiveness of Rule G-23 in addressing its primary purpose of mitigating conflicts of interest that exist when a dealer acts as both Financial Advisor and Underwriter with respect to the same issue. We suggest this conflict of interest could be mitigated by amending Rule G-42(e)(ii) to expand the prohibition on engaging in a principal transaction with municipal entities with whom a municipal advisory relationship exists to further prohibit engaging in principal transactions with municipal entities where a municipal advisory relationship exists with the "*municipal entity client or with an obligated person directly responsible for making loan payments to the municipal entity client relating to the same issuance of municipal securities.*" Regardless of the conflict of interest disclosures made, we believe these corporate transactions are generally run by the corporation or its advisors and most corporations do not appreciate the gravity of the conflict of interest that exists when the only advisor in a transaction is ultimately the Underwriter of the same securities.

Sincerely,

Jay Saunders
Director
KPM Financial, LLC