



August 14, 2019

**VIA ELECTRONIC MAIL**

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

**Re: MSRB Notice 2019-13: Request for Comment on MSRB Rule G-23 on  
Activities of Dealers Acting as Financial Advisors**

Ladies and Gentlemen of the Board:

Phoenix Advisors, LLC, is a multistate, independent municipal advisor firm headquartered in Bordentown, New Jersey, currently employing thirteen Municipal Advisor Representatives. We fully appreciate the needs of smaller issuers; we have regularly appeared ranked among the top 10 Municipal Advisors on Small Issues in the *Bond Buyer*. We appreciate the opportunity to respond to the MSRB's request for comments, and to express our opposition to changes to MSRB Rule G-23 that would reinstate role switching by dealer municipal advisors and reintroduce the attendant conflicts that existed before the 2011 amendments to G-23.

We are aware of the argument that dealer municipal advisors, if permitted to switch roles, might shield smaller or infrequent issuers from limited access to markets or municipal advisor services, but our experience shows that this shield is unnecessary. Our firm counts among its issuer clients hundreds of smaller issuers and numerous infrequent issuers, none of whom have encountered any decline in market access resulting from the 2011 amendments to MSRB Rule G-23. In any event, the question of market access for these types of issuers becomes academic when municipal advisors perform effectively.

The interests of municipal entity issuers are served best when municipal advisors owe a fiduciary duty throughout their engagements with their clients. It would constitute a disservice to an issuer client if the municipal advisor were permitted to abandon its duties of loyalty and care at the most critical moment in the engagement, move to the opposite side of the table, and pursue its interests as the underwriter, notwithstanding the requirements of G-17. After all it indeed can be argued that it is the smaller or infrequent issuer that most needs the duty of loyalty and care. The conflict created by role switching would not be mitigated by the requirement for written disclosures or consents, nor by the hiring of a replacement municipal advisor. To think a replacement advisor could adequately serve an issuer when the transaction is likely to



have been structured by the underwriter bidding on the issue is foolhardy. The prohibition on role switching successfully addresses these issues with no impairment of dealer activities and with no harm to issuers.

It might further be argued that the prohibition should be expanded to address the blurring of the lines between municipal advisor and underwriter. It should be impermissible for dealer municipal advisors to serve contemporaneously as municipal advisor on one transaction and as underwriter on another transaction for the same issuer.

Phoenix Advisors staunchly opposes any dilution or rescission of the 2011 amendments to Rule G-23, believes that the prohibitions on role switching are appropriate and effective, and that issuers have enjoyed better protection against conflicts and predatory practices since the implementation of the 2011 amendments.

Sincerely,

David B. Thompson, CEO