

**ROBERT W. DOTY**

420 Chinquapin Round Road  
Suite 2-i  
Annapolis, MD 21401  
Email: robert.doty@agfs.com  
Telephone: (916) 761-3432

November 2, 2017

Municipal Securities Rulemaking Board  
1300 I Street, N.W.  
Washington, DC 20005

Re: Rule G-32

Ladies and Gentlemen:

This letter responds to the MSRB's Notice 2017-19, Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers dated September 14, 2017.

In specific terms, this letter responds to the Board's question "*Are there any other primary offering practices that the MSRB should consider in its review?*" Thank you for this opportunity to submit this comment.

I suggest that the Board consider amending its Rule G-32(iii)(A) to reflect content along the lines of the changes marked below:

- (iii) Any broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer with respect to which the delivery obligation under subsection (a)(i) of this rule is deemed satisfied pursuant to subsection (a)(ii) of this rule shall provide or send to the customer, by no later than the settlement of such transaction, either:
  - (A) a copy of the official statement (or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any), and, in connection with offered municipal securities sold by the issuer on a negotiated basis to the extent not included in the official statement, (1) the underwriting spread, if any, (2) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; (3) the amount of any compensation received by the broker, dealer or municipal securities dealer at any stage of the offering from an obligated person or any other party, in addition to the governmental issuer, in connection with completion of one or more stages of the offering or completion of the entire offering, or both; and (34) the initial offering price for each maturity in the offering, including maturities that are not reoffered; or

## **Municipal Securities Rulemaking Board**

**November 2, 2017**

**Page 2**

A broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer should disclose all of its compensation in a negotiated offering that is dependent upon the completion of either specific stages in an offering or the entire offering. This is a key subject now involved in an SEC enforcement action in which the Commission alleges, in general, that compensation was paid to a private placement agent by a conduit borrower upon achieving specific stages of the financing (such as meeting with the governmental issuer or receiving the issuer's approval to proceed, in addition to compensation upon the closing the transaction). The Commission alleges that such compensation was not disclosed to investors, although the compensation paid by the governmental issuer was disclosed in the offering document.

Without the disclosure, investors would believe that the underwriter/placement agent received only the compensation paid by the governmental issuer, without knowledge of the underwriter's/placement agent's full compensatory motivation to complete the transaction.

Further, municipal advisors should disclose all of their compensation in both negotiated and competitive offerings and whether their compensation was contingent upon the closing of the transaction or achievement of any other factor, such as the size of the transaction.

In that connection, the 1991 version of the GFOA Disclosure Guidelines for State and Local Government Securities states at 63, as follows:

If financial advisors are named in the official statement, describe their role and contractual arrangements between the issuer and the financial advisors. [Footnote omitted.]

NFMA's White Paper on the Disclosure of Potential Conflicts Interest in Municipal Finance Transactions (2015) states at 6, as follows:

Transaction participants may enter into contingent compensation arrangements with payments conditioned on the successful closing or funding of, or the size of, municipal finance transactions; the delivery of work products; or the sale, purchase, leasing, or licensing of property. ...

Contingent compensation is especially undesirable for experts, or for municipal advisors or other professionals who are expected to be independent in the provision of advice or services to issuers or in the structuring of municipal securities. In addition, underwriters and placement agents should disclose all of their anticipated compensation arrangements, contingent or otherwise, with issuers or other interested parties in conjunction with municipal securities offerings or the uses of proceeds.

Payment arrangements that are contingent on the "success" of a financial transaction clearly pose credit and other risks because these arrangements often entangle the opinion or advice required to complete municipal finance transactions, removing its independence. Historically, compensation arrangements in municipal finance transactions that hinged on transactional completion have been associated with poorly structured bond issues and overly optimistic appraisals, unrealistic fiscal and economic projections, too-confident feasibility

**Municipal Securities Rulemaking Board**

**November 2, 2017**

**Page 3**


studies, overly optimistic construction budgets and timetables, and the like, to the detriment of municipal investors, as well as issuers and obligors. [Footnotes omitted.]

Disclosure of this information would be important and relevant to investors in municipal securities. Rule G-32 provides mechanisms for disclosure by underwriters and placement agents, including disclosure directly to investors if the information is not contained in an offering document.

Municipal advisors do not have the same direct access to investors. Nevertheless, a number of mechanisms may be available to effectuate disclosure by advisors. For example, if the information is not contained in an offering document, the advisors may file the information with the Board in a manner similar to underwriter reporting of bond ballot contributions. Advisors also may choose to contract with issuers to make the disclosure in the offering document.

Thank you for this opportunity to submit these comments.

Yours very truly,



Robert W. Doty

Cc:

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