Subject: File No. SR-MSRB-2011-09
From: Joy A. Howard
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In my capacity as an independent financial advisor, I am writing to set forth my comments relating to the Municipal Securities Rulemaking Board's proposed disclosures under Rule G-17.

Are the amendments to Rule G-17 intended as a prelude to allow underwriters to continue giving advice? The rule will not improve transparency in the municipal market. Instead the rule (i) enables underwriters to give advice (ii) assumes that disclosures are an adequate substitution for fiduciary duties, and (iii) discourages issuers from engaging financial advisors by providing disclosures that resemble a fiduciary duty. As demonstrated by a recent SEC case,[1] disclosures made by individuals who do not possess a fiduciary duty are not an effective means of protecting municipal issuers. In this SEC case, a brokerage firm provided advice but was not under contract as a financial advisor. According to the SEC, the municipal issuers looked to the brokerage firm for "financial advice and relied on their recommendations." Although the brokerage firm was not under contract as a financial advisor, as noted by the SEC, the municipal issuers considered one of the brokers from the firm "to be their financial advisor." The brokerage firm's defense, in connection with the municipal issuers' loss of millions of dollars, is that the municipal issuers were provided disclosure letters that were signed by the issuers indicating that they were accredited investors. The bottom line is that municipal issuers often do not understand the disclosures that they are provided and municipal issuers do not benefit from complex disclosures from firms that are not acting in a fiduciary capacity.

Underwriters should, of course, not be able to make any false or misleading representations regarding their credentials or the terms of a financing; however, underwriters should not be required to provide the numerous disclosures required by Rule G-17. Rather than providing disclosures that are likely to be complex and incomprehensible by unsophisticated issuers, the following alternatives would have more favorable results in protecting issuers:

1) As an alternative to the disclosures required by draft Rule G-17, underwriters should not be permitted to provide advice with respect to the structure, timing, terms and other similar matters concerning financial products or issues. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") individuals that provide advice are required to be registered as Municipal Advisors and act with a fiduciary duty. The Act did not change the definition of underwriter and the exception for underwriters from the definition of municipal advisor does not give underwriters the ability to provide advice.[2] Therefore, the role of underwriters should be limited to providing information with respect to the structure, timing, terms and other similar matters concerning such financial products. If underwriters are precluded from providing advice, as contemplated by the Act, disclosures are not necessary.

2) As an alternative, underwriters should be exempt from making G-17 disclosures when a Municipal Advisor is engaged.

3) As an alternative, underwriters should be required to make one simple disclosure as follows: "Our firm is not acting as your financial advisor and you [issuer name] should consult with a financial advisor regarding the risks of the transaction and whether the pricing is reasonable." While the MSRB's Rule G-23 requires a disclosure from underwriters regarding their role, a simple straight forward disclosure is missing.

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[1] Case No. 2:11-cv-00755, filed August 10, 2011.
[2] *See*, Letter from Nathan R. Howard, Esq. in response to File Number S7-45-10, submitted on February 22, 2011, at 3.