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January 30, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Release No. 34-65918; File No. SR-MSRB-2011-09
Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change, as Modified by Amendment No. 2, Consisting of Interpretive Notice Concerning the Application of MSRB RuleG-17 to Underwriters of Municipal Securities

Dear Ms. Murphy:

The Government Finance Officers Association is pleased to comment on the Municipal Securities Rulemaking Board's (MSRB) Proposed Interpretive Notice Concerning the Application of MSRB Rule G-17 on Conduct of Municipal Securities and Municipal Advisory Activities to Underwriters of Municipal Securities. As stated in previous comments, we support the proposed rule and hope the SEC will act quickly to finalize it. MSRB Rule G-17 would protect issuers - as well as investors - of municipal securities from potential fraudulent activity on the part of the dealer community and would help define the different roles and responsibilities of underwriters and financial advisors to state and local governments.

While the importance of finalizing the changes to Rule G-17 cannot be overstated, it is also vital for the SEC to act quickly and complete its work on the municipal advisor definition, which is one of the most important actions the SEC can take for the municipal securities marketplace. The combination of these regulations will allow rules to be in place for underwriters acting as underwriters, or underwriter firms serving in a financial advisory capacity as well as for independent financial advisors. This clarification is needed to help all market participants understand the regulatory landscape and allow issuers of municipal securities to effectively seek the services of financial advisors and underwriters in a responsible manner. More importantly, the final rule on the municipal advisor definition is needed to help guide the lingering uncertainty about whether appointed members of state and local governing boards will be captured under the municipal advisor definition. The GFOA remains adamantly opposed to including appointed board members within the municipal advisor definition (GFOA letter to SEC File No. S7-45-10).

In 2011, GFOA submitted comments to the MSRB and the SEC on the proposed changes to MSRB Rule G-17. Those letters are attached to this submission and mirror today's letter. While completing this rule is important, along with the municipal advisor definition, it is imperative that the SEC work to ensure that these rules are in sync with each other as well as MSRB Rule G-23. Additionally, as most of these rules remain in development and their practical implementation yet unknown, it is also important for the SEC and MSRB to continuously review the rules to determine if they work in the manner intended, and do not cause unintended consequences in the marketplace.

Most of the comments below are a summary of the comments we previously submitted on the proposed rule.

General Issues

We do not believe that having the underwriter provide disclosures to issuers causes undue costs or burdens to underwriters. Rather, these disclosures are part of doing business. The underwriter should have the responsibility to provide these disclosures, whether it is when they may be marketing their services or responding to a RFP for a negotiated sale, or something more complex such as a swap transaction.

General Disclosures to Issuers

The underwriter should disclose in writing to the issuer at the earliest time possible in the relationship the following:

1. that the underwriter does not have a fiduciary responsibility to the issuer nor is the underwriter required by federal law to act in the best interest of the issuer;
2. that because the underwriter does not have a fiduciary responsibility to the issuer, the issuer may choose to engage the services of an independent financial advisor to represent the issuer's interest in the transaction. We do not believe that the amended Notice goes far enough in preventing underwriters from discouraging issuers from using a financial advisor. We strongly believe that the underwriter should be required to affirmatively state in writing that the issuer may choose to engage an independent advisor to represents its interests.

"Plain English" Disclosures

Making sure that the issuers clearly understand the various underwriter disclosures is imperative. A "plain English" standard pertaining to underwriter disclosures to issuers should be adopted and embraced.

Underwriter Recommendation Based on "Reasonable Belief" of Issuer Personnel

The goal of this section is to ensure that the underwriter provides adequate information about a financing to the issuer's key decision-making personnel. Such personnel is likely to include appropriate staff members and may include members of the issuer's governing body. We believe that a final rulemaking determination for how the underwriter should identify to whom they must provide information to deserves further discussion. The current proposed language sets a baseline standard and understanding of what is required of the underwriter, but once in place, additional discussions between the MSRB, SEC and marketplace participants should take place to achieve the goal of the standard.

Routine Financings

It can be helpful for the underwriter to provide routine financing information to the issuer personnel who are charged by the government to execute the financing. Conversations with the issuer personnel can determine the amount of materials and explanations, although the underwriter may wish to err on the side of more than less information about the structure and security. It would not be unreasonable for the rule to state that the underwriter may be asked by issuer personnel to make disclosures about routine financings to others on the finance team or the members of a governing board who gave the authorization for the financing.

Underwriter Disclosure of Risks in a Transaction

We strongly believe that the Interpretative Notice should require the underwriter to disclose the risks of a financing. While the issuer can and should consult with other professionals (including a financial advisor and bond counsel), the underwriter has the responsibility to be clear about the risks associated with a transaction.

Third Party Payments

We agree with the section of the proposed rule that requires underwriters to disclose if third-party payments are made. However, we think that the underwriter should also disclose the amount of the payment. We also support the disclosure of an underwriter's credit default swap position, as it relates to the issuer's outstanding obligations.

Fair Pricing

As stated in our previous letters and to other regulatory bodies, strong fair pricing standards must be part of the overall rulemaking in our sector. One area that continues to receive attention is "flipping" practices in the marketplace. While a challenge, we believe that the MSRB could initiate educational or rulemaking efforts that would provide for an operational definition of the term and the additional costs incurred by taxpayers as a result of such practices.

Suitability Standards

The SEC and MSRB may wish to begin discussion on establishing suitability standards for the types of financial products that may be sold to state and local governments. A suitability standard would help marketplace participants understand the types of financings that would be appropriate for various types of issuers and would guard against products being pitched or sold to state and local governments that are not suitable for their entity.

We again appreciate the opportunity to comment on Amendments to MSRB Rule G-17. Finalizing this rule, along with the pending municipal advisor definition, is critical to ensure both that issuers are protected and that underwriters and financial advisors have a clear road map regarding the regulatory framework that encompasses their work with state and local governments.

Sincerely,

Susan Gaffney
Director, Federal Liaison Center

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December 1, 2011

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: MSRB Notice 2011-61

Dear Ms. Murphy:

The Government Finance Officers Association is pleased once again to comment on the Municipal Securities Rulemaking Board's (MSRB) Proposed Interpretive Notice Concerning the Application of MSRB Rule G-17 on Conduct of Municipal Securities and Municipal Advisory Activities to Underwriters of Municipal Securities. The GFOA believes that the proposed changes will help protect issuers of municipal securities from fraudulent and manipulative acts and practices. Additionally, the changes will better inform state and local governments about the different roles and responsibilities of underwriters and financial advisors.

Earlier this year we submitted comments to the MSRB on its proposed changes to the G-17 Interpretive Notice. That letter is attached to this submission in order to provide better context for our comments. Specifically, we believe that this Interpretative Notice should be one part of an overlapping layer of regulations that will serve broker/dealers and financial advisors. The G-17 Interpretative Notice should provide needed protections to state and local governments, in conjunction with revised MSRB Rule G-23, the forthcoming SEC definition for financial advisors, and what we hope can be addressed in the near future – suitability standards for the types of products sold to state and local governments.

It is important that the SEC and MSRB ensure the rules work together to develop a seamless regulatory framework that places appropriate standards and disclosures on the outside professionals who assist issuers with issuing municipal securities. These rules remain in development, and their real-world application needs to be seen. We therefore suggest that this Interpretative Notice, MSRB Rule G-23, the forthcoming SEC financial advisor definition and subsequent SEC and MSRB rules, as well as the potential of developing new suitability standards, be continuously reviewed by the appropriate regulatory body to ensure that adequate, justified and workable rules are in place for broker/dealers and financial advisors both today and in the future.

<u>General Disclosures to Issuers</u>

The Notice sets forth certain disclosures that the underwriter must provide to the issuer. As we stated in our October 2011 letter, we believe that an underwriter should disclose in writing to the issuer at the earliest time possible in the relationship the following:

3. that the underwriter does not have a fiduciary responsibility to the issuer nor is the underwriter required by federal law to act in the best interest of the issuer and
4. that because the underwriter does not have a fiduciary responsibility to the issuer, the issuer may choose to engage the services of an independent financial advisor to represent the issuer's interest in the transaction.

This clarification is needed, so that the issuer clearly understands and has in writing the true nature of the underwriter's role. We do not believe that the amended Notice goes far enough in preventing underwriters from discouraging issuers from using a financial advisor. We strongly believe that the underwriter should be required to affirmatively state in writing that the issuer may choose to engage an independent advisor to represents its interests.

"Plain English" Disclosures

Underwriter disclosures to issuers will be of limited value if the language of the disclosure is written in a manner that is difficult for issuers to interpret and understand. As such, the GFOA believes that a "plain English" standard should be adopted in the formulation of all underwriter disclosures to issuers.

Underwriter Recommendation Based on "Reasonable Belief" of Issuer Personnel

The GFOA subscribes to the notion that there is never too much relevant information that can be provided to an issuer. However, we understand the underwriter's challenge in determining who should be considered "issuer personnel." Moreover, placing such requirements in rules is difficult, as each situation between underwriter and issuer personnel varies. This is an area that we think deserves further discussion and attention. While the current amendment language may be adequate to set a baseline standard and understanding of what is required of the underwriter, once in place, additional discussions between the MSRB, SEC and marketplace participants may be in order to achieve the goal of the standard. The goal ensures that the underwriter provides adequate information about a financing to key decision making personnel of the issuer. Depending on the issuer, such personnel are likely to include appropriate staff members, but may or may not include members of its governing body.

Routine Financings

The GFOA believes that there is no harm for the underwriter to provide information about routine financings to the issuer personnel who are charged by the government to execute the financing. The amount of materials and explanations provided may need to be determined through various conversations with the issuer personnel, and the underwriter may wish to err on the side of more information about the structure is better than less. Additionally, at the request of issuer personnel, it would not be unreasonable to state that the underwriter may be asked to make disclosures about routine financings to others on the finance team or the members of a governing board who gave the authorization for the financing.

Underwriter Disclosure of Risks in a Transaction

We strongly believe that the Interpretative Notice should require the underwriter to disclose risks of a financing. While the issuer can and should consult with other professionals about a financing (including a financial advisor and bond counsel), the underwriter should be clear about the risks associated with a transaction, and has the responsibility to do so.

Third Party Payments

The amendment includes a change regarding third-party payments by requiring the underwriter to disclose to the issuer if third-party payments are made, but not the amount. We do think the payment amount is an important variable for the issuer to be aware of and provides better transparency for the transaction, and if not included in the Notice, we will certainly encourage our members in various GFOA Best Practices to further inquire with the underwriter about any relevant third-party relationships and payments. We also support the disclosure of an underwriter's credit default swap position, as it relates to the issuer and the financing.

Fair Pricing

We would like to reiterate the comment made in our October 2011 letter, and additional conversations we have had with various MSRB, SEC, and Treasury officials, that we are concerned over "flipping" practices in the marketplace. Again, noting the difficulty of doing so, we would ask that the MSRB work on an operational definition of the term and discuss the problems associated with such practices either through educational or other Rulemaking processes.

Suitability Standards

This Interpretative Notice, as well as other MSRB and SEC rules could benefit from establishing some type of suitability standard for the types of financial products that may be sold to state and local governments. Such a standard would help all marketplace participants understand the types of financings that may be appropriate for various types of issuers and would guard against products being pitched or sold to state and local governments that are not appropriate for their entity. This, we know, is a monumental task, but it is one that would benefit the marketplace and help with other Rulemaking. We hope that the SEC and MSRB could begin discussing as it continues its work to implement appropriate guidance and Rules for the municipal marketplace.

We again appreciate the opportunity to comment on the Interpretative Notice of G-17 to Underwriters of Municipal Securities and applaud the difficult work that has already been done by the MSRB staff to develop this Notice and other Rules that are helpful to the issuer community.

Sincerely,

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Director, Federal Liaison Center

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October 3, 2011

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: SR-MSRB-2011-09

Dear Ms. Murphy:

Thank you very much for the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) Proposed Interpretive Notice Concerning the Application of MSRB Rule G-17 on Conduct of Municipal Securities and Municipal Advisory Activities to Underwriters of Municipal Securities. The proposed changes, we believe, will help protect issuers of municipal securities from fraudulent and manipulative acts and practices. Additionally, the changes will provide proper guidance to all of market participants so that uncertainties are minimized and all can have a clear understanding of necessary disclosures between underwriters and issuers.

As we commented in our previous letter regarding Rule MSRB G-23, an appropriate safeguard that would be beneficial to many of the practices that the MSRB is proposing would be for the underwriter, in writing, to state that it does not have a fiduciary responsibility to the issuer. Furthermore, it is essential that issuers understand the different roles that underwriters and financial advisors play in a transaction. As such, Rule G-17 should mandate that the underwriter state in writing that the issuer may choose to engage the services of an independent financial advisor to represent the issuer's interests in the transaction. Underwriters should be strictly prohibited from suggesting to the issuer that the underwriter can serve, formally or informally, as the issuer's financial advisor and well as underwriting the bonds.

In reference to this Notice we believe that the proposal serves to be helpful to issuers in the following ways:

- The underwriter must make accurate and not misleading representations to the issuer
- The level of information and disclosure that an underwriter must provide may be different between issuers, and the underwriter must adhere to a standard that takes this into consideration. The underwriter will need to assess how well versed an issuer is with any particular type of financing to determine the level of disclosure about the transaction appropriate to the knowledge and sophistication of the issuer. This issue is a key one for this Interpretative Notice. As such, the MSRB may wish to develop, in conjunction with the GFOA, educational materials for issuers about the information that underwriters must disclose and appropriate questions issuers should ask their underwriter regarding the transaction.
- The existence of any incentives, conflicts of interest or third party payments must be disclosed to the issuer.
- The amount an underwriter pays the issuer for the bonds is fair and reasonable. We understand that developing an appropriate standard for "fair and reasonable" may be difficult, and that other options to address this issue have been discussed by the MSRB in earlier drafts of the proposed rule. This is another very important issue within the Interpretive Notice, and one where we think additional education should take place, per our comments below.

- Rules are in place to ensure a fair retail order period, without any manipulation of the process.
- Underwriter must disclose if their business is involved with Credit Default Swaps, based on activities involving that particular issuer.
- Disclosures made by underwriters to issuers must be relevant, complete and timely. For conflict of interest disclosures, we believe that those should take place immediately when the underwriter is hired. For disclosures related to the terms of the financing, those disclosures need to be ongoing, as discussions between the issuer, the underwriter, and financial advisor are fluid as the transaction is put together. Such disclosures need to be made in a timely manner so that they may be thoroughly considered by the issuer and its financial advisor before the transaction is executed.

There are a few areas where we believe additional guidance should be incorporated into the Interpretative Notice. These include:

- An underwriter should disclose if any litigation is pending that in any way affects their firm's municipal securities business.
- An underwriter must disclose if any experts of the firm that the issuer may have relied upon in selecting the particular underwriter for the transaction have departed from the firm.
- Additional information about the risks associated with the transaction including a comparison of different types of financings that may be applicable for the issuer's particular situation.
- Regarding pricing transparency, the MSRB should develop and promote educational information for issuers and other market participants to best understand underwriting pricing and fees.
- The MSRB should consider the application of suitability standards to the transaction an underwriter is proposing to an issuer.
- While an underwriter must already state that it has an arms-length (and non-fiduciary) relationship with the issuer, additional conflicts of interest should be disclosed in order to ensure full protection of the issuer from unsettling business practices and relationships. Such conflicts of interest may include the fact that the underwriter's compensation is based upon the deal closing, and that the underwriter has duties to both investors and to issuers.
- In an earlier letter to the MSRB, we stated concerns over "flipping" practices. At the least, the MSRB should look at why, in the absence of significant changes in the market, a bond may trade up in price very soon after the initial pricing (e.g., within 2-5 days). In addition, the MSRB should provide some clarity in this regard by providing an operational definition of "flipping" and an explanation why this is not an appropriate practice. This issue may lend itself to G-17 or other MSRB Rules.

We must also acknowledge that in many areas, especially those related to derivatives, swap advisors and defining the role between a financial advisor and an underwriter, the MSRB is working closely with other regulatory bodies, including the Securities and Exchange Commission and the Commodity Futures Trading Commission. Where applicable, the various regulatory bodies should work together to ensure that one set of definitions and rules apply to the municipal securities market. This is essential so that varied definitions and rules do not cause confusion for issuers and others in the marketplace and create situations where necessary disclosures are not made due to confusing or conflicting regulations.

We would welcome the opportunity to further discuss the issues raised above with the MSRB Board or staff.

Sincerely,

Susan Gaffney
Director, Federal Liaison Center