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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

Susan Gaffney
Director, Federal Liaison Center