



*Invested in America*

June 24, 2011

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: **File Number SR-MSRB-2011-03**  
**Rule G-23: Activities of Financial Advisors, 76 Fed. Reg.**  
**32,248 (June 3, 2011)**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide the Securities and Exchange Commission (the “Commission”) with comments relating to File No. SR-MSRB-2011-03, the proposed Amendment No. 1 to the amendments to Municipal Securities Rulemaking Board (the “MSRB”) Rule G-23: Activities of Financial Advisors.

As we expressed in previous comment letters on this issue, we oppose the general focus of the proposed changes to Rule G-23. We believe municipal bond issuers, especially smaller and infrequent issuers, are well served by the current Rule G-23. Under the current Rule, dealers who serve as financial advisors, after disclosing to issuers potential conflicts of interest and obtaining issuers’ consent, may either resign from their role as advisor and then serve as underwriter or may bid on bonds offered in competitive auctions. We believe that prohibiting dealers who also serve as financial advisors from underwriting bonds, as proposed in the amendments to Rule G-23, will in the end prove harmful to issuers. This is especially the case for small issuers who sell bonds via competitive auction.

---

<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

With that said, we appreciate the work of the staffs of the Commission and the MSRB in providing further clarity on the application of new Rule G-23 and the related Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists Under Rule G-23 (the "Guidance"). In particular, we believe that the elimination from the Guidance of the rebuttable presumption and the clarification as to when dealers will be deemed to be "acting as an underwriter" will be helpful to both dealers and issuers as they sort through the issues raised by new Rule G-23, and we are grateful for your understanding.

We have, however, an additional concern raised by the new language in the Guidance. We have long believed that Rule G-23's requirement that financial advisory relationships be evidenced by a written agreement is reasonable and prudent for all parties, and previously provided a helpful bright line for the establishment of the financial advisory relationship. Although we understand the desire to trigger the application of Rule G-23 at the earliest possible time, we continue to be concerned about the ramifications of being deemed a financial advisor without actually having consented to that role and its attendant obligations. In particular, we do not believe that it is necessary to create a new standard to which an underwriter's every actions may be subjected in hindsight, particularly where the underwriter has already made clear to the issuer its role and duties in its initial contacts. We believe that the sentence beginning with, "The dealer must not engage in a course of conduct that is inconsistent with an arm's-length relationship with the issuer ..." effectively promulgates what could be used as a new standard of care outside the four corners of the Rule itself, one which would be subject to considerable ambiguity in its application. Of course, an underwriter's duty of care to its clients is already governed by MSRB Rule G-17. Any activity that violates the duty not to engage in deceptive, dishonest or unfair practices is separately actionable, and the marketplace need not be subjected to further expansion of these duties through the Guidance to Rule G-23, which has been described as "solely a conflicts rule" and not a rule addressing substantive duties. Accordingly, we respectfully request that the sentence be deleted from the Guidance.

\* \* \*

Ms. Elizabeth M. Murphy, Secretary  
U.S. Securities and Exchange Commission  
June 24, 2011  
Page 3

We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would help facilitate your review of the proposed amendments. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130, or Stephen P. Wink of Latham & Watkins, counsel to SIFMA in this matter, at (212) 906-1229.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, light-colored signature line.

Leslie M. Norwood  
Managing Director and  
Associate General Counsel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walker, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
Robert Cook, Director, Division of Trading and Markets  
Lynette Kelly Hotchkiss, Executive Director, Municipal Securities  
Rulemaking Board