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January 13, 2006

Ronald W. Smith, Esq.
Senior Legal Associate
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Comments to Notice 2005-57, Request for Comments on Underwriting Activities of Financial Advisors: Rule G-23

Dear Mr. Smith:

The Bond Market Association (the "Association") [1] is pleased to respond to the notice issued by the Municipal Securities Rulemaking Board (the "MSRB") on November 18, 2005, entitled, Notice 2005-57, Request for Comments on Underwriting Activities of Financial Advisors: Rule G-23 (the "Notice"). The Association believes that Rule G-23 is a successful, well-drafted rule, requiring thorough and accurate disclosure by regulated broker-dealers to issuers and investors. While we support the regular review of rules to ensure that they appropriately address concerns in the marketplace, we do not see a need for changes in Rule G-23 at this time. The suggested changes to Rule G-23 put forth by the National Association of Independent Public Finance Advisors ("NAIPFA") appear to be motivated by an element of self-interest, as the proposals would not affect the activities of the unregulated NAIPFA members and would result in reduced competition and fewer options for issuers.

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[1] The Association is the trade association representing securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. More information about the Association is available on its website at www.bondmarkets.com.

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1. Changes to Rule G-23 Are Unnecessary and Would Be Detrimental to the Municipal Securities Market

Broker-dealers are highly regulated and play an important role as advisors to municipal bond issuers. As dealers, underwriters and advisors, broker-dealers have a wealth of knowledge of the current state of the market that they make available to their advisory clients. The Association firmly believes that Rule G-23 reflects a comprehensive and balanced regulatory approach in the relatively rare circumstances in which a regulated financial advisor steps into the role of underwriter on a particular issue of municipal securities.

When Rule G-23 was adopted, the MSRB declined to prohibit a dealer from underwriting a negotiated sale of an issue on which it acted as financial advisor, as had been proposed in the original draft rule. In adopting the Rule, the MSRB indicated that the purpose and intent of the rule could be accomplished without restricting municipal issuers' flexibility. Under the adopted approach, regulated dealers who resign as financial advisor and seek to become an underwriter on the same issuance must first provide thorough disclosure of the matter, and issuers may then make informed decisions.

Since that time, municipal issuers have only become more sophisticated with respect to the securities markets. The practice of retaining advisors in public finance developed, in part, because of a perception that municipal issuers not large enough to have a financial staff experienced in bond transactions were less sophisticated than their counterparts in the corporate world. In the corporate finance market, underwriters generally perform the functions of both financial advisor and underwriter. Today, this sophistication gap appears narrower than ever. Issuers, as a result of their increased sophistication and enhanced competition, appear to be negotiating smaller underwriter fees. In fact, in both negotiated and competitive municipal underwritings, underwriters' gross underwriting spreads are on a steady downward trend.[2] In addition, municipal issuers consistently obtain better indemnification terms from their financial advisors and underwriters than do their counterparts in the corporate world.

The MSRB revisited Rule G-23 in the late 1990s in the context of broker-dealers acting as remarketing agents for issues on which they acted as financial advisors. Again, the amendments to Rule G-23 adopted at that time addressed the issue of potential conflicts appropriately and effectively by requiring disclosures to issuers, rather than seeking to limit issuer choice.

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[2] *See* THE BOND BUYER 2005 YEARBOOK, 61 (underwriting spreads continued their downward trend from 1995-2004, and average "negotiated" deal spreads have actually declined below "competitive" deal spreads).

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Proposals to restrict the ability of regulated dealers to act as financial advisors would simply reduce competition in that area and limit the options available to issuers. There is no current data or evidence that indicates Rule G-23 is not functioning as it was intended and that a more paternalistic approach is somehow necessary to further protect issuers.[3] In fact, the advent of true price transparency has provided a wealth of information to issuers and has spurred competition. We commend the MSRB and the other securities market regulators for the effort to create a transparent and informed marketplace, as we believe it is serving well the interests of issuers and investors. Competition and informed choice are the cornerstones of the financial markets, and municipal issuers and investors should continue to garner the benefits they bring without unnecessarily restricting competition.

The proposals suggested by NAIPFA would neither increase information transparency nor rid the market of any perceived conflicts of interest. On the contrary, the NAIPFA proposals seek to reduce competition by regulated financial advisors and thereby increase the amount of business done by unregulated advisors who have no disclosure or reporting requirements. Moreover, regulation that has the effect of encouraging the use of unregulated entities could lead to an increase in the sorts of conflicts the MSRB has very effectively restricted through Rules G-37 and G-38.

2. Response to the Enumerated Questions

As part of the Notice, the MSRB has posed a number of wide-ranging questions that bear on this matter. In our responses below, we have endeavored to provide the MSRB with additional information and the perspective of industry participants, which we hope will further elucidate the points we have made above. The original questions posed are included for your convenience.

A. *Would issuers be better served if greater restrictions were placed on dealer financial advisors stepping into the role as underwriter for either negotiated or competitive underwritings? Would restrictions on dealer financial advisors serving as underwriters prove detrimental to issuers by reducing the universe of dealers able and interested in underwriting their issues? Would certain categories of issuers or issues be more adversely affected by greater restrictions on dealer financial advisors underwriting issues on which they advised?*

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[3] Indeed, the information provided by NAIPFA to the MSRB appears to be materially flawed. *See* Letter from Dan A. Black, Executive Director, *Municipal Advisory Council of Texas*, to the *Municipal Securities Rulemaking Board* (Nov. 8, 2005).

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Placing greater restrictions on who may serve as financial advisors to issuers would not better serve issuers' interests. The current legal framework of duties owed by the financial advisor to the issuer provides a more than adequate set of protections for issuers.

Although it is relatively rare for regulated broker-dealers to act as both financial advisor and underwriter on the same issue, if broker-dealers were forced to choose between advising issuers and underwriting issues, issuers would be left with fewer options. This could represent a serious hardship for issuers with less marketable issues or those faced with small, interim or short-term financing needs.

Small issuers and small issues of tax-exempt securities present particular marketing challenges. Issuers need maximum flexibility and range of choice in these circumstances to ensure their securities offerings have the greatest chance of success. In the case of very small offerings ($1 million or less) a regional or local regulated financial advisor may be the only dealer interested in marketing the bonds. Precluding such dealer from participating as either financial advisor or underwriter would likely increase the issuer's cost of funds as competition is reduced.

Likewise, imposing greater restrictions would be of concern to frequent issuers of municipal securities who must manage relationships with many financial advisors and underwriters across a range of financing projects. The restrictions could produce unwanted inefficiencies and disrupt issuer practices, which are often mandated by legislation.[4] Reducing issuer flexibility and range of choice would have an adverse impact on all issuers, and could lead to higher costs of funds for issuers.

B. *Are current disclosure requirements to issuers adequate? How and when do dealers provide such disclosures? Who receives such disclosures? What is the wording of the typical disclosure provided to issuers? Is the disclosure effective in alerting issuers to the potential conflict of interest? If the disclosure requirements are inadequate or dealers are not providing such disclosures in an effective manner, how could such disclosures be improved?*

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[4] "'As an issuer, I wouldn't want to have to terminate my contract with a dealer FA that is advising me on parking bonds but underwriting housing bonds,' [Patrick] Born[, Chairman of the GFOA Committee on Governmental Debt Management,] said. 'I would think that administering what they're suggesting might be difficult,' he said, adding that NAIPFA probably 'is assuming that issuers hire a single FA to do all of their deals.'" Lynn Hume, *TBMA Accuses NAIPFA of Promoting Self-Serving Agenda*, THE BOND BUYER Nov. 3, 2005, at 5.

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The current disclosure requirements that apply to registered broker-dealers in Rule G-23 provide for thorough disclosure to the appropriate parties. Although no comprehensive data is available, the Association understands that these disclosures are typically made to the principal officer of the issuer or those persons specifically authorized to act for the issuer in connection with the particular issuance of securities.

As these situations occur infrequently and are by their nature unique, the industry has not settled on specific language addressing the potential conflict of interest as described in Rule G-23(d)(1)(B). However, because the requirements of Rule G-23 are quite specific, we believe the disclosure practice in this area is consistent.

C. *At what point in the process does a dealer typically resign its role as financial advisor in order to underwrite an issue? Is such timing appropriate?*

Although it is not typical for regulated financial advisors to resign their roles to underwrite issues, in those instances when they do so, it is the Association's understanding that generally such resignations occur after the completion of the agreed upon advisory assignment. Given that such assignment has been completed by the advisor in accordance with its agreement with the issuer, the termination of the advisor's agreement at such time is appropriate.

D. *What, if any, potential conflicts do you believe exist when a financial advisor resigns from a single offering while continuing to advise on other issues?*

Issuers who retain financial advisors in connection with multiple concurrent issues generally are sophisticated financial market participants. While there is the potential that acting as advisor and underwriter on different issues for the same issuer could lead to confusion, given the comprehensive nature of the disclosures required under the Rule and the sophistication of such issuers, the Association believes that restricting issuer choice is unnecessary and detrimental to issuers and the marketplace generally.

E. *Should a financial advisor that resigns such position on an issue in order to underwrite that issue be precluded for a specific period of time from being able to act again as financial advisor for this issuer? Similarly, should a dealer be precluded for a period of time from entering into a financial*

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advisory relationship with an issuer after serving as an underwriter on one of this issuer's offerings of securities?

The Association does not see how further regulation that would preclude a regulated financial advisor or underwriter from working with an issuer in the other role for a defined period of time following its initial service, would benefit issuers or investors, or even address any potential conflicts of interests. To the contrary, any such preclusion would serve solely to limit issuer choice and competition among financial advisors for such period. Moreover, to the extent a municipal issuer faces an urgent interim financing need or other short-term financing situation, reducing competition and precluding the issuer from selecting certain regulated dealers could prove detrimental to the issuer.

F. *Are investors made aware of situations where dealers serving as financial advisors terminate the financial advisory relationship in order to underwrite the issue? How do investors learn of such situations? Is such information material to their investment decisions? What disclosures about such situations would investors consider material in connection with their investment decisions? How could the content or method of such disclosures be improved?*

As required under Rule G-23(h), investors are made aware in writing when the regulated financial advisor participates as an underwriter. Investors are generally informed of this in the Official Statement or in trade confirmations. The Association does not believe that such information is necessarily material to an investor's investment decision as it should not impact a credit analysis and investors may freely choose among competing coupon rates. Nonetheless, we support the disclosure of this information to investors as part of an overall transparent marketplace.

G. *Would investors by better served with greater restrictions on dealer financial advisors stepping into the role as underwriter, or would such restrictions prove detrimental to investors?*

The Association does not believe that investors will be better served by greater restrictions on the ability of regulated financial advisors stepping into the role of underwriter. Regulation that encourages the use of unregulated advisors, who face no restrictions on their ability to make political contributions to issuer officials, and to retain consultants who can do the same, would be detrimental to the municipal marketplace and investors in municipal securities.

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We look forward to discussing these issues further with the MSRB staff, and appreciate your attention to our comments. Please contact the undersigned at (646) 637-9230 or via e-mail at lnorwood@bondmarkets.com with any questions that you might have.

Sincerely,

Leslie M. Norwood
Vice President and
Assistant General Counsel

cc: ***Securities and Exchange Commission***
The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Annette L. Nazareth, Commissioner
Giovanni P. Prezioso, General Counsel, Office of the General Counsel
Robert L.D. Colby, Acting Director, Division of Market Regulation
Martha Mahan Haines, Chief, Office of Municipal Securities

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Executive Committee, Municipal Securities Division
Legal Advisory Committee, Municipal Securities Division
Syndicate & Trading Committee, Municipal Securities Division
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