

MEMO# 25265

June 9, 2011

SEC Approves MSRB Proposal to Limit Conflicts of Interest Related to Financial Advisors

[25265]

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 47-11
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 32-11 RE: SEC APPROVES MSRB
PROPOSAL TO LIMIT CONFLICTS OF INTEREST RELATED TO FINANCIAL ADVISORS

The Securities and Exchange Commission has approved a proposal issued by the Municipal Securities Rulemaking Board addressing conflicts of interest by financial intermediaries in municipal bond underwritings. [\[1\]](#) Specifically, MSRB Rule G-23 has been amended to prohibit a broker, dealer or municipal securities dealer (together “dealer”) from serving as a financial advisor to a municipal issuer on a new bond issue, sold on either a negotiated or competitive bid basis, and subsequently acting as an underwriter on the same issue.

Previously, MSRB Rule G-23 permitted a dealer to serve as financial advisor for a new issue of municipal securities; to resign from such role; and to serve as underwriter for the same issue if certain disclosure and consent requirements were met. The amended rule will prohibit this role switching. With respect to the issuance of municipal securities, a dealer financial advisor will be prohibited from (1) acquiring as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or (2) acting as agent for the issuer in arranging the placement of such issue. The same prohibition will apply to any dealer controlling, controlled by, or under common control with the dealer financial advisor. Revised Rule G-23 also will prohibit a dealer that serves as a financial advisor for a particular issue from serving as the initial remarketing agent for the same issue. Further, the amendments will eliminate the requirement that financial advisory services be provided for compensation.

Amended Rule G-23 includes several limited exceptions. For example, the rule will permit a dealer to serve as successor remarketing agent for an issue if the dealer’s financial advisory relationship with the issuer has been terminated for at least one year. It also will allow a dealer financial advisor to place an issuer’s entire issue with another government entity as part of a plan of financing by such entity for or on behalf of the dealer financial advisor’s issuer client.

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endnotes

[1] See MRSB Notice 2011-29 (May 31, 2011), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-29.aspx>.

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