



Rhode Island Health And Educational Building Corporation

November 15, 2010

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 02549-1090

RE: Proposal Rules – Issuer Review of Assets in Offerings of Asset-Backed Securities
File No. S7-26-10

Dear Ms. Murphy,

Thank you for the opportunity to comment on the proposed rules involving asset-backed securities and how they will impact the Rhode Island Health and Educational Building Corporation (“RIHEBC” or the “Corporation”) which is a state agency charged with issuing tax-exempt and taxable bonds for 501(c)(3) organizations as well as public schools.

It appears to be the Commission’s view based on the definition of asset-backed securities contained in the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, that bonds issued by RIHEBC are asset-backed securities and therefore subject to the proposed regulations unless exempted. It is therefore imperative that the securities be exempted by the Commission as Congress had encouraged.

The Corporation’s comments will focus on the areas of the proposed regulations where the practices used to issue debt in the municipal market differ from the industry practices in the asset backed securities area and how subjecting municipal issuers to the proposed rule will create difficulties and not meet the Commission’s goal of better disclosure.

In a typical financing transaction by RIHEBC, conduit borrowers are loaned the proceeds of the bond offering for their projects. The borrower is responsible for the payment of the debt and RIHEBC has no obligation for payment. In the offering statement for the bond issue information on the terms of the bond issue and related documents are included in addition to information on the conduit borrower in sufficient detail to evaluate the borrower's credit worthiness. If credit enhancement such as insurance is used for the bond issue, information about the credit enhancer is also included. Financial information about RIHEBC is not included because RIHEBC has no obligation to pay the bonds except for funds supplied by the borrower there for. RIHEBC assigns to the Trustee its rights to receive debt service payments from the borrower. The Trustee uses to loan repayments to pay interest and principal on the bonds.

In terms of the proposed Rule 193, the definitions used in the proposed regulations for the various participants in the issuance of asset-backed securities would classify RIHEBC as the Depositor, Sponsor, Issuer and Securitizer.

This means that most municipal market issuers of conduit debt would be subject to the various rules for the defined participant and the potential for inadvertent noncompliance is increased as a municipal issuer tries to complete its financing. This, despite the existence of an entirely separate regulatory regime that is already applicable to municipal debt and being reviewed by the Commission.

Third Party Reports

Typically, RIHEBC receives only two reports that could be said to be reports by third parties of their findings and conclusions after reviewing the underlying assets.

One of these reports is the opinion of bond counsel. Counsel typically provides an opinion whether the bonds have been duly authorized, executed and delivered and whether they constitute valid and binding obligations of the Corporation enforceable in accordance with their terms. These portions of the opinion do not constitute a third party report as described in Rule 193. What potentially causes a bond counsel opinion to be a third party report is its conclusion if given that RIHEBC's assignment to the bond trustee of the revenues the borrower is obligated to pay is a valid pledge of the asset.

While a potential investor would undoubtedly be interested in bond counsel's opinion, this has typically been handled by disclosing bond counsel's proposed form of opinion in disclosure materials. Generally, the Issuer is prevented from selling the bonds unless the opinion is rendered. At the time of the disclosure of the proposed form of opinion, however, the opinion does not yet constitute "findings and conclusions" because the facts on which the findings and conclusions are based have not yet come into existence. Indeed, in most cases they cannot come into existence until the funds have been advanced by the underwriter or investors to the Issuer (technically to the Trustee). Therefore it is impossible for bond counsel to deliver an executed opinion prior to the closing on the bonds, and, consequently, it will be impossible for an Issuer to deliver a bond counsel report to the Securities and Exchange Commission a week or more before the closing.

Specifically as it relates to Rule 193, the requirements that reports provided to the issuer be filed on Form ABS-15G five business days before the first sale in the offering, ignores the practice in the municipal market that bond counsel opinions, which would be subject to the filing are delivered at the closing of the bond issue and only a form of opinion is included in the offering statement. Therefore, an issuer could not include it in Form ABS-15G. If an opinion is required to be filed before the sale it would provide little comfort to the investor and increase the cost of the financing. It also appears to require pre-filing of information for a municipal bond offering which was never the stated intent of the Commission.

Asset Pools

In proposed Rule 193, it is unclear whether a pool consisting of a single asset or a series of assets related to a single obligor is a "pool asset." In some bond issues multiple series are offered for the same obligor/borrower. Offerings for single obligors/borrowers should not be subject to the rule when prospective investors have the same access to material information concerning the borrower as they would have if the borrower borrowed directly from them and when the borrower (not RIHEBC) is the party with any continuing disclosure obligation under Rule 15c2-12 (or would be the only obligated party if Rule 15c2-12 applied to the bond transaction).

Also the typical offering statement by RIHEBC and other conduit issuers contain sufficient information for an investor to make a credit judgment about the "obligor" or multiple "obligors". Even in credit enhanced transactions there is sufficient information about the underlying conduit borrower for the investor to make an evaluation.

Recommendation

Since the Commission has the ability to exempt issuers from the filing requirements imposed by Rule 193 and recognizing the goal of Rule 193 was to provide better disclosure and protect the investors, the Commission should exempt governmental issuers if their offerings are for conduit borrowers/obligors

within their governmental boundaries and that the offering material contains information relating to the creditworthiness of each borrower and obligor.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "R. E. Donovan", written in a cursive style.

Robert E. Donovan
Executive Director