

MEMORANDUM

TO: File No. S7-45-10

FROM: Cyndi N. Rodriguez
Counsel to Commissioner Walter
Office of Commissioner Walter

DATE: July 6, 2011

RE: Meeting with Representatives of the National Association of Independent
Public Finance Advisors (NAIPFA)

On June 2, 2011, Cyndi Rodriguez and Lesli Sheppard, counsel to Commissioner Elisse B. Walter, and Alicia Goldin, Special Counsel, Office of Chief Counsel, Division of Trading Markets met with the following representatives of NAIPFA to discuss the Commission's proposed rules for the registration of municipal advisors:

Steve Apfelbacher, Senior Financial Advisor/President, Ehlers; Larry Kidwell, President and Founder of Kidwell & Company; and Thomas G. Johnsen, CIPFA, Principal.

The representatives also presented the attached document during the discussion.

National Association of Independent Public Finance Advisors



NAIPFA Municipal Advisor Regulation Talking Points
Securities Exchange Commission

June 2, 2011

- The Dodd-Frank Act was enacted for the specific purpose of protecting municipal issuers. Much of the evidence that compelled Congress to act involved issuers being taken advantage of by broker-dealers who led issuers to believe they were advisors when they were not.
- Dodd-Frank imposes a federal fiduciary duty on those who provide advice to municipal issuers, but it excludes dealers serving as underwriters from the definition of municipal advisor.
- The Commission, in the context of adopting registration requirements, will determine to a significant extent the scope of the underwriter exemption.
- The Commission, through oversight of the MSRB's rulemaking, will influence the rules governing the behavior of broker-dealers acting as underwriters and broker-dealers acting as financial advisors.

NAIPFA's goal is to assist the Commission in its rulemaking and oversight by providing real-life examples and information about market participants and how they interact. We believe comment letters to rules as they are proposed are useful but that direct communication with MSRB Board members and SEC Commissioners is essential to express our concerns about the entire regulatory scheme being proposed. NAIPFA's intent is to help establish rules that make the different roles of the advisors and underwriter clear and understandable to the issuer and to establish a level playing field for underwriters and advisors.

NAIPFA's concern is that the initial rules proposed by the Commission and MSRB will not change the most problematic aspects of both the business model of the broker-dealer underwriters and their activities. The proposed SEC and MSRB rules do not protect issuers. Rather they perpetuate or create confusion among issuers because they:

- Create the impression that financial advisors have multiple conflicts with the issuer when in fact the advisor is a fiduciary obligated to act in the client's best interests.
- Allow the broker-dealer underwriters generally to continue business as they did before Dodd-Frank even when the interests of the underwriter are in direct conflict with the issuer.

This concern is based on the fact that:

1. The SEC's proposed registration rule does not clearly limit underwriting activity to purchasing and distributing the securities being offered as Dodd-Frank requires.
2. Proposed Rule G-23 permits a broker-dealer acting as an underwriter to provide the same kind of advice with respect to the issuance of municipal securities that an independent financial advisor provides, except without the fiduciary duty that applies to the independent advisor.

3. MSRB proposed Rules G-36 and the interpretive guidance for that rule and Rule G-17 impose significant disclosure obligations on independent advisors but minimal disclosure obligations on broker-dealers serving as underwriters.

NAIPFA is also concerned that

- there is an apparent absence of coordination between the MSRB and CFTC in addressing similar issues with similar parties; and that
- many of the rules proposed will impose significant costs on independent advisors, who tend to be small businesses with limited capacity to take on burdensome compliance requirements.