
George K. Baum & Company

INVESTMENT BANKERS SINCE 1928

December 20, 2011

Chairman Mary L. Schapiro
U.S. Securities and Exchange Commission
100 F Street, NE
Room 10200
Washington, DC 20549

Alan Polsky, Chair
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 660
Alexandria, VA 22314

Re: Traditional Municipal Advisory Activities Performed by Underwriters

Dear Ms. Schapiro and Mr. Polsky:

George K. Baum & Company is a Broker/Dealer registered with the SEC, FINRA and the MSRB. We have been in business for more than 80 years. Our primary business since our inception has been municipal finance. With offices in 13 states, we provide both underwriting and financial advisory services to municipalities and not-for-profit entities throughout the country.

We are writing to you to express our concern with potential unintended consequences from a limited portion of the published correspondence dated November 9, 2011, sent by Mr. Polsky, in his capacity as Chair of the MSRB, to Ms. Schapiro, in her capacity as Chair of the SEC, regarding traditional municipal advisory activities (hereinafter, the "November 9th Letter"). The November 9th Letter was in furtherance of discussions between senior staff at the SEC and the MSRB regarding the failure by certain market participants to register as municipal advisors when performing municipal advisory services. The MSRB attached a list of traditional municipal advisory activities to its November 9th Letter, for the Commission's consideration as it finalizes its definition of "municipal advisor" as part of its permanent municipal advisor registration rule. The MSRB duly noted that the list was not intended to be an exhaustive list of all municipal advisory activities under Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). According to the MSRB, the list instead was intended to describe a range of those municipal advisory activities for which the MSRB believes there can be little dispute that they were intended to be covered by Section 975 of the Dodd-Frank Act.

The November 9th Letter also noted that, in the course of performing their underwriting duties, underwriters appropriately perform many of the listed traditional municipal advisory activities, and particularly those that the MSRB listed as "transaction-related services," as "integrally related activities necessary to fulfilling their function in a

profession manner, consistent with the exception for underwriters in the definition of a municipal advisor under Section 975 of the Dodd-Frank Act." We agree.

Our concern is that the list of "Traditional Municipal Advisory Activities" attached to the November 9th Letter might be misconstrued to be more limited in scope than the more encompassing statement in the body of that letter. That attached list designates (by asterisk) *only* the listed "transaction-related services" as those that underwriters also appropriately perform. In our opinion, that asterisk and related footnote can lead to an unintended, overly narrow view of the appropriate services underwriters perform and be consistent with the exception for underwriters in the definition of a municipal advisor under Section 975 of the Dodd-Frank Act.

As the MSRB stated in the body of its November 9th Letter, the listed "transaction-related services" that underwriters traditionally perform "particularly" fall within and are consistent with the underwriters exception to the definition of a municipal advisor under Section 975 of the Dodd-Frank Act. But MSRB Rule G-23 makes no distinction between the activities of financial advisors and the activities of underwriters. Specifically Rule G-23 states, "For the purpose of this rule, a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consulting services to or on behalf of an issuer with respect to the issuance of municipal securities, *including advice with respect to the structure, timing, terms and other similar matters concerning such issue*." (emphasis added) Rule G-23 also states, "For the purpose of this rule, a financial advisory relationship shall *not* be deemed to exist when, in the course of acting as an underwriter and not as a financial advisor, a broker, dealer or municipal securities dealer renders advice to an issuer, *including advice with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities*." (emphasis added)

The fact that the exact same list of activities is provided in the definition of a financial advisory relationship and also in the list of the activities covered by the underwriter exception provides clear guidance that underwriters and financial advisors can provide the same services as long as the issuer clearly understands the role of the service provider. Specifically referring to the November 9th letter, it is also appropriate for underwriters to perform many of the other listed activities, including but not limited to the listed "derivatives services", "post issuance services" and "strategic services", as long as they are "integrally related activities necessary to fulfilling their function in a professional manner". For example, as part of "integrally related activities" of certain specific transactions, underwriters traditionally engage in interest rate swaps or related swap advisory services, or assist issuers with services in connection with investing bond issue proceeds. Indeed, the Interpretive Notice for Rule G-23, dated November 27, 2011, states, "it shall not be a violation of Rule G-23(d) for a dealer that states that it is acting as an underwriter with respect to the issuance of municipal securities to provide advice with respect to the investment of the proceeds of the issue, municipal derivative integrally related to the issue, or other similar matters concerning the issue." We believe that the

MSRB has sufficiently addressed prohibitions on underwriters acting as financial advisor for the same issue and has proposed expanded disclosures for underwriters on potential conflicts of interest that may exist in the various services that underwriters provide.

In constructing a definition of "municipal advisor" in the context of the underwriters exception to such definition, we encourage the SEC to take the more inclusive and pervasive view referenced in the body of the MSRB's November 9th Letter, encompassing underwriting activities that include, but are not limited to, all of the activities on the list attached to that letter, not just those particular activities listed under the "transaction-related services" heading. Doing so will not give rise to any additional, unmitigated risk, as underwriting activities already are adequately addressed by the MSRB under MSRB Rule G-23 and the pending interpretive notice under MSRB Rule G-17.

Thank you for your time and consideration.

Respectfully,

Robert K. Dalton
Vice Chairman
George K. Baum & Company

cc: Elisse B. Walter, Commissioner
U.S. Securities and Exchange Commission

Robert Cook, Director
U.S. Securities and Exchange Commission
Division of Trading and Markets
cookr@sec.gov

David S. Shillman, Associate Director
U.S. Securities and Exchange Commission
Division of Trading and Markets
shillmand@sec.gov

Jennifer B. McHugh, Senior Advisor to the Chairman
U.S. Securities and Exchange Commission
mchughj@sec.gov

Victoria Crane, Branch Chief
U.S. Securities and Exchange Commission
Division of Trading and Markets
cranev@sec.gov

Mary Simpkins, Special Counsel
U.S. Securities and Exchange Commission
Division of Trading and Markets
Office of Municipal Securities
simpkinsm@sec.gov

Peg Henry, General Counsel, Market Regulation
Municipal Securities Rulemaking Board
phenry@msrb.org

Mike Nicholas, Chief Executive Officer
Bond Dealers of America
mnicholas@bdamerica.org

Dana L. Bjornson
EVP, Chief Financial and Compliance Officer
George K. Baum & Company