KIDWELL & COMPANY
INVESTMENT BANKERS SINCE 1987

March 21, 2011

DELIVERED VIA EMAIL ATTACHMENT

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File No. SR-MSRB-2011-03

Dear Secretary Murphy:

Kidwell & Company is an independent Municipal Advisor ("MA") registered with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board ("MSRB") that is headquartered in Brentwood, Tennessee. Our firm is fully compliant with all SEC and MSRB rules and regulations issued to date. The firm was founded in 2001 and will celebrate a decade of service to municipal issuers this year. Prior to the founding of the firm, I was employed by bank and broker dealers firms; subject to regulation by various authorities while meeting professional qualifications requirements having taken and passed the Series 6, 7, 52, and 63 examinations; and this marks my 24th year of providing municipal advisor/ investment banker services to municipal issuer clients.

Our firm has, and continues, to support legislative and regulatory efforts with respect to Municipal Advisors as defined by the Dodd-Frank Act (the "Act") and we believe such actions can provide for a more disciplined, knowledgeable, accountable industry for the issuers of municipal securities and the investors that provide the capital for their many endeavors. We continue to question whether the rules written to govern the industry will place the interests of issuers, investors, and the public trust before those of well-funded special interests.

MSRB PROPOSED AMENDMENTS TO RULE G-23 AND GUIDANCE:

On February 9, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC") a proposed rule change (the "proposed rule change") consisting of (i) proposed amendments to MSRB Rule G-23 (on activities of financial advisors) (the "proposed amendments") and (ii) a proposed interpretation of Rule G-23 (the "proposed interpretive notice").

The MSRB requested that the proposed rule change be effective for new issues for which the time of formal award as defined in MSRB Rule G-34 (a)(ii)(C)(1)(a) occurs more than six months after SEC approval to allow issuers of municipal securities time to finalize any outstanding transactions that might be affected by the proposed rule change.

Concurrently, with the issuance of the proposed Rule G-23 change the MSRB released "Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists Under Rule G-23 (the "Guidance")."

STATUTORY DEFINITION; UNDERWRITER EXEMPTION; AND FIDUCIARY DUTY:

Securities and Exchange Commission Release Number 34-63576; File S7-45-10 states Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines the term Municipal Advisor to mean a person (who is not a municipal entity or employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity. The Release further states the statutory definition of a Municipal Advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. The release specifically states the definition of a Municipal Advisor includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that engage in municipal advisory activities.

The Release states the definition of a Municipal Advisor explicitly excludes "a broker, dealer, or municipal securities dealer serving as an underwriter," as well as attorneys offering legal advice or providing services that are of a traditional legal nature and engineers providing engineering advice. The Release further states the definition of a Municipal Advisor excludes "any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice" and "any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps."

The Release states that consequently, the statutory definition of Municipal Advisor includes distinct groups of professionals that offer different services and compete in distant markets. The three principal types of Municipal Advisors are stated in the Release to be (1) financial advisors, including, but not limited to, broker dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a Municipal Advisor); and (3) third party marketers and solicitors.

Section 15B(c)(1)of the Securities Act of 1934 was amended by Dodd Frank to prove "a municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is contravention of any rule of the Board."

DODD-FRANK; PROPOSED RULE G-23; AND CONFLICTS OF INTEREST:

The current financial crisis was caused in part by the acts of termed financial advisors who acted to serve various entities while engaged in conflicts of interest that were either undisclosed, or disclosed and misunderstood, by debt issuers, borrowers, and investors. While conflicts of interest may have

been disclosed to issuers, we believe it evident many did not fully understand the meaning of how their interests could be adversely affected by permitting such conflicts of interest to exist. Many issuers did not understand the implications associated with firms they trusted to represent their interests in transactions being engaged to serve in multiple capacities such as underwriter, remarketing agent, liquidity agent, credit enhancement provider, swap advisor, swap broker, or swap counterparty where transaction interests were not aligned and gain to such firms was at direct or indirect expense to tax and rate payers.

It is now apparent municipal issuers did not have a proper understanding of the nature of disclosed conflicts of interest; fact financial firms were wearing multiple hats in transactions; how disclosed conflicts could adversely affect the interests of tax and rate payers; risks associated with certain transaction types; capacity to measure, metric, and manage such risk; total amount of fees paid to financial firms; capacity to observe when associated rates of interest were higher than market competitive; or the massive costs associated with termination and/or continuance of certain financial structures and instruments. We would suggest that it was the intent of the Act to eliminate actual or perceived conflicts resulting from the actions of financial entities to represent more than one interest in a transaction and to provide for protections for issuers, investors, and the public trust to safeguard against such conflicts in future years.

We believe MSRB proposed Rules G-23 and G-36 are inexorably bound and evaluation of each should be taken in consideration of both rules. We believe the intent of the Act regarding proposed Rule G-23 is clearly evidenced by that part of the law which requires for there to be a fiduciary duty of municipal advisor to issuer. A fiduciary duty is deemed to exist when an individual or entity justifiably reposes its confidence and trust in another individual or entity to represent its interests. Individuals may repose their confidence in an individual or entity and allow conflicts of interest to exist while accepting the associated risk of loss of monies that are private. Corporations and private businesses may repose their confidence in an individual or entity and allow conflicts of interest to exist while accepting associated risk of loss of monies that are private. State and local governments and their instrumentalities should be held to a different and higher standard because the risk associated with loss due to conflict is of public monies where the officials responsible for the allowance of conflict bear no personal financial responsibility in association with such actions.

How would the municipal marketplace be affected differently if municipal issuer officials were required to repay the public trust all monies lost due to decisions made to allow for conflicts to those of tax and rate payers to exist? What if the decision was to let their good friend serve as underwriter while providing municipal advisor services, but in order to do so the issuer official was required to pledge all personal assets to repay the government for any losses sustained? Would the decisions of municipal issuers regarding the allowance of conflicts be affected? Would issuer officials be less likely to subject the public trust to conflicts that may result in personal loss? We submit it is in the answers to these questions that the will and intent of the Act are clearly visible.

DODD-FRANK AND MUNICIPAL SECURITIES DEALERS:

It is entirely understandable that firms which have served in multiple capacities in transactions in years past while earning multiple fees do not wish to see those fees reduced or eliminated. These firms have carefully constructed revenue models and are staffed with public finance bankers tasked with the responsibility to produce proprietary underwriting and trading product to attain targeted levels of

profitability. The pressure exerted by stockholders and management to attain profitability targets is tremendous and we believe such pressure has led issuers into financial products for which they are not well suited which have proved very costly to the public trust. Also, it is our belief that the revenue models at bank/broker dealer firms are not well suited to continue to meet profitability expectations in an environment where municipal advisor fees would otherwise replace proprietary underwriting and trading income.

We believe that here enters the rationale and reason for confusion in MA definition; the underwriter advisory exception; absence of fiduciary duty requirement for underwriters providing advice; and delay in timeline for effective date contained in the proposed MSRB Rule G-23 and Guidance. The functioning of a vibrant, healthy, and profitable municipal securities dealer community is essential to the marketplace. As an independent MA our firm and our clients benefit from a strong and active bank/broker dealer community. To do other than stipulate to this reality would be less than forthright. However, business revenue construct issues should be addressed by businesses and the market in an open and straight forward manner and not through the implementation of rules by regulatory authorities.

One of the greatest costs associated with any enterprise is the cost of getting something wrong the first time. Rules should not be allowed to perpetuate a culture of subterfuge. We believe it was the intent of the Act to eliminate abuses in the marketplace and it is only fair to the interests of issuers and the public trust that the requirements of new rules be applied in accordance with the law. Anything less than this would be less than worthy of the public trust.

DISCUSSION OF MSRB PROPOSED AMENDMENTS TO G-23 AND GUIDANCE:

The proposed MSRB Rule G-23 and Guidance together function to confuse the intent of the Act. In the proposed format MSRB Rule G-23 and the Guidance function to prolong the effective date of the law. We assert the intent of the Act is to encourage a municipal marketplace that is more fair, competitive, and transparent and all rules written by the MSRB should seek to achieve this intent.

We believe in the proposed format Rule G-23 and the Guidance serve to effectively:

1. undermine the will of the Act to adhere to clear lines of delineation between interests that are public and private;
2. promote the perpetuation of a culture of conflict the Act intended to eliminate;
3. create loopholes for bank/broker dealers to continue to serve in multiple roles and represent conflicting interests in transactions;
4. avoid the intent of the Act to implement an effective fiduciary duty for Municipal Advisors who are bank/broker dealers;
5. establish confusion and perplexity versus clarity and precision as baseline for interpretation of the rules;
6. invite opportunity for continued abuses of municipal issuers now and in the future;
7. conflict directly with the stated mission of the MSRB which is to protect the interests of issuers, investors, and the public trust and not those of bank/broker dealer community rather than those of issuers, investors, and the public trust.

The intent of financial regulatory reform and the municipal provisions of the Dodd-Frank Act will be unattainable if new age rules are allowed to be implemented that do not address real problems and allow for the continuance of the problems which have existed in the past. For all of the reasons stated above, we believe the proposed MSRB Rule G-23 and Guidance do not reflect the intent of the law.

SUMMARY:

It is now estimated that it will cost $6.5 Billion to (i.e. $4.8 Billion from taxpayer funds and $1.7 Billion in fees charged by regulatory agencies) and the addition of 5,000 employees to the federal government to implement financial regulatory reform. Will these funds be expended to achieve an effective reiteration of the processes that led to problems in the municipal and financial markets in years past? Will the SEC mandate that MSRB rules rightfully position the needs of issuers, investors, and the public trust in front of those of the special interests of financial firms? Will the SEC send back for reconsideration those MSRB Rules which do not achieve the intent of the Act?

We urge the SEC to act decisively and ardently encourage the elimination in entirety of (1) the final sentence of paragraph (b) of the proposed MSRB Rule-23 and (2) the Guidance issued in association with the proposed Rule G-23. It is in the long term best interests of issuers, investors, and the public trust for clear lines of delineation to be established between the various interests in, and parties to, municipal securities transactions. We believe such to be the intent of the Act which will be preserved by rules if written to serve its means. We believe the result will be a stronger more vibrant and competitive marketplace for all participants.

Sincerely,

Larry Kidwell, CIPFA®
President
Kidwell & Company Inc.