

My 19 year public finance career has comprised nearly equal parts financial advisor, investment banker, capital markets professional, and now owner/operator of a public finance-focused financial analytics firm. We're concerned about the murkiness that currently exists in the practical application of MSRB Rule G-17 specifically related to disclosure of payments to third parties.

Under the Conflicts of Interest section on page 9 of the text of proposed rule change specifically under Payments to or from Third Parties it states,

"The MSRB views the failure of an underwriter to disclose to the issuer the existence of...payments made by the underwriter in connection with such new issue to parties other than the issuer...to be a violation of the underwriter's obligation to the issuer under Rule G-17. For example, it would be a violation of Rule G-17 for an underwriter to compensate an undisclosed third party in order to secure municipal securities business."

In an age of increasingly modularized and potentially outsourced work, this strikes us as unworkably broad in practice. We generally believe the intent of G-17 is that payments to those who carry some level of influence with an issuer and who have advocated on the underwriter's behalf in securing municipal securities business must be disclosed. However, the statement is far more open than that and we believe may be interpreted to encompass a broad array of other professional services that happen in the standard course of municipal securities business. Seven examples are listed below:

- 1) Underwriter hires former County Commissioner to introduce Underwriter to current Chair of Commission
- 2) An offshore firm performs data-entry and/or Issuer specific research used by Underwriter to complete a response to Issuer request for proposals
- 3) An accounting firm is engaged by Underwriter to perform verification review of the refunding scenarios generated for a presentation to Issuer
- 4) Same as 3. but accounting firm is engaged during deal pricing; either as a single fee for service or as part of an ongoing retainer relationship
- 5) Same as 3) and 4) but instead of accounting firm, professional service is external tax counsel
- 6) A financial analytics firm is hired to run (re)financing scenarios used in Issuer presentation; fee for service or as part of retainer relationship
- 7) A courier service is used to deliver black binder clips from a local office supply store to Underwriter; black binder clips are a requirement for submission of the three copies of Underwriter's response to request for proposals

The one item above where G-17 is very clear in its application is item 1). The other examples are services that must be performed more or less during the course of business as an underwriter of municipal securities and we believe are less obvious, particularly once you get to item 7). Whether those functions are performed by in-house resources versus outsourced service providers would not seem to be the intention of the disclosure requirements under G-17 though as currently written, it remains vague. All of the services above listed above could be interpreted to be compensated third parties used to secure municipal securities business.

Put simply, the reason public finance departments exist is that they “secure municipal securities business,” and they pay many third parties in order to achieve that result. Where is the line drawn for G-17 disclosure? Again it seems the intent is to address a certain set of third parties, particularly those that have a direct relationship with an issuer. That said it occurs to us that this is not just any relationship; the courier in 7) above could also have a relationship with the Issuer. It is a relationship with the Issuer which could be leveraged to help the Underwriter specifically secure municipal securities business. We believe refinement must be provided in order to make this standard functional in practice.

We also believe clarification is required to understand how the application of the rule changes, if at all, in the case of attracting new business (i.e. responding to requests for proposals) versus actually working on a live, mandated deal.

We support the MSRB’s work and mission and if helpful, would be happy to further discuss the comments contained herein.

Sincerely,

Peter C. Orr, CFA
President
Intuitive Analytics LLC