

**WULFF, HANSEN & Co.**

ESTABLISHED 1931  
INVESTMENT BANKERS

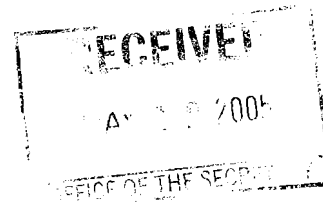
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May 6, 2005

Mr. Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, D.C. 20549-0609



Re: File Number SR-MSRB-2005-04

Dear Mr. Katz:

Wulff, Hansen & Co. is a 74-year-old broker/dealer operating primarily in California, with a business focused on public finance and the municipal bond markets. We strongly support the MSRB's proposal to ban the use of unregulated and unsupervised consultants as a means of obtaining municipal securities business.

We recognize that the use of such consultants could, in a perfect world, benefit both issuers and broker/dealers. Unfortunately, we do not live in such a world and we believe that the social and economic costs of the present system (in the form of overt pay-to-play, more subtle forms of influence peddling, or similar undesirable practices) have come to outweigh the benefits. Those who assert disbelief that such practices exist in connection with the large amounts of money flowing to and through unsupervised consultants are being either disingenuous or incredibly naive.

Those who profit from the present arrangements would have the Commission believe that such consultants are a necessary part of business acquisition and that requiring solicitors to be controlled and regulated as professionals would be unworkable. We accept neither of these assertions, for reasons outlined below.

**Are Consultants Required for the Conduct of Business?**

The answer is no. We have, over the years, underwritten hundreds of issues and raised billions of dollars for municipal issuers without the use of unregulated mercenaries. So have many, many other firms. It happens every day, all across America. This is indisputable. The proposed rule change would level the playing field and allow firms to compete only on the merits, without recourse to any of the sometimes questionable influences and pressures which are too often associated with some of these "finders".

We believe that consultants are generally hired for their ability to use non-business influence to affect business decisions which might otherwise be made in a neutral environment. If one examines the various G-38 filings on the MSRB website, and does a bit of research into the named consultants, it appears likely that many, perhaps most, of them may well be chosen for their connections and what in politics is known as “access”, rather than for their qualifications for helping issuers get the best possible assistance in their financing.

The proposition that, without these unregulated consultants, issuers in need of financing would be unable to find an investment banker to help them seems more than a little far-fetched. In our experience, the supply of municipal underwriting and financial advisory services is generally sufficient to meet the market’s demands. If we are mistaken in this belief, and elimination of consultants left a large number of issuers wandering hopelessly in search of scarce investment bankers, we are highly confident that the securities industry would rise to the occasion by creating additional supply.

We believe it noteworthy that, unless we have overlooked something in the filings, no public officials have come forth with comments opposing the rule change. If the present system were legitimately vital to the issuers, one would expect them to speak out for its continuation.

### ***Is the “Affiliated Person” Requirement Unworkable?***

The MSRB’s abandonment of the “associated person” requirement in favor of “affiliated person” has addressed the legitimate concerns in that area. The new requirement is less strict than those applied by NASD rules to non-exempt business, and those rules do not appear to have crippled the industry or otherwise rendered it unable to provide investment services to those who desire them. This real-life evidence does not support the assertion that the proposal’s restrictions would be unworkable or would do irreparable harm if applied to solicitation of municipal securities business.

We recognize that certain questions of supervision, control, and responsibility may still arise, but believe they can be addressed through proper guidance and interpretative releases. Related questions have been successfully answered in the non-exempt segments of the industry, and indeed in other regulated fields of endeavor, and we see no inherent barrier to successfully implementing such a change in the municipal securities area.

### ***Other Issues:***

- We support the retention of the current exemption for certain technical service providers, but strongly recommend that additional safeguards be included. In order to avoid creating a “loophole” in the restrictions, *dealers employing such exempt service providers should be prepared to demonstrate, upon request,*

*that the technical services were actually provided and that the compensation for the services was reasonable in light of all the facts and circumstances. Absent such requirements, it will be all too easy for such "technical services" to be rendered in exchange for fees which are clearly in excess of their value, thus allowing payments which were, in reality, being made for the procurement of business rather than for the actual services provided.*

- We also agree with the several commentators who point out that a way must be found to apply similar rules to entities other than broker/dealers. However, this is not a reason to abandon the MSRB proposal. The process must start somewhere and the MSRB is the appropriate organization to address this matter with regard to broker/dealers.
- While understanding the concern over communications which might appear, at first blush, to be solicitations but which truly are not, we are confident that interpretive guidance can allow the industry to avoid any potential problems in that area. The new rule is no more problematic in this regard than is the existing G-38.
- The argument that the proposal is unconstitutional (with which we tend to agree) need not be considered here; it can and should be decided in the courts.

We do not doubt that the proposals would benefit both the public and much of the industry. However, we also understand that the existing arrangements have powerful and vocal constituencies. Should it prove politically impossible to implement the proposed changes as they are currently written, we believe that a reasonable "second-best" would be to (a) Apply the standards of Rule G-37 to political contributions by independent consultants, and (b) Prohibit consulting arrangements involving "performance-based" fees in which the consultant's compensation is tied directly to his success in obtaining a particular piece of business. *Such arrangements create exactly those conflicts of interest which regulation and licensing are intended to control.*

Thank you for the opportunity to express our support for the proposal as it stands.

Very truly yours,



Chris Charles  
President

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