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Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

VIA ELECTRONIC DELIVERY

Dear Mr. Smith:

In its Request for Comment 2019-13 ("RFC"), the MSRB seeks input from market participants on the value and function of MSRB G-23 ("G-23") with respect to the activities of dealers acting as financial advisors. Columbia Capital Management, LLC is a non-dealer financial advisor, primarily serving issuers and borrowers in the Midwest, California and Hawaii.

As the RFC notes, the effect of G-23 was strengthened following the Dodd-Frank Act's creation of a statutory duty for municipal advisors, recognizing that the inherent conflict created when a dealer serves as both a financial advisor and underwriter with respect to the same municipal securities offering is too significant to be resolved through disclosure alone.

Columbia Capital submits that G-23 is functioning as intended. In fact, the MSRB should consider strengthening G-23, in particular as it relates to smaller and infrequent issuers. Dealers still appear to be providing advice as is evidenced by the number of bond issuances, including bond refundings, completed by smaller and infrequent issuers without a municipal advisor involved. One need only to look at the flurry of negotiated transactions, including numerous advance refundings, during November and December 2017, triggered by legislative changes to tax law, that were executed without municipal advisors. According to Bloomberg, there were 63 negotiated transactions in Missouri between November 1 and December 31, 2017. Of these, Bloomberg coded 33 as refundings. Of those 33, only five (15%), had a financial advisor involved.

Role-switching is detrimental to municipal issuers and obligated persons because it creates a fundamental conflict of interest. For example, although MSRB guidance on G-23 permits dealers to provide "plain vanilla" refunding analysis as general market information, the underwriting exclusion is not triggered until an issuer determines to undertake a transaction. The answer to, "do we do this refunding now or do we wait?" is almost certainly "advice" and likely an MSRB G-42 "recommendation" due to its call to action nature.

Our specific responses to certain questions raised in the RFC follow:

1. **What has been the experience of issuers, dealers, municipal advisors, and other market participants with respect to Rule G-23's prohibition on role switching since the 2011 amendment? Has the rule been effective in achieving its primary purpose of addressing the conflict of interest that exists when a dealer acts as both a financial advisor and an underwriter with respect to the same issue?**

   In our practice, we find most dealers take their obligations under G-23 seriously and seek to find the proper exemption or exclusion when they wish to provide more than general market information. Anecdotally, we believe abuses persist, particularly for smaller or infrequent issuers/borrowers that are not aware of the anti-role switching protections or are unclear what statutory duty is imposed on a dealer providing advice under an exemption/exclusion versus a municipal advisor.

   Our clients routinely provide a path for direct dealer interaction via the IRMA exemption and resolution of the required IRMA paperwork is generally quick and streamlined. As a firm, we believe the intent of the MA Rule was to ensure this free flow of information. Our practice is to work collaboratively with dealers through the IRMA exemption to provide them with the issuer access they request.

2. **Have small and/or infrequent issuers experienced any particularized benefits or costs, such as limited choices among financial advisors or underwriters or placement agents serving their market, due to Rule G-23's prohibition on role switching? Does Rule G-23 strike the right balance between issuer protection and issuer choice?**

   The MA market remains robust and highly competitive, even for small and infrequent issuers. We do not believe G-23 imposes any additional burden or constraint on small or infrequent issuers and, in fact, provides a level of protection to the issuers and borrowers that can benefit most from the involvement of a fiduciary on their transactions. We do not believe G-23 constrains issuer choice.

5. **Does Rule G-23 prohibit any activities that would be permitted under the SEC's municipal advisor rules in ways that are contrary to the regulatory purpose underlying the rules? For example, does Rule G-23 unduly impede the activities of dealers operating under an exclusion or exemption from registration under the SEC's municipal advisor rules?**
   Our experience is that the exclusions and exemptions regime provides more or less unfettered access from dealers to issuers and borrowers. The separation of advice from execution is the only way to ensure issuers and borrowers understand the motivations of the parties providing them with advice. We do not believe G-23 prohibits activities that would be beneficial to issuers and borrowers.

6. **Should the MSRB make any amendments to the Role Switching Exceptions? For example –**

b. **Should Rule G-23 provide an exception to a dealer that avails itself of any of the exclusions or exemptions under the SEC's municipal advisor rules, such as the IRMA exemption?**
   No. The purpose of the exceptions and exclusions is to provide clearly understood, documented and legitimate avenues for the free-flow of market information without sacrificing the clear distinction between advice and execution. Returning to pre-G-23 days where dealers could simply change roles with a resignation letter, in this case adding the minor speed-bump of an additional disclosure to achieve the same result, obviates the intent of G-23, runs counter to the direction of the SEC and returns our market to one where conflicts abound.

c. **Should Rule G-23 provide an exception for competitive bid underwritings? If so, should such an exception be limited to small issuances (e.g., $15 million or less in aggregate principal amount)?**
   No. Respectfully, the underlying assumption of this question is that competitive sales magically appear in the market without thought or the need for G-42 "advice." Competitive sales should result from carefully constructed notices of sale that reflect the specific needs of the issuer or borrower, anticipated market conditions at the time of sale, tailored call provisions, and thoughtful bid restrictions to accommodate other constraints (voted limitations on par amount, policy restrictions on savings levels, the creation or preservation of imbedded call option value, etc.) A dealer constructing a notice of sale and then having the opportunity to bid on it has the incentive to structure the bid constraints in a way that benefits its approach to competitive offerings, reducing the potential value of competition to the issuer/borrower.

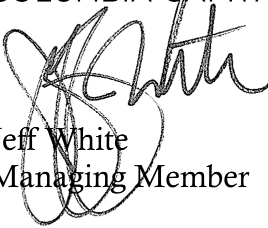
   The threshold concept also presumes that small/infrequent issuers and borrowers are less worthy of independent advice than other issuers and it certainly fails to consider the differences in markets across states. According to Bloomberg, of the 87 publicly offered issues in Kansas during the first half of 2019, 70 had par amounts less than $15 million. Of these 87 transactions, 55 were offered competitively and 46 of those competitive sales (84%) had par amounts less than $15 million.

d. **Should Rule G-23 provide an exception for a dealer financial advisor if it disengages as financial advisor and a successor financial advisor is engaged by the issuer? If so, should the rule impose a cooling off period?**
   No. We think this situation would be rife for abuse and likely deprive governmental issuers of their statutory right to advice under a fiduciary standard. How is the cooling off period documented and when does the clock start? Is there a blackout during the cooling-off period? Under what standard is the dealer operating when it says to the issuer, "I'd really like to work on this deal for you but we have to wait until the one-year anniversary of this conversation to do so"? In this circumstance, would the dealer be held to a fiduciary duty for its advice to wait or only to a fair dealing standard if the timing of the transaction ended up having negative consequences for the issuer?

9. **Rule G-23's prohibition on role switching applies on an issue-by-issue basis. Does this standard continue to be appropriate? Should the prohibition be broader or narrower? Should the MSRB provide interpretive guidance regarding what constitutes an "issuance" for this purpose, and if so, how should it be defined?**
   The issue-by-issuer approach strikes the right balance, permitting dealers flexibility to choose their desired role for an issuer.

We appreciate the opportunity to comment.

Respectfully submitted,
COLUMBIA CAPITAL MANAGEMENT, LLC



Jeff White
Managing Member