LEWIS YOUNG
ROBERTSON & BURNINGHAM, INC.
AN INDEPENDENT MUNICIPAL FINANCIAL ADVISORY
AND CONSULTING FIRM

August 7, 2019

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

Re: MSRB Notice 2019-13, Request for Comment on MSRB Rule G-23

Ladies and Gentlemen:

Lewis Young Robertson & Burningham ("LYRB") is pleased to submit comments on the above-referenced Notice.

LYRB is an independent financial advisory firm which has elected, since its inception 23 years ago, to be regulated as a broker dealer and, therefore, has been and remains subject to MSRB regulations. We are now also registered as a municipal advisor with the Securities and Exchange Commission and the MSRB pursuant to Rule 15Ba1-2 of the Commission.

LYRB does not underwrite or purchase securities for our own account or for sale to others nor do we carry customer accounts of any kind. We do not participate as a co-manager or member of selling groups and do not act as a remarketing agent. We are a major financial advisor in the State of Utah and work in some other states as well. LYRB has acted as a financial advisor on hundreds of transactions with a volume of over $12 billion. These transactions run the gamut from small to large, and include general obligation bonds, various types of revenue and tax backed bonds, revenue and bond anticipation notes, and taxable and tax-exempt bonds in both fixed rate and variable rate structures.

The Request for Comment on Rule G-23 ("Request for Comment") generally invites consideration of the subject matter of Rule G-23, in light of current practice and Rule G-42. We herein outline preliminary thoughts. More detailed responses may be needed, depending on what changes, if any, the MSRB ultimately proposes to Rule G-23.

In general, we do not perceive that Rule G-23, as currently implemented, presents significant problems (with one exception, noted below) for the bond industry. The changes made earlier in the decade were salutary and eliminated abuses and loopholes which, in some local markets, had been exploited by some dealers to the detriment of some municipal issuers. These gains should not be lost in any revisions made.

However, we note that Rule G-23 is at heart a conflict of interest rule. Accordingly, the bulk of present Rule G-23 could be presented as a note or illustration to the conflict of interest rules embodied in G-42. If this seems like "streamlining", we would have no concerns with it.

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Any weakening of the present prohibitions, wherever they appear, would invite a return to former abuses.

More specifically, we respond to some of the specific items set out in Notice 2019-13:

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?

   The rule has been effective. Prior abuses have, so far as we are aware, been significantly curtailed, if not eliminated.

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?

   We serve some smaller issuers and have not seen difficulties due to prohibition of role switching. On the contrary, it has been a protection and strikes a reasonable balance between issuer protection and choice, at least as we have seen.

3. Considering the implementation of MSRB's and SEC's municipal advisor rules, are there ways the MSRB could achieve Rule G-23's purpose without retaining it as a standalone rule? For example, should the MSRB eliminate Rule G-23 and address any need for regulatory requirements and exceptions through enhancements to other MSRB rules, such as Rule G-42?

   The functional aspects of G-23 could be transferred to Rule G-42, if done correctly. As always, the devil is in the details.

4. Should the MSRB make any amendments to the Role Switching Exceptions? For example-

   a. Does the Bond Bank Exception remain appropriate: Should this exception be broader or narrower?
   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?
   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)?
   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?

We recommend no changes. This seems to be working well. If disengagement (with or without a cooling off period) is allowed, it would facilitate dealers falling into tacit "you scratch my back, then I'll scratch yours" arrangements as they deal with issuers where they may have underwriting arrangements or advisory engagements.

5. Rule G-23's prohibition on role switching currently extends to dealer financial advisors acting as a placement agent for the issuance of municipal securities.

    a. As it pertains to placement agent activities, is the prohibition sufficiently clear as to what activities are, or are not, permissible for dealer financial advisors? Should the MSRB provide interpretive guidance regarding the scope of activities that a dealer financial advisor may perform under Rule G-23 without being regarded as a placement agent for purposes of the rule's prohibition on role switching?

    b. If Rule G-23 were eliminated as a standalone rule, with any substantive requirements being moved to Rule G-42 or another MSRB rule, should the MSRB should the MSRB modify Rule G-42 or such other rule to address any permitted or prohibited placement agent activities by a municipal advisor insofar as MSRB rules are concerned?

    This Rule is clear, assuming that customary financial advisory activities undertaken in a direct purchase sale are not improperly treated as "placement agent" activities. If an advisor is acting as an issuer's fiduciary advisor in seeking purchasers for the issuer's paper, is paid by the issuer (and not by the purchaser) and does not act for a purchaser, there should be no question under G-23 or G-42 of the presence of "placement agent" activities and a consequent conflict of interest. Any attempt to force this type of legitimate representation into a role as "placement agent" and then disqualify the advisor for a non-existent conflict of interest would result in all direct purchase transactions where a fiduciary advisor is involved having to accommodate a separate professional or firm solely to act as placement agent so that the fiduciary advisor does not get "tagged" with this role even though the advisor is acting solely for and on behalf of the issuer. This would increase the cost of each such transaction to the issuer with no value coming to that issuer for the increased expense. No changes made should inadvertently cause such an interpretation to be made.

6. Rule G-23's prohibition on rule 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?

    While other standards might work. The current one seems relatively problem free. If it ain't broke, don't fix it.

We may have additional comments if an actual change is proposed.

Lewis Young Robertson & Burningham, Inc.

By: _____
Principal