21 Dupont Circle NW
Suite 750
Washington DC 20036

March 21, 2010

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

RE: File Number SR-MSRB-2011-03
Rule G-23: Activities of Financial Advisors, 76 Fed. Reg. 10,926 (Feb. 28, 2011)

Dear Ms. Murphy:

The Bond Dealers of America (the "BDA") is pleased to offer comments to the Securities and Exchange Commission (the "Commission") with respect to File Number SR-MSRB-2011-03 regarding the proposed amendments to Municipal Securities Rulemaking Board ("MSRB") Rule G-23: Activities of Financial Advisors (the "Proposed Amendments"). The BDA is a trade association exclusively focused on U.S. fixed income markets and represents bond dealers who are headquartered in cities all over the country and who do business in dozens of states coast to coast. Some of our members are financial advisors in addition to being broker-dealers.

While BDA acknowledges that it is prudent to periodically review existing regulatory schemes to determine their effectiveness in the context of current market practices, we believe that the current Rule G-23 provides issuers, particularly in the case of competitively bid transactions and for small or infrequent issuers, with both the information they need to make informed decisions and the access to as broad a pool of underwriters as possible, leading to greater competition and lower fees. Rule G-23 in its current form provides a structure that relies on the disclosure of potential conflicts of interest on the part of a financial adviser so that an issuer has the information it needs to evaluate each situation and determine the nature of the conflict, if any. The Proposed Amendments to Rule G-23 would prohibit any broker, dealer or municipal securities dealer (a "dealer") that acts as a financial advisor to an issuer in connection with a particular new issue of municipal securities from resigning as

financial advisor and then switching roles and underwriting the transaction either on a negotiated or a competitively bid basis thereby eliminating an issuer's ability to exercise its own judgment in each situation. We understand that the Proposed Amendments reflect the MSRB's concern that the role switching currently permitted under Rule G-23 is inconsistent with a dealer financial advisor's fiduciary duty to its issuer client and its belief that small and/or infrequent issuers are unable to appreciate the nature of the conflict they may be asked to waive. However, the exact nature and the scope of a municipal advisor's fiduciary duty to a municipal entity has yet to be determined and understanding this scope is an important part of determining the effectiveness of the current Rule G-23. BDA believes that the MSRB's concerns are better addressed by more clearly delineating the role and scope of duties of a municipal advisor and its fiduciary duty and the role of the underwriter rather than by the blanket prohibition on the switching of roles contained in the Proposed Amendments.

Exemption for Competitively Bid Transactions. If the Commission decides to move forward with changes to Rule G-23, the BDA believes that an exemption for competitively bid transactions is necessary. Potential conflicts of interest for financial advisors who also act as underwriters are eliminated in a fairly-run, competitively bid offering of securities. The bidding process in and of itself encourages competition among interested dealers and introduces an arms' length basis for establishing the terms of the issue and the underwriting. Rule G-23 in its current form sufficiently protects issuers from any real or potential conflict of interest in competitively bid situations and there is no need to extend restrictions to cover such transactions.

Unfavorable Impact on Small and/or Infrequent Issuers. Small and/or infrequent issuers of municipal securities face unique challenges in the municipal markets and the BDA requests that the Commission exempt from the Proposed Amendments small issues of municipal securities. Very often, only the local financial advisor or dealer is interested in marketing the securities of these municipal issuers and these transactions are usually too small to attract bids from larger firms. The vast majority of these deals currently are priced with only one or two bidders a competitive sale transaction.

According to data provided to BDA by IPREO, between January 1, 2000 and August 27, 2010, 42 percent of competitive bond issuances of $10 million or less and competitive note sales between $1 million and $10 million received 3 or fewer bids. Many competitive offers received only one bid. This compares to bond issuances of $30 million or more where only 12 percent received 3 or fewer bids. The competitive bond issuances of $10 million or less and competitive note sales between $1 million and $10 million were nearly 70 percent of all issuances during that period. If even fewer firms are able to bid as a result of the Proposed Amendments to Rule G-23 the cost of accessing the capital markets for these smaller issuers is likely to increase or, in the worst case, these issuers may be prevented from accessing the markets at all. If the Commission decides to move forward with changes to Rule G-23, the BDA requests that the MSRB carefully monitor the level of activity and market access of small and/or infrequent issuers to assess the impact of the Proposed Amendments on this segment of the market and further revise Rule G-23 if needed to increase market accessibility.

Extend Length of Transition Period for Current Financial Advisory Relationships. While the BDA is pleased that the MSRB has requested that the proposed rule changes not take effect until six months after Commission approval, many municipal securities transactions may take longer than six months to come to market, particularly in times of economic uncertainty and fluctuating market conditions. A transitional period of one year would allow issuers, dealers and financial advisors sufficient time to review their current engagements and business practices and to take action to conform to, and comply with, the new rules and to access the market for those transactions that are currently under consideration.

Eliminate Financial Advisor Presumption. The MSRB included in their submission of the Proposed Amendments to the Commission new interpretive guidance entitled "Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists under Rule G-23" (the "Guidance"). As the consequences of being determined to be a financial advisor become more important, it is necessary that all market participants be able to clearly understand when a party is a financial advisor and when a party is an underwriter. The Guidance recognizes that an underwriter may properly, in the course of acting as an underwriter, "provide[s] advice to an issuer, including advice with respect to the structure, timing, terms, and other similar matters concerning the issuance of municipal securities." This is the sort of advice that the Guidance acknowledges a financial advisor also provides. The Guidance goes on to create a rebuttable presumption that any party providing such advice is a financial advisor. The presumption may be rebutted if a dealer clearly identifies itself as an underwriter from the earliest stages of its relationship with the issuer with respect to an issue of municipal securities and will not be considered a financial advisor for purposes of Rule G-23 with respect to that issue of securities. However, that clarity evaporates when the Guidance goes on to provide that an underwriter could still be considered a financial advisor based upon unspecified subsequent actions.

The BDA believes that rather than employing presumptions, rebuttable presumptions and the deeming of parties to be acting in one role or another based on unarticulated standards, there should be a simple and clear rule that if a party is engaged by an issuer as a financial advisor, it is a financial advisor. If a party is engaged by an issuer as an underwriter, it is an underwriter. If the Commission believes that issuers entering the credit markets do not understand the difference between those roles, it can prescribe disclosures that make the difference clear.

Finally, while the Proposed Amendments are intended to eliminate any real or perceived conflict of interest that may result from a switching of roles, a complete prohibition as contemplated by the Proposed Amendments will only serve to benefit those firms whose financial advisory activities will not be directly affected by the changes to Rule G-23 since these firms do not possess the capacity to participate in an underwriting of these securities, thus by regulation favoring one particular business model. The MSRB's concerns that the role switching currently permitted under Rule G-23 is inconsistent with a dealer financial advisor's fiduciary duty to its issuer client is better addressed by more clearly defining the role of a municipal advisor and the scope of its fiduciary duty. If changes to Rule G-23 are

then still necessary to protect issuers from either real or perceived conflicts of interest, the BDA believes such changes should be more limited in scope than the Proposed Amendments and should take into consideration the differing circumstances surrounding competitive and negotiated sales as well as the size of the issuers and how the issuers access the markets.

Thank you for the opportunity to present our views on the Proposed Amendments. Please do not hesitate to call if you have any questions or would like to discuss further any of these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer