



**National Association of Independent
Public Finance Advisors**

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March 20, 2009

The Honorable Barney Frank
Chairman, House Financial Services Committee
2252 Rayburn House Office Building
Washington, DC 20515

The Honorable Christopher Dodd
Chairman, Senate Banking, Housing, and Urban
Affairs Committee
448 Russell Senate Office Building
Washington, DC 20510

The Honorable Spencer Bachus
Ranking Minority Member,
House Financing Services Committee
2246 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard C. Shelby
Ranking Minority Member,
Senate Banking, Housing, and Urban Affairs
Committee
304 Russell Senate Office Building
Washington, DC 20510

RE: REGULATION OF FINANCIAL ADVISORS IN THE MUNICIPAL MARKET

The National Association of Independent Public Finance Advisors (NAIPFA), founded 20 years ago, is a professional organization of *independent* public finance advisory firms that provides independent public finance advice to public entities across the country. NAIPFA members must adhere to the Association's code of ethics, meet ongoing professional education standards as a Certified Independent Public Finance Advisors (CIPFA) and do not underwrite or buy municipal securities.

NAIPFA member firms provide public finance advice to public entities on security types, maturity structures and security terms. We provide public finance advice to the public entity who determines how they will issue the security. The public finance advice provided by our NAIPFA member firm assists the public entity to make an informed public finance decision and the outcome of the public finance decision benefits the public entity. Since its inception, NAIPFA has always promoted *independence* in public finance advice as well as transparency in decision making and market processes.

NAIPFA understands the concerns and challenges faced by the Administration, Congress and other federal policymakers in reviewing the regulatory structure of the financial markets. We also appreciate the concerns over recent abuses, related to political contributions and pay-to-play practices, and agree that steps need to be taken to ban such practices and provide enforcement. In this same spirit, NAIPFA additionally believes that Public Finance Advisors owned or controlled by a banking firm/broker-dealer should be banned from being hired by the public entity as a Public Financial Advisor and permitted to resign as the Public Financial Advisor to immediately underwrite and purchase the bond issue.

While NAIPFA does not support regulation of Independent Public Finance Advisors, if Congress determines that Public Finance Advisors should be regulated, NAIPFA is prepared to work with all Congressional Committees, the Security Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB), Government Finance Officers Association (GFOA) or any other interested party to address this topic and develop a responsive structure of oversight.

NAIPFA strongly believes that the MSRB is not the appropriate agency to regulate Public Finance Advisors because the MSRB, in Rule G-23, believes a conflict "may" exist between the role of the Public Finance Advisor and banking

firm/broker-dealer when working on the same security issue. In addition their mission is to regulate securities firms and banks. Public Finance Advisers represent public entities.

GFOA, who represent the views of thousands of finance professionals serving as chief finance officers for public entities, recognizes that a conflict “does” exist between the role of the Public Finance Advisor and banking firm/broker-dealer hired to work on the same security issue. The SEC, which currently regulates investment advisors that have a fiduciary responsibility to their clients, would be a more appropriate regulator of Public Finance Advisors.

Attached is a resolution passed by the NAIPFA Board of Directors at its meeting held on March 16, 2009 stating our position regarding the role of the *independent* public finance advisor versus that of the public finance advisor and our concepts for regulation should Congress discuss this issue. We respectfully request that you carefully consider the following as detailed in the attached resolution:

- The difference between an *Independent* Public Finance Advisor and a Public Finance Advisor.
- MSRB Rule G-23 and the conflict of interest that “does” exist when a Public Finance Advisor owned or controlled by a banking firm/broker-dealer is allowed to step down from this role and purchase the security.
- If Congress determines regulation is necessary, concepts as part of regulation should include:
 - Regulation must recognize the value of an *Independent* Public Finance Advisor in providing conflict free public finance advice to the public entity. An *Independent* Public Finance Advisor assists the public entity in making an informed public finance decision and the public entity benefits from their informed decision.
 - Any advisor who provides "public finance" advice to public entities should be required to be regulated as a public finance advisor.
 - MSRB regulations concerning political contributions and pay-to-play practices should be adopted.
 - Regulation must recognize the GFOA “Best Practice” position that a conflict of interest “does” exist within Rule G-23.
 - Elimination of Audit or Net Capital Requirements of *Independent* Public Finance Advisors whose only product is advice.

NAIPFA believes that all municipal market participants should be part of an open and public debate in determining how best to protect and enhance the interests of each segment of the municipal market. We respectfully request that we be actively involved in any of these discussions or hearings. We invite you to direct any questions regarding NAIPFA or our role as independent public finance advisors to me at (651) 697-8510 or steve@ehlers-inc.com.

Respectfully submitted,

NATIONAL ASSOCIATION OF INDEPENDENT PUBLIC FINANCE ADVISORS

Steve Apfelbacher, President/CIPFA

cc: Timothy F. Geithner, Secretary, Department of the Treasury
Ben S. Bernanke, Chair, Board of Governors of the Federal Reserve
William C. Dudley, President, Federal Reserve Bank of New York
Mary L. Schapiro, Chair, Securities and Exchange Commission
Ronald A. Stack, Chair, Municipal Securities Rulemaking Board

