

Resolution approved by the Board of Directors of National Association of Independent Public Finance Advisors (NAIPFA) on March 16, 2009

Whereas, the National Association of Independent Public Finance Advisors (NAIPFA), founded 20 years ago, is an organization of public finance professionals that provide public financial advice as Independent Public Finance Advisors, has a code of ethics and has professional standards for certification of Public Finance Advisors within firm members; and

Whereas, each NAIPFA member firm specializes in providing independent public finance advice to public bodies and/or certain non-profit organizations (commonly known as a “public entity”); and

Whereas, NAIPFA is aware of recent abuses, primarily related to political contributions and pay-to-play practices, and believes that steps need to be taken to ban such practices and provide enforcement; and

Whereas, NAIPFA professional standards discourage these practices by its members but recognizes that other market participants do participate in such practices and in fact not all public finance advisors are Independent Public Finance Advisors that qualify for NAIPFA membership; and

Whereas, there are inherent and fundamental differences between a Public Finance Advisor owned by a banking firm/broker-dealer and an Independent Public Finance Advisor that must always be recognized in that:

- a. “Public Finance Advisors” provide public finance advice to a public entity on various ways the public entity can issue a security in addition to related public finance areas such as capital improvement programs, budget formulation/ implementation, debt management, economic development, user rates, or other related public finance advice needed for the efficient operation of the public entity.
- b. “Independent Public Finance Advisors” provide public finance advice as described in a. above and in addition:
 - i. Are not employed, given direction or controlled by a banking firm/broker-dealer that participates in the underwriting, trading, purchase, sale or holding of securities;
 - ii. Do not have any agreements to provide financial advice to a public entity based on payment from or direction by a banking firm/broker-dealer or third party;
 - iii. Have a fundamental obligation to act solely in the best interests of the public entity, the seller of securities, and provides public finance conflict free advice to the public entity rather than representing both the buyer and seller of securities which is a conflict of interest; and
 - iv. Do not sell a specific product or security but solely provides independent public finance advice to the public entity.

Whereas, the Government Finance Officers Associations (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; and

Whereas, since its inception NAIPFA has always promoted independence in public finance advisory services as well as transparency in decision making and market processes; and

Now therefore be it resolved by the Board of Directors of the National Association of Independent Public Finance Advisors (NAIPFA), as follows:

1. That NAIPFA supports:
 - a. Banning political contributions and, additionally, extensions of current provisions banning “pay-to-play”; and
 - b. Banning Public Finance Advisors owned or controlled by a banking firm/broker-dealer from being hired by the public entity as a Public Financial Advisor and being permitted to resign as the Public Financial Advisor to immediately underwrite and purchase the bond issue; and further



2. That if Congress determines that Public Finance Advisors should be regulated, NAIPFA is prepared to work with all Congressional Committees, the SEC, the MSRB, GFOA or any other interested party to address this topic and develop a responsive structure of oversight; and further
3. That NAIPFA believes that any regulatory proposal must include the following concepts:
 - a. Regulatory changes need to distinguish between the roles of market participants and apply appropriate standards for each role. The role of Independent Public Finance Advisor enhances the reputation, efficiency and transparency of municipal markets by providing public finance advice to the public entity issuer thereby assisting the public entity in making an informed public finance decision and that the outcome of that public finance decision benefits the public entity; and further
 - b. Attorneys, accountants, investment advisors, engineers or other professionals sometimes provide public finance advice to public entities. It is the activity of providing public finance advice that should be considered for regulation. Regulation should not focus solely on one group of service providers such as independent or banking firm-broker-dealer Public Finance Advisors. Even though other professionals may be regulated for other services they perform including the banking firm/broker-dealer, they should not be exempted from the same regulation specifically as a public finance advisor when providing public finance advice; and further
 - c. Any regulation must ensure that the Public Finance Advisor solely represents the interests of the public entity to insure conflict free advice; and further
 - d. The Municipal Securities Rulemaking Board (MSRB) develops rules to regulate securities firms and banks involved in the underwriting, trading and selling of municipal securities. As part of Rule G-23, the MSRB believes that a conflict “may” exist between the role of the Public Finance Advisor and banking firm/broker-dealer hired to work on the same security issue. GFOA, representing public entities, believes a conflict “does” exist. Given the MSRB’s Rule G-23 position and the MSRB mission to regulate the securities firms and banks, the MSRB is not an appropriate agency to regulate Public Finance Advisors. 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; and further
 - e. MSRB regulations concerning political contributions and pay-to-play practices should be adopted; and further
 - f. Regulation must recognize the GFOA “Best Practice” position that a conflict of interest “does” exist within Rule G-23; and further
 - g. Since the only product offered by conflict free Independent Public Finance Advisors is the sale of public finance advice to the public entity, there is no need for audit or net capital requirements as part of regulation; and further
 - h. NAIPFA believes that all municipal market participants need to be part of an open and public debate to determine how best to protect and enhance the municipal market and that NAIPFA must be actively involved in any discussions or hearings.

