

PRESS RELEASE

May 10, 2010. American Governmental Financial Services Company (AGFS) and Swap Financial Group, LLC strongly support SA 3792, a proposed amendment to the financial reform package pending in the Senate. SA 3792 was introduced in the Senate by Senator Barbara Boxer.

SA 3792 is our legislation of choice for the following reasons, among others—

1. SA 3792 would codify the fiduciary duty that is already recognized and enforced by the SEC for firms that provide financial advice to issuers.
2. SA 3792 would lead to an organized and formal, as opposed to a piecemeal, definition, application and enforcement of advisors' fiduciary duties at the federal level.
3. SA 3792 makes the critical distinction, that other proposals have failed to acknowledge, between acting as arms'-length principals to sell financial products and services, on one hand, and creating relationships of trust and confidence with issuers, on the other.
4. SA 3792 would not interfere with the roles of underwriters or swap providers, and their professional employees, including public finance bankers and derivatives marketers, acting solely as such—only when those parties step beyond their roles as arms'-length principals would they fall under the regulatory pattern.
5. SA 3792 would likely require the repeal of MSRB Rule G-23, the only regulation that purports to permit underwriters to “advise” issuers (although Rule G-23 does not define the consequences of doing so).

Robert Doty, President of AGFS, said, “SA 3792 is an important and serious proposal that would bring into play more effective federal application of financial advisors' fiduciary duties. We advisors have no doubt about our fiduciary duties to our clients. Unlike earlier, less well-considered proposals, SA 3792 would not impose a fiduciary duty upon underwriters, and swap dealers, or other financial firms marketing products or services as arms'-length principals. It would reach only firms that undertake to provide ‘advice’ to issuers as to the choices issuers should make and thereby draw issuers into the firms' trust and confidence. This is legislation that should be adopted as a part of the overall financial reform package.”

Peter Shapiro, Managing Director of Swap Financial Group, said, “SA 3792 makes key distinctions that other proposals have missed in terms of the appropriate roles of financial and swaps advisors to issuers. SA 3792 recognizes that the roles of underwriters and swaps dealers serving as principals or counterparties are not fiduciary roles. Because earlier proposals have mixed the concepts inappropriately, SA 3792 should supplant all other sections of the financial reform package relating to fiduciary duties of underwriters and financial products marketers.”

The market now has the benefit of hindsight after the financial crisis as to the adverse impacts of certain complex financial transactions upon municipal issuers that relied upon financial firms selling the

issuers financial products and services. In some notable cases, those issuers did not receive appropriate or unconflicted advice, or have an adequate understanding, as to the significance, risks and appropriateness for them of financial transactions into which they entered. The financial reform debate provides a perfect opportunity to codify the federal fiduciary standard long applied by the Securities and Exchange Commission to firms providing financial advice to issuers and to hold advisory firms responsible for dishonesty and incompetence.

We believe that SA 3792 should replace all other sections of the financial reform package relating to fiduciary duties of underwriters and financial products dealers.

In sharp contrast to the larger financial reform package now pending in the Senate and to Municipal Securities Rulemaking Board Rule G-23, SA 3792 makes appropriate—and crucial—distinctions between offering and selling financial products and services to issuers, on one hand, and providing advice to issuers, on the other. It is one thing to provide “information” to issuers about products and services (for example, about the capabilities of firms, market conditions, and securities structures that investors prefer) and entirely something else when financial firms undertake to provide issuers with “advice.” Firms that undertake to “advise” issuers as to what is best for the issuers and what decisions the issuers should make should accept professional responsibility for the firms’ advice.

We ask other firms providing financial advice to municipal securities issuers—both dealers and nondealers—to join us in support of this legislation that would be helpful to the integrity of the municipal market and the protection of municipal issuers.

Contacts:

Robert Doty, President
AGFS
1721 Eastern Avenue, Suite 4
Sacramento, CA 95864
robert.doty@agfs.com
(916) 483-7378

Peter Shapiro, Managing Director
Swap Financial Group, LLC
76 South Orange Avenue, Suite 6
South Orange, NJ 07079
PShapiro@swapfinancial.com
(973) 378-5500