

**STATE OF ARKANSAS
SECURITIES DEPARTMENT**

IN THE MATTER OF

ORDER EXEMPTING MORGAN KEEGAN
& COMPANY, INC. FROM PROVISION OF
RULE 308.01

MORGAN KEEGAN & COMPANY, INC.

NO. 03-90000309-NA009

FINDINGS OF FACT

1. On May 14, 2003, a letter was received by the Arkansas Securities Commissioner requesting that Morgan Keegan & Company, Inc., ("Morgan Keegan") be determined to be exempt from the provisions of Rule 308.01 which would prohibit it from bidding to purchase bonds issued by Arkansas school districts for which it acts as fiscal agent.
2. Morgan Keegan is an investment banking firm and a registered broker-dealer having its principal place of business at 50 N. Front Street, 16th Floor, Memphis, Tennessee 38103. As part of its broker-dealer business, for a number of years it has been, and is currently, acting as fiscal agent for various Arkansas school districts.
3. In its decision in *Lake View School District No. 25 vs. Huckabee*, 351 Ark. 31, ___ S.W. 3rd ___ (2002), the Arkansas Supreme Court ruled unconstitutional Ark. Code Ann. § 26-80-204(18)(C) (2001 Supp.) which provided that millage levied by school districts for debt service purposes that is in excess of the amount required to produce the revenues needed to pay interest and principal accruing on their bonds may be included in the 25 mills required by Arkansas Constitution Amendment 74 to be levied for maintenance and operation expenses.
4. As a consequence of *Lake View*, approximately eighty percent (80%) of all Arkansas school districts are faced with the decision whether to levy additional millage to replace the excess debt service millage which can no longer be used to meet the requirements of Amendment 74, or to refund their outstanding bonds in order to move millage in excess of debt service requirements to maintenance and operation. If a district chooses to issue new bonds, it must do so before January 1, 2004, in order to comply with *Lake View*.
5. It is believed that many of the affected school districts will choose to restructure their outstanding bond issues. This will be accomplished by each school district issuing new bonds to refund their existing bonds prior to maturity. Because of the effects of applicable Internal Revenue Service regulations, it is more efficient and cost effective for the school districts to issue their new bonds within 90 days of a call date for the bonds being refunded. Many of the outstanding bonds have a call dates of August 1,

2003. Consequently, an unusually large number of Arkansas school bond issues will be brought to market between now and August, and all refunding bonds must be issued prior to the January 2004 deadline.

6. Arkansas school districts are required by laws of the State of Arkansas to sell their bonds at public sales.
7. The greatly increased volume of bond offerings may put the school districts at a disadvantage if sufficient bidders are not willing to submit competitive offers to purchase their bonds. It appears that it will benefit the school districts if Morgan Keegan is permitted to submit bids, in its discretion, as needed to assure an orderly market for the bonds at competitive prices.
8. Morgan Keegan has represented that it has no unfair advantage in the bidding process by virtue of serving as fiscal advisor.
9. Morgan Keegan has agreed that this Order will be conditioned not only upon the findings set forth above, but also with the following:
 - a. That it disclose in the preliminary official statement for a bond issue that it has reserved the right to submit a competitive bid;
 - b. That it advise the school district prior to the date bids are to be received whether it will submit a bid;
 - c. That the acceptance by a school district of a bid from Morgan Keegan which is the only bid received shall be subject to same-day review and approval by the Commissioner; and
 - d. That Morgan Keegan will comply with the provisions of the Municipal Securities Rulemaking Board Rule G-23 in connection with each transaction.
 - e. That the exemption shall expire at the close of business, December 31, 2003.

CONCLUSIONS OF LAW

1. Rule 308.01.F. prohibits a broker-dealer or agent from “[E]ntering into a pre-sale contract with respect to any bond which is required by laws of the State of Arkansas to be sold at public sale, or to obtain any beneficial interest, direct or indirect, in the initial purchase of any bonds with respect to which the broker-dealer has acted as fiscal agent...”
 2. The prohibition of Rule 308.01.F. is applicable to the sales of bonds contemplated by Arkansas school districts seeking to restructure their millage to comply with *Lake View*.
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3. Rule 308.01.F. provides that the Rule shall not apply to bonds if it is shown to the satisfaction of the Commissioner that an arrangement otherwise prohibited by the Rule is to the benefit of the issuer.
4. That the exemption shall be effective immediately and shall expire at the close of business, December 31, 2003.

OPINION

Under the circumstances described above, it is to the benefit of the Arkansas school districts issuing new bonds that Morgan Keegan, while acting as fiscal agent to such a school district, be exempt from the prohibition of Rule 308.01 against submitting a bid to purchase the newly issued bonds. However, such an exemption should be conditioned, not only on the Findings of Fact set out above, but also on the following:

1. That Morgan Keegan disclose in the preliminary official statement for a bond issue that it has reserved the right to submit a competitive bid;
2. That Morgan Keegan advise the school district prior to the date bids are to be received whether it will submit a bid;
3. That if the only bid received by the school district is from Morgan Keegan, then acceptance of the bid by the school district is subject to same day review and approval by the Commissioner; and
4. That the exemption shall expire at the close of business, December 31, 2003.

ORDER

IT IS THEREFORE ORDERED that Morgan Keegan is exempt from the prohibition of Rule 308.01 against submitting a bid to purchase bonds to be issued by school districts for which it is acting as fiscal agent, subject to the continuation of the circumstances and conditions described above.

IT IS FURTHER ORDERED that such exemption shall expire at the close of business, December 31, 2003.

WITNESS MY HAND AND SEAL this 15th day of May, 2003.


MICHAEL B. JOHNSON
COMMISSIONER