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NFMA SUBMITS AMICUS BRIEF IN LAKE OF THE TORCHES CASE

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The National Federation of Municipal Analysts (“NFMA”) announced today that it has submitted an *amicus curiae* brief with the United States Court Of Appeals For The Seventh Circuit in the case of Wells Fargo Bank, National Association, As Trustee, Plaintiff-Appellant v. Lake Of The Torches Economic Development Corporation, Defendant-Appellee. The brief can be found at www.nfma.org.

The NFMA infrequently files amicus briefs, and only in cases, such as this one, that have potentially important implications for the municipal bond market generally. This case is on appeal after the federal district court ruled in favor of the issuer. As the NFMA asserted in its brief, there are two main principles fundamental to municipal bonds that are under attack in this case. First, the issuer in this matter has sought to repudiate its bond debt and renounce any repayment obligation on the grounds that the Trust Indenture violated federal regulations governing tribal gaming, notwithstanding the fact that the issuer had affirmatively and explicitly represented to investors in its disclosure document, and through its counsel opinions, that the Trust Indenture was not in violation of such regulations. The NFMA takes no position on whether or not the Trust Indenture violates the federal regulations, but points out that, contrary to the federal district court’s ruling that reliance on such disclosure and opinions was “unreasonable,” such reliance is standard in the industry and indeed is an essential component of our system of federal and state securities laws. The NFMA argued that, in light of such reasonable reliance, an issuer should not be able to assert positions that contradict the issuer’s prior representations as a means of nullifying its repayment obligation and giving the issuer a windfall.

Second, although there was a standard severability clause in the Trust Indenture, the federal district court refused to allow for the few provisions in the Trust Indenture that it claimed were in violation of federal regulations law to be severed from the rest of the document so that the repayment obligations in the Trust Indenture could survive. The NFMA pointed out to the appeals court that severability clauses exist in almost all bond documents and are intended by the parties to be applied by courts to both excise certain contractual provisions deemed invalid and to preserve the remaining provisions agreed to as an enforceable contract. NFMA contends it was error for the district court to reject the severability clause and deem the entire Trust Indenture, and all related agreements, void.

“Although tribal financing constitutes a small portion of the municipal market, the precedents set by the lower court ruling on this case have potentially far-reaching ramifications for the market as a whole, if they are allowed to stand. The ruling challenges both the right of bond investors to rely upon disclosure and opinions, and the sanctity of repayment obligations in bond documents” said Mark Stockwell, NFMA Chairman. “The NFMA Board discussed the potential fallout from the ruling and determined that it was in the best interests of its members to make our voices heard on these issues.”

Established in 1983, the NFMA is an organization of approximately 1,000 members, primarily research analysts, who evaluate credit and other associated risks in the municipal market. These individuals represent, among others, mutual funds, insurance companies, broker/dealers, bond insurers, rating agencies, and financial advisory firms.