



J. BEN WATKINS III
DIRECTOR

STATE OF FLORIDA

DIVISION OF BOND FINANCE

1801 HERMITAGE BOULEVARD, SUITE 200
TALLAHASSEE, FLORIDA 32308

TELEPHONE: (850) 488-4782
FACSIMILE: (850) 413-1315

RICK SCOTT
GOVERNOR
AS CHAIRMAN

PAM BONDI
ATTORNEY GENERAL

JEFF ATWATER
CHIEF FINANCIAL OFFICER

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE

May 27, 2016

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Regulatory Notice 2016-11
Request for Comment on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans

Dear Mr. Smith:

This letter is in response to the above-referenced Request for Comment. Comments were requested to elicit input on the benefits and burdens of the potential disclosure requirement and possible alternatives. As a frequent issuer and market participant, we believe that a rule of this nature imposed on municipal advisors is inappropriate. We suggest that improvements to the current EMMA system would encourage more voluntary disclosure of direct purchases and bank loans without the need to impose this requirement on a third party professional.

While we understand and support the need for direct purchase and bank loan disclosure, the MSRB should not insert itself into a municipal issuer's relationship with its municipal advisor. Municipal entities should be able to control their engagement of municipal advisors. Issuers should determine the nature of the services to be provided by municipal advisors. Requiring municipal advisors to ensure direct purchase and bank loan disclosure forces them into a role for which they may not have been retained. If the municipal advisor is asked merely to review a proposal from an underwriter, the municipal entity should not be forced to engage the municipal advisor to review and ensure it has disclosed direct purchase and bank loans. The MSRB attempts to dictate the terms of municipal issuers' contractual relationships with their municipal advisors with this conceptual proposal.

Additionally, it is inappropriate to impose a disclosure requirement on municipal advisors. Rule G-42, which becomes effective next month, was drafted to impose and explain the nature of the fiduciary duty on municipal advisors. The focus of the rule was the duty municipal advisors have to their *municipal entity clients*. The imposition of a duty to ensure disclosure to investors detracts from and directly conflicts with the fiduciary duty to municipal issuer clients. Municipal advisors represent one party in the transaction- the municipal issuer- and Rule G-42 was designed to ensure that this duty would not be compromised by relationships with other market participants. If municipal advisors are made responsible for disclosure to investors, their focus cannot be solely on the needs of their

municipal entity client.

The MSRB has suggested the proposed rule would operate like the registration statement filing requirement imposed on underwriters in Rules G-32 and G-42. However, unlike municipal advisors, underwriters have no conflicting duty to municipal issuers. Additionally, the role of the municipal advisor does not easily accommodate a disclosure requirement. Underwriters cannot participate in a municipal offering unless the issuer has complied with its continuing disclosure obligations. Municipal advisors are engaged in a completely different role, at different times, and often for limited purposes; they are not offering the bonds for sale to investors. They are offering advice to municipal issuers, and if they were prohibited from assisting municipal issuer clients due to the client's failure to adequately disclose bank loans, transactions would suffer.

A better approach to obtaining direct purchase and bank loan disclosure would be a focus on improving the EMMA system. Currently, the system is not set up to accept such disclosure in a uniform way. Because EMMA disclosure is filed using CUSIP numbers, which bank loans do not use, there is no simple way to link existing debt of a municipal entity to its bank loan debt. A standard naming convention for issuers might assist to identify this bank loan information as material to other debt of that issuer.

The MSRB should determine what information would be most useful to investors and create a template to guide issuers in disclosing that information electronically. The system should also add a drop-down menu so issuers can select "bank loan/direct purchase" as the specific type of disclosure being made rather than a generic voluntary filing. As an issuer that has voluntarily disclosed bank loans, we found it difficult to determine what information to disclose. Issuers are unsure what disclosure is appropriate. Additionally, there is no information, other than financial statements, produced on an annual basis that would make continuing disclosure possible. Another important consideration would be a threshold amount of direct purchase or bank loans to avoid the necessity of filings for loan amounts that have minimal impact on an issuer's financial position.

If the EMMA system is improved, we believe it will be more likely that municipal entities will voluntarily disclose bank loan and direct purchase information. Municipal advisors will encounter the same problems issuers have encountered in attempting to voluntarily file with EMMA, so a focus on fixing the filing system makes more sense than imposing a requirement on municipal advisors. We request the MSRB explore ways to make the current electronic disclosure system more functional before taking any steps to impose a disclosure requirement on municipal advisors or any other parties.

Very truly yours,



J. Ben Watkins III, Director
Division of Bond Finance