



May 23, 2016

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

Re: MSRB Regulatory Notice 2016-11

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's (MSRB or Board) request for comment on its Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans.

The NFMA is a not-for-profit association with nearly 1,400 members in the United States and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our Recommended Best Practices in Disclosure and White Papers are available on our website, www.nfma.org.

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

The NFMA appreciates and supports the MSRB's continued effort to improve the disclosure of direct placements and bank loans by municipal market participants. For nearly five years, the NFMA has advocated for more timely and comprehensive issuer disclosure of these instruments. Specifically, the organization led the industry's Bank Loan Task Force that published Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, May 2013 and also authored Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements, June 2015.

While the NFMA understands the benefits that issuers may derive from the availability of direct placements and bank loans as an alternative to publicly issued debt, failure of an issuer with outstanding bonds to disclose that it has entered into another type of debt instrument impedes the market from operating fairly and efficiently. Disclosure lapses of this type hinder credit analysis and fair pricing that can ultimately impact the decision to buy, hold or sell a security. Specifically, investors are left without a complete representation of an issuer's credit profile. This includes the impact that these obligations have on: 1) the amount of debt outstanding; 2) the ability of a new lender to exercise remedies ahead of existing bondholders; 3) diversion of specific resources (originally part of general resources) to secure the new obligation; and, 4) liquidity if the principal payment is structured as a balloon payment.

Below are the NFMA's responses to the questions outlined in the MSRB Regulatory Notice 2016-11:

1. *Would implementation of a disclosure requirement as described above help protect investors and promote informed investment decisions? If so, how? If not, why not?*

Yes, the requirement for an involved and regulated market participant to disclose direct purchases and bank loans would reasonably improve the likelihood that such arrangements would be made public. This would, however, only capture situations in which a municipal advisor was involved. As mentioned earlier, failure to disclose the incurrence of these obligations by issuers with outstanding publicly issued debt prevents investors from having a complete and accurate accounting of the information necessary to assess an issuer's ability to repay its debts.

2. *What information regarding outstanding indebtedness, such as direct purchases and bank loans, do issuers typically disclose in financial statements? What are considered industry best practices for such disclosures?*

The NFMA is not aware of a consistent format for the disclosure of direct purchases and bank loans in financial statements. It is our experience that often an issuer's financial statements detail only the principal amount, interest rate and maturity date or range for these instruments.

Ideally, disclosure of direct purchases and bank loans would include the release of the primary lending document between the lender and the borrower and any relevant ancillary documents.

In lieu of releasing the documents, a summary of the transaction could be provided that contained the following information: 1) lender; 2) date of incurrence, principal amount, maturity and amortization; 3) interest rate, if fixed, or method of computation, if variable (and any default rates); 4) information on interest rate swaps, caps and other interest rate management products that hedge the bank loan; 5) purpose/use of proceeds; 6) collateral/security pledge (e.g., general obligation, specified revenues, real property, personal property), and whether the pledge is on parity with or subordinate to bonds; 7)

demonstration of compliance with applicable additional debt tests; 8) covenants, events of default and remedies; 9) term-out provisions if the bank loan allows the bank to seek repayment earlier than the stated maturity date (e.g., a demand or put date); 10) terms under which the bank loan can be sold or transferred by the bank to other investors; 11) disclosure of “most-favored nation” or similar clause; and 12) ratings, if assigned.

3. *What information does a bondholder need with respect to an issuer’s outstanding indebtedness to make informed decisions about an investment (e.g., whether to buy, hold or sell a bond)?*

Please see response to Question 2.

4. *Do any market participants currently have more or more timely information about issuers’ direct purchases or bank loans than other market participants?*

Rating agencies have received, and may continue to obtain, information regarding direct purchases and bank loans ahead of the information becoming publicly available. This typically is the case when an agency is reviewing a new issue sale or conducting issuer surveillance. If the information disclosed to a rating agency has an impact on the agency’s view of the credit a rating, action may take place and influence the pricing on the issuer’s outstanding bonds. Under these circumstances, investors are placed at a disadvantage because of the asymmetrical disclosure of the existence and terms of these instruments.

5. *Would the information available to a municipal advisor when advising on or negotiating aspects of a direct purchase or bank loan be useful to the investing public? If so, how?*

Markets are the fairest and most efficient when disclosures are timely, complete and available to the investing public. Disclosing the intent to enter into a new debt obligation—regardless of the form of the instrument—would be useful as it would provide notice to existing bondholders of a pending action that could affect the credit quality, pricing and/or suitability of their investment.

6. *What activity should trigger the disclosure requirement discussed in this concept proposal (e.g., advising on a specific type of financing transaction that occurs; advising on any financing transaction that occurs)?*

Please see response to Question 5.

7. *How expansive should any proposed disclosure be (e.g., only if material to the financing on which advice is being given; all alternative financings outstanding, regardless of materiality to current transaction)?*

Since materiality is subject to the judgment of each individual market participant we do not think it should be a benchmark in determining disclosure requirements.

8. *What specific information regarding the direct purchases and bank loans should be required to be disclosed (e.g., documents from the financing or only certain terms thereof)? What information is important to investors? Is there a particular document typically used in these types of transactions that contains any or all of this information, and, if so, please describe the document and the information it provides?*

Please see response to Question 2.

9. *Are there alternative methods the MSRB should consider for obtaining and publicly disseminating material information related to an issuer's direct purchases and bank loans?*

The NFMA thinks the proposal to require municipal advisors to provide information on direct purchases and bank loans is a positive step in improving disclosure of these instruments.

We understand that modifications to SEC Rule 15c2-12 are outside of the MSRB's purview. However, should the SEC decide to update Rule 15c2-12, the incurrence of additional debt (broadly) would be a welcome addition to the list of disclosable material events.

10. *Should such a disclosure obligation also apply to dealers broadly or in certain circumstances?*

Given the persistent challenges to obtaining compliance with municipal disclosure requirements, we are in favor of applying the requirement to disclose as broadly as the regulations will allow.

11. *What would be the additional costs and/or burdens on municipal advisors resulting from such a disclosure requirement? Would these costs and/or burdens be outweighed by the benefit of making the information available?*

The NFMA is unable to respond to this question.

12. *How might such a disclosure requirement economically impact issuers of municipal securities and current investors?*

From the investor point of view, such a disclosure requirement would facilitate more accurate credit assessments and pricing and improve liquidity.

13. *Is the requirement under MSRB Rule G-34 for submitting information to the SHORT System analogous to the concept being proposed? Is the information sought in*

MSRB Rule G-34(c)(ii)(B)(1) comparable to that which would be disclosed under the type of requirement contemplated?

Yes, the requirement under MSRB Rule G-34 appears to be similar to the disclosure concept being proposed. This would intuitively make sense since the VRDO instrument that the SHORT System was designed to address is similar in many respects to direct purchases and bank loans. This is particularly true in regard to some of the potential risks that both instruments can have on an issuer's credit quality and ability to repay outstanding bondholders.

14. *Is there additional information an investor may need in order to have a complete picture of an issuer's overall financial condition?*

We believe that the disclosure information outlined in our response to Question 2 would be sufficient to assess the impact of direct purchases and bank loans on an issuer's financial condition. More broadly, there are likely other areas for improvement in the quality and completeness of information that would aid in assessing an issuer's overall financial condition. The NFMA routinely publishes Recommended Best Practices outlining the type of information our members would like to receive from issuers based on the municipal sector.

15. *In addition to direct purchases and bank loans, what other types of debt financings do municipal entities use as alternatives to the issuance of municipal securities for which disclosure would be useful to investors?*

We would encourage that the disclosure requirements discussed in this Concept Proposal be broadened to apply to all types of debt arrangements that are not public debt issuances and/or currently not covered under the existing disclosure regime, including all private placements.

16. *The MSRB has provided detailed guidance on how an issuer or its agent can voluntarily submit disclosures regarding bank loans to EMMA, but there has been a limited number of submissions. What additional steps might the MSRB take to facilitate these voluntary disclosures?*

Create a new category for disclosure of these instruments that is intuitive for issuers, financing participants and dissemination agents, such as "Direct Purchases, Bank Loans and Other Non-Bond Obligations".

17. *Please provide current or historical data, studies, or other information relevant to evaluating the number, value and terms of outstanding municipal entity direct purchases and bank loans. Additionally, please provide the number and value of municipal entity direct purchases and bank loans originated annually.*

These are private transactions between the lenders and the issuers. We are not aware of any definitive source that aggregates this information. Market participants have,

however, speculated on the size of this debt category based on their firms' internal knowledge of the product.

We would like to express our appreciation, again, to the MSRB for its interest in improving disclosure of these instruments in order to improve the transparency, fairness and efficiency of the municipal market.

Sincerely,

/s/

Lisa Washburn
NFMA Chair

