NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

August 6, 2018

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW #1000
Washington, DC 20005

RE: MSRB Notice 2018-10

Dear Mr. Smith:

NAMA appreciates the opportunity to comment on MSRB's Retrospective Review of 2012 Interpretative Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Notice 2018-10).

NAMA strongly believes that issuers should receive certain key disclosures from underwriters and municipal advisors. These disclosures are important for issuers to gain a deeper understanding of the risks of any particular financing and of the various conflicts that may exist with parties that provide them professional services. Additionally, issuers should understand the different role professionals play in the transaction and of the various duties that these professionals owe to the issuer. Rule G-17 related to municipal advisors' and underwriters' responsibilities to deal fairly with issuers and avoid deceptive, unfair, and dishonest practice is an important and fundamental rule to protect issuers. Therefore, its significance in the suite of MSRB rulemaking should not be understated.

In its May 2012 Rule G-17 Interpretive Guidance, the MSRB mandated that underwriters provide certain disclosures to issuers. The disclosures relate to the underwriters' actual and potential material conflicts of interest, the nature and risks of the transactions recommended by the underwriter and of the nature of the underwriter's role. We do not believe that the standards established in the 2012 Interpretive Guidance should be diminished, although there are ways to make them more meaningful.

Below are some significant areas of the Notice that we wish to address. Our comments are based on previous NAMA (then NAIPFA - National Association of Independent Public Finance Advisors) comments related to the Interpretative Guidance and observations that our members have had over the past few years. More importantly, our comments reflect the significance of having the MSRB instill in its rulemaking and interpretative guidance the principal of protecting issuers, as that is a key piece of the MSRB's statutorily defined mandate with respect to the rules governing activity of broker-dealers and municipal advisors.

Volume and Types of Disclosures

NAMA believes that the current types of disclosures that the underwriter provides to the issuer as currently stated in the Interpretive Guidance should remain intact. However, for many issuers, these disclosures are buried within lengthy documents that contain hypothetical potential conflicts and risks.

NAMA believes that there are two potential fixes for this. First, syndicate members should not be allowed to provide long form boilerplate disclosure if that disclosure has already been provided by the syndicate manager. Syndicate members should only be allowed to provide conflict disclosures that are particular to them. Second, the MSRB should highlight its existing guidance about "omnibus disclosures" to ensure that underwriters provide material transaction risks and conflicts disclosures in a manner that is easily identifiable by the issuer (including various members of the issuing entity's internal finance team and governing body). This information should be presented in a straight forward manner, with other general disclosures presented separately from the statements and discussions of material transaction risks and conflicts disclosures (including statement that the underwriter does not have a fiduciary duty to the issuer). We understand that for practical purposes an underwriter may draft boilerplate language regarding various potential conflicts and transaction risks and include all of those in a form G-17 letter; however, the existing MSRB guidance on omnibus disclosures already requires them to make some sort of indication as to which of those omnibus risk disclosures or conflicts actually apply to the immediate transaction. Emphasizing this existing guidance as well as better enforcement would help to achieve the stated aim of making these disclosures more useful to issuers.

Issuer Acknowledgment of Disclosures

Issuers currently acknowledge receiving disclosures from underwriters. This practice should continue, and should allow for issuers to execute acknowledgements as they see fit.

Minimizing Content and Frequency of Disclosures for Different Classes of Issuers

The MSRB asks if they should consider alternative approaches to guidance implementation which may include different requirements for different classes of issuers. NAMA does not support lessening the responsibilities of underwriter disclosures to issuers due to different variables that may be at play (e.g., issuer size, frequency of issuances, dedicated staff). This includes not supporting the idea of annual disclosures. Since the disclosures must reflect conflicts of interest and risks associated with the transaction, it is difficult to understand how this could be done on an annual basis without the need for supplementary material throughout the year. Therefore, the easiest manner of disclosure delivery would be to have it remain as is.

Using EMMA for UW Enhancements to the Guidance

The MSRB asks if EMMA could or should be used to disseminate underwriter disclosures to issuers. Because these disclosures are from the underwriter and to the issuer about their relationship, they may be presented in a way that causes confusion to investors (who will be receiving many of the same disclosures in the context of the official statement where the information is presented in a manner material to investors). We do not think creating an additional public disclosure document separate from the official statement is an idea worth exploring. Furthermore, it is difficult to imagine how an underwriter would appropriately tailor such disclosures by issuer and transaction. Therefore, you would undermine the purpose of the rule by requiring issuers to have to seek out these even more boilerplate disclosures online instead of having them provided directly to the issuer.

If the MSRB is looking at ways to address "general" disclosures separately from those of client and deal specific disclosures, separating boilerplate disclosures from material and client/deal specific disclosures (and making the latter more easily identifiable) would be a better way to achieve this goal. In any event, EMMA should not be used for these disclosures.

Underwriter Statements that an Issuer Should Not Hire a Municipal Advisor

An area our members continue to be concerned with is when underwriters circumvent their duty noted in the statement in the Interpretive Guidance that "The underwriter also must not recommend that the issuer not retain a municipal advisor."

We would request that the statement be updated and strengthened to say that "The underwriter may not make direct or indirect statements to the issuer that the issuer not hire a municipal advisor or otherwise make statements to deter the use of a municipal advisor or blur the distinction between the underwriting and municipal advisor functions and/or duties."

Please let us know if we may answer any questions or provide other assistance related to the Interpretive Guidance. Thank you again for the opportunity to comment on this Notice.

Sincerely,

Susan Gaffney
Executive Director