Government Finance Officers Association
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January 15, 2019

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board 1300 I Street, N.W.
Washington, D.C. 20005

Re: MSRB Regulatory Notice 2018-29

Dear Mr. Smith:

The Government Finance Officers Associations ("GFOA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to address interpretive guidance, advisories and compliance resources. The GFOA represents nearly 20,000 state and local government finance professionals across the United States, many of whom issue municipal securities, and therefore is very interested in this rulemaking.

The GFOA welcomes the opportunity to comment on MSRB Notice 2018-29. GFOA has commented in the past on Rule G-17[1][2] and subsequent interpretative guidance, as the MSRB's work in this area is very important to municipal securities issuers. Rule G-17, in particular, is representative of MSRB rulemaking that is done to fulfill its mission to protect issuers.

As GFOA stated in its August 6, 2018 letter, the intent of the rulemaking must be to ensure that issuers are aware of conflicts that exist with their underwriting team, (and in particular, the representative underwriter) and risks associated with a financing. While the revised proposed guidance is a step forward in many areas – including separating standard from specific disclosures, eliminating the issuer opt out provision, and requiring plain English standards – other parts of the guidance are not as strong as they should be in order to equip issuers with proper awareness and adequate disclosures about transactions and their underwriter(s). Our comments primarily focus on sections that reference underwriter disclosures to issuers. Responses to specific questions are noted below.

Clarity and communication of disclosures: When determining clarity and communication of disclosures, standard disclosures should be discussed separately from specific transaction and underwriter disclosures.

Timing and frequency of disclosures: The MSRB's suggestion that disclosures be provided once and then referenced thereafter (see Section "D" page 7) is problematic. GFOA stated previously

[1] GFOA G-17 2018 Comment Letter referenced throughout: http://msrb.org/RFC/2018-10/GFOA.pdf

[2] GFOA G-17 2011 Comment Letter referenced throughout: https://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-22.pdf

that some boilerplate/standard disclosures could be provided annually for some frequent issuers; however, we believe that this practice may diminish the import of the actual matter being disclosed. The revised guidance should be changed to mandate that disclosures are provided to issuers for each transaction, to ensure that the issuers are aware of the fair dealing requirement for each issuance of securities. There may be some instances where annual boilerplate disclosures for frequent issuers may make sense, but that should not be applied across the board nor as the MSRB suggests that disclosures may be provided once and then referenced in future transactions. Transaction specific and material underwriter conflicts of interest should be provided for each issuance of securities.

Types of transaction-specific disclosures: The types of transaction specific disclosures provided to issuers should include key information about the risks of a transaction. The MSRB should not formulate rulemaking that could dilute the information that an underwriter provides to an issuer about the material risks within a transaction. This calls into question whether the revised G-42 standard cited in the Notice is the most appropriate when underwriters recommend a financing structure to issuers. The "two-prong analysis, generally consisting of a call to action to proceed with a specific recommended financing structure" standard could prevent some issuers from receiving the right information they need to determine what financing structures are best for their government.

Conflicts of interest and "reasonably foreseeable" conflicts of interest: The material conflicts of interest and "reasonably foreseeable" conflicts of interest standard should be used by the underwriter. Including "all potential" risks could not only increase the disclosures in magnitude but also it could diminish the meaningful inclusions that issuers need to know. To restate, it is important for the key conflicts to be reported in a separate document from standard disclosures. Underwriters should also continue to have an "ongoing obligation" to provide material disclosures after the execution of the contract and continuing through the underwriting period.

Underwriter discouragement of the use of a Municipal Advisor: The proposed language helps to make sure that underwriters avoid telling issuers not to hire a municipal advisor. However, per our comments in 2018 and 2011, we suggest that MSRB also include a requirement that underwriters affirmatively state that issuers may choose to hire a municipal advisor to represent their interests in a transaction.

Thank you again for the opportunity to comment. Please feel free to contact me at ebrock@gfoa.org or (202) 393-8467 if you have any questions on or would like to discuss any of the information provided in this letter.

Sincerely,

Emily S. Brock

Emily Swenson Brock
Director, Federal Liaison Center