

May 27, 2016

VIA ELECTRONIC MAIL

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

Re: **Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans
Regulatory Notice 2016-11**

Dear Mr. Smith:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans (the Notice)² issued by the Municipal Securities Rulemaking Board (MSRB). ABA members regularly purchase municipal obligations directly from the obligors and extend the kinds of loans and other credit accommodations that are the subject of the Notice. In addition, many of our members provide services as regulated municipal securities dealers, either through separately identifiable departments in commercial banks or through broker-dealer affiliates of commercial banks.

Your organization promotes timely disclosure and transparency of bank loans in the municipal marketplace, and ABA generally supports that goal. Many of our members affirmatively encourage obligors to post redacted bank loan documentation on the MSRB's EMMA website to ensure transparency, while some of our members defer to the relevant obligor in matters of bank loan disclosure, believing that disclosure is the purview of the obligor alone. Although the proposal outlined in the Notice is intended to promote transparency, it is not clear to us that it will ultimately achieve that objective. Since municipal obligors may elect not to engage a municipal advisor in connection with bank loans, the proposal still would not produce the consistent disclosure you desire. However, even if a municipal obligor retains a municipal advisor, the transaction may not involve municipal securities and thus not fall within the jurisdiction of the MSRB. That limitation, coupled with the issues presented for municipal borrowers and their advisors – who have a fiduciary responsibility to their municipal clients – has led us to conclude that the proposal may not be beneficial to the market on the whole. We trust that you will carefully balance the interests of all market participants in considering this proposal, and we would welcome the opportunity to further discuss it with you.

¹ The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

² MSRB Notice 2016-11.

We submit the following in response to certain questions posed by the Notice (the corresponding number of each question in the Notice being used here for ease of reference.

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

RESPONSE: The disclosure requirement described in the Notice would plainly promote transparency, which ABA generally supports; however, the better question may be the one posed in number 11 below, *i.e.*, whether the benefits of requiring municipal advisors to make such disclosure outweigh the costs of such a disclosure requirement. We believe that gauging the benefits achieved by such a requirement (viewed on an incremental basis relative to what has and may otherwise be accomplished in that regard) is critical to this analysis.

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?

RESPONSE: The National Federation of Municipal Analysts published its recommended best practices for bank loans last year, and we have also included a link to our critique of those recommendations.³

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)?

RESPONSE: Bank loans in all cases must fit within the parameters of the obligor's additional debt and lien covenants (often referred to as the "additional indebtedness test") that the existing debt holders have previously accepted. As a result, we are not convinced that failure to timely disclose additional debt and its terms will materially adversely affect existing debt holders (or, at a minimum, result in any adverse effect that they could not reasonably foresee at the time they purchased the related debt). In other words, an existing debt holder knows (or should know) whether the obligor has the ability to issue additional debt (potentially on different terms than those on which it purchased the same obligor's debt).

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

RESPONSE: If such a disclosure requirement is adopted, it should apply only when the obligor has other public market debt outstanding, and only the closing of a bank loan on which the municipal advisor actually advised the obligor should trigger the requirement. Disclosure promptly after closing is reasonable, and we support the ten business day standard referenced in the NFMA RBP cited above; however, we believe that any express or implied recommendation to disclose the bank loan prior to its consummation is unwarranted if disclosure and transparency are the sole objectives. Advance disclosure of a bank loan is also unnecessary because the existing debt holders and other interested parties should already be aware of the obligor's ability to enter into a bank loan.

³ NFMA's RBP is available at: http://www.nfma.org/assets/documents/RBP/rbp_bankloans_615.pdf.
ABA's comments are available at <http://www.aba.com/Advocacy/commentletters/Documents/BankLoanDisclosureNFMARBPCLMay42015.pdf>.

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?

RESPONSE: Any requirement to prepare a summary of the bank loan would be highly problematic for the lender and the obligor (and we assume the municipal advisor). First, there is no independent need for a disclosure document, so the preparation of a summary would be an additional expense to the obligor that does not benefit any of the parties to the bank loan transaction. Second, a summary in which the obligor is a participant may give rise to concerns for the obligor with respect to SEC Rule 10b-5 (e.g., regulatory and litigation risk resulting from possible misstatements or omissions in summary disclosure documentation) and the SEC's Municipalities Continuing Disclosure Cooperation initiative. Finally, posting appropriately redacted (that is, in a manner generally consistent with the redaction permitted under MSRB Rule G-34(c)) copies of the financing documents will allow third parties access to all relevant information relating to the bank loan, making a summary superfluous. Requiring the preparation and filing of a summary would serve only as a short cut to a thorough analysis by other interested parties and a needless complication and added expense to an otherwise attractive financing option for the obligor.

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?

RESPONSE: We expect that the market will regulate itself in this regard. If a municipal obligor is not timely disclosing its bank loans and/or entering into bank loans in violation of its covenants with other debt holders, it may soon find itself without access to the capital markets. Accordingly, we believe that, with the assistance of GFOA and other industry groups, and the implementation of a more straightforward way of disclosing information regarding bank loans on EMMA, there should be increasing willingness on the part of municipal borrowers to voluntarily disclose the terms of bank loans.

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?

RESPONSE: This is one of the more important questions to consider. Although we appreciate the theoretical concerns raised by the MSRB and others in relation to bank loan disclosure, we have yet to encounter an actual example of an investor suffering material harm due to slow or no disclosure of a bank loan. That circumstance is not surprising because, in general, the structure of bank loans is similar to the agreements entered into between banks and municipal obligors when a bank provides credit or liquidity enhancement for VRDOs. Those agreements have existed for decades without causing material harm to other debt holders, so we wonder why or how similarly structured bank loans would have a different effect.

As a result, although we generally support the prompt disclosure of bank loans to foster transparency, the practical benefits to other constituents are less clear. We believe that the concept proposal would impose material costs or burdens on municipal advisors, and indirectly on municipal obligors as well. Municipal advisors would likely incur additional time and expenses to review the disclosure documents, including possibly retaining legal counsel to prepare submissions, which costs will likely be borne by issuers or obligors in the form of increased fees.

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

RESPONSE: Any requirement that may involve the participation of an issuer will have some measure of economic cost to the issuer (e.g., higher municipal advisor fees, legal fees and indirect costs in the form of time). Perhaps more subtly, a disclosure requirement that has a negative economic impact on a municipal advisor may result in an unconscious bias (and hence advice) against an otherwise attractive financing option for the issuer. Finally, a disclosure requirement on municipal advisors may result in issuers having to pay higher fees to municipal advisors due to the higher costs of the municipal advisors providing their services.

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?

RESPONSE: Issuer education is the key. Issuers need to understand why disclosure is necessary or desirable for their continued access to debt capital markets; and, providing the information to the market through EMMA should be made as easy as possible.

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.

RESPONSE: Even if determinable, the total number of bank loans is not useful by itself. Many municipal obligors with bank loans only have bank debt (and no public debt), and thus should not need to disclose the existence of that debt to the general marketplace. The better question is how many bank loans have been issued and not promptly disclosed when the issuer had other public debt outstanding. Better still would be to determine how many bank loans have been issued and not promptly disclosed when the issuer had other public debt outstanding *and* where the bank loan contained terms that could reasonably be expected to have a material adverse effect on the existing public debt holders. We do not see much utility in these statistics other than the last figure - that number would tell us the true extent of the concern.

ABA's members generally support the prompt disclosure of bank loans following closing; however, in this connection, we do not wish to see any material limitation or requirement imposed on any party to a bank loan transaction. A requirement for municipal advisors to disclose bank loans should be carefully balanced against the costs of such a requirement (including indirect costs on municipal obligors). In sum, we question whether the concerns raised by the MSRB are addressed by the concept proposed. We would be happy to further discuss these issues with you.

Sincerely,



Cristeena G. Naser
Vice President
Center for Securities, Trust & Investment