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November 17, 2017

VIA Electronic Mail

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

Re: MSRB NOTICE 2017-19, Request for Comment on a Concept
Proposal Regarding Amendments to Primary Offering Practices of
Brokers, Dealers, and Municipal Securities Dealers

Dear Mr. Smith:

In response to MSRB Notice 2017-19 (the "Concept Proposal"), the National Association of Bond Lawyers (NABL) provides the following comments on various aspects of the Concept Proposal. Our comments are limited to areas where we believe there is a risk of unintended consequences in the application of the proposed rule changes related to primary offering practices of brokers, dealers, and municipal securities dealers.

A Rule Requiring all Municipal Securities Transactions to be Bona Fide Public Offerings Limits an Issuer's Flexibility

The MSRB requested comments in the Concept Proposal concerning whether it should adopt a rule requiring a bona fide public offering in all municipal securities transactions. To the extent the issuer and the underwriter have contracted that the municipal securities be subject to a bona fide public offering, NABL agrees that such an offering should take place. NABL believes, however, that the MSRB should not inject itself into the negotiation of bond purchase contracts between municipal issuers and municipal underwriters. Thus, if the MSRB were to adopt such a rule, it should apply only when the issuer has determined that there should be a bona fide public offering.

In addition, NABL believes the MSRB should revise its interpretative guidance of Rule G-17 such that if, in any offering of municipal securities, the underwriter is not obligated to conduct a bona fide public offering, the underwriter should specifically identify in its Rule G-17 disclosures that the underwriter is not obligated to conduct a bona fide public offering and the material risks to the issuer of conducting an offering that is not subject to that requirement.

Any requirement to post CUSIP numbers for advance refundings should not serve as an indirect regulation of the issuer.

In the Concept Proposal, the MSRB seeks comments as to whether underwriters, in advance refundings, should be required to disclose the CUSIPs refunded and the percentages thereof before underwriters are required to post the advance refunding documents. NABL does not express a view on whether such a requirement should be adopted, but we do believe that it is important that any requirement not serve to indirectly regulate issuers by creating a *de facto* requirement that refunded CUSIPs be identified by the issuer at pricing or any time before the issuer is otherwise obligated to provide such information. Any requirement for underwriters to disclose the CUSIPs proposed to be refunded should only be with respect to information that is then available.

The MSRB should not adopt a rule requiring underwriters or municipal advisors to post preliminary official statements.

NABL opposes a requirement to post preliminary official statements to EMMA. Any such requirement would have the effect of prescribing actions before the sale of municipal securities, which would represent an indirect regulation of issuers – something that is prohibited under the Tower Amendment. In addition, we are concerned about logistical issues related to such a requirement. Currently, many issuers use the official statement printers to track who downloads preliminary official statements so that, if there is a supplement to the preliminary official statement, the issuer can ensure that anyone who downloaded the preliminary official statement receives the supplement. We do not believe that the MSRB is currently in a position to provide such tracking services. Additionally, this type of requirement would be particularly problematic in limited offerings because issuers and placement agents do not market limited offerings to the general public.

The MSRB should carefully consider the potential impact of its rules on tax-exempt municipal bond rules.

The Internal Revenue Service recently issued new rules regarding the establishment of the “issue price” of tax-exempt bonds. In some circumstances, the actions of the managing underwriter, co-managers, selling group members and retail distribution networks are involved. No rule of the MSRB should be adopted if such rule would undermine, conflict with or make impractical the continued compliance with the IRS issue price regulations. For example, a free-to-trade wire may be required to lift syndicate sales restrictions, but if the issuer of the bonds elects to establish its issue price using the “hold-the-offering-price” rule in the new issue price regulations, then the free-to-trade wire rule could not be issued until after expiration of the holding period specified in those regulations. Similarly, any MSRB rule establishing a requirement for a bona fide public

offering should match its definition of “public” to that used in the issue price regulations. NABL believes that any new MSRB rule should be reviewed from a federal tax perspective. We hope that the MSRB considers NABL a resource in this respect, and we invite the MSRB to consult with us concerning how new rules may affect or be affected by the application of IRS regulations.

Sincerely,

A handwritten signature in blue ink that reads "Alexandra M. MacLennan". The signature is written in a cursive style with a large initial 'A'.

Alexandra M. MacLennan