



May 27, 2016

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

Re: MSRB Notice 2016-11: Request for Comment on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans

Dear Mr. Smith:

The Asset Management Group of the Securities Industry and Financial Markets Association (the “AMG”) appreciates this opportunity to respond to Notice 2016-11¹ (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”), in which the MSRB requests comment on a concept proposal to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients (“Concept Proposal”).

The AMG is the voice for the buy side within the securities industry and broader financial markets, which serves millions of individual and institutional investors as they save for retirement, education, emergencies, and other investment needs and goals. AMG’s members represent U.S. asset management firms whose combined assets under management exceed \$30 trillion. The clients of AMG member firms include, among others, registered investment companies, separate accounts, ERISA plans, and state and local government pension funds.

The AMG supports the MSRB’s efforts to ensure that investors have timely access to material information about direct purchases and bank loans and believes that such disclosures would both protect investors and promote better informed investment decisions. Further, we believe that any associated costs with such a requirement would be minimal on both the issuers and the municipal advisors. As discussed in more detail below, the AMG believes that the MSRB’s proposal can improve the disclosure of information on bank loans. Therefore, the AMG believes the MRSB should proceed with publishing a second request for comment on a specific proposal that would require municipal advisors, as well as brokers and dealers, to disclose information about direct purchases and bank loan financings in the municipal market.

¹ MSRB Notice 2016-11 (March 28, 2016).

AMENDMENTS TO RULE 15c2-12

As discussed in this letter, the AMG supports the MSRB's efforts regarding disclosure of direct purchases and bank loans. In addition, we believe that disclosure enhancements could be accomplished by amending existing SEC regulations, particularly Securities and Exchange Commission ("SEC") Rule 15c2-12. In connection with an overall update of Rule 15c2-12, which requires underwriters of municipal bond issues to ensure that issuers enter into an agreement to make certain continuing disclosures, the SEC could ensure that material information regarding direct purchases and bank loans entered into by issuers are consistently and uniformly reported to MSRB's Electronic Municipal Market Access system ("EMMA"). Under the MSRB's proposal alone, where there are some bank loans that may not qualify as municipal securities, a regulatory gap may result due to such bank loans being omitted from the scope of the proposal.² Accordingly, we recommend that bank financing, whether meeting the characteristics of a "security" or otherwise, should be included in the list of reportable events under Rule 15c2-12.

RESPONSES TO RELEVANT QUESTIONS

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. A disclosure requirement would help protect investors and promote informed investment decisions.

Direct purchases and bank loans are often unreported or underreported to the municipal securities market. A lack of consistent disclosure of these borrowings stands in sharp contrast to the regular and reliable disclosure of public bond offerings, including fixed rate debt and variable rate demand notes ("VRDNs").

Further, it is worth noting that while many VRDNs are originally issued on a 'public' basis, they may subsequently be converted to private bank notes with no attendant disclosure. It is possible that such transactions will subsequently be re-marketed to the public market, creating a potential lapse in disclosure. A timely disclosure requirement for direct purchases and bank loans, as well as lines of credit and other bridge financing arrangements, would enable investors to be better informed about an issuer's debt profile and financial management practices, which, in turn,

² The AMG believes, at a minimum, that the MSRB should require municipal advisors to file onto EMMA a notice of the creation of any securities that were sold to a bank in a transaction that the municipal advisor helped to arrange, and to encourage municipal advisors to file onto EMMA notice of any loan that they helped to arrange. In each such case, notice should include a summary of material transaction terms. Given the "gray area" between loans and securities, we also suggest that under such a regime, if a municipal advisor is uncertain as to whether a transaction involves a loan or a security, the municipal advisor should treat it as a security and file a notice on EMMA.

would allow investment decisions to be based on more fulsome financial information that is critical to a reasonable investor's 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?

Organizations such as the National Federation of Municipal Analysts ("NFMA") produce Recommended Best Practices, which outline appropriate disclosure in various sectors.³ AMG endorses these efforts and encourages the MSRB to consider NFMA's Recommended Best Practices in developing any disclosure requirement for bank loans and direct purchases. Currently, disclosure practices vary greatly across sectors, regions and types of governments, and we believe all sectors could benefit from adherence to a more stringent and uniform disclosure standard.

Although not perfect, the healthcare sector may provide the best example of current industry best practices. Disclosures in the healthcare sector seem to be more fulsome than many other sectors. Additionally, annual audits are typically within 150 days and quarterly audits are within 60 days. As expected, larger hospital systems offer the best disclosure, often including the offering of interactive quarterly conference calls with senior management presentations, and management discussion and analysis ("MD&A").

However, even in the healthcare sector, bank debt disclosure, as well as terms and covenants, are inconsistent. Disclosure may be included in MD&A and included in audits, but the terms typically are not included. Additionally, some management personnel are willing to discuss the terms, rate and covenants that differ from the master trust indenture, but others are not. Investors typically do not know the full terms of the covenants until there is a new bond deal and management is forthcoming, or there is a covenant violation. AMG's members have also witnessed situations where bank loans have cross-defaulted and other agreements included termination language upon a covenant violation, which can create liquidity problems for holdings. Further, there are situations where the same issuer is able to obtain different terms from different banks, where one set of terms includes a termination event and the other does not. AMG members also believe some banks may be charging fees to waive covenant violations, which brings additional uncertainty to the market.

³ RECOMMENDED BEST PRACTICES IN DISCLOSURE FOR DIRECT PURCHASE BONDS, BANK LOANS, AND OTHER BANK-BORROWER AGREEMENTS, Nat'l Fed'n of Mun. Analysts, *available at*: http://www.nfma.org/assets/documents/RBP/rbp_bankloans_615.pdf.

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)?

Existing and prospective bondholders need to understand and analyze the overall fiscal health of an issuer, including bank loans and direct purchases. At a minimum, the basic terms of bank loans and direct purchases should be disclosed and the governing documents (*i.e.* the term sheet, indenture or loan agreement, etc.) should be available on EMMA. Specific disclosure elements of bank loans and direct purchases should include: (1) par amount; (2) coupon and/or borrowing spread; (3) issue price; (4) term to maturity; and (5) other material provisions, which include (but are not limited to) the date when the loan was made, the use of the proceeds, call provisions, put and sinking fund schedules, debt and lien priority, event-driven changes in financing cost, financial covenants, events of termination and default (including cross-defaults), acceleration rights and other remedies, disclosure of a "most-favored nation" clause, if present, and demonstration of compliance with additional debt tests. The need to analyze bank loans or direct placements is no different than analyzing parity or other debt of an issuer.

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

Investing banks providing the loans or acting as the purchasers are getting timely information about the issuers' direct purchases or bank loans. There are information barriers and policies and procedures in place to address these situations, but this may also create the appearance of an unfair advantage, as the banks that are providing certain financing could be acting as broker/dealer for the next public offering. Specific material provisions, like cross-default and acceleration provisions, may give the investing bank and/or the purchaser an advantage vis-à-vis other holders of bonds.

Additionally, the AMG believes that rating agencies sometimes receive information about bank loans and direct purchases when investors do not. Providing information to the rating agencies should not be viewed as disclosure to investors. If the bank loan results in a rating downgrade, investors may be surprised by the change, and this can have an effect on the pricing and liquidity of the bonds. If an investor was provided the information at the same time as the rating agency, the investor could make its own determination on whether to buy, hold or sell a bond, perhaps in advance of a rating agency action.

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?

Yes. A municipal advisor's term sheet should contain a level of detail about the financing that a reasonable investor would find helpful to making an investment decision about an issuer. Therefore, investors would welcome access to it.

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 financial transaction that occurs)?

In order to limit any potential regulatory gap, the AMG believes the MSRB should make the disclosure requirement as broad as possible, in accordance with the MSRB's jurisdictional limitations.

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)?

The disclosure should be made with respect to bank loan or direct purchase information relevant to the transaction in question as well as with respect to the terms of other such borrowings that remain outstanding (if not previously disclosed to the public). Once the issuer is current on its disclosure, there would only be the ongoing requirement to disclose each new borrowing or any material changes to existing financing.

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?

The NFMA's Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements outlines the specific information regarding direct purchases and bank loans that we believe would be helpful.⁴ At a minimum, issuer disclosure should include the borrowing documents (e.g. a detailed term sheet, series resolution or indenture, borrowing agreement, legal opinions, ratings letters, CUSIP, etc.) and would mirror the level of disclosure common to public transactions. We also believe that copies of the redacted documents would be sufficient, rather than requiring municipal advisors to create any new documentation.

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?

As discussed above, the AMG believes the SEC would be best suited to address disclosure of direct purchases and bank loans through amending SEC Rule 15c2-12. However, the AMG is supportive of the MSRB's proposal to require municipal advisors to report material information on an issuer's direct purchases and bank loans, to the extent the MSRB has the jurisdiction to do so. We also agree that MSRB's EMMA reporting system is the appropriate and centralized portal for the disclosure of an issuer's borrowing transactions, including direct purchases and

⁴ *Id.*

bank loans. If the MSRB proceeds with creating a disclosure requirement, the AMG suggests that it can improve EMMA by adding a new bank loan/direct purchase category.

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

The MSRB should craft the proposal as broadly as possible, ensuring that it applies to all municipal advisers and broker/dealers. This would reduce disclosure inconsistencies and limit the potential regulatory gap, allowing investors to receive information about all direct purchases and bank loans that are also municipal securities.

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

At this point, it is difficult to comment in any detail on the costs and benefits of the disclosure requirement in advance of the MSRB's specific proposal, which we urge the MSRB to issue. On a general basis, however, we do not believe that any additional costs and/or burdens associated with a disclosure requirement would outweigh the significant benefit that will result from this meaningful reform.

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

Subject to credit fundamentals, issuers that strive for "best-in-class" disclosure receive preferable pricing by investors in the public markets and their securities are characterized by relatively higher liquidity in the secondary market. Further, if an issuer is current on its disclosure, and remains so, we believe the municipal advisor should find the ongoing reporting burden to be minimal. For each new direct loan or other borrowing, the municipal advisor should only have to post the relevant documents to EMMA on a timely basis. Therefore, this proposal should benefit well-managed issuers.

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

Generally, as long as an issuer is current on its disclosure, only the relevant documents to the transactions should be necessary to provide the investor with a relatively complete picture of an issuer's overall financial condition.

However, while disclosure efforts have come a long way in the areas of call, mandatory tender and redemption notices, consistency and choice of reporting venue (*e.g.* EMMA versus Bloomberg) are important considerations. In addition, a common disclosure point for commercial paper transactions (mirroring the VRDN tab in EMMA) would be useful. Also, the defeasance of an issuer's debt should result in the timely posting of the escrow agreement and

verification report to EMMA, permitting investors to review pre-refunded bond offerings. Finally, proper “tagging” of documents (*e.g.* correctly titling documents and posting them to the proper section of EMMA) should be improved in order to allow investors to obtain the benefit of issuers’ disclosure efforts.

Further, it is worth noting that the question is often not *what* is needed, but rather *when* is the information needed. Often, investors do not have access to timely information, which is necessary to have a complete picture of an issuer’s overall financial condition. For example, disclosure for local governments consists primarily of audited financial statements. Often, it can take local governments up to 270 days after the end of the fiscal year to release their audit. This makes it very difficult for an investor or potential investor to appropriately analyze the local government’s financial position. Having access to unaudited interim financial statements would significantly increase investors’ ability to understand an issuer’s overall financial condition.

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?

With respect to legacy transactions that were originating before EMMA was active, it would be helpful to have relevant transaction documents, including offering statements and governing bond documents. The AMG would also support expanding the disclosure to include all lines of credit and other bridge financing arrangements, capital leases, and public-private partnerships, in addition to bank loans and direct purchases, to ensure investors make investment decisions based on complete financial information.

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?

While EMMA has been a useful tool, the EMMA interface has proved to be difficult for many issuers. We believe that the MSRB should reorganize EMMA to make it easier both for investors to find information and for issuers to submit information correctly. The AMG would welcome the opportunity to work with the MSRB to make changes to EMMA to make it more user friendly.

Mr. Ronald W. Smith
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The AMG sincerely appreciates the opportunity to provide comments and your consideration of these views. We stand ready to provide any additional information or assistance that the MSRB might find useful. Please do not hesitate to contact Tim Cameron at 202-962-7447 or tcameron@sifma.org or Lindsey Keljo at 202-962-7312 or lkjeljo@sifma.org with any questions.

Sincerely yours,



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