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Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Response to MSRB Draft Proposal

Dear Mr. Smith:

We are pleased to provide comments to the draft proposal of the Municipal Securities Rulemaking Board ("MSRB"), dated February 7, 2012 (the "Proposal"), that would limit the ability of an underwriter (the "Underwriter") of bonds issued in one issue (the "New Bonds") to consent to amendments of a master (or "open-ended") indenture, resolution or ordinance (the "Master Indenture") pursuant to which the New Bonds are issued, where outstanding bonds (the "Prior Bonds") will remain outstanding under the amended Master Indenture. The Proposal is to adopt an interpretative notice that would make it illegal under MSRB Rule G-17[1] for an Underwriter to consent to an amendment of the Master Indenture if: (i) the amendment reduces the security for the owners of the Prior Bonds; and (ii) the Master Indenture did not expressly provide that the Underwriter could consent to the amendment. For the reasons stated below, we recommend that this Proposal not be adopted by the MSRB.

The context in which we believe this issue has arisen in the past is where an issuer, such as us, desires to amend (and in some cases restate) the Master Indenture to reflect new or modernized provisions that have become commonplace in the bond

[1] The operative language of G-17 is "each broker . . . shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice."

market for Master Indentures. In our experience, the Master Indenture typically provides a limited set of circumstances for which an amendment can be approved by the bond trustee (the "Trustee") without consent of bondholders. However, the Master Indenture importantly provides broad authority for the holders of a majority in principal amount of outstanding bonds, including the Prior Bonds and the New Bonds, to consent to any amendment (except certain specific amendments for which unanimous consent is required). We note that, in virtually all cases, the holders of the Prior Bonds should be fully aware of the possibility that the holders of outstanding bonds, including the New Bonds, can consent to a broad range of amendments even if the holders of the Prior Bonds oppose the amendment, including if the amendment adversely affects the security of the Prior Bonds.

Fundamental changes have occurred in the structures, procedures, security and practices affecting the issuance of governmental bonds. The advent of different types of variable rate bonds, the use of various sources of credit enhancement, changing criteria upon which ratings are determined, just to mention a few changes, have caused many issuers, particularly issuers like us who have multiple series of parity bonds under a single Master Indenture, to modernize the Master Indenture to reflect new market conditions, structures and requirements. It is also noteworthy that, in our experience, the amendments often do not reverse a limitation that was specifically drafted in the original Master Indenture, but rather add new provisions to contemplate a transaction or a financing structure that was not even contemplated as a possibility at the time the Master Indenture was executed. Further, the Trustees have become much less willing to concur in the issuer's interpretation of any aspect of the Master Indenture or for enforcement of the Master Indenture, including whether these amendments can be approved without bondholder consent. In addition, at the time a typical Master Indenture was first adopted, bonds were registered with the Trustee, so that the Trustee could easily assist the issuer in reaching the holders of the Prior Bonds to seek consent. Today, of course, with virtually all bonds registered through DTC, an issuer is unable to solicit bondholders effectively for consent to an amendment.

As a consequence of these market forces and our need to modernize our Master Indentures without the significant cost of refunding or defeasing bonds, the practice of having the holders of the New Bonds (and the Underwriter) consent to amendments without the defeasance of the Prior Bonds or without securing the consent of the holders of the Prior Bonds has become relatively commonplace. To our knowledge, we believe this practice has been used by issuers, such as us, for many years without significant resistance from the holders of Prior Bonds. As a consequence, we are concerned the Proposal will cast a negative light and make illegal a practice that has been used for years with little controversy. We are concerned that

we, among numerous other issuers, could be negatively impacted by the Proposal without adequate substantiation of the depth of the concerns. We ask that the MSRB be mindful of the impact on issuers of the Proposal. We note that the Proposal is focused on a change in "security" for the Prior Bonds. If the MSRB's concern is for those limited circumstances where the fundamental security for the Prior Bonds is reduced, then the Proposal should be more narrowly defined.

We recommend that the MSRB should not adopt the Proposal for the following reasons:

1. The Master Indenture permits the holders of a majority in outstanding bonds to consent to virtually any amendment. In our experience, when the Master Indenture is amended contemporaneously with the issuance of the New Bonds, the holders of the New Bonds have been considered to consent to the amendment by reason of their purchase of the New Bonds in addition to the Underwriter's consent. This deemed consent is disclosed in the offer. The holders of the New Bonds have a clear right under the Master Indenture to consent to a wide variety of amendments. We see no difference between those holders consenting at the time of issuance of the New Bonds, as compared to consenting at a later date. The crucial point is that they have consented. The Master Indenture was not drafted with the intent that the amendment process was supposed to occur only when the consenting bonds were already outstanding for any given period of time or that the process be difficult or impossible. We should be free to find an efficient manner to accomplish a purpose that is expressly limited under the Master Indenture. We believe the Proposal should not be adopted because it may adversely affect the process of the holders of the New Bonds consenting by purchase, as the Proposal could limit the Underwriter's ability to facilitate or participate in the consent by purchase.[2] Regulating or prohibiting the Underwriter's role in the process of consenting could limit the ability of the holders of the New Bonds to exercise a right that the Master Indenture grants to them. Further, the Proposal will have the MSRB dictating the process by which we may amend the Master Indenture in a manner not contemplated by Rule G-17.

2. As part of the consent by purchase, as a belt and suspenders method, issuers like us often have also asked the Underwriter, as the initial holder, to consent on behalf of the holders of the New Bonds and/or to consent as the authorized representative of the holders of the New Bonds. The Proposal will adversely affect the

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[2] We believe consent by purchase after disclosure on the New Bonds is a standard, widely-accepted practice in the market. To the extent the Underwriter is no longer permitted to participate in the consent by purchase process, the danger exists that the consent by purchase process might altogether be stifled in the market.

role the Underwriter can play in our additional protections that are gained by the Underwriter's consent as the initial holder.

3. We have engaged with underwriters in this practice for years without significant resistance from holders of the Prior Bonds, and we have realized the material advantages of modernizing our Master Indentures without impact on the Prior Bonds. We are unaware of rating declines or other controversies that have resulted from the amendments. So, fundamentally, we believe the Proposal will materially and adversely impact an accepted practice that is of benefit to the issuers. Further, we believe that the interpretative notice will cast a negative light upon established practices of the Underwriters and issuers, and, potentially, raise questions about the validity of those practices and/or raise issues of liability after the fact.

4. We believe the Proposal wrongly suggests that the Underwriter of the New Bonds is "dealing" with holders of the Prior Bonds. Rule G-17 only pertains to when a broker "deals" with any other person. As the Underwriter of the New Bonds, the Underwriter is not "dealing" with the holders of the Prior Bonds. The Underwriter has no current relationship or duty to the holders of the Prior Bonds. Indeed, the Underwriter, because of the DTC system, has no accurate knowledge of who the holders of the Prior Bonds are. Adopting the Proposal would give a much broader meaning to the term "dealing" than we believe is intended by Rule G-17.

5. The Proposal suggests that the Underwriter is consenting to an amendment that is detrimental to bondholders, including the holders of the New Bonds. The Underwriter clearly is concerned to present a bond structure that is marketable to the holders of the New Bonds, to whom the Underwriter owes a duty of fair dealing. To adopt the Proposal suggests that this practice is deceptive, dishonest and unfair, when, in fact, the Underwriter is simply facilitating the issuer and the holders of the New Bonds to exercise a right to which they are entitled. How can that practice be unfair, deceptive or dishonest?

6. The Proposal requires a change in "security" before it applies. In the vast majority of amendments with which we have experience, the fundamental security of the Prior Bonds is not changed. If the MSRB is aware that the fundamental security for the Prior Bonds, such as a security interest in or lien on the net revenues of the issuer's utility system, has been significantly reduced by reason of amendments approved by the Underwriter, particularly to the point of jeopardizing the ratings on the Prior Bonds, without consent of the holders of the Prior Bonds, then the proposed notice should be narrowly drafted to affect amendments only where the fundamental security for the Prior Bonds is deleted, released or substantially reduced. As drafted, the Proposal may have much broader reach than is needed to deal with that concern.

More definition would be needed to define the "security" that cannot be changed or reduced. We note, however, that the holders of a majority in principal amount of bonds, e.g., the holders of the New Bonds, could agree to such a change, if the holders of the Prior Bonds are not needed to achieve that majority, without any question as to its validity.

7. Since the context in which the Underwriter will consent to an amendment involves an existing Master Indenture, issuers such as us have relatively little ability, absent employing the approach the Proposal wants the Underwriter to avoid, to amend our Master Indenture to include the kind of language that the Proposal requires.

8. The Proposal wrongly suggests that any amendment where the documents with respect to the Prior Bonds do not fully explain the authority of the Underwriter of the New Bonds is wrong when in our experience the disclosure documents have said that the holders of any bonds, including bonds to be issued in the future, can consent to amendments. Further, the Proposal refuses to distinguish its application based upon the substance of the amendments to the Master Indenture, which, in our minds, does a disservice to the interests of issuers seeking to modernize the provisions of the Master Indenture without substantial impact on the holders of the Prior Bonds or the "security" of the Prior Bonds. To the extent that the Proposal has a place in protecting the interests of the holders of the Prior Bonds, some analysis of the depth of the problem should be considered and the final Proposal should be drafted narrowly to deal with the specific problems found.

9. The Proposal requires a description of the Underwriter's ability to consent in the Official Statement, leaving open the issue of where in the Official Statement summary and/or body such description would be required to be placed, which would arguably need to be consistent across the market.

10. Because the Proposal will likely affect the Underwriter's willingness to consent to an amendment, we suspect that the adoption of the Proposal will cause issuers to refocus through DTC on the solicitation for consents from the holders of existing bonds. In our experience, because of the difficulty in verifying ownership of DTC bonds and the difficulty of effectively explaining amendments for which consent is required, the Proposal could likely have the effect of overwhelming holders with multiple, confusing requests for consent.

In conclusion, if the MSRB believes that protections of the holders of the Prior Bonds are needed, we recommend THAT the MSRB adopt a rule that requires a different course of action, on a going-forward basis, to establish a new manner of the

amendment procedures and that gives issuers sufficient time to conform their documents to the desired new standard.

For the above reasons, we respectfully ask the MSRB to decline to adopt the Proposal. If you have any questions or want to discuss the points made herein, please feel free to contact me at jheerens@indianapolisairport.com or (317) 487-5490.

Very truly yours,

Joseph R. Heerens
Chief Legal Officer

cc: John Clark
Marsha Stone
Jerry Wise
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