George K. Baum & Company
INVESTMENT BANKERS SINCE 1928

May 26, 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:

George K. Baum & Company ("GKB") is a broker dealer which has been providing access to the taxable and tax exempt fixed income capital markets for both issuer clients and investor clients since 1928. Depending upon the needs of any particular client, on any particular transaction, GKB has investment banking employees who can provide both underwriting services or municipal advisory services (never, of course, providing both services to an issuer client on the same transaction). We are pleased to have an opportunity to respond to Notice 2016-11.

We support the concept of increased transparency through information being publically available for all direct purchases (the private placement of municipal securities with a single purchaser) and bank loans (a loan, which is not a security, from a bank directly to a municipal entity, evidenced by a loan agreement or other type of financing agreement between the bank and the municipal entity). We believe that the information included in an issuer's or obligated person's audited financial statements may not timely provide the level of detail regarding direct purchases or bank loans that a municipal securities investor needs to make a fully informed decision about an issuer's or obligated person's full credit picture. We also believe that the disclosure of this information regarding direct purchases and bank loans should be made contemporaneously with the issuer's or obligated person's agreement to take out a loan or place private debt.

In regard to the Concept Proposal, the MSRB appears to be trying to reinforce a regulatory structure which we believe is being built upon a bad foundation. We believe that additional regulation by the MSRB, addressing the process and responsibility for disclosing information about direct purchases and bank loans, needs to be delayed until the SEC provides greater clarity and interpretive guidance on what constitutes a municipal security, and correspondingly what constitutes a bank loan, which is not a security. This issue has been put to the SEC many times and it appears that the SEC believes that there is already sufficient guidance stemming from and referring to the U.S. Supreme Court case of *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990). In the course of our municipal business, many times we have asked underwriter's counsel or lender's counsel to provide us a definitive written opinion stating that a certain debt transaction directly between a municipal entity and a bank was either (1) a direct purchase of a municipal security, or (2) a loan from the bank to the municipal entity and not involving a security. To date, in spite of the written guidance provided by the SEC and the MSRB, it has been our experience that qualified, respected attorneys who are expert in municipal securities laws and regulations have been extremely reluctant to provide such an opinion. In our experience, legal counsel for bank lenders

have been even more reluctant or unwilling to provide such an opinion. It is readily apparent to us that highly competent and experienced securities lawyers believe that more definitive guidance is needed before they can provide such written opinions. The MSRB previously has recognized this quandary. In its Regulatory Notice 2011-52 (September 12, 2011), the MSRB states, "when banks make 'loans' to state and local governments, even if only to provide a source of funds for those governments to purchase their own securities, whether such 'loans' will be considered securities can be a difficult question." (Regulatory Notice 2011-52, page 2)

The uncertainty as to how to classify certain types of debt regularly puts broker dealers at odds with potential investors and lenders. Almost always a bank which offers to fund the debt has a particularly strong preference and opinion about whether they want the debt to be structured as a loan or as a security, and that preference and opinion appears to us to rarely be founded upon an analysis of the factors set forth in the *Reves* decision. We are told, by some banks, that they want an issuance of debt to be a security so that it will be assigned a CUSIP number and be liquid in the secondary market. We are also told by some banks (and sometimes the same banks on different but similar transactions) that they want a debt financing to be a non-security loan because we are told that they do not have to mark such loans to market for purposes of calculating their required regulatory capital and booking income or losses on their income statement. Banks often emphasize the fact that they are regulated by their own federal functional regulators, including Federal Reserve or the Comptroller of the Currency, and they take their marching orders in making a determination as to whether debt is a security or a loan from their regulators. Often if the broker dealer is not willing to treat the debt as the bank requires, that bank will not fund the debt.

When the SEC provides new regulation or interpretive guidance which allows broker dealers, municipal advisors, municipal entity issuers, borrowers, lenders and securities investors to have a clear understanding of what determines whether debt is a security or a loan, then we would support the MSRB (or any other regulatory body) creating regulatory instructions on how the terms of direct purchases of securities and bank loan terms should be disclosed. We believe that any such regulation should recognize that there are only two parties which are, in all instances, aware of the terms of a borrowing; the borrower and the lender (or in the case of the direct purchase of securities, the issuer and the investor). Imposing a disclosure requirement on any other party in the transaction will result in some transactions being unreported or reported incorrectly. Not all borrowers or issuers utilize the services of a municipal advisor, not all borrowers or issuers utilize the services of an underwriter or placement agent. And if a particular debt transaction is properly structured as a bank loan, and therefore does not involve the direct sale and purchase of a municipal security, by definition there will not be any municipal advisor, underwriter or placement agent for that transaction. Therefore, in our opinion, the suggestion in the Concept Proposal that municipal advisors be required to disclose information regarding the direct purchases of securities of their municipal entity clients, and direct funding of loans by banks to their municipal entity clients, would have a limited impact and not achieve the desired goals enunciated in the Concept Release.

We believe that the most complete coverage and disclosure of transactions would occur if the SEC were to make the issuance of any debt an additional notice event under SEC Rule 15c2-12(b)(5)(i)(C), which would therefore need to be promptly disclosed on EMMA not in excess of ten business days after the occurrence of the event. By revising the list of notice events in Rule 15c2-12 to include any new debt

assumed by a municipal entity issuer or an obligated person through the either the issuance of debt by direct purchase or the incurrence of debt through a loan obtained from a bank, the SEC could specify exactly what information would need to be disclosed and linked on EMMA to all of the issuer's or obligated person's outstanding CUSIP numbers, so that the information could be more easily found by securities investors, thereby enhancing transparency. Placing additional reporting obligations on municipal advisors or underwriters for bank loans or direct purchases is not appropriate or necessary.

Sincerely,

Guy E. Yandel
Executive Vice President

Dana L. Bjornson
Executive Vice President and Chief Compliance Officer

Andrew F. Sears
Executive Vice President & General Counsel