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May 27, 2016

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

**RE: MSRB Regulatory Notice 2016-11**

Dear Mr. Smith:

The Government Finance Officers Associations (GFOA) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to require municipal advisors to disclose direct purchases and bank loans of their municipal entity clients. The GFOA represents over 18,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector. Members of GFOA's Committee on Governmental Debt Management (Debt Committee), a geographically and organizationally diverse group of 25 municipal securities issuers, were consulted in preparing this comment letter. Below are the Committee's comments.

For the reasons outlined below, the GFOA is opposed to the proposed requirement that Municipal Advisors have an obligation to disclose an issuer's bank loans to the MSRB. Bank loans are an important tool in a government's financing toolkit. Bank loans provide a financing option that is generally simpler than publicly marketed bonds, and often with fewer issuance costs and ongoing compliance requirements. Bank loans can also often be structured in a manner that more closely conforms to specific project or repayment considerations. However, bank loans are typically executed in an environment that is not as transparent as the public bond market. For that reason, the GFOA remains engaged in independent and municipal market coalition efforts to improve voluntary disclosure of bank loans.

The GFOA publicly took a position on the need to disclosure bank loans with its best practice *Understanding Bank Loans*. GFOA noted that disclosure of bank loans is particularly important to bond holders if the bank loans are secured by any or all of the same revenues as the outstanding bonds, and are large enough to be material to the creditworthiness of the government. The best practice notice also provides guidance to issuers on utilizing the MSRB's Electronic Municipal Market Access (EMMA) system to disclose bank loan information.

More recently, GFOA issued an alert to in May 2016 reminding our members of this position. In addition, a session at the 2016 GFOA annual conference will focus on this subject. The GFOA is also working collaboratively with the MSRB to jointly develop additional efforts to educate issuers about disclosure best practices including continuing disclosure and the disclosure of bank loans

GFOA supports the MSRB's decision in MSRB Notice 2012-18 to create specific features on EMMA for the voluntary disclosure of bank loans. GFOA also supports efforts to improve the EMMA system which would help issuers more easily navigate the system and input accurate and timely disclosure information in specific designated areas.

While the GFOA remains committed to working with MSRB and other municipal market participant groups to improve voluntary bank loan disclosure, we have significant concerns with the MSRB's Regulatory Notice 2016-11 and do not support this proposal for the following reasons:

- It is primarily the issuer's responsibility to disclose information to the market regarding bank loans and private placements. The issuer makes certifications regarding the completeness and accuracy of disclosure at the time of issuance. And in continuing disclosure agreements, the issuer commits to periodically provide updated financial and operating data.
- Information regarding bank loans and private placements of the issuers may be regarded as material in an assessment of the issuer's financial condition.
- The MSRB's proposal to transfer the responsibility of communicating material financial information to municipal advisors (MAs) is problematic. It arbitrarily assigns the issuer's responsibility to another party, Mas, who may not in general be familiar with the intricacies of securities law nor with an issuer's disclosure policies and procedures. In many cases, the MA will not have a contractual obligation to the issuer regarding continuing or voluntary disclosure responsibility. Further, these disclosure responsibilities may be in conflict with the MA's fundamental fiduciary responsibilities to the issuer that have recently been reinforced in the Securities and Exchange Commission's 2013 MA Rule. Disclosure responsibilities are not consistent with the role of an advisor.
- This proposal seems to trample on disclosure counsel's role to issuers to determine what financial information is material and should be disclosed to investors. MAs currently do not have that responsibility and it is unclear what expertise they could lend to such a determination.
- Establishing this requirement would further complicate the already unnecessarily confusing matrix of responsibilities assigned to MAs by the 2013 MA Rule and subsequent SEC and MSRB regulations, such as MSRB Rule G-42.
- This MSRB proposal ignores the ongoing and increasing level of activity of GFOA and our municipal market partners (National Association of Bond Lawyers; National Association of State Treasurers; National Association of State Auditors, Comptrollers and Treasurers; Securities Industry and Financial Markets Association; Bond Dealers of America; National Federation of Municipal Analysts; and others) to work collaboratively to improve continuing disclosure from municipal interests. GFOA recognizes and embraces the need for issues to provide investors with accurate financial information, which is why we have developed best practices to provide guidance to issuers on disclosure.

Thank you again for the opportunity to comment. Please feel free to contact me at [ebrock@gfoa.org](mailto:ebrock@gfoa.org) or (202) 393-8467 if you have any questions on or would like to discuss any of the information provided in this letter.

Sincerely,



Emily Brock  
Director, Federal Liaison Center