National Association of Municipal Advisors
19900 MacArthur Boulevard, Suite 1100
Irvine, California 92612
844-770-NAMA
www.municipaladvisors.org

May 26, 2016

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

RE: MSRB Concept Release; 2016-11

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Concept Proposal ("CP") to Improve Disclosure of Direct Purchases and Bank Loans ("bank loans"). NAMA is America's leading organization of municipal securities industry professionals who provide municipal advisor ("MA") services to States, municipal entities and obligated persons. Our organization and members support core principles to protect the interests of municipal bond issuers and the public trust; build a more vibrant, competitive, and transparent municipal securities marketplace; and to uphold the highest standards of professional ethics, qualifications, education, and regulatory compliance for municipal advisors.

NAMA strongly encourages robust disclosure practices in the municipal securities market. This includes our support for the recommendations that are outlined in the Government Finance Officers Association's bank loan and numerous disclosure Best Practices. The MSRB, municipal bond issuers, other municipal market participants and the Securities and Exchange Commission ("SEC") have all taken steps to improve municipal market disclosure and we expect that trend will continue to benefit all market participants.

While the MSRB's objective to encourage enhanced disclosure practices and market transparency is of merit, NAMA must strongly oppose the current Concept Proposal. There are numerous reasons for this opposition, which are outlined below. It is also important to comment that, in general, this proposal is well outside of the MSRB's regulatory authority, and would effectively impose a reporting requirement on municipal issuers in violation of the Tower Amendment. Any changes to the disclosure requirements for municipal issuers should be undertaken by Congress and/or the SEC with a full public process open to all interested stakeholders and should be designed to work effectively.

KEY CONCERNS

1. **MAs are Not Dealers with Responsibilities to Investors**. The CP notes in many areas that the MSRB imposes various responsibilities on dealers to provide disclosure documents to EMMA under Rules G-32 and G-34. The reason dealers have this responsibility is because investors are the "customers" of broker-dealers. Requiring delivery, even electronic delivery of disclosure and other documents, is part of a broker-dealer's responsibility to the investor customers. Unlike broker-dealers, municipal advisors do not have a customer relationship with investors nor do they have such a relationship with the investing public at large. To impose such a broad investor delivery requirement on municipal advisors is well outside the boundary of the MSRB's regulatory authority.

2. **MAs Have a Fiduciary Responsibility Only to Their Governmental Entity Client.** Requiring MAs to send the MSRB client bank loan documents, could directly violate the MA's fiduciary standard to its client and MSRB Rule G-42, to put the interests of the client ahead of the MA's own. If a municipal entity and their counsel decide bank loan information is not material and should not be disclosed, and the MA were to then disclose this information, the MA would be acting in conflict with the interests of its client, and instead could be acting in the best interest of the investor, or themselves out of concern to not violate MSRB rules. Additionally, if a MA has signed a confidentiality agreement with their client, disclosing information to a third party could violate the agreement with the client. A MA serves as a member of the issuer's financing team, and the MA alone should not be responsible for making decisions independent of the issuer's wishes or outside the bounds of what the issuer requires of the municipal advisor in their written agreement.

3. **Disclosure Responsibilities Rest in the Hands of the Government/Governmental Entity.** The government/governmental entity, with the advice of counsel, is the party primarily responsible for determining what information is material for bond holders and should be disclosed in annual financial information (as noted in the continuing disclosure agreement), voluntary disclosures and event notices. As part of the Concept Proposal, the MSRB is now suggesting that the MA play a role and supersede the roles and relationship of issuer and counsel, and make a filing for the purpose of investors. Again, while NAMA is supportive of robust disclosure practices, only the issuer, with advice of counsel, can determine their entity's disclosure policies, procedures and practices.

4. **Issuers Could Withdraw From or Minimize Engagements with MAs**. If the items noted above prove correct, and MAs have responsibilities that are counterintuitive to their client and the MA's fiduciary duty, issuers may be inclined to discontinue or not engage in the future with municipal advisors. Such a result would go against the purpose of the Section 975 of the *Dodd Frank Act* and the Section 15B of the *Securities and Exchange*

Act of 1934 (The MA Rule) to have a professional at the table who is there to only serve and advise the municipal entity client on a financing.

5. **Proposal Misses the Objective of Meaningful Disclosures of Bank Loans**. The MSRB states, as have others in the industry, that investors need access to material bank loan information related to their municipal bond holdings. We do not disagree with this assessment. However, this proposal would not get the industry to that goal line. One reason is that the proposal does not specify that bank loan information is needed only when there are bonds outstanding, which seems to be an important threshold to meet when having to disclose information to the MSRB and EMMA for any purpose. Second, there are numerous bank loans and direct purchases that are done without a municipal advisor. Forcing disclosure of information only when a MA is involved, would provide inconsistent information to the market, that could serve as misrepresentations to investors, and as noted above, curtail the use of MAs.

Again, while NAMA appreciates the MSRB's continued attention to this important matter, we strongly oppose the ideas contained in this Concept Proposal. It would place an unreasonable burden on municipal advisors, that is outside of and contrary to their statutory responsibilities, and takes away from the important disclosure decisions made by issuers.

We do believe that ongoing efforts by issuers and other parties in the municipal securities community to promote good disclosure practices can be successful. Additionally, as the caretaker of the EMMA system, the MSRB should continue to pursue its valuable efforts to improve the functionality of the system and look for ways to leverage the information that the SEC has required to be placed on EMMA in a more user-friendly manner. For example, the MSRB may wish to consider a way to allow issuers to "tag" voluntary disclosures to specific CUSIPs to help investors find additional information about a specific credit and entity; develop a better interface for the information to be submitted and displayed in EMMA; and "prompt" issuers when they make other disclosures, with for instance a pop up screen, if they have any other types of information of interest to investors that should be voluntarily posted on EMMA.

We look forward to discussing our concerns and ideas on this topic with you, and would welcome any questions you may have.

Sincerely,

Terri Heaton, CIPMA
President