



**Comments on National Association of Health and Educational Facilities Finance
Authorities (Notice 2017-22)
January 29, 2018**

The National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”) appreciates the opportunity to respond to Notice 2017-22, Input on Compliance Support. NAHEFFA commends MSRB for seeking this input to improve its processes and operations.

The Association promotes the common interest of issuers which provide capital financing for not-for-profit healthcare and higher education institutions and facilitates national advocacy, support, networking and education on behalf of its members. NAHEFFA focuses its efforts on issues which directly influence the availability of, or access to tax-exempt financing for non-profit healthcare and higher educational institutions. NAHEFFA has 41 members representing 34 states.

NAHEFFA is a long-time supporter of and participant in MSRB activities and programs. NAHEFFA urges MSRB to stay tightly focused on its statutory mission and that education, communications and other activities be directly associated with its regulations and core functions. NAHEFFA has two points it wishes to make in this proceeding.

Stakeholder Engagement - MSRB’s willingness and considerable resources expended in various forms of education and communications, including speaking at stakeholder meetings, is commendable and valuable. NAHEFFA has and will take advantage of this resource. Our recommendation is that where feasible presentations and communications should be more tailored toward the audience.

In our case, for example, general presentations about what MSRB is and what it is doing are of limited value compared to a focused presentation that takes into account and uses as examples conduit, even better non-profit financing. This approach will limit the utility of off-the-shelf, one-size-fits-all presentations but will leave the audience with a deeper understanding of how MSRB activities affect their roles as issuers, authority executives, board members, counsel, bankers and advisors in our type of financings.

Guidance - Issuing useful, clear and well- founded guidance is a critical activity for any regulatory authority. MSRB’s stated recent goal to focus on this area is exactly right. This industry, like many, does not need new regulations but the ones we have need to be well understood. We work in an environment where borrowers increasingly are weighing the costs of regulatory compliance against the benefits of tax-exempt financing. New or enhanced regulations must be necessary, not merely nice to do, and guidance should have as an important purpose demonstrating flexibility and regulatory restraint.

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In that regard, MSRB guidance and the guidance development process can be improved by having a process-- transparent, interactive and aimed at elucidation for all market participants of obligations, restrictions, freedom to operate, not guidance so protective of MSRB/SEC discretion and carefully parsed and caveated that it is of little practical value.

Our case in point is Regulatory Notice 2017-13 on duties of non-solicitor municipal advisors in conduit financing scenarios. NAHEFFA requested guidance in this area because, despite repeated requests by NAHEFFA during the Rule G-42 rulemaking for specific language or commentary on the impact of the rule on the use by issuers and borrowers of MA's in several conduit financing scenarios, the SEC and MSRB declined to do so. NAHEFFA wrote MSRB, explained in detail the issues Rule G-42 raises, suggested solutions and asked for guidance. MSRB staff met with NAHEFFA at the kickoff of its review but then was non communicative about the content and timing for many months.

When the guidance was issued last July the effort was appreciated but the result was disappointing. The "guidance" provides very little, it is more of a considerations compendium, full of lawyerly on- the- one- hand, on- the- other- hand statements. We and our MA's have generally not found that the ball has been advanced on the understanding of the effect of G-42 on our large sector.

Perhaps more significantly, literally hundreds or even thousands of conduit issuers across the country had no knowledge of this request and undoubtedly little or no knowledge of the response. The unhelpful result and its lack of circulation could have been remedied to a significant extent if MSRB had announced the request for guidance and asked for comments at that stage and/or when a draft was available. The guidance would have been more useful -- or perhaps it would have been clear that the effort of developing guidance was not going to be productive and our request withdrawn -- if there had been a more transparent process. Certainly, non-NAHEFFA member issuers and related parties around the country, including MAs, could have weighed in which only would have provided valuable insights and benefitted the final product.

The process widely used in the federal government is to publish significant proposed guidance for comment. The agency is, of course, free to weigh the value of the input it receives but this approach often prevents surprises. We recommend that MSRB adopt this procedure formally or at least give it a try in the next round of guidance to evaluate its usefulness.



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Thank you for considering our comments. We would be glad to respond to any questions you may have.

Respectfully submitted,

A handwritten signature in black ink that reads "Charles A. Samuels". The signature is written in a cursive style.

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