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August 6, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC 20005

RE: MSRB Notice 2018-10: Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities

Dear Mr. Smith:

The Government Finance Officers Association (GFOA) welcomes the opportunity to comment on MSRB Notice 2018-10. GFOA has commented in the past on Rule G-17 and subsequent interpretative guidance, as the MSRB's work in this area is very important to municipal securities issuers. Rule G-17, in particular, is representative of MSRB rulemaking that is done to fulfill its mission to protect issuers.

Below are our thoughts on the key issues raised in the Notice.

Required Disclosures

Receipt of Disclosures is Appropriate. Issuers receive G-17 disclosures from underwriters and must acknowledge receipt of those disclosures. As is common practice, the disclosures are sent at an appropriate time at the beginning of the debt issuance planning stage and prior to the release of the POS.

Disclosures Are Often Boilerplate and Cumbersome. In many cases the disclosures are voluminous and not focused on actual conflicts that may exist within the underwriting firm or the specific risks of a particular financing to the entity. Instead, the documents are full of non-material potential disclosures where key material disclosures are not highlighted nor flagged, and in many cases buried in the information provided. In these cases, the intent of the rulemaking – to ensure that issuers are aware of conflicts that exist with their underwriting team and risks associated with a financing – may be missing its mark.

Key Material Disclosures Should be Highlighted as Already Required. From a practical matter, while underwriters may wish to provide boilerplate disclosures to issuers of all types, sizes and levels of sophistication, it is imperative for the MSRB to advocate for the disclosures to be framed in a way that they can be well received and understood by the issuer. It would be helpful if large amounts of non-material disclosures are provided separately from key conflicts (including compensation and other fees earned on the transaction) and risk disclosures. Likewise, issuers would appreciate a notation that the underwriter does not have a fiduciary duty to the issuer. Given these conditions, the rulemaking may meet its intended expectations for underwriters to deal fairly with issuers, and protect issuers from deceptive,

dishonest or unfair practices. These disclosures should also be provided in a "plain English" manner versus legalese to maintain the spirit of the rulemaking to have the underwriter deal fairly with the issuer. The 2012 guidance already requires underwriters to "identify with sufficient clarity and ease of review the applicable portions of [boilerplate disclosures] to a particular transaction." Therefore, the MSRB should emphasize this duty which is already required.

Disclosures are Read and Reviewed by a Variety of Issuer Personnel. As GFOA noted in its December 1, 2011 letter to the SEC on Application of Rule G-17[1], there may be members of the financing team or the governing body who would like to be aware of and review underwriter disclosures. These issuer team members may hold differing levels of expertise about the financing than the "issuer personnel" for whom the underwriter is directed to provide the disclosures to under the Rule.

This reiterates the need for the underwriter to provide disclosures to the issuer, especially in "complex" transactions but also in routine transactions, in order to ensure that information is conveyed to those on the issuer's internal financing team who have various levels of expertise about the municipal securities market. The process would be enhanced by having the underwriter specifically highlight key and material disclosures and include additional disclosures separately within the document as required by the 2012 guidance.

Disclosure Obstacles for Large and Small issuers. Small and large governments are burdened by the disclosures in different ways. Larger issuers who may be frequently in the market have to tackle and acknowledge the paperwork many times, while smaller and infrequent issuers, especially, may find all of the information overwhelming to review and understand how it relates to their specific transaction. Again, a key way of managing this may be to have non-material or boilerplate disclosures be provided separately within same document (e.g., such as Appendix A) from key conflicts and risks and notation that the underwriter does not have a fiduciary duty to the issuer. This would also assist some issuers where the key issuer representative may not require in depth information about routine financings, but others on the financing team or the governing body may wish to have and review that information.

Variables to Determine Ways to Modify Requirements May Be Difficult. Because issuers of municipal securities vary widely and may use multiple underwriters, it would seem to be nearly impossible to develop ways to modify the rulemaking for some issuers over others, and ensure fair dealing is taking place. Even for frequent issuers if certain disclosures were only sent once a year, it would take away from the intent of the rule which is to ensure that the issuer is aware of the fair dealing process for each transaction. Issuer sophistication with financings does not fall neatly into buckets associated with either the size of the issuer or the frequency of their transactions.

A possible way to better manage the process and highlight the important disclosures that are of interest to members of the issuer's internal financing team for each transaction would be if boilerplate disclosures are provided separately but within the same document (e.g., such as Appendix A) or even routinely for frequent issuers (e.g., annual disclosures) while specific conflicts and risks associated with each transaction are sent and acknowledged by the issuer.

Opting Out of Disclosures Should NOT Be an Option. As many issuers learned with financings prior to the 2008 market crash, not getting their hands on or reading the fine print of their transaction documents, led to many problems with various types of financings, and created financial and administrative burdens for issuers. The MSRB should therefore not consider an opt-out provision since having the disclosures, and understanding them, is imperative for issuers. If these disclosures are not provided, it would also

[1] https://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-22.pdf

seem to go against the main tenets of Rule G-17 to ensure that underwriters are not engaged in any deceptive, dishonest or unfair practices.

EMMA Should Not Be Used as a Repository for Underwriter Disclosure Documents. EMMA is a system to assist investors with their investment decisions. Information produced specifically for issuers, of which the issuer must acknowledge receipt, would not be well served to be placed on EMMA, as underwriters may be concerned about investor use of this information. This could cause even further boilerplating of information important to issuers and the decisions they make about their financings.

Further Consideration of Disclosures to Conduit Issuers and Borrowers is Needed. Regarding disclosures to conduit issuers and borrowers, the MSRB should make clear in its Interpretative Notice that the information would best be utilized if it was sent to the party who is making decisions about the issuance and is liable for the debt, which in most case is the borrower and not the issuer.

Underwriter Comments on the Use of Municipal Advisors. The current guidance instructs underwriters to avoid telling issuers not to hire a municipal advisor. In the past GFOA has commented on the need for the guidance to be strengthened to include a requirement that underwriters affirmatively state 1) that issuers may choose to hire a municipal advisor to represent their interests in a transaction and 2) to take no actions to discourage issuers from engaging a municipal advisor. We once again encourage the MSRB to do so (see GFOA's December 1, 2011 letter). Our members continue to observe significant numbers of large negotiated transactions sold by inexperienced debt issuers where no municipal advisor has been engaged.

We appreciate the MSRB's review of its Interpretative Notice on Rule G-17. As we commented many times in 2011, we believe that there should be greater focus and effort to have underwriters provide key and material disclosures about conflicts, risks regarding the transaction, and their non-fiduciary duty to issuer clients in a clear manner. Unfortunately, since 2012 the G-17 disclosures are overwhelming in volume which causes issuers to either ignore or not understand the important information that is being provided to the issuer in these disclosures.

We would be happy to discuss our comments with you in greater detail as well as coordinate conference calls with various types and sizes of issuers to help the MSRB understand the concerns issuers have with the implementation of G-17 disclosures.

Sincerely,

Emily S. Brock

Emily S. Brock
Director, Federal Liaison Center

cc: Rebecca Olsen, Acting Director, Office of Municipal Securities, Securities and Exchange Commission