



Municipal Securities Rulemaking Board

April 14, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20540-1090

**Re: Proposed Amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17)**

Dear Mr. Fields:

The Municipal Securities Rulemaking Board (MSRB)<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission’s (“Commission”) proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (“Exchange Act”) (“proposed amendments”). The MSRB commends the Commission for taking this important step towards improving transparency and investor protection in the municipal securities market by requiring issuers and obligated persons to post event notices that would include their incurrence of a material bank loan or direct purchase of municipal securities.

For several years, the MSRB has expressed interest in the increasing use by municipal entities of bank loans, direct purchases and similar forms of indebtedness (collectively, “bank loans”) in lieu of, or in addition to, the public issuance of municipal securities and the possibility that some of these alternative financings are actually securities subject to MSRB rules.<sup>2</sup> The MSRB has urged the voluntary disclosure of such financings, emphasizing that, because “bank loans generally do not require the same level of disclosure as public offerings for municipal securities, holders of an issuer’s outstanding debt, as well as potential investors and other market participants, may not become aware of such bank loans or their impact on the issuer’s

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<sup>1</sup> The MSRB is the primary regulator, with the Commission’s oversight, of the municipal securities market, and the only self-regulatory organization created by Congress. The MSRB’s mission is to protect investors, state and local government issuers, other municipal entities and obligated persons, and the public interest by promoting a fair and efficient municipal securities market. It accomplishes this through the establishment of rules for brokers, dealers and municipal securities dealers and municipal advisors; the collection and dissemination of market information; and market leadership, outreach and education.

<sup>2</sup> See [MSRB Notices 2011-37 \(Aug. 3, 2011\)](#) and [2011-52 \(Sept. 12, 2011\)](#) for considerations related to whether a financing is a security and subject to relevant laws, rules and regulations.

outstanding debt until the release of an issuer's audited financial statements."<sup>3</sup> The MSRB has also noted that a bank loan "could impair the rights of the issuer's existing bondholders," and have an impact on the seniority status of existing bondholders or on the credit or liquidity profile of a municipal issuer.<sup>4</sup> Industry participants also have voiced concern over the need for disclosure of this information and have offered guidance on best practices for disclosing other indebtedness.<sup>5</sup>

In order to facilitate the disclosure process for bank loans, the MSRB provided practical guidance in 2012 on how to make a voluntary disclosure on the Electronic Municipal Market Access (EMMA<sup>®</sup>) website,<sup>6</sup> and more recently, on September 26, 2016, the MSRB made significant enhancements to EMMA to facilitate the voluntary disclosure of these debt transactions.<sup>7</sup> The end result is an improved process for issuers to make voluntary disclosures of bank loans, and a more user-friendly process for investors to retrieve that information. While the MSRB is hopeful that these changes to EMMA will increase the number of voluntary bank loan disclosures made, the MSRB continues to believe that a specific disclosure requirement under an existing framework is the better approach to ensuring issuers make these disclosures.

In 2016, the MSRB published a concept proposal, requesting comment on whether to require municipal advisors to disclose information regarding bank loans ("Concept Proposal").<sup>8</sup> The

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<sup>3</sup> See [MSRB Notice 2012-18 \(Apr. 3, 2012\)](#).

<sup>4</sup> See [MSRB Notice 2015-03 \(Jan. 29, 2015\)](#).

<sup>5</sup> See, e.g., Government Finance Officers Association, GFOA Alert: Bank Loan Disclosure, May 2016; Standard & Poor's Ratings Services, S&P Evaluated \$5.1 Bil. of U.S. Public Finance Bank Loans In 2015: Issuers' Liquidity Positions Helped to Support Ratings, March 2016; Moody's Investors Service, Growth in Bank Loans and Private Placements Increases Risk and Reduces Transparency in the Municipal Market, October 2014; National Federation of Municipal Analysts White Paper, Best Municipal Bond Issuance and Disclosure Practices, January 2014; Standard & Poor's Ratings Services, Alternative Financing: Disclosure is Critical to Credit Analysis in Public Finance, February 2014; Government Finance Officers Association, Best Practice: Understanding Bank Loans, September 2013; Standard & Poor's Credit FAQ: Bank Loans and Bond Ratings: What to Disclose?, June 2013; Bank Loan Disclosure Task Force White Paper, Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, May 2013; National Association of Bond Lawyers, Practice Pointers for Bank Loans and Other Private Placements, February 2012.

<sup>6</sup> See [MSRB Notice 2012-18 \(Apr. 3, 2012\)](#).

<sup>7</sup> See ["MSRB Improves Bank Loan Disclosure on EMMA Website" \(Sept. 26, 2016\)](#).

<sup>8</sup> See [MSRB Notice 2016-11 \(Mar. 28, 2016\)](#).

MSRB received a number of comments in response to the Concept Proposal, most of which supported the MSRB's goal of increased transparency and more fulsome disclosure of bank loans. However, most commenters also did not believe that MSRB rulemaking was the proper vehicle to obtain the desired information, but, instead, noted that the material or special event notice provisions of Exchange Act Rule 15c2-12 already provided a framework for the requirement of significant post-issuance disclosures, and indicated that amendments to this existing rule by the Commission would be a better regulatory mechanism to achieve the desired disclosures.<sup>9</sup> After careful consideration of the comments received, the MSRB opted not to advance the Concept Proposal into proposed MSRB rulemaking, and, instead, engaged in efforts to increase transparency in the municipal securities market, including by enhancing EMMA as noted above, to simplify the process by which bank loan information is voluntarily disclosed.

In sum, the MSRB strongly supports the Commission's proposed amendments to the continuing disclosure obligations of municipal securities issuers under Rule 15c2-12 to require disclosure of material bank loans, direct purchases and similar forms of indebtedness used by issuers and obligated persons; as well as the terms and covenants included in those alternative financings. The MSRB believes the existing disclosure structure of Rule 15c2-12 is the appropriate vehicle for obtaining the desired information. In addition to expressing its support, the MSRB would be pleased to act as a resource to, and provide support for, the Commission in its ongoing development of the proposed amendments.

If you have any questions regarding this matter, please contact me or Robert Fippinger, Chief Legal Officer, at (202) 838-1500.

Sincerely,



Lynnette Kelly  
Executive Director

cc: The Honorable Michael S. Piwowar, Acting Chair  
The Honorable Kara M. Stein, Commissioner

Jessica Kane, Director  
Office of Municipal Securities

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<sup>9</sup> Previously, the MSRB also suggested that the Commission consider changes to Rule 15c2-12 as it relates to the lack of disclosure of bank loans and other debt and debt-like obligations. See [Letter to Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, Re: Request for Comment on Collection of Information Provided for in Rule 15c2-12 under the Securities Exchange Act of 1934, from Kym S. Arnone, Chair, MSRB \(January 20, 2015\)](#).