



Municipal Securities Rulemaking Board

September 2, 2016

The Honorable Orrin Hatch
Chair, Senate Committee on Finance
219 Senate Dirksen Office Building
Washington, DC 20510

Dear Mr. Chairman,

I am writing to you in your capacity as chair of the Congressional Task Force on Economic Growth in Puerto Rico (“Task Force”) and thank you for your consideration of our comments. The Municipal Securities Rulemaking Board (MSRB) is the self-regulatory organization governing the municipal securities industry. The MSRB’s mission is to protect investors, municipal entities and the public interest by promoting a fair and efficient municipal market. The MSRB operates the Electronic Municipal Market Access (EMMA[®]) website, which is the official repository for disclosures, trade data and other information on municipal securities.

The Task Force has requested stakeholder input to assist in its preparation of a report identifying factors that could affect economic growth in Puerto Rico. Specifically, the report will examine the relationship between federal laws and economic growth in Puerto Rico, recommend changes to federal laws in order to spur sustainable, long-term economic growth, and provide additional information as deemed necessary.

Reliable access to capital at reasonable cost is essential for Puerto Rico’s future economic growth. We believe economic growth in Puerto Rico is best sustained within the context of a robust, transparent and fair municipal securities marketplace. Given the territory’s recent municipal bond default and restructuring, Puerto Rico and its bonding authorities will be working to increase investor confidence throughout its recovery. There are proactive steps Puerto Rico, its bonding authorities and any state or local government can take to be as transparent as possible and trusted by investors. The MSRB, which acts as the primary regulator and objective resource for the municipal bond market, offers the Task Force the following principles and best practice resources to highlight federal laws, regulations and interpretations designed to ensure that the municipal market operates fairly and transparently, that investors and municipal entities are protected and that there is a high degree of confidence in the municipal market. By considering these principles and implementing effective debt management practices, issuers of municipal securities can do their part in achieving reliable access to capital and gaining investor trust.

Background

Congress established the MSRB in 1975 under the Securities Exchange Act of 1934 as a self-regulatory organization with a mandate to regulate the activities of brokers-dealers and bank dealers that buy, sell and underwrite municipal securities. The MSRB is governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by both Congress and the Securities and Exchange Commission (SEC), and its rules generally must be approved by the SEC before becoming effective.

MSRB rules can be categorized as (1) professional qualification rules that establish qualifications for conducting business; (2) fair practice rules that protect investors, municipal entities, obligated persons and the general public; (3) uniform practice rules that ensure consistent behavior of regulated entities in the marketplace; (4) market transparency rules that provide for full and timely flow of information to the marketplace; and (5) regulated entity administration rules that set internal requirements for firms. The MSRB is not authorized to examine for compliance with or to enforce these rules; rather, the MSRB plays a supporting role to the regulatory agencies that do enforce its rules, including the SEC, bank regulators and the Financial Industry Regulatory Authority (FINRA). That supporting role often entails training on MSRB rules for examiners and sharing market data, including customized data reports.

Congress expanded the MSRB's authority in 2010 to include the regulation of municipal advisors—professionals that issuers may hire to provide advice regarding the structure, terms, timing or other aspects of the issuance of municipal bonds. Simultaneous with this new authority to regulate municipal advisors, Congress expanded the MSRB's original mandate to protect investors to include the protection of municipal entities.

It is important to note that this new mandate to protect municipal entities does not authorize the MSRB to regulate issuers of municipal securities. MSRB rules apply only to broker-dealers, bank dealers and municipal advisors. Therefore, in order to fulfill its mandate to protect investors and municipal entities beyond the indirect protection afforded by its rules, the MSRB engages in two additional activities: market transparency and education.

With respect to market transparency, the MSRB provides free, public access through its EMMA website to municipal bond offering documents, continuing disclosures, trade data, interest rates, credit ratings and other information. Through the EMMA platform, issuers and investors can better understand the trading activity, terms, characteristics and risks of a particular municipal security, and retail and professional investors enjoy equal access to this information.

The MSRB's education program supports the MSRB's reputation as a trusted and objective resource on the municipal market. Its education efforts include frequent outreach to market

stakeholders on rulemaking developments and market information, including the provision of presentations, webinars, fact sheets, videos and other educational materials.

Municipal market stakeholder groups also take an active role in educating market participants through the development of best practice guidelines. These best practices, combined with MSRB education and outreach efforts, are designed to promote a high degree of integrity in the marketplace.

Principles

The following principles, informed by MSRB rules, transparency and education initiatives and municipal market stakeholder best practices, are recommended for consideration by Puerto Rico, its bonding authorities and any municipal issuer seeking to attract investors by carefully following legal requirements and adhering to high standards as stakeholders in the municipal market:

- 1) Ensure that the decision to issue debt, including the method of sale and the engagement of appropriate financial professionals, is informed by careful consideration of alternatives.**
- 2) Make timely and complete primary market and continuing disclosures throughout the life of the bond, facilitated by the use of effective policies and procedures.**
- 3) Voluntarily disclose to investors information on bank loans, alternative financings and other information that could affect the debt or credit profile of the issuer.**
- 4) Fully utilize the EMMA website as a resource.**
- 5) Institute training and make educational resources about the municipal market and its oversight available to professionals at all levels of government.**

A complete explanation of these principles and their application is provided below.

- 1) Ensure that the decision to issue debt, including the method of sale and the engagement of appropriate financial professionals, is informed by careful consideration of alternatives.**

Every territory, state and local government must analyze a number of factors when considering whether and how to issue debt to finance the projects that benefit its citizens. The issuing entity should be aware of the available financing alternatives and any legal parameters surrounding the amount and types of debt allowed to be issued, including those detailed in any adopted governmental debt policies. If a municipal bond financing is pursued, issuers may also

consider the method of sale (negotiated or competitive), evaluate the types of professionals they desire as part of the financing team and ensure that the assembled team is properly qualified to assist in the issuance process.

The MSRB provides an online Education Center on its website, MSRB.org, with a specialized section on “Issuing Municipal Securities” to assist state and local governments in understanding this process. This online library of resources includes information regarding the roles and responsibilities of the financing team, and MSRB rules that apply to those financial professionals. It is helpful for issuers to understand these rules to understand whether they are being treated fairly. Additional stakeholder resources, provided for reference only and not intended to create legal standards, include:

- The Government Finance Officers Association (GFOA) best practice, [“Debt Management Policy”](#)
- GFOA checklist of considerations when issuing bonds, [“Small Government/New Issuer – Debt Issuance Checklist: Considerations When Issuing Bonds”](#)

2) Make timely and complete primary market and continuing disclosures throughout the life of the bond, facilitated by the use of effective policies and procedures.

When state and local governments issue most types of municipal securities, their underwriters are required under SEC Rule 15c2-12 to reasonably determine that the issuer, or other persons obligated to make payment on the securities, have agreed to provide ongoing disclosures that include updated financial information to investors using the MSRB’s EMMA website. The financial and operating status of any issuer of municipal securities is likely to change over time. Whether the changes are positive or negative, disclosing timely, accurate and complete financial information is critical for issuers, investors and the municipal market. In the instance where audited financials are not completed by the date pledged, issuers should consider submitting unaudited or interim financial statements to the market through EMMA on a voluntary basis.

Issuers that regularly provide financial disclosures help protect their future access to capital through the municipal market. In this regard, state and local government officials should take the following steps: (1) identify required financial and operational disclosures; (2) establish disclosure policies and procedures; (3) schedule email reminders through EMMA for recurring disclosures and (4) make disclosures publicly available on EMMA. Resources are available at MSRB.org in the Education Center’s “Disclosing Information to Investors” section to assist issuers in completing these steps. In addition, resources from municipal market stakeholders can assist in establishing policies and procedures that reflect industry best practices. The materials provided below are for reference and are not intended to create legal standards. They

are provided and compiled as resources to Puerto Rico, its bonding authorities and all state and local governments seeking to improve their disclosure practices. Stakeholder resources include:

- GFOA best practices for state and local governments, [“Understanding Your Continuing Disclosure Responsibilities”](#)
- National Federation of Municipal Analysts (NFMA) disclosure guidelines customized by market sector and type of security, available at NFMA.org by clicking on publications, then “disclosure guidelines”
- National Association of Bond Lawyers (NABL) white paper, [“Crafting Disclosure Policies”](#)
- National Association of State Auditors, Comptrollers & Treasurers (NASACT) best practices for states, [“Voluntary Interim Financial Reporting: Best Practices for State Governments”](#)

3) Voluntarily disclose to investors information on bank loans, alternative financings and other information that could impact the debt or credit profile of the issuer.

Bank loans and direct-purchase debt are increasingly used as financing alternatives to public offerings in the municipal securities market to fund capital improvement projects or refund outstanding bonds. These debt obligations are not currently subject to the disclosure requirements of SEC Rule 15c2-12, and therefore disclosures about bank loans and alternative financings are not required to be submitted to EMMA. Nonetheless, the MSRB believes that the timely disclosure of any debt or debt-like obligations held by issuers is essential to market transparency and to ensuring a fair and efficient municipal market. Without adequate disclosure of debt or debt-like obligations, bondholders could be unaware of the presence of bank loans that could have an impact on the seniority status of bondholders or could affect the credit or liquidity profile of an issuer. Given these concerns, the MSRB [wrote to the SEC on January 20, 2015](#) requesting that the SEC review Rule 15c2-12 to identify ways to enhance the quality and timeliness of information made available to the municipal market, including with regard to a lack of disclosure of bank loans and direct-purchase debt.

In addition to this request, the MSRB published a [“Bank Loan Disclosure Market Advisory”](#) on January 29, 2015 to alert municipal market participants to the importance of voluntarily posting information on bank loans to EMMA and to highlight the best practices of industry participants (following up on an [April 3, 2012 MSRB notice on this topic](#)). Note that EMMA will soon include an enhanced feature to facilitate and highlight these disclosures.

Finally, on April 4, 2016, the MSRB and the Financial Industry Regulatory Authority (FINRA) jointly [provided guidance](#) to remind broker-dealer firms of their obligations in connection with privately placing municipal securities directly with a single purchaser and the use of bank loans in the municipal securities market, including conducting adequate due diligence to ascertain the

nature of the transaction and financing instrument to ensure compliance with FINRA and MSRB rules.

Issuers should also consider disclosing through the EMMA system, on a voluntary basis, information that may have been shared with financial professionals, such as rating agency presentations, “road show” presentations or materials provided to insurers or lenders. Like the disclosure of bank loans, these voluntary disclosures may provide a more comprehensive view of the issuer to potential investors, which fosters a more transparent and efficient market. Investors seeking consistent and readily available disclosures could form a negative view of issuers who appear to withhold or selectively disclose information.

Additional resources from stakeholders (provided for reference only and not intended to create legal standards) include the following:

- GFOA best practices, [“Understanding Bank Loans”](#)
- [“Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans,”](#) developed by a Bank Loan Disclosure Task Force comprised of NABL, NFMA, GFOA and financial services sector trade groups

4) Fully utilize the EMMA website as a resource.

A feature of the MSRB’s EMMA website enables issuers to enhance the display of their municipal securities information through the creation of a customized issuer homepage that helps them to more effectively communicate with investors. Customized issuer homepages give investors access to consolidated information about each highlighted issuer’s securities on EMMA. Issuer homepages are viewed through an interactive map that allows investors to browse a comprehensive directory of state, city, county and other issuers in a particular state. A customized issuer homepage can provide a centralized view of trading activity, pre-sale documents, official statements, continuing disclosures, bank loans and refunding escrows for an issuer’s outstanding securities. Issuers can create a single consolidated issuer homepage or, if they issue bonds on behalf of a number of issuing authorities, they can create separate homepages to individually manage the information.

In this way, issuers can make information more transparent to investors and demonstrate the quality of information they provide regarding their financial status. EMMA allows issuers to meet minimum disclosure standards, but issuers should also consider that more frequent voluntary disclosures may result in better market access and enhanced investor confidence. Complete information on how to develop an issuer homepage is available at MSRB.org in the Education Center section on [“Disclosing Information to Investors.”](#)

5) Institute training and make educational resources about the municipal market and its oversight available to professionals at all levels of government.

Puerto Rico and its bonding authorities can require that all municipal professionals learn more about their obligations when accessing the municipal capital market and can encourage robust education about the market. MSRB's [online Education Center](#) offers professionals at all levels of state and local government—and other market participants—an extensive library of free webinars, videos, podcasts, fact sheets and instructional documents that are designed to enhance understanding of the municipal market and provide information that helps market participants make informed decisions.

Applicable in helping Puerto Rico issuers and all state and local governments to understand the obligations that their financial service professionals must follow, the Education Center section on [“Issuing Municipal Securities”](#) includes fact sheets outlining “What to Expect from your Underwriter” and “What to Expect from Your Municipal Advisor.”

Enhancing these resources, the MSRB will soon launch MuniEdProSM, which is a suite of interactive, online courses about municipal market activities and regulations. Each MuniEdProSM course allows the user to apply MSRB rules to real-world scenarios.

Conclusion

In furtherance of its mission to protect investors, municipal entities and the public interest by promoting a fair and efficient municipal marketplace, the MSRB is pleased to submit to the Congressional Task Force on Economic Growth in Puerto Rico these principles that can assist Puerto Rico issuers at all levels of government in maintaining reliable and cost-effective access to capital, and help assure that the path to economic growth is supported by a robust, transparent and fair municipal market. We appreciate the opportunity to provide this information to the Task Force and would be glad to provide any additional information that could be useful to its members. Feel free to contact me at 202-838-1301 or lkelly@msrb.org with any questions.

Sincerely,



Lynnette Kelly
Executive Director