



Municipal Securities Rulemaking Board

April 25, 2016

Mr. Dean Mead
Senior Research Manager
Governmental Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

Re: Improving Disclosure of Direct Purchases and Bank Loans

Dear Dean:

The Municipal Securities Rulemaking Board (MSRB) understands that the Governmental Accounting Standards Board (GASB) is in the process of conducting research on debt disclosures, including direct borrowing as part of its reexamination of Statements 34, 38 and 62. The MSRB commends GASB for dedicating resources and outreach to this important topic, which we believe has a significant effect on the municipal securities market. The MSRB believes that the availability of timely disclosure by state and local government bond issuers of additional debt and debt-like obligations is essential to foster market transparency and ensure a fair and efficient municipal market.

As you may know, the mission of the MSRB is to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal securities market. Direct purchases and bank loan agreements may contain key terms that impair the rights of existing bondholders. For example, in some instances, these financings may have provisions that make bank creditors senior to bondholders or that provide bank creditors with more favorable remedies than bondholders in the event of default. Bondholders may not learn of the existence and amounts of these types of financings until the release of the issuer's audited financial statements, and key terms may not appear in such financial statements.

These debt obligations are not subject to Securities and Exchange Commission (SEC) Rule 15c2-12 and, therefore, are not required to be reported through filings on the MSRB's Electronic Municipal Market Access (EMMA[®]) website. Bank loans or other debt-like obligations such as swap transactions, guarantees and lease financing arrangements, which similarly are not reported, could also impact the credit or liquidity profile of an issuer.

To raise awareness about this issue, in a 2011 notice, the MSRB cautioned market participants that in certain circumstances, financings that are "bank loans" may in fact be municipal securities and subject to MSRB rules¹. In 2012, the MSRB first encouraged state and local

¹ <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-52.aspx>

governments to make information about their bank loans publicly available on a voluntary basis on the EMMA website.² In 2015, the MSRB published a Bank Loan Disclosure Market Advisory, again calling for more transparency of bank loans and other debt-like obligations³. The MSRB also has urged the SEC to revisit Rule 15c2-12 and consider potential changes to the rule to reflect new products and current market conditions.⁴

Despite the MSRB's ongoing advocacy for voluntary disclosure of bank loan financings on EMMA, the number of properly submitted disclosures made remains limited. In April 2016, the MSRB and the Financial Industry Regulatory Authority (FINRA) provided joint guidance to municipal securities dealers as to their obligations in connection with direct purchases and bank loans as alternatives to public financings⁵. The market advisory highlighted the need to conduct due diligence to determine whether the financing instrument is a bank loan or a municipal security, and a reminder of the federal securities laws and the rules and regulations that may apply to these transactions.⁶ The MSRB is currently seeking public comment on a concept proposal to improve disclosure of direct purchases and bank loans.⁷ The concept proposal is intended to elicit views and input from all interested parties on the benefits and burdens of potential rulemaking requiring disclosure of bank loan debt, as well as possible alternatives. The MSRB anticipates a robust response from municipal market participants.

The MSRB welcomes the opportunity to serve as a resource to the GASB for information related to disclosure of bank loans. For your reference, we have included applicable MSRB regulatory notices and educational materials related to the disclosure of direct purchases and bank loans. As the activities of the GASB's research agenda on debt disclosures proceed, please do not hesitate to contact the MSRB with any questions or for additional information.

Sincerely,



Lynnette Kelly
Executive Director

² <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-18.aspx>

³ <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2015-03.ashx?n=1>

⁴ <http://www.msrb.org/msrb1/pdfs/MSRB-Comment-Letter-on-SEC-Rule-15c2-12-January-2015.pdf>

⁵ <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-12.ashx?n=1>

⁶ <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-12.ashx?la=en>

⁷ <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2016-11.ashx?n=1>