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July 31, 2012

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Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
900 Duke Street, Suite 600
Alexandria, VA 22314

RE: NABL Response to MSRB Notice 2012-28

Dear Mr. Smith:

The National Association of Bond Lawyers (“NABL”) respectfully submits the enclosed response to Municipal Securities Rulemaking Board (“MSRB”) Notice 2012-28 *Request for Comment on Concept Proposal to Provide For Public Disclosure of Financial Incentives Paid or Received by Dealers and Municipal Advisors Representing Potential Conflicts of Interest*. This response was prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee comprising those individuals listed on Exhibit A, and was approved by the NABL Board of Directors.

NABL exists to promote the integrity of the municipal securities market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 2,800 members and is headquartered in Washington, DC.

If you have any questions concerning the comments, please feel free to contact the NABL Governmental Affairs Office at (202) 503-3303 (bdaly@nabl.org).

Thank you in advance for your consideration of these comments.

Sincerely,

Kristin H.R. Franceschi

Enclosure

**COMMENTS OF THE NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING MSRB NOTICE 2012-28**

**REQUEST FOR COMMENT ON CONCEPT PROPOSAL TO PROVIDE FOR PUBLIC
DISCLOSURE OF FINANCIAL INCENTIVES PAID OR RECEIVED BY DEALERS
AND MUNICIPAL ADVISORS REPRESENTING POTENTIAL CONFLICTS OF
INTEREST**

On May 31, 2012, the Municipal Securities Rulemaking Board (MSRB) issued Notice 2012-28 *Request for Comment on Concept Proposal to Provide for Public Disclosure of Financial Incentives Paid or Received by Dealers and Municipal Advisors Representing Potential Conflicts of Interest* (Notice), requesting comments on the concept proposal, as well as specific questions posed within the Notice.

The following comments are submitted to the MSRB on behalf of the National Association of Bond Lawyers (NABL). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee (comprising those individuals listed on Exhibit A) and have been approved by the NABL Board of Directors.

NABL respectfully defers to the underwriting, municipal advisor and issuer communities to comment on the specific proposals made in the Notice. However, in addition to conceptually discussing the posting of certain underwriters' and advisors' payments and receipts to the MSRB's Electronic Municipal Market Access system (EMMA), the MSRB also asked about the disclosure of transaction expenses paid by municipal issuers. It is this aspect of the Notice that NABL addresses in this comment letter.

In bullet point nine of the "Request for Comment" portion of the Notice, the MSRB asks if it should consider permitting issuers to voluntarily submit to EMMA copies of state filings which include information about fees and other costs paid by the issuer in connection with securities offerings. As an alternative to submitting state filings, the MSRB asks if it should develop a standardized form for issuers to voluntarily disclose amounts paid to transaction participants and service providers.

We note that there is nothing of which we are aware that now prohibits issuers from filing such information on EMMA. We assume, therefore, that the MSRB is asking whether it should encourage the filing of such information. The answer to this question requires an evaluation of the likely benefit to issuers and others, including whether the information would be detailed enough to be comparable from one issuer or one transaction to another. We are concerned that the information would not be comparable and that the result could well be to mislead, rather than to enlighten.

As the MSRB notes in its question, a number of states already require the submission of certain information by issuers about fees and costs. The requirements vary by state, and there may be exemptions that will also vary by state, thus providing information that is difficult to compare. For example, in Florida, bond anticipation notes are exempt from the reporting requirements, as are most conduit transactions. State reporting requirements may only address

payments made from bond proceeds or made by the issuer (as opposed to a third party) and may provide different requirements for competitively bid bonds. In a number of states, the reporting is in an electronic-only format and filed up to 120 days after closing.

It therefore seems that simply encouraging the filing of existing state-required reports would not provide information that users of EMMA could find useful because it would not be comparable and, of course, would not include issuers from every state. While that might argue for a standardized MSRB-created reporting system, we are also concerned that, because there is no standardized scope of work for the various professionals involved in a bond issuance, it will not be practical to create a standardized reporting system that would provide meaningful information that could be compared from state to state, issuer to issuer and even transaction to transaction of the same issuer.

Municipal financings (and the closing expenses associated with such financings) will vary widely depending upon the geographic region, the nature of the security and repayment source, the type of issuer, the deal size, the relative experience of the issuer, the issuer's own staff and resources, the purpose and complexity of the transaction and other factors. NABL believes that the disclosure of such fees and costs on a national level through EMMA would not be helpful and might actually be confusing to issuers and investors by inviting inappropriate comparisons.

Issuers engage transaction participants and service providers in a variety of ways and agree to compensation based on various factors. Some of these parties are paid on an hourly basis and some are paid on an agreed-upon fixed-fee basis for a transaction; the complexity or type of a transaction may also influence the rate or the amount of payment. Compensation can also be dictated, in whole or in part, by state law. Additionally, cost may not be the sole factor in selecting a service provider. Often, issuers will select service providers through a request for proposal process whereby experience and familiarity with the transaction and the issuer may be weighted more heavily than cost.

We can provide examples from the point of view of counsel, and we believe that other professionals involved in municipal issuance could provide similar examples to show that a standard fee disclosure form cannot address the myriad of factors that may be involved in the setting of professional service fees. The following examples relating to counsel fees indicate why any such standardized form would not facilitate desired comparisons and would only lend to confusion rather than transparency, unless issuers undertook substantial additional disclosure to explain the basis for fees for a particular transaction:

- Who has primary drafting responsibility for the financing and disclosure documents (the issuer's staff or outside counsel)?
- If outside counsel, is it being prepared by bond counsel, special tax counsel, underwriters' counsel or disclosure counsel (if any)?
- Is the scope of counsel's engagement limited in any way?
- Are the bonds being validated in court?
- Will outside counsel, as bond counsel or disclosure counsel, be assisting in the negotiation of transaction documents even if not identified as performing such role (e.g., transaction counsel)?

We would also note that most primary offering documents for municipal securities include disclosure of the sources and uses of funds and, typically, include a line item for costs of issuance. This disclosure usually includes a general description of the types of service providers to be compensated (e.g. paying agents; printers; bond, tax, disclosure and issuer counsel; rating agency; financial advisory; verification) but would not include specific amounts paid to each provider. Underwriters' compensation is typically separately disclosed in the offering document.

Finally, we are not sure the disclosure of fees and costs paid by issuers to their transaction participants and service providers, including bond counsel, disclosure counsel, official statement printers, paying agents, bond trustees and rating agencies, among others, will further the MSRB's goal, as articulated in the Notice, of disclosing conflicts of interest of the service providers. The main thrust of the Notice appropriately focuses on financial incentives paid to, or paid by, underwriters or municipal advisors, by or to third parties. Direct payments for services provided to the issuer would appear to be wholly unrelated to the issue of potential conflicts of interest of underwriters and municipal advisors.

EXHIBIT A

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MSRB NOTICE 2012-28**

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