



National Association
of Bond Lawyers

President

ALEXANDRA M.
MACLENNAN
TAMPA, FL

President-Elect

DEE P. WISOR
DENVER, CO

Treasurer

RICHARD J. MOORE
SAN FRANCISCO, CA

Secretary

TERI M.
GUARNACCIA
BALTIMORE, MD

Immediate Past

President
CLIFFORD M.
GERBER
SAN FRANCISCO, CA

Directors:

M. JASON AKERS
NEW ORLEANS, LA

ANN D.
FILLINGHAM
LANSING, MI

PERRY E. ISRAEL
SACRAMENTO, CA

STACEY C. LEWIS
SEATTLE, WA

CAROL J. MCCOOG
PORTLAND, OR

RENE A. MOORE
DENVER, CO

JOSEPH E. SMITH
BIRMINGHAM, AL

Chief Operating Officer

LINDA H. WYMAN
WASHINGTON, DC

*Director of Governmental
Affairs*

JESSICA R. GIROUX
WASHINGTON, DC

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

February 23, 2018

VIA Electronic Mail

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

Re: MSRB NOTICE 2017-22, MSRB Seeks Input on Compliance Support

Dear Mr. Smith:

In response to MSRB Notice 2017-22, the National Association of Bond Lawyers (NABL) provides the following limited comments relating to future advisories by the Municipal Securities Rulemaking Board (the MSRB).

MSRB Advisories should provide legal guidance or interpretation only of matters within the scope of MSRB Rules

NABL appreciates the MSRB's view of its broadened mission regarding matters affecting the municipal market in that it wants to "bring public attention to municipal securities market practices, products or trends to promote dialogue and propose solutions to challenges that may have an impact on the integrity of the market."¹ Nonetheless, we believe that MSRB advisories, particularly those providing legal interpretation, should be limited to interpretation of MSRB rules and not extend to federal securities laws generally or, in particular, how federal securities laws are interpreted with respect to issuers and obligated persons. While the Dodd-Frank amendments expanded the MSRB's mission to provide that "in general" the MSRB should protect issuers and obligated persons in addition to investors and the market, the MSRB has no direct authority over issuers and obligated persons, and therefore no basis for publishing legal guidance or directives to issuers and obligated persons.

By way of example, we believe the statements in Regulatory Notice 2017-18 regarding the potential legal liability of issuers concerning selective disclosure did not adequately explain the law governing these matters and were misleading in some instances. Our members have advised their clients for many years regarding the application of insider trading laws to ad hoc investor communications in an effort to ease the concern of some issuers about engaging in those discussions with investors. While setting forth a roadmap for the effective use of EMMA in providing voluntary disclosure is very useful, the inclusion of incomplete legal

¹ <http://www.msrb.org/Market-Topics/Market-Advisories.aspx>

analysis to raise the alarm for issuers about potential insider trading liability may be counterproductive.

Another example is Regulatory Notice 2017-14, which cautioned market participants that certain practices like issuers designating the counsel of their underwriters, or influencing the underwriter's selection of counsel "gives rise to actual or potential conflicts of interest in the counsel's representation of the underwriter, and calls into question counsel's ability to carry out its responsibilities with the necessary degree of independence from the issuer, to act with undivided loyalty and to be free from conflicting allegiances in providing legal counsel to the underwriter."² In this instance, the MSRB's recommendations could have included an express direction to underwriters either to decline to follow the issuer's recommendation or engage co-counsel if there is any unease with the issuer's recommended firm. Rather, the MSRB's recommendations were solely directed to issuers, over whom the MSRB has no regulatory authority. This lack of balance in a market advisory can, unfortunately, diminish the value of the advisory.

We encourage the MSRB to reach out to NABL and other trade associations in developing any future advisories and/or guidance to increase the utility and value of the advisories.

Thank you for this opportunity to provide these comments.

Sincerely,



Alexandra M. MacLennan

² <http://www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2017-14.ashx?n=1>