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March 8, 2012

Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: DRAFT INTERPRETATION OF MSRB RULE G-17 RESTRICTING UNDERWRITER CONSENTS TO AMENDMENTS TO OUTSTANDING SECURITY DOCUMENTS

Dear Sir/Madam:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Municipal Securities Rulemaking Board (the "MSRB") Notice 2012-04 – Request for Comment on Draft Interpretive Notice Concerning the Application of MSRB Rule G-17 to Bondholder Consents by Underwriters of Municipal Bonds (the "Request for Comment"), requesting comments on an accompanying draft interpretive notice concerning MSRB Rule G-17 (the "Draft Notice").

The comments were prepared by an ad hoc subcommittee of the NABL Municipal Law Committee comprised of those individuals listed on Exhibit A and were 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 this submission, please feel free to contact me directly at (410) 580-4151 (kristin.franceschi@dlapiper.com) or Tyler Smith, (864) 240-4543 (tsmith@hsblawfirm.com).

We thank you in advance for your consideration of these comments.

Sincerely,

Kristin H.R. Franceschi
2012 NABL President

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COMMENTS OF

NATIONAL ASSOCIATION OF BOND LAWYERS

Regarding

DRAFT INTERPRETATION OF MSRB RULE G-17 RESTRICTING UNDERWRITER CONSENTS TO AMENDMENTS TO OUTSTANDING SECURITY DOCUMENTS

March 8, 2012

On February 7, 2012, the Municipal Securities Rulemaking Board (the "*MSRB*") issued its Notice 2012-04 – *Request for Comment on Draft Interpretive Notice Concerning the Application of MSRB Rule G-17 to Bondholder Consents by Underwriters of Municipal Bonds* (the *"Request for Comment"*), requesting comments on an accompanying draft interpretive notice concerning MSRB Rule G-17 (the "*Draft Notice*"). The Draft Notice, if adopted in its current form, would interpret Rule G-17 to make it unlawful for an underwriter (as an owner of bonds before such bonds are sold to the underwriter's customers in an offering) to exercise a right to consent to amendments to an authorizing document providing security for outstanding bonds, if any such amendment would reduce the security for the owners of the outstanding bonds, unless (a) the authorizing document expressly provides that an underwriter could provide bondholder consent and (b) the offering documents for the outstanding bonds expressly disclosed that bondholder consents could be provided by underwriters of subsequently issued bonds.

The National Association of Bond Lawyers (*"NABL"*) recommends that the Draft Notice not be filed for approval in its current form inasmuch as the Draft Notice could adversely affect municipal issuers and obligated persons and, in many instances, impair their rights under their existing bond documents. If the Draft Notice is filed and approved, Rule G-17 could be read to proscribe a broad range of routine and long accepted practices in the municipal securities marketplace to the detriment of municipal issuers and obligated persons. NABL recommends further that, if the MSRB chooses to limit underwriter participation in holder consents, the MSRB do so through a rule-making process rather than by an interpretation of Rule G-17 and limiting the prohibition to instances in which the underwriter would be assisting an issuer in breaching a contract provision or duty implied under State law.

These comments were prepared by an *ad hoc* subcommittee of the NABL Municipal Law Committee (comprising those individuals listed on Exhibit A) and have been approved by the NABL Board of Directors. NABL is an organization of approximately 2,800 public finance attorneys. Its mission is to promote the integrity of the municipal market by advancing an understanding of and compliance with laws affecting public finance. NABL respectfully provides these comments in furtherance of that mission.

Bond Documents as a Contract with the Bondholder

It is a basic legal principle that bonds and the terms of the related indenture, ordinance, authorizing resolution, loan and financing agreement, or other legal documents (the *"Bond Documents"*) form a contract between the issuer or any obligated person and the holders of bonds. In addition to setting out payment and covenant provisions, one of the key elements of the Bond Documents is the terms under which the issuer may make amendments to the Bond Documents without holder consent and, to the extent holder consent is required for certain changes, the level of holder consent required. A description of these relevant provisions is one of the key elements of the document summaries included as part of the Official Statement prepared in connection with the offering of the bonds. By their purchase, the holders are agreeing to be bound by the provisions, just as the issuer is agreeing to the limitations imposed by them.

Open-Ended Bond Documents and Consent Practice

Municipal issuers often issue bonds under (or secure bonds by pledges of conduit borrower notes secured by) open-ended indentures, ordinances, orders, resolutions, or other authorizing legislation, or other authorizing documents under which such issuers secure the bonds by pledging revenues and, sometimes, granting a lien on or mortgage of real or personal property. Under these Bond Documents, issuers commonly reserve rights (a) to issue additional bonds secured by the authorizing documents on a parity (or in some circumstances, on a senior or other) basis with outstanding bonds and (b) to amend the terms of the authorizing documents with the consent of the owners of a specified percentage in aggregate principal amount of the bonds outstanding under the authorizing documents (usually a simple majority or, in some cases a two-thirds majority). The provisions usually exclude amendments to specific payment terms and certain other provisions without the consent of all affected bondholders.[1] Typically the terms that are excluded from the majority or super-majority consent provisions encompass those set out for consent of each holder under the provisions of the Trust Indenture Act.[2] It is uncommon for consents to be limited to persons who have owned bonds for any minimum time period.[3] Thus, we believe that, where an issuer or obligated person is issuing new bonds under an open-ended authorizing document which permits amendments with the consent of the owners of a majority (or other stated percentage) in principal amount of the bonds that it benefits, and does not distinguish between owners of long standing and those who recently bought their bonds, under the express contractual provisions of the Bond Documents the issuer is free to amend the Bond Documents in reliance on consents of the owners of newly issued bonds without proceeding to conduct a solicitation from all holders.

It has been a long-standing and common practice in the municipal bond industry for underwriters to consent to amendments (as initial holders) of the bonds as described in the Draft Notice. However, the mechanics and any limitation on an issuer's right to amend the Bond Documents are governed by applicable State law and the terms of the Bond Documents, so practices vary in terms of how consents from the purchasers of new issues are obtained. In some cases, the underwriters do not themselves consent, but the bonds that they distribute provide that their purchase is a deemed consent to the amendment (or a deemed

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[1] We note that the Draft Notice mentions an amendment to a call feature of outstanding bonds effectuated through an underwriter consent process and that such changes may, depending on the actual Bond Documents, fall within the scope of changes requiring consent of all affected bondholders.

[2] *See* Trust Indenture Act of 1939 § 316(b). While generally inapplicable to municipal bonds, many terms of municipal security documents are consistent with and modeled after analogous corporate indentures.

[3] Compare, in this regard, the provisions of the Model Debenture Indenture (American Bar Association 1965) comprising Section 902 (amendments consented to by two-thirds of debenture holders, without any minimum holding period) and Section 610(e) (holders must own debentures for six months to petition for appointment of a replacement trustee).

appointment of the underwriter or a trustee to consent on behalf of the bondholders); the purchasers of the new parity bonds are willing to consent as a condition to purchase. At still other times, the underwriter merely distributes bonds secured by the pledge of a conduit borrower note to a trustee for the holders of the bonds, and the terms of the indenture securing the bonds instruct the trustee (as holder of the note) to consent to an amendment of an underlying borrower security document. In yet other cases, the underwriter merely places the new issue bonds with one or more institutional buyers whom the issuer has asked and who are committed (to the underwriter's knowledge) to consent to an amendment. In any of the foregoing scenarios, the determination of the percentage approving the amendment is made in accordance with the terms of the Bond Documents, granting equal weight to the outstanding bonds and the newly issued bonds, whether the newly issued bonds are voted by the underwriter, the trustee or by their initial holders. The selection of the appropriate method of obtaining consents is developed by the issuer and finance team in accordance with the terms of the applicable Bond Documents and State law. Furthermore, Bond Documents generally provide that any consent may be revoked by a bond owner until such time as the necessary percentage for approval is obtained.

In each case, the new bonds are issued with full disclosure of the amendment to the Bond Documents which is being made and the process for approval of the amendment. Additionally, any requisite filings under Rule 15c2-12 with respect to outstanding bonds are also made. The process is designed to be transparent to both new and existing bondholders.

As further discussed below, an issuer of debt securities generally owes no duty to the owners of its bonds under State law, except to comply with the contract to which the parties agreed when the bonds were issued. Purchasers of bonds can and usually do protect themselves with respect to the provisions they consider of such significance as to require their consent in all circumstances (e.g., various protected terms such as those discussed above requiring consent of all the affected holders). Further, purchasers of bonds may, prospectively, protect themselves from any perceived risk resulting from consents by underwriters or other short-term holders by not buying the bonds unless the Bond Documents prohibit or limit consents from those types of holders (similar to provisions limiting the rights of holders of insured or credit enhanced bonds to consent to amendments by reserving consent rights to the bond insurer or credit enhancer).[4]

The Draft Notice implies that an underwriter consent process is used in lieu of defeasance or solicitation of bondholder consents. We do not disagree that, from a cost and timing perspective, any of the consent processes described above may be cheaper and faster than a consent solicitation.[5] Additionally, due to the limitation on the number of advance refunding transactions which can be done on a tax-exempt basis, defeasance is, practically speaking, an option of limited application to an issuer and, even if permissible, may be financially prohibitive. Notwithstanding these facts, issuers should be able to obtain consents in accordance with their bargained-for rights under the Bond Documents and State law and not be obligated to pursue a lengthier and/or more expensive strategy. However, since NABL recognizes the importance of the issue of proper bondholder consent procedures to the MSRB, while not directly relevant to the Draft Notice,

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[4] It is instructive that the SEC previously issued a no action letter concluding that the staff would not recommend enforcement if a company offered to amend outstanding debentures to, among other things, reduce the price of their common stock conversion option, but only if they are owned by holders who consent to an amendment to the authorizing document that permitted the company to incur additional debt. See Magic Marker Corporation (avail. July 30, 1971).

[5] In addition, any consideration of issues of the sort raised by the Draft Notice should bear in mind that, out of the approximately $3 trillion of municipal bonds outstanding, an estimated 35% are held directly by retail investors (with a comparable percentage held, on a retail basis, indirectly through mutual funds, closed end funds or solicitations, UITs and ETFs) and that, in the instances of such retail holdings, obtaining consents through means such as tender offers is difficult if not essentially prohibitive.

attached as Exhibit B, please find some thoughts of this committee with respect to changes which could be made to DTC procedures to facilitate the consent solicitations.

Role of the Underwriter in a Consent Amendment

In preparing these comments, we considered the extent to which the underwriter's participation in a consent amendment should be viewed differently than from the perspective of the issuer or obligated person, as the Draft Notice focuses on the appropriateness of the underwriter's participation. Not infrequently, the underwriter on the consent transaction may be different from the firm that underwrote the outstanding transaction and the holders of the outstanding bonds may have had no customer relationship to the current underwriter, much less, to the extent of secondary market purchases, any underwriter. Those holders received, or should have received, information in the form of prior Official Statements or other information on EMMA informing them of the terms on which their bonds could be amended. Therefore, we believe that the underwriter should be viewed as assisting the issuer or obligated person effectuate a transaction for which is bargained in the Bond Documents, using a procedure which has long been utilized in the municipal marketplace and which does not violate any duty that the issuer has to its holders.

Unlike the duties of care and loyalty owed to stockholders of corporations, courts consistently refuse to extend such fiduciary duties for bondholders. Rather, the general rule is that the relationship between issuers and their bondholders is contractual, as described above, rather than fiduciary, in that the rights of bondholders are governed exclusively by the terms of the contract under which the bonds are issued.[6] Similarly, courts have held that a trustee's duties to bondholders are measured solely by the trust instrument, even if such duties are less than those required of a trustee at common law.[7] Thus, in the absence of extraordinary circumstances (*i.e.*, fraud, coercion, or bad faith) the issuer owes its bondholders no extra-contractual duties.[8]

Some courts have found an implied covenant of good faith and fair dealing in contracts under which bonds are issued. For example, in *Hackettstown National Bank v. D.G. Yuengling Brewing Co.* 74 F. 110 (2nd Cir. 1896), the court held that an agreement by what was clearly a *collusive* majority waiving conditions and postponing the payment of interest for the purpose of compelling the minority to sell out to them would not bind the minority. However, this implied covenant does *not* impose any additional obligations or duties owed by the issuer other than what is contained in the contract; instead, it ensures that the parties to the contract perform the bargained-for terms of the agreement. [9]

In *MetLife*, an oft-cited case which arose in the wake of the widely-publicized bidding war for the leveraged buy-out of RJR Nabisco, Inc. (*"RJR"*), a group of previous bond purchasers asserted that RJR's actions, occurring subsequent to such holders' purchase of the bonds, dramatically reduced the value of such bonds, such argument being advanced notwithstanding that the actions were not prohibited in the applicable bond indentures. *MetLife*, 716 F. Supp. at 1504. In addressing holders' arguments that the court impose duties akin to good faith and fair dealing in interpreting the authorizing documents, the court confirmed the following firmly established doctrines, observing that:

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[6] *See generally Metropolitan Life Ins. Co. and Jefferson-Pilot Life Ins. Co. v. RJR Nabisco, Inc. and F. Ross Johnson*, 716 F. Supp. 1504 (S.D.N.Y. 1989) (hereinafter *"MetLife"*), discussed in greater detail below.

[7] *See, e.g., MetLife*; *Hazzard v. Chase Nat. Bank,* 159 Misc. 57 (N.Y. Sup. Ct. 1936), citing *Refshauge v. Sesostris Temple A. A. O. N. of M.*, 139 Neb. 775 (Neb. 1941).

[8] *Mann v. Oppenheimer & Co.*, 517 A.2d 1056 (Del. 1986).

[9] *See Geren v. Quantum Chem. Corp.*, 832 F. Supp. 728, 732 (S.D.N.Y. 1993); *MetLife.*

> Such a covenant is implied only where the implied term is consistent with other mutually agreed upon terms in the contract. In other words, the implied covenant will only aid and further the explicit terms of the agreement and will never impose an obligation which would be inconsistent with other terms of the contractual relationship. Viewed another way, the implied covenant of good faith is breached only when one party seeks to prevent the contract's performance or to withhold its benefits. As a result, it thus ensures that parties to a contract perform the substantive, bargained-for terms of their agreement.

Id., 716 F.Supp. at 1508 (multiple citations of precedent omitted; quotation marks from precedent omitted).

It is thus well established that, absent circumstances that would bring the relationship among financing parties into the narrow and limited exception to the general rule, issuers owe no fiduciary duties to holders of their bonds, as their relationship is defined purely by the terms of the contract under which the relationship exists.

Comparably, the issues addressed in the Draft Notice are of the same nature as those, commonly employed in Bond Documents, in which purchasers of bonds consent to the future incurrence of indebtedness on parity with such bonds (or, even on a senior basis when so provided) upon satisfaction of conditions contractually set forth in the authorizing documents. Hence, again in *MetLife* and after summarizing part of defendants' arguments as follows, the court ultimately sided with the defendants' contentions: certain provisions in bond indentures were known to the market and to bondholders, "who freely bought the bonds and were equally free to sell them at any time. Any attempt by this Court to create contractual terms, *post hoc* . . . not only finds no basis in the controlling law and undisputed facts of this case, but also would constitute an impermissible invasion into the free and open operation of the marketplace." *Id.*

On the other hand, the goals set forth in the Draft Notice are inconsistent with the ability of parties to financial transactions freely to negotiate, up front, what provisions, benefits, and protections are to be afforded the parties. As observed by the *MetLife* court:

> The sort of unbounded and one-sided elasticity urged by [bondholders] would interfere with and destabilize the market. And this Court, like the parties to these contracts, cannot ignore or disavow the marketplace in which the contract is performed. Nor can it ignore the expectations of that market - expectations, for instance, that the terms of an indenture will be upheld, and that a court will not, sua sponte, add new substantive terms to that indenture as it sees fit.

Id. at 1520.

As noted above, whether an underwriter's consent is lawful is a matter of State law. *See, e.g., Aristocrat Leisure Ltd. et al. v. Deutsche Bank Trust Company Americas, as Trustee et al.,* 2005 U.S. Dist. LEXIS 16788 (S.D.N.Y. 2005) (collecting cases in the context of interpreting holder consent provisions of a bond indenture).[10]

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[10] As summarized by the court in *Aristocrat Leisure*: "The Court interprets bond indentures pursuant to contract law. See *MetLife Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990) (applying New York contract law to review the District Court's interpretation of an indenture). So long as there is no reasonable basis for differing meanings of contractual language when viewing the contract as a whole, the contract is unambiguous. See *Fleet Capital*, 2002 U.S. Dist. LEXIS 18115, WL at *63. Where unambiguous, courts are to interpret contractual language pursuant to its plain meaning, especially when dealing with 'sophisticated, counseled business people negotiating at arm's length.' *See Vt. Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475, 807 N.E.2d 876, 879, 775 N.Y.S.2d 765 (2004); *see also Alexander & Alexander*, 136 F.3d at 86 ("If the court finds that the contract is not ambiguous it should assign the

We believe that, if the owners of outstanding bonds agreed to buy them in reliance on Bond Documents that permitted the issuer to amend them, including by an underwriter consent process, then it should be perfectly lawful for an underwriter to assist the issuer in its exercise of a right to which the owners of existing bonds had agreed.

Recommendation

NABL recognizes that the Draft Notice is an interpretation of its Rule G-17, which relates to the conduct of underwriters and provides that:

> In the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

NABL is concerned that the Draft Notice incorrectly implies that the consents described in the Draft Notice are being obtained unfairly notwithstanding the fact that, as indicated above, such consents have long been utilized in the municipal marketplace and are in fact conducted in a manner designed to meet the conditions of the Bond Documents and applicable State law. To the extent that amendments to the Bond Documents could adversely affect the value of or security for outstanding bonds, it may be against the preference of those holders but such as possibility was within the scope of their existing contract with the issuer as set out in the Bond Documents. Thus, we do not believe that an underwriter who helps an issuer effectuate such a consent in accordance with its Bond Documents and applicable State law should be viewed as dealing unfairly with those holders or engaging in any deceptive, dishonest or unfair practice. Where the purchasers of outstanding bonds have not bargained for and received such protections, and the issuers did not agree to such protections in the authorizing documents, NABL believes that the MSRB should not effectively insert such protections into the business terms of transactions by regulatory action.

NABL is also concerned that, if an underwriter is treated as breaching its duty under Rule G-17 in the situation described in the Draft Notice, it may be hard to distinguish similar situations in which an underwriter participates in a new transaction which could adversely affect existing bondholders but which is permitted under the terms of the applicable Bond Documents.

First, as discussed above, there are several alternative structures used to effectuate holder consents. Although the underwriter's level of involvement varies from actually consenting to identifying purchasers who consent, NABL is concerned that there is no principled way to distinguish these circumstances from a direct underwriter consent. Consequently, if the Draft Notice were filed and approved, it may effectively preclude each of these practices, to the detriment of issuers and obligated persons.

Furthermore, NABL is concerned that underwritings that affect bondholders in other ways, beyond the apparent intent of the Draft Notice, could arguably also be viewed to violate Rule G-17. For example, suppose bondholders had purchased bonds issued under an open-ended bond agreement that permits the issuance of additional parity bonds when certain conditions (*e.g.*, coverage of debt service by prior year net revenues) are satisfied, and when the conditions are satisfied an underwriter buys a permitted issue of additional parity bonds, diluting (and therefore "reducing") the security afforded for the outstanding bonds. While not listed as a "reduction in security" in the Draft Notice, we are concerned that the scope of the Draft

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plain and ordinary meaning to each term and interpret the contract without the aid of extrinsic evidence."). "Language whose meaning is otherwise plain is not ambiguous merely because the parties urge different interpretations in the litigation. The court should not find the language ambiguous on the basis of the interpretation urged by one party, where that interpretation would strain the contract language beyond its reasonable and ordinary meaning." *MetLife Ins.*, 906 F.2d at 889 (quotation and citation omitted)." *Aristocrat Leisure*, 2005 U.S. Dist. LEXIS 16788, at 13.

Notice could be read broadly enough to prevent an underwriter's participation in the transaction lest it be viewed as dealing unfairly with the outstanding bondholders.

Due to the material adverse impact on issuers of outstanding parity debt that would result from finalization of Rule G-17 in its current form, NABL recommends that, if the MSRB chooses to limit underwriter participation in holder consents, then the MSRB's desired result should be sought by proposing and adopting a new rule, during which process the full impact of the proposed rule-making can be developed by all market participants and issuers and other affected parties would be afforded a better opportunity to bring issues to the attention of the MSRB and SEC.

NABL recognizes that recent Congressional action has changed the mandate of the MSRB. Specifically, since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("*Dodd-Frank*"), the MSRB's authority encompasses the regulation of municipal advisors and, as a related concept, the protection of municipal issuers and obligated persons. In that regard, NABL is concerned as to the substantial impairment of the contract rights of municipal issuers and obligated persons that could result from the finalization of the Draft Notice, which impairment would clearly adversely affect, rather than protect, municipal issuers.

NABL believes that, if the MSRB considers proposing a rule that prohibits underwriter consents, it should weigh the impact on both issuers and investors. While the Draft Notice could be viewed as giving to outstanding bondholders an unintended benefit (hold-out value), it would simultaneously deny issuers a right for which they *had* contracted. For the reasons described above, NABL requests that the MSRB not file the Draft Notice for approval, thereby potentially imposing a restriction on underwriter consents.

EXHIBIT A

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EXHIBIT B

DTC CONSENT CONSIDERATIONS

Bond document amendments which are to become effective upon receiving the affirmative vote of a specific percentage of the holders (usually weighted by ownership amount) can only occur if the issuer (or more usually the indenture trustee) receives copies of the signed consents of such holders. Depository Trust Company (hereafter "DTC") is the registered holder of the bonds in almost all currently outstanding publicly offered municipal issues and when its consent to an amendment is sought it will execute a proxy authorizing its participants to vote through it. When those participants do follow through and file the appropriate documentation, a partial vote to the extent of the filing will be recorded.

However, while DTC, for a cost, will make available to a trustee or an issuer a list of participants currently recorded on the DTC books as entities through whom beneficial holders (the true owners) hold bonds, such a list will only show the accommodation address of participant agents for further contact. More importantly, there is no current SEC, MSRB or DTC requirement that actual notices concerning municipal issues be sent through the DTC system (that is, from DTC to interested participants, from such participants to any interested indirect participants, and from such other entities to beneficial holders). The practice is that notices will be summarized on a system for communication to participants, with the review and retransmittal of such summary information being entirely voluntary. Therefore, it is our experience that, not infrequently, beneficial holders of bonds do not receive notices through the DTC system, including the notices which relate to voting on amendments to documents. In the absence of contact from beneficial holders, DTC and its participants will not vote for amendments.

In contrast to this voluntary system, corporate entities, using the proxy statement rules, are able to force relevant notices through the DTC system. The issuers involved have to pay expenses for such but items like the required proxies for voting at the annual meeting of a '34 Act company must be delivered to the beneficial owners of the stock in time for their votes to be made and counted.

NABL believes that if municipal issuers and their trustees could do the same - force notices of their choice and at their expense to be sent all the way through the DTC system to beneficial owners - it would be significantly easier for issuers and other obligated persons to make amendments to bond documents through a holder solicitation process. At the very least, changes which would give an issuer the ability to cause a notice to be transmitted to holders of outstanding bonds describing any amendment process being undertaken by current holders might allay any concerns that others, such as underwriters, consenting on behalf of new parity holders were somehow acting adversely to such current holders. The current holders could speak for themselves or, if a holder has an existing relationship with the underwriter, contact the underwriter about the amendment process.

NABL is aware that there are commercial entities who will contact beneficial owners for issuers and trustees at a cost, including for the purpose of obtaining consents to document amendments. While we do not have comprehensive information regarding the results which have been achieved by this process, it is clear that such efforts are not always entirely successful in obtaining the desired consents or even ensuring that owners qualified to vote are informed of that ability. A mechanism for transmittal of notices and other materials through the DTC system, as with corporate entities, would provide issuers and obligated persons a more robust platform to communicate and obtain consents from their bondholders.