



**National Association of Independent
Public Finance Advisors**

P.O. Box 304
Montgomery, Illinois 60538.0304
630.896.1292 • 209.633.6265 Fax
www.naipfa.com

February 8, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2012-61 – Concept Proposal to Require Underwriters to Submit Preliminary Official Statements to the MSRB’s EMMA System

The National Association of Independent Public Finance Advisors ("NAIPFA") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board (the "MSRB") in regard to MSRB Notice 2012-61 – Request for Comment: Concept Proposal to Require Underwriters to Submit Preliminary Official Statements to the MSRB’s EMMA System (the "Notice" or "Release").

NAIPFA appreciates the MSRB’s efforts to expand investor access to timely information and fully supports the implementation of common sense regulations designed to increase the timely dissemination of information where such regulations result in a net benefit to issuers, investors, and the overall market. However, at this time, NAIPFA does not believe that a rule such as what is described in the Notice meets this criterion. Conversely, NAIPFA would welcome MSRB efforts to undertake a comprehensive quantitative analysis of the overall market with an eye towards determining what, if any, benefits would be achieved by developing a centralized repository for Preliminary Official Statements and all supplements thereto (collectively referred to herein as "POS Documents").

As is noted in the Release, underwriters will meet their disclosure obligations to customers by delivering "to the customer, prior to the customer committing to purchase the securities, [] a preliminary official statement (if one is prepared)." The MSRB further acknowledges that where an issuer has prepared POS Documents for a new issue of municipal securities, the issuer "will typically make it available to the market by various methods, including posting it electronically on an issuer’s website or a commercial site, or by making it available electronically (or in hard copy) through its financial advisor or directly to investors upon request." In addition, the MSRB states that dealers will often post POS Documents to their websites so that the "dealer may direct interested persons to the link itself." Notably, investors also have access to information from those financial advisors and issuers who currently post POS Documents on their respective websites, *The BondBuyer* New Issue Sales Calendar, and various auction and commercially available platforms.

Acknowledging that there exist numerous routes for investors to access POS Documents, the MSRB goes on to say that “potential investors are frequently unaware of this availability.” Yet there seems to be a question even within the MSRB as to whether this is in fact true as the MSRB then asks commenters whether “retail investors have ready access to preliminary official statements posted on an issuer’s website or through commercial vendors.” Further, the MSRB does not provide any quantifiable basis for its statement that investors are unaware of postings, even on their own broker’s website. Therefore, there appears to be a slight disconnect between the MSRB’s premise that investors do not know they have access to this information, and the question posed, that is, whether investors have access to such information.

Underlying the MSRB’s concept proposal is the idea that by increasing the availability of POS Documents to investors, the MSRB can “improve the timely flow of information, allow investors more time for a careful review of the offering and potentially attract a broader base of investors to the offering.” NAIPFA agrees that broader investor participation should be encouraged. However, at this time NAIPFA is not convinced that simply requiring underwriters, and potentially Municipal Advisors, to post POS Documents to EMMA will increase investor participation, and particularly retail investor participation, principally because NAIPFA believes that if an investors were interested in obtaining POS Documents they would more than likely access their own broker’s website rather than EMMA. Thus, since investors are apparently not utilizing their own broker’s website to obtain information about the securities they may purchase from that broker, NAIPFA is not convinced that centralizing POS Documents will increase the timely flow of information, allow investors more time for a careful review of the offering, or attract a broader base of investors to the offering.

It seems counterintuitive to suggest that investors who are not already accessing their broker’s website for POS Documents would utilize EMMA for such information since EMMA has traditionally been utilized as a secondary market disclosure resource for industry professionals, and as acknowledged by the MSRB in the Release, EMMA has not been utilized as a primary market disclosure resource.. Further, NAIPFA is not aware of any quantitative information which would indicate extensive investor utilization of EMMA for either primary or secondary market information.

With respect to retail investor participation in the municipal securities market, NAIPFA does not believe that any lack of participation is the result of a lack of access to information. Rather, NAIPFA believes that any issues which may exist in the market with respect to retail investor access is the result of the business structure of the broker-dealers who engage in the underwriting of municipal securities. As NAIPFA has noted in previous comments to the MSRB, many of the broker-dealers who engage in underwriting are simply not structured, or lack the desire to, cater to the retail investor community; in other words, the broker-dealers who purchase the securities in the primary market may simply not have the retail investor clientele to sell a significant amount of securities to those purchasers and instead offer the securities to institutional investors who do possess a sufficient retail customer base. As such,



even assuming that this proposal would increase retail investor access to information, there seems to be little likelihood that the concept proposal would improve retail investor involvement in the municipal securities market to an extent which would benefit issuers or retail investors due to the above-referenced barriers to access likely not being eliminated by the implementation of a rule such as what is proposed.

Furthermore, NAIPFA is concerned that the text of the concept proposal, if utilized in the development of a rule, will result in a rule which may allow for the manipulation of the release of information to an extent which may not otherwise occur. This concern stems from the following statement contained within the Notice:

The concept proposal would not require, directly or indirectly, that a preliminary official statement or supplement be prepared and would leave full discretion with the issuer as to whether any preliminary official statement *or supplement* it does prepare may be posted on EMMA by the underwriter prior to the bond sale.

If the foregoing language is taken at face value, it would seem to indicate that a municipal entity who agrees to submit a preliminary official statement to EMMA could subsequently choose not to submit a supplement to EMMA. In addition, requiring underwriters and potentially Municipal Advisors to post POS Documents to EMMA may cause these entities to cease posting such information on their own websites. Taken together, the centralization of information, the decreased need for corporate website posting of such information, and the full discretion vested in issuers with regard to the dissemination of such information would seem to create an opportunity whereby parties could intentionally mislead, in violation of securities laws, potential investors with respect to available information prior to the sale of securities by simply determining to not submit supplemental information to EMMA after having previously posted a Preliminary Official Statement. Further, the centralization of this information, in particular, would likely cause investors to rely solely on the information found therein, and would likely deter such investors from even considering undertaking additional due diligence efforts to determine if other information may be available to them. The aggregate effect of the foregoing would seem to actually encourage fraudulent and manipulative acts and practices, a result which would clearly be contrary to the MSRB's goals.

In addition to the foregoing concerns, NAIPFA has a number of questions with regard to the Release. For example, please consider the following:

- Does the MSRB intend to make a distinction between draft Preliminary Official Statements and “final” Preliminary Official Statements in terms of requiring same to be posted on EMMA? Does the MSRB only intend require “final” POS Documents to be posted onto EMMA? Notably, underwriting firms often receive “draft” Preliminary Official Statements in connection with requests for proposal, but the Release makes no distinction between “draft” and “final” POS Documents for purposes of EMMA



posting. Similarly, the MSRB Glossary definition of “Preliminary Official Statement” makes no distinction between “draft” and “final” Preliminary Official Statements. As such, would an underwriter be required to post even “draft” Preliminary Official Statements?

- Would every potential underwriter who received POS Documents, whether in connection with a negotiated sale or competitive bid, be required to post such documents on EMMA regardless of their intention to submit a proposal or bid, or would an underwriter only be required to post the POS Documents relating to issuances that correspond to issuances that the underwriter intends to submit a proposal or bid? In other words, will the MSRB require underwriters to post POS Documents regardless of their intention to underwrite, or will there be an intent requirement which would thereby trigger the underwriter’s obligation to post POS Documents?
- Once an underwriter has submitted POS Documents to EMMA, would the EMMA website reflect which broker-dealer made the submission? In other words, would an investor be able to identify the broker-dealer who submits POS Documents for the purposes of determining from whom they may purchase securities? If not, what would be the extent of additional burdens on investors who would then be required to determine the identity of a broker with whom they may purchase such securities?
- How and to what extent would a centralized repository of POS Documents improve investor access to information beyond what appears to be an already ample number of available means for potential investors to obtain POS Documents, including from their own broker’s website?
- What would be the cost associated with updating EMMA to the extent necessary to handle the additional technological/capacity needs which would be associated with the POS Document submission requirement?

In light of NAIPFA’s foregoing questions and concerns, and without being presented with quantifiable data as to the potential effect that this concept proposal would have on the market’s overall efficiency, we are concerned that a rule such as that which is described within the Notice would simply result in increased costs to issuers, underwriters, and/or financial advisors without any quantifiable benefit to any of the above-referenced market participants. In addition, as noted above, this concept proposal, if enacted, could in fact cause investors to obtain less information, not more.

Since this is a concept proposal, we recommend that the MSRB, rather than moving forward with the development of a rule, instead undertake discussions with the various market participants, including broker-dealers, municipal advisors, investors and issuers, in order to determine how the industry might improve the flow of information *and* increase retail investor participation. Again, although the Release suggests that more information will cause more



investor and, in particular, retail investor participation, NAIPFA is not convinced that this is in fact the case. As such, we would encourage the MSRB to engage market participants in a broader discussion with respect to potential means by which the MSRB may help to increase retail investor participation.

Sincerely,



Jeanine Rodgers Caruso, CIPFA
President, National Association of Independent Public Finance Advisors

cc: The Honorable Elisse B. Walter, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
Liban Jama, Counsel to Commissioner Aguilar
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

