

May 25, 2016

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

**Re: MSRB Regulatory Notice 2016-11: Request for Comment on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans**

Dear Mr. Smith:

Zions Bank, a division of ZB, N.A. (“Zions”) appreciates this opportunity to respond to the Municipal Securities Rulemaking Board’s (“MSRB’s”) Request for Comment on a Concept Proposal to Improve Disclosure for Direct Purchases and Bank Loans (“Concept Proposal”). Zions generally supports improved municipal market transparency through disclosure; however, Zions wishes to identify specific issues with the Concept Proposal for consideration by the MSRB.

**I. The Disclosure Contemplated by the Concept Proposal May Result in Increased Transaction Costs and Litigation Risk for Municipal Securities Issuers.**

As noted by the MSRB, voluntary disclosure of bank loan financings on EMMA by issuers has been limited despite efforts by the MSRB to promote such voluntary disclosure.<sup>1</sup> There are likely multiple reasons for this limited participation by issuers.

First, disclosure of bank loan financings will result in increased costs to issuers. Municipal advisor fees paid by issuers will likely increase with the costs of additional disclosure required under the Concept Proposal. This, in turn, will result in higher transaction costs, ultimately paid for by taxpayers. Furthermore, if banks seek to protect themselves from being more easily refunded out of direct placements bonds, longer and more costly call features could be placed on those issues, similarly increasing issuers' transaction costs.

Second, the Concept Proposal exposes issuers to increased litigation risk. Currently, municipal securities issuers are under no duty to disclose the details of direct purchases or bank loan financings on EMMA. In fact, the Tower Amendment prohibits the MSRB from requiring such disclosure from issuers. Under the Concept Proposal, the MSRB seeks to avoid the prohibitions of the Tower Amendment by indirectly requiring disclosure of bank loan financings by issuers through its rulemaking authority over municipal advisors. As we have seen recently with the Securities and Exchange Commission's (“SEC’s”) Municipalities Continuing Disclosure Cooperation Initiative, the SEC is willing to bring enforcement actions against issuers pursuant

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<sup>1</sup> Concept Proposal at p. 3.

to its anti-fraud authority that involves disclosure by issuers required indirectly through broker-dealer regulation. The Concept Proposal could similarly place issuers at an increased risk of being targeted by the SEC in an enforcement action under Section 17(a)(2) of the Securities Act of 1933 and/or Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b) promulgated thereunder for issuer disclosures posted on EMMA.<sup>2</sup>

While the MSRB's mandate includes the protection of investors, it must balance this charge with its mandate to also protect issuers pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

## **II. Regulation of Dealers Related to Securities Transactions Is Not Equivalent to Regulation of Municipal Advisors Related to Bank Loans.**

In addition to municipal advisors, the MSRB's regulatory authority covers the conduct of brokers, dealers, and municipal securities dealers ("dealers"). The MSRB cites MSRB Rules G-32 and G-34, which require dealers to make certain disclosures regarding issuers in connection with the sale of municipal securities, to support the possibility that the MSRB may similarly use its rulemaking authority "to require disclosures by municipal advisors of information about direct purchases and bank loans of their municipal entity clients within the limitations of the Tower Amendment."<sup>3</sup>

Even assuming the requirements for issuer disclosures through municipal advisors are permitted under the Tower Amendment, dealers do not owe a fiduciary duty to their municipal issuer clients like municipal advisors. For the reasons set forth above, although disclosure of direct purchase and bank loan information may be of interest to some investors, providing such disclosure may not be in the best interests of an issuer. Moreover, the rules cited by the MSRB relate to securities transactions. Under the Concept Proposal, the MSRB is venturing into instruments, namely bank loans, which fall under the jurisdiction of federal banking regulators. Zions respectfully requests that the MSRB consider the unique obligations of municipal advisors to their issuer clients as well as the respective jurisdictions of federal regulators in crafting any disclosure regulation applicable to municipal advisors.

## **III. Investors Will Not Receive Consistent or Material Disclosure.**

Under the Concept Proposal, direct purchase and bank loan disclosure would be posted on EMMA by municipal advisors.<sup>4</sup> For a variety of reasons that do not always correspond to the size of a municipal securities issue, municipal advisors are not hired by issuers for every municipal market transaction. For example, municipal advisors are typically not hired in connection with municipal loans purchased by state-sponsored revolving loan programs. These

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<sup>2</sup> The MSRB could further encourage voluntary disclosure of direct placement and bank loan information by working with the SEC to provide guidance to issuers on federal securities law obligations and implications of providing such disclosure.

<sup>3</sup> Concept Proposal at pp. 4-6.

<sup>4</sup> Concept Proposal at p. 6.

portfolios can be quite large. Some municipal securities issuers never hire a municipal advisor. In fact, issuers may be more reluctant to hire municipal advisors if it results in additional disclosure requirements being imposed under MSRB rules. Accordingly, investors' reliance on EMMA to locate direct purchase and bank loan information about issuers would be misplaced because such information would be provided on an inconsistent and unpredictable basis. It is also unclear where the responsibility to update such information on EMMA would fall.

Zions agrees with the comments submitted by the American Bankers Association ("ABA") regarding the practical benefits of the Concept Proposal disclosures to investors. The ABA is correct in noting that bank loans are required to meet the parameters of issuers' existing additional debt and lien covenants. These requirements are already known to investors and, thus, disclosure of such terms may not materially affect investors. The ABA is also correct in noting that investors could require issuers to make prompt disclosure of the terms of any additional debt incurred, if such disclosure was of material importance to investors. Such regulation could occur at the market level, without additional regulation by the MSRB.

#### **IV. Conclusion**

We hope our comments will provide additional perspective on the appropriate level of municipal advisor regulation to ensure municipal securities issuers and investors are protected. We understand that other federal regulators may be interested in the outcome of the issues discussed herein and, therefore, have provided copies of this letter to the individuals listed below.

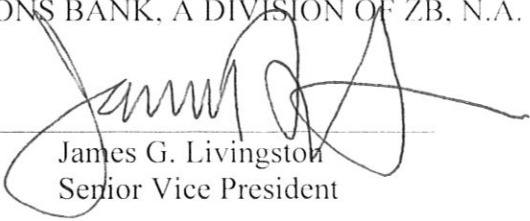
Zions participated in the development of the ABA's comments on the Concept Proposal and wishes to express its support for and endorsement of those comments.

Thank you for your consideration. If you have any questions regarding this letter, please feel free to contact Gary Hansen at Zions Bank, One South Main, 17<sup>th</sup> Floor, Salt Lake City, Utah 84133, Telephone: 801-844-7762, E-mail: Gary.Hansen@zionsbank.com.

Very truly yours,

ZIONS BANK, A DIVISION OF ZB, N.A.

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