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December 23, 2016

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

RE: NABL Comments on Draft Rule G-49 in MSRB Regulatory Notice 2016-23 Regarding
Minimum Denominations in Municipal Securities

Dear Mr. Smith:

The National Association of Bond Lawyers appreciates the opportunity to comment on Draft Rule G-49 concerning transactions below the minimum denomination of an issue of municipal securities.

Existing Municipal Security Rulemaking Board ("MSRB") Rule G-15(f) generally prohibits dealers from purchasing or selling municipal securities in amounts less than the minimum denomination. Rule G-15(f) includes two exceptions designed to provide liquidity for below-minimum denomination positions that arise from time to time.¹ The MSRB has proposed a new Rule G-49 as a stand-alone rule for below-minimum denomination transactions. New Rule G-49 would liberalize, in some aspects, the existing exceptions, including allowing dealers to sell a below-minimum denomination security in certain circumstances "to a customer that does not have a position in the issue, even if the transaction does not result in a customer increasing its position to an amount at or above the minimum denomination."

As noted in Regulatory Notice 2016-23, authorized denominations, including minimum denominations, are determined by the issuer at issuance. They are part of the bond contract and are typically contained in a bond indenture or bond ordinance or resolution. These are contracts that can only be modified in accordance with such contracts' specific terms governing modifications. As the MSRB is not a party to the contract, whether the MSRB permits sales of municipal securities in less than the minimum denomination, or in anything other than an authorized denomination, is ineffective to determine whether such transfers are legal or contractually binding under the bond documents.

The MSRB recognizes the contractual nature of bond denominations in its online glossary. "Authorized Denomination" is defined by the MSRB as the "par value at which a municipal security can be purchased *as authorized by the bond contract.*" (emphasis added) Similarly, "Minimum Denomination" is defined by the MSRB as the "lowest denomination of an issue that can be purchased *as authorized by the bond documents.*" (emphasis added) Authorized and minimum denominations of an issue of municipal securities are

¹ One exception permits a dealer to purchase from a customer an amount below the minimum denomination if the dealer determines that the customer is liquidating its entire position. The other exception permits a dealer to sell to a customer an amount below the minimum denomination if the dealer determines that the position being sold is the result of a customer liquidating an entire position below the minimum denomination.

established for a variety of reasons, including, among others, (1) state law requirements, (2) an issuer's desire to limit distribution of its securities for suitability or other reasons, or (3) an issuer's intention to meet the exemption requirements for SEC Rule 15c2-12. Authorized and minimum denominations are set forth in the bond documents with the intent that sales and transfers of bonds will be made only in compliance with minimum denomination requirements, including transfers effected through book entries of participants in The Depository Trust Company.

While we acknowledge that the book-entry system of registration has greatly facilitated securities transfers, it has also removed the bond trustee and issuer's paying agent from the transfer process, thereby removing the entities that could police the denomination requirements on the issuer's behalf. As bond lawyers, we are concerned about reports of improper sales of municipal securities below minimum denominations that do not appear to comply with the bond documents. For this reason, we express caution regarding adopting a rule that would expand or liberalize the exceptions beyond transactions to liquidate existing positions that are below the minimum denomination.

Although we appreciate the desire to improve liquidity for investors, any such efforts should be consistent with issuer requirements set forth in bond documents. The fact that the MSRB promulgated existing Rule G-15(f) and is considering new Rule G-49 is an indication that the current system fails to effectively implement the authorized and minimum denomination provisions of the bond documents. In its deliberations concerning Rule G-49, we specifically suggest the MSRB consider the following:

- Whether the MSRB Rule should strive to decrease rather than hold steady (or increase) the number of below minimum denomination positions;
- Whether the MSRB Rule should actively discourage or prevent the sale of below-minimum denomination securities to investors that do not have an existing position in the security, such sale being in contravention of bond documents;
- Whether more can be done (through improvements to trading platforms, transaction mechanics, including minimum denominations in the data reported under Rule G-32, or otherwise) to facilitate compliance with bond documents, and to ensure that investors are not purchasing or disposing of an amount below minimum denominations.

The National Association of Bond Lawyers exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the laws affecting public finance. We offer these comments in furtherance of that mission.

As it has in the past, NABL welcomes the opportunity to participate in any of these MSRB efforts. If NABL can provide further assistance, please do not hesitate to contact Bill Daly in our Washington, D.C., office at (202) 503-3300.

Thank you in advance for your consideration of these comments.

Sincerely,



Clifford M. Gerber

cc: Lynnette Kelly, Executive Director, MSRB
Robert Fippinger, Chief Legal Officer, MSRB