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VIA ELECTRONIC MAIL

May 15, 2017

Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7–01–17
Proposed Amendments to Exchange Act Rule 15c2-12

Dear Mr. Fields:

The American Bankers Association (ABA)[1] is responding to the request for comment by the Securities and Exchange Commission (Commission) on proposed amendments to Exchange Act Rule 15c2-12, which, among other things, establishes continuing disclosure requirements in the secondary municipal securities market. The proposal would add to the current event notices that must be disclosed to the secondary market two new event notices, intended to address the increasing use of direct bank loans and direct purchases by municipalities and obligors,[2] (collectively, "obligated persons"). Direct loans and direct purchases are not currently subject to market disclosure requirements.

ABA generally supports the concept of disclosure related to direct loans and direct purchases so long as certain confidential information can be redacted. ABA's comments reflect our members' concerns, however, that the proposal as drafted is deeply flawed. Because it is substantially overbroad in scope, it will impose enormous burdens on obligated persons and underwriters – burdens which the Commission has grossly underestimated. In fact, the proposal if implemented as planned, will result in a glut of voluminous documents filed on the Electronic Municipal Market Access (EMMA) system, which will not provide relevant timely information or transparency to investors, ratings organizations, and other market participants as intended. Accordingly, we urge the Commission to withdraw this proposal and, through dialogue with all market participants, reconsider its current approach by focusing on ways to address the issue of disclosure of direct loans and direct purchases in a manner that is more targeted and practical to implement – and, importantly, without imposing disproportionate burdens on impacted market participants.

[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend more than $9 trillion in loans.

[2] A *direct bank loan* occurs when a bank or other financial entity enters into a loan agreement or other type of financing agreement with an obligor. A *direct purchase* occurs when a bank purchases a bond directly from the obligor. The *obligor* is the entity responsible for repaying the loan; an obligor may be an issuer or another governmental or not-for-profit entity that is responsible for repaying the loan.

DISCUSSION

Rule 15c2-12 is designed to address fraud and manipulation in the municipal securities market by prohibiting the underwriting of municipal securities and subsequent recommendations of these municipal securities by dealers for which adequate information is not available. Rule 15c2-12 has been amended on several occasions to address changing conditions in the market and currently requires disclosure to the secondary market on the EMMA system of fourteen events, some of which reflect on the creditworthiness of the obligated person.

As the Commission noted in the preamble, the genesis of the current proposal is the significant increase in the use of direct bank loans and direct purchases by obligated persons. Such transactions provide access to funding that can address the specific requirements of obligated persons, particularly smaller municipalities, at a cost that is lower than the cost for accessing the public municipal securities market, if market access is even available. However, because these transactions are not subject to Rule 15c2-12, obligated persons can disclose information about them on a voluntary basis only, thus creating uneven disclosure across the industry.[3] This proposal is an attempt to mandate and standardize the disclosure of information about direct bank loans and direct purchases.

Specifically, the proposed amendments would amend paragraph (b)(5)(i)(C) to add the following two new event disclosures that obligated persons must file on the EMMA system in a timely manner, not in excess of ten business days after the occurrence of the event:

1. The incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material; and

2. The occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person any of which reflect financial difficulties.

The Commission asserts that timely disclosure of these events is necessary to "facilitate investor access to important information in a timely manner and help to enhance transparency."[4] As discussed more fully below, ABA believes strongly that as currently drafted the proposal would do just the opposite by inundating EMMA with lengthy, unstructured, and irrelevant documents that would shed little light on critical information, while imposing enormous burdens on obligated persons and underwriters both in terms of time and costs.

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[3] ABA participated with other trade groups to develop a white paper on voluntary disclosure, *Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans,* issued in 2013. The white paper is available at: http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank.loan.5.13.pdf.

[4] SEC Release No. 34-80130 at page 35.

We note that the goal of the proposal is to alert investors, ratings organizations, and other market participants of events that could impact an obligated person's overall creditworthiness and liquidity. Such a glut of information on EMMA would be of little, if any, benefit to the numerous retail investors in the municipal market, many of whom may be seniors.

1. Incurrence of a "Financial Obligation"

a. The term "financial obligation" is defined too broadly.

The proposal defines the term "financial obligation" as a debt obligation lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding, but does not include publicly issued municipal securities. We recognize that the marked increase in the use of direct loans and direct purchases by obligated persons has raised concerns about the possible impact on existing investors in bonds payable from the same credit or revenue source as the direct loan or direct purchase, and we do not object to disclosures about the former instruments. However, the proposal substantially widens the scope of the transactions that must be disclosed and establishes a need to analyze individual covenants.

Although the Commission describes the proposed new events as being "similar" to the other events listed in Rule 15c2-12, ABA believes that, in fact, these events will require far more analysis to determine whether they are reportable than do the events currently listed. This is the first amendment to Rule 15c2-12 since the Commission's *Municipalities Continuing Disclosure Cooperation* (MCDC) initiative, which resulted in more than 140 settlements with the Commission, along with substantial penalties to underwriters. As a result, underwriters and obligated persons will clearly err on the side of disclosure to avoid future enforcement actions by the Commission. Consequently, we fear that obligated persons will simply inundate EMMA with an enormous number of voluminous documents, whether or not material, thereby defeating the intent of the new disclosures for all practical purposes.

Accordingly, ABA believes that the term "financial obligation" should be limited solely to direct loans and direct purchases. Additionally, to align the proposal more fully with its intended goals, we urge the Commission to limit disclosure clearly to those cases in which an obligated person has outstanding publicly issued debt payable from the same credit or revenue source as the particular transaction being disclosed. Because this proposal imposes on obligated persons such a high level of compliance burden, we believe such a clarification is critical. We further urge the Commission to limit disclosure to those events which *adversely* affect existing security holders.

b. The Commission should provide a mechanism to redact confidential information.

ABA urges the Commission to provide a mechanism for redacting confidential and personally identifiable information similar to that for auction rate securities and variable rate demand obligations under MSRB Rule G-34(c). According to MSRB, "information that was intended to remain confidential to maintain internal security or confidentiality of personal information may include the fees assessed by liquidity providers or ARS

Program Dealers as well as staff names and contact information for making a request to use a VRDO liquidity facility, as well as information that could be used in a fraudulent manner, such as VRDO liquidity facility bank routing or account numbers."[5]

Importantly, the pricing for each of these direct loan or direct purchase transactions is customized and specifically targeted to the particular financial needs of that obligated person, its financial condition, public credit ratings (if any), the lender's own credit analysis, the source of payment and/or collateral pledged for the debt obligation, existing cost of funds for the lender, and other unique and time sensitive factors relative to that particular debt obligation and the timeframe during which negotiations are conducted. Disclosure of pricing on a near "real time" basis (*e.g*. within ten business days of closing) may set an unrealistic expectation among other obligated persons as to the appropriate pricing for their direct purchase loan transactions. Conversely, such early disclosures may also have an anti-competitive effect that may increase pricing otherwise available, by establishing a type of "benchmark" for certain transactions. Because many of these lending transactions are competitively bid, the availability of this "real time" pricing information may inform the bids of competitors and weaken robust pricing competition expected under a sealed proposal process*.*

For the reasons stated above, ABA urges the Commission to provide for redaction of confidential information.

2. Occurrence of an Event Reflecting "Financial Difficulties"

The proposal would also require disclosure of the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation that reflects "financial difficulties" on the part of the obligated person. As the preamble to the proposal discusses, there are many differing circumstances where the occurrence of a particular event *may or may not* indicate that an obligated person is experiencing "financial difficulties." As a result, significant time may be required to determine whether a particular event is a reflection of financial difficulties. ABA strongly urges the Commission to provide further, specific guidance on those events that constitute "financial difficulties."

3. The SEC has grossly understated the burden imposed by this proposal.

ABA believes the Commission has grossly underestimated the costs and burdens this proposal will impose on obligated persons and underwriters, and we fully endorse the position of the National Association of Bond Lawyers as stated in its April 11, 2017, letter (the NABL letter) to the Office of Management and Budget.[6] As noted above, given the market concerns in the wake of the recent MCDC initiative, the determination of which transactions could adversely affect security holders will become critical. Obligated persons will need to expend substantial resources on internal personnel to analyze transaction documents and file the required disclosures. Lacking internal resources, obligated persons would very likely have to engage outside counsel or other professionals to review voluminous transaction documents and file the necessary

[5] MSRB Regulatory Notice 2011-17 (Feb. 23, 2011).
[6] NABL's letter is available at: https://www.sec.gov/comments/s7-01-17/s70117-1698938-149892.pdf.

disclosures. If outside counsel or other professionals are unaffordable, the likely consequence will be that entire documents will be filed on EMMA, whether or not material, out of an abundance of caution. This may particularly be the case with smaller obligated persons who lack the resources and expertise to make such complicated determinations.

Given the enormous burden imposed by this current proposal, we question whether it comports with the Administration's executive orders intended to reduce regulatory burden, particularly in the financial sector. We note that Executive Order 13771[7] requires that the costs imposed by any new proposed rule be offset by the costs associated with eliminating two existing rules; in other words, for fiscal year 2017 "the total incremental cost of all new regulations, including repealed regulations, shall be no greater than zero."[8]

Because the burden estimate is so flawed, ABA believes the Commission should withdraw this proposal. Any new effort to require disclosure of direct loans and direct purchases should include a thorough and realistic assessment under the Paperwork Reduction Act of the burden imposed by such disclosure. In addition, the Commission should, in concert with all municipal market representatives, explore other mechanisms that are more targeted and practical to implement – and, importantly, without imposing disproportionate burdens on impacted market participants.

4. Effective Date and Capability of EMMA

According to the proposal, the new event notices would take effect three months after final adoption of the rule to allow time for the MSRB to update EMMA and for underwriters to comply. Based on the times estimated in the NABL letter for compliance with the proposal, ABA believes that the three-month compliance timeframe is woefully inadequate. Moreover, it is unclear whether the MSRB is preparing for the information deluge which we believe will likely occur. We urge the Commission to (1) assess realistically the costs and burdens imposed by the proposal and revise its compliance timeframe accordingly, and (2) ascertain whether the EMMA system can, in fact, realistically handle the numbers of documents the industry expects to be filed.

CONCLUSION

As described above, ABA believes these proposed amendments to Rule 15c2-12, rather than providing transparency about direct loans and direct purchases, will in practice serve to make it more difficult for investors (particularly senior retail investors), ratings organizations, and other market participants to find relevant information.

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[7] Executive Order 13771 is available at https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf (January 30, 2017).

[8] *Id.*

Accordingly, ABA urges the Commission to withdraw the proposal and refocus its efforts in collaboration with all municipal market participants to develop disclosures for direct loans and direct purchases in a manner that is more targeted and practical to implement – and, importantly, without imposing disproportionate burdens on impacted market participants. Any new disclosure proposal should:

1. Limit new disclosure events to direct bank loans and direct purchases;

2. Provide further guidance or parameters for the term "reflecting financial difficulties;"

3. Be based on an appropriate Paperwork Reduction Act review to include the numerous activities addressed in the NABL letter which were not part of the current proposal;

4. Clarify that the proposed event disclosures apply only to obligated persons with publicly issued municipal securities outstanding that are payable from the same credit or revenue source as the transaction being disclosed;

5. Provide for redaction of confidential pricing and personally identifiable information; and

6. Provide for a realistic compliance transition period.

If you have any questions about the foregoing, please do not hesitate to contact me at 202-663-5332 or cnaser@aba.com.

Sincerely,

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