

VIA ELECTRONIC MAIL

August 16, 2012

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

Re: Concept Proposal on Disclosure of Financial Incentives Representing Potential
Conflicts of Interest

Dear Mr. Smith:

The American Bankers Association (ABA)¹ and the ABA Securities Association (ABASA)² (collectively, the Associations) appreciate the opportunity to comment on the concept proposal issued by the Municipal Securities Rulemaking Board (MSRB) to provide for public disclosure of financial incentives paid or received by municipal dealers and municipal advisors representing potential conflicts of interest. ABA and ABASA members provide services as regulated municipal securities dealers, either through separately identifiable departments in commercial banks or through broker-dealer affiliates of commercial banks. In addition, our members may become subject to municipal advisor regulations when the Securities and Exchange Commission (Commission) finalizes the definition of “municipal advisor.”

The concept proposal is intended to make transparent any potential financial incentives that could have an impact on the substantial and long-term commitments of municipalities. To achieve that goal, the concept proposal sets forth the types of disclosures that could be required of underwriters for recommending a municipal securities financing or any closely related transaction (collectively “new issue transactions”). Similarly, it sets forth the disclosures that could be required of municipal advisors with respect to recommendations for any municipal financial product or the issuance of municipal securities or any closely related transaction (collectively, an “advised transaction”). The proposal does not define the term “closely related,” but cites as examples swap transactions or investments of bond proceeds occurring contemporaneously with a new issue.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its 2 million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities. Learn more at www.aba.com.

² ABASA is a separately chartered affiliate of the ABA that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.

ABA and ABASA appreciate the efforts of the MSRB to improve transparency and disclosure in the municipal securities market, and as a general matter, support those goals. However, the Associations oppose this concept proposal as both premature and burdensome, imposing costs that would far outweigh any potential benefit to municipalities or investors.

DISCUSSION

In its concept proposal, the MSRB expressed its belief that “municipal securities offerings borne from self-interested advice or in the context of conflicting interests or undisclosed payments to third-parties are much more likely to be the issues that later experience financial or legal stress or otherwise perform poorly as investments.” It noted further that the integrity of the municipal market has been challenged as the result of undisclosed third-party payments in connection with new issues of municipal securities or closely-related transactions, citing among other transactions the experience of Jefferson County, Alabama. As a result, the MSRB is considering whether to require dealers and municipal advisors to submit to the MSRB, for public display on EMMA, disclosures with respect to payments, credits (such as inter-company credits or values between affiliated parties), quid-pro-quo arrangements or other valuable consideration, either provided to any other party, including municipal entities and their personnel, or received from any party other than the municipal entity.

At the outset, the Associations question the rationale for the concept proposal. The MSRB cites as examples of why the concept proposal is needed instances of fraudulent activities involving undisclosed third-party payments. Yet, the fact that there have been civil and criminal prosecutions in these cases clearly demonstrates that existing laws both prohibit and provide remedies for such illegal payments. We believe it is clear that voluntary disclosure can never be a remedy to such conduct because individuals engaged in illegal activities will simply not disclose such behaviors.

1. The Proposal is Premature

The concept proposal seeks input on the costs and benefits of certain disclosures by municipal advisors. However, because the Commission has not yet defined those entities and individuals that will be subject to municipal advisor registration, a fulsome response is not possible. This is particularly critical for the banking industry because the Commission’s municipal advisor proposal would expand the reach of the statutory basis for municipal advisor regulation far beyond what Congress intended.³ Indeed, ABA wishes to reiterate our continued adamant opposition to the applicability to commercial banks of municipal advisor registration requirements as set forth in the Commission’s proposal for a permanent registration regime for municipal advisors.⁴ As stated in our comment letter on the proposal,⁵ ABA believes that the imposition on highly regulated banks of a wholly duplicative securities-based regulatory scheme is a critically flawed reading of the statute. As such, it serves no public purpose, but would have significant unintended consequences on municipalities – the very entities intended to receive the benefit of the registration requirement.

³ See, Section 975 of the Dodd-Frank Act, Pub. L. 111-203 (2010).

⁴ The proposal is available at <http://sec.gov/rules/proposed/2010/34-63576fr.pdf>.

⁵ A copy of our comment letter on the proposal is available at <http://www.sec.gov/comments/s7-45-10/s74510-551.pdf>.

In addition, the new disclosures that municipal dealers must make to issuers under MSRB Rule G-17 would appear to cover the types of disclosures set forth in the concept proposal. For example, certain third-party payments have long been prohibited under MSRB Rules G-37 and G-38, and the G-17 interpretive notice would cover disclosure to issuers of potential and actual conflicts of interest, including payments by third parties to municipal dealers for recommending those third parties' services or products to issuers. Because the G-17 requirements took effect only just this month, ABA and ABASA believe the MSRB must assess the efficacy of those disclosures before moving forward with this concept proposal.

2. The Costs of the Proposal Would Outweigh any Benefits to Issuers

Under the concept proposal, municipal dealers and municipal advisors would be required to disclose on EMMA a broad range of third-party payments with respect to new issue transactions, advised transactions and any transactions “closely related” to either of the above categories. As noted above, the Associations believe that payments that would present actual or potential conflicts of interest, or involve solicitations or recommendations for underwriting or advisory contracts will be disclosed to issuers pursuant to MSRB Rule G-17, and the concept proposal is wholly duplicative of those requirements.

Importantly, the concept proposal fails to differentiate between third payments that may pose an actual or potential conflict of interest and those made for other legitimate reasons. For example, issuers may direct underwriters or advisors to make certain payments on their behalf; yet, under the concept proposal, such payments would have to be disclosed. As a result, issuers and users of EMMA could be inundated by disclosures that will provide no benefit to them.

Moreover, the term “closely related” transaction is not defined in the proposal. Its intended scope, however, is discerned by the MSRB’s question asking whether there should be standard exceptions for payments to entities such as third-party service providers or suppliers performing *bona fide* standard functions at commercially reasonable rates. Surely, disclosures of payments in the ordinary course of new issue transactions for services such as copying, design printing, analytics or fees to rating agencies, the CUSIP Service Bureau or DTCC would provide no benefit to issuers or investors. Rather, we believe such disclosures would detract from other material disclosures by underwriters and issuers.

Finally, the information that would be required under the concept proposal could not be provided without significant costs to municipal dealers and advisors. Accordingly, the Associations believe that the time and effort required to obtain, post and update the information far outweighs any unsubstantiated benefit to issuers or investors.

CONCLUSION

In conclusion, ABA and ABASA oppose the concept proposal. We believe that the proposal will unnecessarily duplicate information provided to issuers pursuant to MSRB Rule G-17. Moreover, because of its broad scope, the numerous additional disclosures on EMMA would only serve to detract from material disclosures made by underwriters and municipal advisors. Finally, because as described above the information provided would have little or no value to issuers and investors, the Associations believe it clear that the costs of the concept proposal far outweigh any benefit.

We would be pleased to discuss any of these comments in greater detail. If you have any questions about the foregoing, please do not hesitate to contact the undersigned at 202-663-5332.

Sincerely,



Cristeena G. Naser

cc: Lynette Kelly, Executive Director
Municipal Securities Rulemaking Board

Ernesto A. Lanza,
Deputy Executive Director and Chief Legal Officer
Municipal Securities Rulemaking Board