



November 9, 2017

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

Re: MSRB Regulatory Notice 2017-19

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's (MSRB or Board) *Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers*.

The NFMA is a not-for-profit association with nearly 1,400 members in the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our *Recommended Best Practices in Disclosure* and *White Papers* are available on our website, [www.nfma.org](http://www.nfma.org).

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

Thank you for giving the NFMA an opportunity to comment on Regulatory Notice 2017-19. Our comments pertain primarily to the discussion in *Part II, Rule G-32 – Disclosures in Connection with Primary Offerings*, specifically regarding Refunded CUSIPS and Preliminary Official Statement (POS) Disclosure.

The NFMA supports the full disclosure of all credit and security information to all market participants at the same time to ensure a level playing field. The most widespread and problematic violation of this principle occurs when issuers selectively disclose material information only to the Rating Agencies. This is unfair to investors because rating actions taken based on early and exclusive access to information often,



if not always, impact the pricing and liquidity of municipal securities.

We also support the submission of a POS to EMMA prior to pricing to ensure that all market participants, including holders of parity bonds, have equal access to the latest disclosure document of an issuer.

Regarding *Part A, Disclosure of the CUSIPs Refunded and the Percentages Thereof*, the following are responses to the specific questions posed in the release:

1. We support the disclosure to EMMA of all CUSIPS being refunded to all market participants at the same time, immediately following pricing of the refunding bonds and the execution of the escrow agreement.
2. See answer to Question 1, above.
3. We believe that if the timeframe for providing information cannot be shortened, then there should be a requirement to provide all information to market participants at the same time.
4. We feel that there are only advantages to providing equal access to information to investors at the same time, so that all market participants can fairly analyze and evaluate these securities in the secondary market.
5. We believe the most effective and least costly solution to ensure that all investors have equal access to refunded CUSIP information is the disclosure of all credit and security information to EMMA at the same time, as soon as practicable.

Regarding *Part B, Submission of Preliminary Official Statements to EMMA*, the following are our responses:

1. The NFMA supports the filing of a POS to EMMA by the underwriter or municipal advisor prior to the pricing of the bond issue. The delivery of the POS to the market for competitive issues may inadvertently exclude other investors that may also be interested in bidding on the transaction, to the detriment of both the issuer and the potential investor.

Additionally, the information contained in the document is likely to be the most current disclosure for the issuer. If there are outstanding bondholders, this information is of critical importance to them as well. Providing timely access to the POS will help ensure that investors have equal access to information in both the primary and secondary market.

2. We believe that the underwriter or municipal advisor should inform the issuer that the information is being posted to EMMA and ensure that the filing is posted to all existing CUSIPS of parity bonds.
3. We believe that submitting a POS to EMMA would ensure that all market participants would have equal access to the POS at the same time.



4. We have cited the advantages under Question 1 of this section. We do not believe that there are any disadvantages to investors.
5. We do not believe that there should be selective distribution of a POS for competitive deals. Regarding negotiated deals, there may be reasons for limiting distribution for Limited Public Offerings or Private Placements that may not be subject to EMMA reporting requirements.
6. We believe that distributing the POS to EMMA prior to pricing is the most efficient way to ensure that all investors have equal access to the information provided in the POS.
7. The rule should apply equally to competitive and negotiated offerings, subject to the caveat referred to in our response to Question 5, above.
8. We recommend that the POS be submitted to EMMA. Any changes or updates to the submitted POS should also be required to be submitted to EMMA prior to pricing. The POS should only be withdrawn after the submission to EMMA of the Final Official Statement. If the bonds are not issued, the POS should be retained by EMMA as it would be the most recent disclosure document.

This Regulatory Notice and the MRSB's recent Market Advisory on Selective Disclosure dated September 13, 2017 indicate that the Board is concerned that all market participants receive equal access to all material information relevant to a bond transaction. We have observed that material information is frequently disclosed to Rating Agencies that is not included in the POS or otherwise made publicly available. It is not uncommon for an issuer to decline to provide this information to investors or to refer them to a Rating Agency report for certain material disclosures. Since this information is not freely available to retail investors, or even some institutional investors, it is clearly a case of selective disclosure.

The NFMA has publicly discussed its concerns about unequal information in the municipal market for years. Selective disclosure of information by an issuer to an investor or group of investors enables one (or some) to have an advantage when making an investment decision. And, when Rating Agencies receive advance information and base rating actions on information not publicly available, all investors are at risk of a surprise loss in value or liquidity of their investment. The NFMA urges the MSRB to address all issues of unequal and unfair disclosure in the municipal market.

Sincerely,

/s/

Julie Egan  
NFMA Chair 2017

/s/

Lisa Washburn  
NFMA Industry Practices & Procedures Chair

