NATIONAL FEDERATION *of* MUNICIPAL ANALYSTS

May 10, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20540-1090

Re: Proposed Amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17)

Dear Mr. Fields:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the U.S. Securities and Exchange Commission's (SEC) proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934.

We would also like to thank the SEC and its Office of Municipal Securities for the work that they have done to increase transparency in the municipal market through the proposal of two critical amendments to the material event notification requirements under Rule 15c2-12. These changes would alert market participants to the incurrence of bank loans and other financial obligations by issuers and obligors and to the triggering of events under such obligations related to financial difficulties. We believe amendments such as these are an important step in ensuring that industry regulation keeps pace with developments and changes in the municipal bond market.

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 its members and other interested parties, to promote better disclosure by issuers, and to advocate for best practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the municipal bond market at large, about municipal bonds through our Recommended Best Practices in Disclosure and White Papers, which are available on our website, www.nfma.org. We also open our annual conferences to non-members and the media.

Over the past five years, many industry groups and organizations have expressed concerns regarding the lack of disclosure of bank loans and direct placements. Specifically, as cited by the SEC, these agreements can adversely affect bondholder rights and impact debt metrics and financial flexibility.

Knowledge of exposure to these instruments – and their terms – is critical to an investor's ability to assess an issuer's financial position and value the investment. Public awareness of the triggering of events under these instruments related to financial difficulties is also important in eliminating the potential for private lenders, counterparties and/or rating agencies to be privy to material nonpublic information that could be detrimental to an issuer's creditworthiness. There have been circumstances in which this asymmetrical disclosure has resulted in surprise rating downgrades. Additionally, since bank loans and direct placements often have terms similar to those contained in letters of credit or other bank liquidity facilities, it is extremely likely that many governing loan documents have provisions that give the lender rights and remedies that are not available to bondholders, including the right to terminate the agreement or demand repayment before bonds are paid.

In 2013, nine industry organizations authored a white paper explaining the industry's concerns and encouraging the voluntary disclosure of bank loans and direct placements.[1] The Municipal Securities Rulemaking Board (MSRB) and the major rating agencies have also produced several publications that express their concerns regarding the lack of transparency of bank loans and direct placements. Despite widespread support throughout the industry for voluntary issuer disclosure of these obligations, efforts to date have proven to be ineffective and inadequate.

Specific Comments on the Proposed Amendments

- *Disclosure of financial obligations and application of materiality:* In general, we agree with the scope of "financial obligations" as defined in the proposed amendments. While the increased use of bank loans and direct placements, and the realization of the lack of publicly available information on these instruments, elevated concerns regarding disclosure, the issue extends to other agreements used to raise capital ("debt obligations") outside of the public debt markets such private placements, limited public offerings and associated derivatives. There are other obligations, however, that are included in the definition of financial obligations under the proposed amendments. These are often incurred in the ordinary course of business or are less likely to interfere directly with bondholder security, although they still may impact debt metrics and operating budgets. We would consider operating and capital leases, guarantees and court-ordered judgments in this category ("other financial obligations").

  Debt obligations are often subject to their own indentures and/or contracts that may have provisions that overlap or conflict with the agreements that govern publicly issued bonds. And, as the SEC proposed amendments explain, debt obligations "could result in, among other things, contingent liquidity and credit risks, refinancing risk and reduced security for existing holders."[2]

  The NFMA believes that the disclosure of debt obligations should not be subject to the materiality qualification. The negative impact that these obligations can have on existing

[1] Bank Loan Disclosure Task Force White Paper, Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, May 2013. Organizational participation from the American Bankers Association, Bond Dealers of America, Government Finance Officers Association, Investment Company Institute, National Association of Bond Lawyers, National Association of Health and Educational Facilities Finance Authorities, National Association of Independent Public Finance Advisors (now the National Association of Municipal Advisors), National Federation of Municipal Analysts, and Securities Industry and Financial Markets Association.

[2] Securities and Exchange Commission 17 CFR Part 240, [Release No. 34-80130; file No. S7-01-17], RIN 3235-AL97, Proposed Amendments to Exchange Act Rule 15c2-12, p. 32.

bondholders' investments warrants their disclosure without qualification. Subjecting these disclosures to issuer determination of materiality would likely result in inconsistent and incomplete disclosure of meaningful debt obligations. Removing this qualification would thus provide greater certainty to issuers, investors, and the marketplace generally.

For other financial obligations, we agree with a materiality determination for disclosure. However, there is a lack of clarity among many market participants, including issuers and their representatives, in how to determine materiality consistent with the standards of the SEC. For this reason, we recommend that the SEC provide interpretative guidance to the market to facilitate compliance with the proposed amendments.

- *Necessary information when disclosing financial obligations*: The commentary in the proposed amendments to the rule correctly points out that specific loan terms like acceleration rights and priority claims can affect bondholders. But the text of the actual proposed rule requires notification only of the "incurrence" of a financial obligation.[3] This suggests that issuers can satisfy their disclosure obligations without describing the terms of the financial obligation.

  Providing notice of the incurrence of a financial obligation alone will be insufficient for existing bondholders to assess its impact on an issuer's credit quality and the value of securities. For the proposed amendments to equalize the information available among private and public lenders and to allow bondholders to assess the obligation's impact on their investment, the SEC needs to require that either all the relevant agreements or a detailed summary of the terms of the financial transaction be posted along with the notice on the MSRB's EMMA system. This approach follows the voluntary disclosure guidelines published by the NFMA and the Government Finance Officers' Association (GFOA) and the precedent set in the disclosure of standby bond purchase agreements for variable rate demand obligations. We strongly encourage the SEC to make the terms of all financial obligations part of the required disclosure under the new amendments.

- *Disclosure of events related to financial difficulties:* For all types of financial obligations covered under the SEC's proposed definition, the triggering of an event related to financial difficulties should always be publicly disclosed on EMMA, without regard to the materiality of the obligation itself. Failure to do so withholds critically important information from holders of an issuer's public debt.

  We believe that the definition of events related to financial difficulties should include, but not necessarily be limited to: 1) payment or non-payment (technical) defaults, including rate covenant violations; 2) events of acceleration; 3) swap termination events and collateral postings; and 4) modification of terms, including lengthening of maturities, alterations to rate covenants, additional bonds tests and debt service reserve funds, including the substitution of cash with a surety bond or other credit instrument. These events should be reported even when facilitated through amendments made through a "deemed consent" process, where the purchase

[3] Ibid.

of bonds serves as a consent for proposals to alter existing indentures. We recommend that the proposed amendments include a provision for the reporting of the resolution of such events on EMMA.

- *Limitation on application of amendment:* The NFMA believes that the proposed amendments should apply only to issuers or obligors that have outstanding publicly issued debt.

As outlined above, the NFMA supports the SEC's proposed amendments and offers suggestions to eliminate some of the discretionary determinations to improve disclosure compliance, make the process more efficient, and eliminate some of the expected filings that will have little incremental value to existing bondholders. The information that would be available, if the proposed amendments are adopted, is essential to raising the disclosure standards in the $3.7 trillion municipal market. Disclosure of relevant information affecting outstanding debt in a public capital market should not be subject to issuer discretion or a risk-reward trade-off analysis.

Thank you again for the opportunity to comment on these important amendments and for your continued efforts to improve transparency and fairness in the municipal market. We would be happy to discuss our views and concerns further at your convenience.

Sincerely,

/s/ /s/

Julie Egan
NFMA Chair 2017

Lisa Washburn
NFMA Industry Practices & Procedures Chair