

## **National Federation of Municipal Analysts**

### **White Paper on Expert Work Products**



The National Federation of Municipal Analysts (NFMA), since its 1983 inception, has been in the forefront of efforts to improve disclosure of credit and market risks that have faced analysts and investors in the taxable and tax-exempt municipal bond markets. Work in this regard has been recognized by other industry associations and by various regulatory bodies. An amicus brief filed by the NFMA with the US Supreme Court in *re Davis v Kentucky* was cited by the Court in support of their decision in that case.

The NFMA is an organization of over 1,200 members, primarily research analysts, whose profession is to evaluate credit and other risks of municipal securities. These individuals represent, among other types of firms, mutual funds, insurance companies, broker/dealers, commercial banks, and rating agencies.

The NFMA's disclosure efforts have ranged from global issues, some of which are communicated to members of Congress and federal regulatory agencies, to detailed work on specific credit sectors. For further information on our continuing efforts to improve municipal disclosure, please refer to "Disclosure Guidelines" and "Position Statements" in the "Publications" section of the NFMA's website ([www.nfma.org](http://www.nfma.org)).

The NFMA's primary means of communicating sector-specific recommendations are "White Papers" and "Recommended Best Practices in Disclosure" (RBPs). These documents, in addition to NFMA Position Statements on other topics, can also be found on our website.

White Papers are the NFMA's preferred method of comment when disclosure recommendations have not previously been articulated in a detailed or organized manner. As a rule, White Papers are written by a team of NFMA members who represent different types of companies, e.g., rating agencies, insurers, mutual funds, and broker-dealers.

RBPs are utilized when a given analytical topic has previously been subject to thorough discussion. When RBPs are developed, diverse groups of NFMA analysts work with representatives of industry groups and other market professionals to develop best practices guidelines on certain market sectors or topics.

This White Paper on Expert Work Products attempts to set forth common sense principles that the NFMA feels should be generally followed when Expert Work Products are prepared in conjunction with municipal securities disclosure documents.

Please note that this document is intended to complement, rather than supplant, guidance provided by SEC Rule 15c2-12 and its amendments.

The NFMA's disclosure efforts are a continuing process. This White Paper, and Recommended Best Practices papers, are not static documents but are revised as market

conditions warrant. The NFMA encourages interested parties to contact the NFMA, via its website, [www.nfma.org](http://www.nfma.org), to submit comments regarding this and any other document that appears on the website.

As a final note, neither the recommendations included in this White Paper nor the information within it are intended to apply equally to all situations and issuers/obligors. The NFMA encourages providers of information to indicate when a specific item requested in the White Paper is not applicable to a particular situation.

## **INTRODUCTION**

Expert Work Products (EWPs) are frequently included in disclosure documents to support the viability of the proposed project being financed or the value of the collateral assets, and are used to enhance the marketing of municipal securities. These EWPs, whether presented as part of either an official statement or a continuing disclosure document, generally constitute material information regarding an issue of municipal securities. In order for credit analysts to fully understand and give appropriate weight to these reports, and for the benefit of all market participants, the NFMA proposes in this White Paper a uniform set of disclosure guidelines regarding these EWPs.

In this White Paper, the term "Expert Work Product" means:

- Feasibility studies and reports;
- Economic and financial projections, forecasts and analyses;
- Real estate appraisals and other asset valuations; and,
- Other third party reports used by municipal market participants to disclose information regarding the above topics to other market participants.

The term "Experts", i.e. those who prepare Expert Work Products, includes but is not limited to:

- Engineers;
- Accountants and auditors, when those parties are acting in a role that produces "Expert Work Products" as defined above;
- Appraisers;
- Business valuation consultants; and,
- Feasibility consultants.

Many of these parties are subject to governmental or private professional licensure, certification, and other standards regarding their professional competence.

The term "Experts" may also refer to unlicensed or non-certified companies or individuals who represent themselves as having expertise in the preparation of EWPs. Frequently, these parties are not required to be licensed or certified or to satisfy other standards of professional competence.

Expert Work Products are often used to illustrate the feasibility of start-up or expansion projects associated with bonds issued in the following sectors, among others:

- Land-based securities (tax increment, special assessment, or special tax bonds);
- Multi-family housing;
- Toll roads;
- Water, sewer, electric, and other types of municipal utilities;
- Airports and maritime ports;
- Private activity projects;
- Healthcare, continuing care, and assisted living projects;
- Charter or independent schools;
- Convention centers and related hotels;
- Stadiums; and
- Economic development and redevelopment projects.

Although credit analysts remain responsible for their own analyses, Expert Work Products frequently serve as the starting point in an assessment of a project's financial feasibility. The existence of an EWP as part of a bond issue may result in significant investor reliance upon Experts and their EWPs.

In general, the ability of bondholders to be repaid in full or otherwise to realize the full value of their investment depends on the ability of an issuer/obligor substantially to meet financial projections, forecasts, or asset values as indicated by EWPs. Many market participants assume appropriately that the presentation of key information, such as EWPs, in disclosure documents inherently represents the confidence of transactional participants who participate in the preparation of official statements, such as financial advisors, disclosure counsel, underwriters and issuers/obligors in the Expert and its EWP. Investors and the municipal securities market in general expect parties to a financing to review EWPs that are

presented with other offering documents. If this is not the case, it should be stated.

The Expert Work Product should speak for itself and not be diluted or potentially mischaracterized in an abridged summary description. An issuer/obligor needs to be careful in any such description, making it clear in the disclosure document that the description is a summary and providing a cross-reference to the original source document, which should be attached.

Given the importance of maintaining the high quality of disclosure in municipal offerings, the NFMA believes that Expert Work Products presented in disclosure documents should conform to standards for appropriate investor and analyst reliance and uniformity in disclosure.

## **GOALS**

The NFMA believes that this White Paper will foster the following:

- a) Recognition of standards in the preparation and presentation of Expert Work Products;
- b) Professionalism of the parties that produce Expert Work Products; and,
- c) The quality of initial and continuing disclosure regarding issues addressed in Expert Work Products.

## **RECOMMENDATIONS**

Based on our experience as analysts who assess municipal securities, we recommend that the following information be disclosed when an EWP is used as part of a municipal bond offering:

- ✓ The Expert's qualifications, expertise, and history, including any licenses and professional certifications held by the Expert.
- ✓ A description of the methodology that was used to produce the EWP.
- ✓ Professional standards or guidance relevant to the preparation of the EWP. Examples of professional bodies that issue professional standards or guidance are the Appraisal Institute, the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, and the Financial Accounting Standards Board.
- ✓ A statement by the Expert regarding whether he or she has complied in all significant respects with the above standards or guidance. If not, deviation(s) from the standards and reasons for such deviations should be included in the report, as well as the deviations' impact on findings included in the EWP.

- ✓ If no such standards or guidance exist, we recommend that fact also be disclosed and that the Expert describe and justify the standards or guidance used.
- ✓ The scope, purpose and intended use of the EWP.
- ✓ Identification of significant assumptions used or made by the Expert in preparation of the EWP.
- ✓ An affirmation by the Expert that in its professional opinion all significant assumptions used in the work products are reasonable. If this statement cannot be made, the Expert should state which assumption(s) are not reasonable and why they are not reasonable.
- ✓ The Expert's sources of information, especially sources that underlie significant assumptions. If any assumptions were provided to the Expert by other parties such as the issuer/obligor or underwriter, those assumptions should be identified. Parties who provided the assumptions should be noted, as should any interest of those parties in the project and/or the bond issue.
- ✓ Key sensitivity analyses. The NFMA recommends that Experts identify key items of sensitivity, as well as provide a range of results by using multiple inputs for the sensitive items. In many cases, this can be accomplished via a standard presentation of "base", "best", and "worst" cases.
- ✓ Whether the Expert has been able to access any and all information that he or she deemed necessary or desirable in preparation of the EWP.
- ✓ The identity of the party employing the expert, and if different, the identity of the party paying the expert.
- ✓ The Expert's potential conflicts of interest, including any relationships with parties having a significant financial or other interest in the subject matter or in the municipal securities offering.
- ✓ The amount and form of compensation paid or to be paid to the Expert in connection with the preparation of the Expert Work Product; whether payment to the Expert is contingent on sale and delivery of the bond issue in question; and whether significant amounts remain unpaid as of the completion of the Expert Work Product.
- ✓ Other work that Expert has performed for the issuer/obligor in the last five years .
- ✓ A statement that the Expert has reviewed, approved, and consented to descriptions in the disclosure documents of the Expert and the EWP.
- ✓ A statement that the Expert has consented to use of the EWP in the disclosure documents.

Each item above should be disclosed by the Expert in its EWP. If an Expert does not make these disclosures in its EWP, the issuer/obligor, disclosure counsel, financial advisor, and underwriter should disclose this information elsewhere in primary or secondary market disclosure documents.

Additionally, the NFMA recommends that the following information be disclosed in the main body of the disclosure document:

- ✓ A statement that the EWP has been reviewed by the issuer/obligor, financial advisor, disclosure counsel, and underwriter. Members of financing teams, including issuers/obligors, disclosure counsel, financial advisors, underwriters, and other parties participating actively in the preparation of official statements should review EWPs carefully, ask relevant questions, and seek necessary clarifications from the Expert. It is understood that the issuer's/obligor's and underwriter's reviews of the EWP do not amount to a guarantee of the EWP's forecasts or conclusions.
- ✓ If the issuer/obligor, financial advisor, disclosure counsel, and underwriter have not formed a reasonable basis for belief that the assumptions in the EWP are reasonable, that information should be disclosed.
- ✓ Descriptions of both the EWP and the Expert, with a cross-reference to the full Expert Work Product included in the official statement.

## **CONCLUSION**

This White Paper does not seek to dictate how Expert Work Products should be prepared, but to ensure disclosure of certain information regarding Experts and their work products.

This disclosure regarding Experts and Expert Work Products is critical to helping analysts make informed decisions about the creditworthiness of many municipal securities transactions.

We hope that this White Paper assists investors and credit analysts in their assessment of Expert Work Products, and that it helps to set standards for other municipal market participants as they prepare and present Expert Work Products in municipal offering statements.

