NFMA

July 30, 2012

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, Virginia 22314

Re: MSRB Notice Number 2012-36 – Request for Comment on *Draft Amendment to Limit Dealer Consents to Changes in Authorizing Documents for Municipal Securities*

Dear Mr. Smith:

The National Federation of Municipal Analysts ("NFMA") appreciates the opportunity to comment on Notice Number 2012-36 ("G-11 Notice"). We note that on March 26, 2012 we commented on MSRB Notice Number 2012-04 – Request for Comment on *Draft Interpretive Notice Concerning the Application of MSRB Rule G-17 to Bondholder Consents by Underwriters of Municipal Securities ("G-17 Notice")*. Our comments on the G-11 Notice are consistent with our comments on the G-17 Notice.

The NFMA is supportive of the spirit of the G-11 Notice, because it prevents underwriters that are not taking an investment position in a bond from consenting to changes that diminish the security provided to outstanding bondholders. We also agree and support the MSRB's statement that it "…also appreciates that while the practice of obtaining underwriter consents may be an efficient way for an issuer to modernize its governing documents, the practice…could be considered as unfair and deceptive because it is exercising rights in a manner that existing bondholders did not explicitly contemplate."

As stated in our G-17 Notice Comments, municipal bond analysts are averse to changes in security provisions unless these changes are transparent and are accomplished via the intent of the bond documents.

We are particularly concerned with new issue and secondary disclosure practices in those instances where these types of consent are being sought. In the case of a new issue, if the security provisions can be diluted with the consent of less than 100% of the owners of the bonds,

this should be clearly stated in the body of the offering documents under both the "Security" and the "Risks" sections. Further, if the underwriter is in the process of accumulating consents with each new bond issuance to meet the requirements to effect changes, this should also be clearly stated in the body of the new bond's offering documents.

We also note that in those instances where deemed consent has been provided, and the result is a material change in security provisions, adequate and conspicuous notice should be provided via EMMA as a "material event notice". Merely publishing the new offering documents is not sufficient notice, in the opinion of the NFMA.

As a matter of practice, analysts representing investors are unlikely to consent to a dilution of their security interests unless: a) they are given something of equal or greater value in exchange and/or; b) view the changes as necessary to avoid worsening the situation of an already troubled credit.

The MSRB has stated it seeks comments on the following specific matters. Our comments follow each section:

> *Should dealers acting in such other capacities (for example, auction agents for auction rate securities) be permitted to consent to changes under the exceptions set forth in the Draft Rule G-11 Amendment, or should the Draft Rule G-11 Amendment explicitly prohibit dealers acting in other capacities, such as auction agents, from providing consents to changes to the authorizing documents?*

The NFMA is of the opinion that the exceptions set out in Draft Rule G-11 Amendments are appropriate.

> *Would the Draft Rule G-11 Amendment help to protect investors, and are there other benefits that would be realized from adopting the Draft Rule G-11 Amendment?*

The NFMA is of the opinion that Draft Rule G-11 Amendments will serve to protect investors.

> *Would the Draft Rule G-11 Amendment have any negative effects on issuers, investors or other market participants? If so, please describe in detail.*

The NFMA recognizes the need to update and modernize bond documents. As stated in our March 2012 comment on the G-17 Notice, we believe it would be desirable to differentiate between those amendments that merely modernize documents with no adverse impact on bondholder's security, and those that dilute the security provisions that Bondholders thought they could rely upon. For example, any consent that weakens or eliminates financial covenants, releases a mortgage lien, or removes a debt service reserve fund requirement is clearly not desirable for bondholders under any circumstances.

> *Are issuers able to obtain consents from beneficial holders of bonds effectively and efficiently through existing mechanisms? The MSRB welcomes comments and suggestions for streamlining and improving methods of identifying and obtaining consents from bondholders, including those available through DTC and otherwise.*

The NFMA does not have an opinion on this question, but we do note that the task of identifying and obtaining consents from bondholders is not really the issue. As mentioned earlier, even if bondholders are located, it is only under the very limited circumstances discussed above that they would be likely to consent to anything that serves to undermine bond security.

> *What would be the burdens on issuers or other market participants of adopting a rule that limits obtaining bondholder consents in the manner contemplated by the Draft Rule G-11 Amendment?*

The NFMA does not feel this is overly burdensome, and reiterates its call for better primary and secondary market disclosure of bondholder consents.

> *Are there alternative methods the MSRB should consider to providing the protections sought under the Draft Rule G-11 Amendment that would be more effective and/or less burdensome, resulting in an appropriate balance between the need for a cost effective and efficient manner of obtaining consents and the duty of dealers under Rule G-17 to deal fairly with all persons?*

The NFMA believes that standards which address what is and is not a material dilution of security provisions can be developed, and is willing to work with other industry groups in this regard.

We thank you for consideration of these comments.

Sincerely,

/s/
Lisa Good
Executive Director
NFMA