

Client Alert

Current Issues Relevant to Our Clients

February 6, 2015

MSRB Releases Bank Loan Disclosure Advisory

As part of its charge to promote a fair and efficient municipal securities market, the Municipal Securities Rulemaking Board (MSRB) issued regulatory notice 2015-03 (the Notice) on January 29, 2015, calling for timely disclosure of bank loans extended to municipal borrowers, whether in the form of the direct purchase of bonds or notes, a loan agreement or any other type of financing with the municipal borrower. A copy of the Notice can be found [here](#). Although the message is nothing new to market observers, the tone of the Notice reinforces the MSRB's desire to see the market adopt the timely disclosure practices for bank loans previously espoused by it¹ and other industry groups.²

Bank loans may of course impact the credit and liquidity profile of the borrower, making their disclosure necessary for a clear view of a borrower's financial health. Under the current regulatory framework, if a borrower does not voluntarily disclose a bank loan to the market, existence of the loan may not be communicated to the borrower's existing bondholders, potential investors and other market participants until the borrower's next public offering or the release of its audited financial statements. The MSRB calls that circumstance a "significant delay" of disclosure that "undermines market transparency."

As a result, the Notice urges municipal borrowers to voluntarily disclose bank loans to the market by posting a summary of the loan's terms or relevant loan documents to EMMA promptly after closing. Although the Notice specifies the terms of the bank loan that should be disclosed if the borrower uses the summary approach, we believe that disclosure of the full financing documents, redacted in a manner generally analogous to MSRB Rule G-34(c),³ is the best practice in most circumstances.

Why Did the MSRB Issue This Notice Now?

Despite prior admonitions by the MSRB (going back to 2012) and other market participants, the Notice indicates that bank loan disclosure, on an aggregate basis, is inadequate. Comparing rating agency data with EMMA filings, the Notice concludes that "bank loan executions have far exceeded bank loan disclosures." Accordingly, the MSRB is seeking to improve the disclosure practices of municipal borrowers relating to bank loans, particularly those of small and infrequent issuers. In related news, on January 20, 2015, the MSRB submitted a letter in response to the SEC's request for comment on the existing collection of information provided for in Rule 15c2-12 (available [here](#)), in which it expressed some of the same views as those expressed in the Notice, and suggested that the SEC consider changing Rule 15c2-12 to require municipal borrowers to report the incurrence of bank loans and similar obligations as additional material events.

What Should Lenders Know About the Notice?

Although many of our bank clients follow our advice to encourage their municipal borrowers to make voluntary

disclosure of bank loans, the data referenced in the Notice suggest that too few municipal borrowers are doing so. In addition to recommending or requiring appropriate disclosure in the term sheet, lenders should reinforce the importance of it in their discussions and negotiations with their municipal customers. With our assistance, many of our bank clients adopted policies and procedures for providing redacted financing documents for purposes of Rule G-34(c), which generally requires broker-dealers acting as remarketing agents to post copies of bank documents providing credit and/or liquidity support for VRDOs to EMMA. Similarly, we recommend that lenders providing bank loans to municipal borrowers establish policies and procedures to facilitate their timely disclosure to the market. As leading participants in the municipal securities market, many of our bank clients have been at the forefront of promoting the vigorous disclosures advocated by the MSRB in the Notice.

What Should Municipal Borrowers Know About the Notice?

Municipal Borrowers should disclose any bank financing promptly after closing by posting the loan documents (redacted in a manner generally analogous to the

guidance related to Rule G-34(c)) to EMMA in accordance with the procedure specified in MSRB Notice 2012-18 (April 3, 2012), available [here](#). Although the summary disclosure referenced in the Notice may be appropriate in limited circumstances (e.g., where the lender's rights, remedies, security and other protections are no different than that of other debt holders), we generally recommend posting full versions of the financing documents (redacted as noted above) to achieve utmost transparency of the bank loan and relieve any concerns of the borrower relating to SEC Rule 10b-5 or MCDC. As stated in the Notice, "while disclosure of bank loans is not required under Rule 15c2-12, any voluntary disclosure may be held to the same standards...as information disclosed under Rule 15c2-12."

The borrower's advisors play an important role as well. In light of the "current regulatory ambiguities regarding bank loans," municipal borrowers, particularly those less well versed with bank financing, should seek experienced counsel in structuring and executing these transactions.

What Should Broker-Dealers Know About the Notice?

Putting aside issues of applicability of MSRB Rules to bank loans,⁴ the Notice reminds underwriters of their obligations with respect to primary offering documents under Rule 15(c)2-12. As well as noting the benefits to investors, the Notice states that including information regarding bank loans in the offering documents supports the underwriter's due diligence obligations. The Notice also offers broker-dealers an opportunity to revisit the regulatory complexities associated with bank loans, involving the potential application of SEC and MSRB rules that apply to placement agents.

For More Information

For more information, please contact your primary Chapman attorney or visit us online at chapman.com.

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To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

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1 See MSRB Notice 2012-18 (April 3, 2012), available [here](#), which is referenced in the Notice.

2 See, for example, GFOA's Best Practice / Understanding Bank Loans (2013)(DEBT), available [here](#) and Chapman's Client Alert regarding the same, available [here](#).

3 MSRB Notice 2011-17, available [here](#), suggests that information intended to remain confidential to maintain internal security or confidentiality of personal information, such as fees, staff names and contact information, and information that could be used in a fraudulent manner, such as bank routing and account numbers, may be redacted from the liquidity documents posted to the SHORT system to comply with the Rule.

4 See MSRB Notice 2011-52 (September 12, 2011), available [here](#).