NATIONAL FEDERATION of MUNICIPAL ANALYSTS

January 8, 2018

Mr. Brent J. Fields
Federal Advisory Committee Management Officer
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SEC File No. 265-30

Dear Members of the Fixed Income Market Structure Advisory Committee:

The National Federation of Municipal Analysts (NFMA) is a not-for-profit association with over 1,400 members in the United States, comprising a broad range of municipal bond analysts from the buy-side, sell-side, rating agencies and bond insurers. 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.

Since our inception in 1983, the NFMA has worked for many years to improve both primary and secondary market disclosure. While considerable progress has been made in many areas, inadequate disclosure in the primary and secondary markets remains a significant problem for the municipal bond market, especially for retail investors, who are the market's largest investors through both direct purchases and municipal bond funds. While we feel that the municipal bond market overall is relatively liquid, there is considerable evidence that the lack of timely and comprehensive secondary market disclosure can have a negative impact on the liquidity of individual bond issues.

Since the Security and Exchange Commission's (SEC) introduction of Rule 15c2-12 in 1994 requiring annual secondary market disclosure, the municipal bond market has undergone major transformations in product development, investor technology and its investor base. Regulatory actions have been relatively limited, largely due to restrictions placed on the regulation of municipal bond issuers by the Tower Amendment. The SEC, in its 2012 Report on the Municipal Securities Market, identified many of the municipal bond market's shortcomings, both in terms of pricing transparency and the timing and adequacy of secondary market disclosure. This report contains a blueprint for improving municipal bond disclosure and is a good starting point for the work of this committee.

The SEC, through its recent Municipal Continuing Disclosure Cooperation (MCDC) initiative and its Proposed Amendments to SEC Rule 15c2-12, has made concerted efforts to broaden municipal bond disclosure. We are encouraged that both the SEC and the Municipal Securities Rulemaking

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Board (MSRB) are addressing many of the recommendations regarding market structure, pricing, and transparency. Still, municipal bond investors remain disadvantaged with respect to the types of robust disclosure that are available in other markets, particularly the continuing disclosure that is key to investment liquidity.

In a letter to then-Chair White on August 10, 2016, the NFMA submitted detailed comments on Primary and Secondary Market Disclosure in the Municipal Market. A copy of this letter is attached for your information. Our recommendations focused on the following areas:

1. Improving the current state of municipal disclosure on the MSRB's EMMA website;
2. Expanding the list of Material Event Disclosures;
3. Facilitating better disclosure through additional written SEC guidance;
4. Addressing primary disclosure issues, especially the need to provide the municipal market with all material information that is provided to the rating agencies; and,
5. Providing new legislative authority to require minimum disclosure standards, timely audited financial statements and an enforcement mechanism to ensure compliance with Continuing Disclosure Agreements.

The SEC addressed a few of our concerns from the 2016 letter to Chair White in the Proposed Amendments to Exchange Rule Act 15c2-12 (File No. S7-01-17). Comments were submitted in May 2017, and a final action is still pending. We are also attaching a copy of our comment letter to this proposal dated May 10, 2017.

We would be happy to discuss our recommendations with you at a future time. Thank you very much for your consideration.

Sincerely,

/s/	/s/
Julie Egan NFMA Industry Practices & Procedures Co-Chair	Lisa Washburn NFMA Industry Practices & Procedures Co-Chair

cc: Hon. Michael S. Piwowar, Commissioner, SEC
Rick A. Fleming, Investor Advocate, SEC
Rebecca Olsen, Acting Director, Office of Municipal Securities
Lynnette Kelly, MSRB Executive Director

NFMA

August 10, 2016

The Honorable Mary Jo White, Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Via Electronic Mail

RE: NFMA Comments on Primary and Secondary Market Disclosure in the Municipal Market

Dear Chair White:

The National Federation of Municipal Analysts (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.

The NFMA would like to express its concern about the content and exclusion of material information in primary offering documents and the quality and timeliness of secondary market disclosures. Inadequate disclosure in the primary and secondary markets remains a significant problem in the municipal bond industry. This lack of information can negatively impact the accuracy of pricing and liquidity, especially in the secondary market.

Since the Security and Exchange Commission's (SEC) amendments to Rule 15c2-12 in 1994, the municipal bond market has undergone major transformations in product development, investor technology and its investor base. We believe that the SEC's recent Municipal Continuing Disclosure Cooperation (MCDC) initiative has exposed major shortcomings in the municipal secondary market disclosure regime, and is a good starting point for more comprehensive efforts to address these issues.

The SEC, in its 2012 Municipal Securities Market Report (2012 Report), identified many of the municipal bond market's shortcomings, both in terms of pricing transparency and the timing and adequacy of secondary market disclosure. We are pleased that both the SEC and the Municipal Securities Rulemaking Board (MSRB) are addressing many of the recommendations regarding market structure, pricing and transparency. However, we believe that regulatory and industry efforts to address the problems related to disclosure have lagged.

On February 13, 2015, then-Commissioner Luis Aguilar made a number of proposals to address disclosure-related challenges. Two of his recommendations fall within the powers of the SEC, namely amending Rule 15c2-12 and providing interpretative guidance to municipal market participants. The recommendations for amending Rule 15c2-12 contained several common-sense ideas including expanding disclosure to include bank loans and other debt instruments, and the development of an enforcement mechanism to address compliance lapses. He also called for the SEC to update its interpretative guidance to reflect changes in the municipal market since 1994, when interpretive guidance on disclosure obligations was last provided. The NFMA strongly supports these recommendations.

Amending Rule 15c2-12 would be an efficient method to address the current secondary market disclosure shortcomings in the municipal market. In recent years, the amount of information disclosed annually by issuers has not kept pace with the complexity, heterogeneity and credit conditions of the market. Generally speaking, it is not uncommon for disclosure to consist of only an annual audit, Comprehensive Annual Financial Report (CAFR) or annual report. Smaller, less frequent issuers tend to produce audited financial reports lacking Management Discussion and Analysis sections, and with limited financial statement notes and supplemental information. Timeliness of disclosures continues to be a concern, with issuers often disclosing information six to nine months after the end of the prior fiscal year, or even longer in many cases. Compliance with the required Material Events disclosures has also been problematic, as was discovered in the SEC's MCDC initiative.

For purposes of this letter, we have grouped our recommendations into the following categories: a) improving the current state of disclosure filings to EMMA; b) expanding the list of Material Events notices to reflect the changing needs of municipal market participants; c) facilitating improved municipal market disclosure through written interpretative guidance by the SEC; d) addressing primary disclosure concerns; and, e) providing new legislative authority, as recommended in the SEC's 2012 Municipal Securities Market Report.

Improving the Current State of Continuing Disclosure on EMMA

Rule 15c2-12 provides that annual financial information and operating statistics be uploaded to the MSRB's EMMA website. However, the timeliness and inclusiveness of this information remains a concern among our membership. We believe that the following areas should be examined should the SEC undertake a review of Rule 15c2-12:

1. Review current disclosure practices with a goal of establishing more standardization in terms of the form, content and timing of the information to be disclosed under Rule 15c2-12. The information currently provided varies widely by sector, and broad discretion is often exercised over the importance of information and whether it will be included in the post-sale annual continuing disclosure filings. Often events and/or circumstances that are material are omitted

from reporting under Continuing Disclosure Agreements (CDAs), such as the incurrence of additional long and short-term debt, early swap terminations, swap collateral postings and defaults under other contractual agreements. The lack of such disclosure—or the delay in providing such information—impairs secondary market pricing and liquidity and can affect bond ratings.

2. Consider amending the CDA undertaking to include a statement regarding the issuer's established policies and procedures to ensure compliance with the CDA in the future. Confirmation that policies and procedures exist would reasonably improve the likelihood of compliance.

3. Encourage the dissemination of interim financial information to the market on a timelier basis, including the use of dedicated investor websites. Interim information includes: approved budgets; budget amendments; financial reports submitted to legislative bodies, governing boards and regulatory entities; changes in economic and revenue assumptions; tax receipts; cash flows and other unaudited information. The SEC's support of providing such information without fear of penalty, absent fraud or material misrepresentation, would remove a current impediment to issuer distribution of such information.

4. Actively cite relevant recommended best practices published by groups such as the NFMA, Government Finance Officers Association (GFOA), National Association of Bond Lawyers (NABL) and National Association of State Comptrollers and Treasurers (NASACT). These papers provide a good representation of the various views of market participants on the content and timeliness of disclosure.

Expanding the List of Material Event Disclosures

The current list of Material Events under Rule 15c2-12 reflects important events that must be reported immediately (within 10 business days) to EMMA, given their potential impact on the credit quality of an issuer. The material event list has evolved over time and should be revisited periodically by the SEC to address new concerns that have arisen in the municipal bond market. Ideally, the enumerated material events would be presented and emphasized as a non-exclusive list. In many instances, the lack of disclosure of a non-enumerated event (such as the incurrence of a bank loan) is a material omission of critical information that negatively impacts credit quality and secondary market pricing and liquidity. The following are suggested additions to the enumerated material event disclosures:

1. Reporting Other Long-Term Debt Obligations – The use of bank loans and direct purchases of municipal bonds as an alternative to a public bond issues have increased significantly in recent years. These instruments can have a material impact on outstanding publicly issued debt by: a) increasing the amount of debt outstanding; b) allowing a new lender to exercise remedies ahead of existing bondholders; c) diverting of specific resources (originally part of general resources) to secure the new obligation; d) adding covenants that, when triggered,

could result in cross-defaults; and, e) compromising liquidity if the principal payment is structured as a balloon payment or has extraordinary call provisions.

The NFMA has previously recommended the disclosure of such debt obligations by making loan documents publicly available, with redactions as necessary, or providing a summary of the terms of such debt obligations. Greater detail regarding the NFMA's position on the disclosure of bank loans is included in Recommended Best Practices for Direct Purchase Bonds, Bank Loans and Other Bank Borrower Agreements, dated June 2015. While our focus has been on these instruments because of the product's significant growth, the reporting of the incurrence of other long-term debt obligations, including capital leases, should also be required.

2. Disclosing Other Events – There are numerous other events that can impact an issuer or obligor's credit quality, liquidity and bond pricing and that are not currently enumerated as reportable material events. Disclosure of these events is clearly material to an investor's ability to assess credit quality and pricing for a security. Examples of such events include: a) changes in the composition of debt service reserve funds, particularly the substitution of cash reserves with a surety bond, which introduce a surety bond provider's risk as counterparty into a transaction; b) early swap terminations and swap collateral postings, which can impact the liquidity and credit quality of an issuer; c) defaults under other contractual agreements, which can trigger actions that may negatively impact investors in an issuer's other debt obligations; and, d) ongoing investigations by the SEC which may impact pricing and liquidity of an issuer's obligations and alter investors' views on whether to buy, sell or hold a security.

3. Requiring Follow-Up Reporting for all Material Events Notices – It is essential that issuers provide market participants with information when reported material events have been resolved. This applies to a broad range of issues, such as rate covenant violations, technical and payment defaults, debt service reserve fund draws, and similar occurrences. Disclosing updated, current information is critical for the proper analysis of the bond's credit quality and its secondary market liquidity and pricing.

Facilitating Better Disclosure Through Additional Written Guidance

The SEC last issued Interpretative Guidance to the municipal bond market in 1994. Since that time, the market has undergone tremendous change yet there have been limited modifications to the disclosure regime. Significant advancements in information technology relating to the dissemination of data have not been fully realized because of concerns about voluntarily providing financial information or operating statistics that are unaudited. There also seems to be a misconception that providing information required under Rule 15c2-12 is the "gold standard" or "ceiling" and therefore, there is reluctance by some municipal issuers, underwriters, counsel and/or financial advisors to provide additional information, regardless of its significance. We expect that this could be remedied to some degree if the SEC were to issue more comprehensive and clear guidance on the types, content and frequency of secondary market disclosure that is expected under Rule 15c2-12. Absent new constructive SEC guidance, the NFMA is concerned that many issuers and their representatives will continue to provide only what they believe is the minimum required, and that there could be further erosion in the timeliness of information.

Addressing Primary Market Disclosure Issues

The evolution of the municipal market and the recent situations of issuer distress have highlighted a number of shortcomings in primary market disclosures that we think warrant action on, or guidance from, the SEC, including more detailed information on security structure and asymmetrical disclosure of information to market participants.

Evaluation of security structure has become critical in the wake of recent bankruptcy court actions. Because of the importance of these features in determining investor treatment relative to other securities in distress and in bankruptcy, it is vital that there is comprehensive disclosure about bond security in each primary offering document. Bond security disclosure should include: a) its authorization; b) voter approval requirement, if any; c) specific revenue pledges and tax raising abilities and processes; d) limitations on raising incremental or new revenues; and, e) whether a statutory lien is present.

Issuers routinely provide information to municipal bond rating agencies that may influence the agencies' ratings assigned to the bonds. Information that is material to the rating agencies in the context of its ratings is similarly material to investors and should be disclosed. But often, this information is not made publicly available, to the detriment of the ability of outstanding bondholders and prospective buyers to independently assess the credit quality of the bonds. This leaves investors at a disadvantage when assessing a fair price for the bonds, and has potentially harmful effects on secondary market liquidity. Eliminating this asymmetry in information disclosure supports the directives in the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring investors to perform their own independent research and not rely solely on the opinions of the rating agencies. We also note that similar issues exist regarding asymmetrical disclosure in which other market participants, such as banks and financial guarantors, receive information that is not provided to investors.

Providing New Legislative Authority

While the previously outlined recommendations fall within the current municipal bond market regulatory structure, these alone may not be sufficient to provide the type of oversight that is necessary to ensure adequate transparency and fairness for municipal bond market participants. Several of the SEC's legislative proposals made in its 2012 Report warrant serious consideration:

1. Authorization for the SEC to require municipal issuers to prepare primary and continuing disclosure during the term of the securities. Such requirements could include time frames, frequency and minimum disclosure standards.

2. Permission for the SEC to require that financial statements be audited.

3. Ability to provide a mechanism to enforce issuer compliance with CDAs.

Thank you for your continued efforts to improve transparency and fairness in the municipal market. We appreciate your attention to our concerns and are willing to provide any additional information and/or assistance that would be helpful in addressing these issues. Should you or your staff have any questions, or wish to discuss this further, you can reach me via the NFMA offices, or directly at lwashburn@mma-research.com.

Sincerely,

/s/

Lisa Washburn
NFMA Chair

cc: The Honorable Richard Shelby, Chairman,Senate Committee on Banking, Housing & Urban Affairs
The Honorable Sherrod Brown, Ranking Member, Senate Committee on Banking, Housing & Urban Affairs
The Honorable Orrin Hatch, Chairman, Committee on Finance
The Honorable Ron Wyden, Ranking Member, Committee on Finance
United States Senate

The Honorable Kevin Brady, Chairman, House Ways and Means Committee
The Honorable Sander Levin, Ranking Member, House Ways and Means Committee
The Honorable Jeb Hensarling, Chairman, House Committee of Financial Services
The Honorable Maxine Waters, Ranking Member, House Committee of Financial Services
United States House of Representatives

The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
LeeAnn Gaunt, Chief, Municipal Securities and Public Pensions Unit
Jessica Kane Director, Office of Municipal Securities
Rebecca Olsen, Deputy Director, Office of Municipal Securities
Securities and Exchange Commission

Lynnette Kelly, Executive Director
Municipal Securities Rulemaking Board

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

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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	Lisa Washburn
NFMA Chair 2017	NFMA Industry Practices & Procedures Chair