VIA E-MAIL

May 15, 2017

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: SEC Proposed Amendments to Municipal Securities Disclosure
File No. S7-01-17

Dear Mr. Fields:

The National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA") appreciates the opportunity to comment on this important proposed rule which would greatly expand the obligations and burdens on thousands of governmental and nonprofit issuers and obligors of tax exempt bonds. We respectfully urge that the proposed rule be withdrawn and substantially revamped to focus it on true problem areas, clarified with specificity as to the obligations of market participants and based on credible regulatory burden analysis.

NAHEFFA has 41 members representing 34 states. Our authorities issue tax exempt bonds for nonprofit healthcare, education and other charitable purposes. Many of these charities are small and do not have the resources to deal with the mounting torrent of federal regulatory requirements from various agencies. This cumulative regulatory burden, particularly when applied to the key market mechanism for funding capital projects for health care and education, may drive many smaller entities to less financially preferable solutions than tax exempt bonds if paperwork, reporting and other requirements by SEC, IRS and others becomes unbearable and underwriting and legal fees increase Ironically, this proposal could create momentum to do even more bank loans that avoid increased underwriting fees necessary to cover increased counsel fees and SEC compliance-related expenses.

The presidential election resulted in a popular mandate against overregulation. All federal agencies should take heed, including independent agencies and subordinate entities such as the Municipal Securities Rulemaking Board. The CHOICE Act, for example, contains directives on unfunded mandates and cost benefit

The proposed rule would establish two new categories of information related to material "financial obligations" of an issuer or obligated person for which an event notice would be required under Rule 15c2-12 in addition to the existing 14 categories of event notice disclosures. The issuer of or obligated person would be required to file with EMMA, within ten business days of occurrence, notice of:

- incurrence of a financial obligation of the issuer or obligated person, if material, or an agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material; and
- a default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a financial obligation, any of which reflects financial difficulties.

The proposed rule provides a broad definition of "financial obligation" which includes: a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding.

Every sentence, virtually every word of this proposal is fraught with lack of clarity, guidance and possible multiple interpretations. Even smaller non-profits have myriad real property leases equipment leases, supply contracts and labor agreements. Larger institutions will have thousands. As examples, the broad definition of financial obligation could pick up financial aid contracts, health insurance contracts, food service contracts, research agreements, management contracts, sports venue contracts, equipment and vehicle leases, among other contracts.

Given the breath and substance of the requirements in the proposed rule and the lack of guidance on materiality, as a practical matter and in 20/20 hindsight, the Commission will likely find either over compliance or noncompliance by many entities. This undoubtedly will lead to another round of MCDC type enforcement in which hundreds, if not thousands, of relatively minor violations of rule 15c2-12 will be touted as examples of serious noncompliance in the municipal/nonprofit sectors, requiring additional authority and resources for the SEC and MSRB.

We support disclosure, improvements in disclosure, the essential mission of the MSRB, its importance in the marketplace and the vital, positive role that EMMA plays. The MSRB has promoted greater disclosure of information relating to bank loans by obligors, and has made changes to EMMA to accommodate it. Further, many groups such as our own, but most notably GFOA, have been working to develop initiatives to promote greater disclosure, particularly on bank loans. But even though it has been only a short time since EMMA improvement initiatives began, the SEC has jumped into full bore new regulation without any time to evaluate whether the recent efforts have borne fruit. Query whether EMMA can handle this potential deluge of data without MSRB requiring a greater budget, additional personnel, greater fees and penalties directed to its coffers.

If this proposed rule only required that material bank loans be subject to material event status in Rule 15c2-12, the Commission would not be receiving this comment and many other comments criticizing the proposal. Instead, in a textbook example of disproportionate regulatory response, the Commission proposal not only includes new obligations with respect to bank loans but a huge variety and diversity of other obligations and events. In addition to our concerns above about adding material event notice requirements for various financial obligations, the SEC's proposal to force a "financial difficulty" standard into the material event mix is also of

great concern to our members. Again, while acknowledging and respecting the tenets of disclosure and its importance to the investor community, such broad language, without a clear understanding of how it would benefit investors, especially at the expense – figuratively and literally – of issuers, needs to be further reviewed and in our opinion significantly scaled back or eliminated altogether.

The Commission fails to provide greater context for clarification of materiality such that conservative issuers and obligors will, if they have the resources, feel obligated to grossly over-disclose information which will be of little value to most buyers in the marketplace. Thousands of other issuers will by necessity incompletely report under these requirements. Issuers and obligors may over-burden the EMMA system by filing redacted copies of any agreement they fear may be material. Who will a "data dump" benefit? This potential deluge of information may actually adversely affect disclosure by overwhelming investors with too much, often irrelevant information that will have to be sifted through to determine materiality.

Alternatively, instead, of attempting to extend its requirements to the full extent of the law, what if the Commission exercised discretion and focused on specific ,concrete, much smaller and limited areas where it feels that failures to timely report might adversely affect investors? There may be significant agreement about those limited areas and then the marketplace and Commission, along with the MSRB, could evaluate the benefits as well as costs of compliance. If it turns out to be necessary, incremental requirements can be added rather than imposing this gross across-the-board approach.

One limiting principle, for example, could be to exclude those operational obligations, such as the many tens of thousands of contracts and leases that the education and healthcare and other charitable institutions we serve execute every year. Instead, the focus would be on financial obligations related to capital financing which use mechanisms other than tax exempt financing and essentially creates the same obligation and financial requirements. These arguably could be considered by investors as relevant, "material" to purchasing decisions.

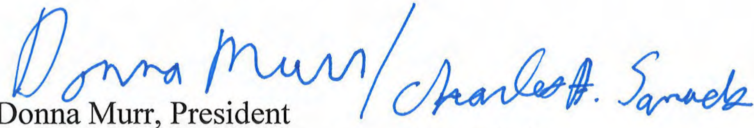
NAHEFFA applauds NABL for asking OMB to review the adequacy of the Commission's regulatory compliance cost analyses and the SEC's compliance with the Paperwork Reduction Act and applicable executive orders. The time and costs to fill out reports are only a small part of what the Commission is proposing to levy on governments and non-profits. The need to create internally or by contract (including increased reliance on counsel) large new reporting disclosure analysis bureaucracies and mechanisms will result in costs in the many millions of dollars. Most borrowers do not have existing Offices of SEC Reporting Compliance sitting around waiting for new tasks.

The resources and judgments that will need to be expended to determine material information undoubtedly will be staggering. Certain agreements may be subject to non-disclosure provisions or contain confidential information that may require extensive discussions with the obligor's counterparties. In many cases when lenders agree to modifications, such agreements are subject to non-disclosures. Even the data – dumping approach requires significant resources.

These real costs and burdens should be properly weighed by the Commission and then balanced by some quantification of the benefits of the posting of tons of trivial data. Who will use these data and what are the incremental benefits to better buying decisions?

NAHEFFA appreciates this opportunity to file comments on this important issue. We stand ready to work with SEC, MSRB and other stakeholders to develop a more workable, sensible rule.

Respectfully submitted,



Donna Murr, President
Martin Walke, Advocacy Committee Chair
National Association of Health and
Educational Facilities Finance Authorities
P.O. Box 906
Oakhurst, NJ 07755