Bond Dealers of America

1909 K Street NW • Suite 510
Washington, DC 20006
202.204.7900
www.bdamerica.org

May 15, 2017

VIA ELECTRONIC MAIL

Secretary
Securities and Exchange Commission
100 F Street NE.,
Washington, DC 20549

RE: (Release No. 34-80130; File No. S7-01-17) (the "Release") Proposed Amendments to Municipal Securities Disclosure (the "Proposed Amendments")

Dear Secretary:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the Release seeking comment on the Proposed Amendments. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. The BDA supports the timely disclosure of bank loans to bond investors to inform them of structural advantages of competing debt, but believes that the Proposed Amendments need refinements to ensure that they are narrowly tailored to address the information concerning bank loans that investors desire.

The BDA supports the concept of the Proposed Amendments. While we discuss several areas where we believe that the SEC should consider refining the Proposed Amendments, as we have in prior letters, we want to underscore our support for changes to Rule 15c2-12 that will affirmatively require issuers and obligated persons to alert investors when they enter into bank loans and comparable obligations.

The BDA believes that the definition of financial obligations and the new listed event (16) need to be redrafted more narrowly around bondholder concerns related to competing bank debt. The BDA believes that the primary investor desire for information giving rise to the Proposed Amendments is the way that bank debt competes with publicly traded bonds, and this competition is nothing new in the municipal securities market. While the contractual terms of many indentures in the municipal securities market restrict the issuer or obligated person from issuing additional debt that does not comply with specific criteria, those terms often do not regulate (and therefore permit) the issuer from setting a host of other terms when it issues additional debt that can materially impact bondholders. This has been the case for many decades and the terms of bank loans are not unique at all. What is unique, which we explain in more detail below, is that bank loans do not have the kind of transparency to the municipal securities market as bank credit facilities (e.g., letters of credit) that have been common in the municipal securities market for decades.

For decades, the terms and conditions of credit facilities covering variable rate demand bonds have had the potential of materially impacting the holders of publicly traded bonds. Credit facilities covering variable rate demand bonds often allow banks the ability to have their debt paid earlier than fixed rate bonds, even though both kinds of debt are secured by a pledge of the same priority. This happens in a couple of ways. First, the credit facilities often terminate in three to five years and if the credit facilities are not renewed or replaced, then the bank can purchase the bonds they cover and require a rapid amortization of the bonds (which can average between one to three years but can go longer or shorter). Second, credit facilities frequently allow the bank to purchase and then accelerate the payment of principal on the bonds if the issuer defaults under the terms of the credit facility. When this is contrasted to the terms of fixed rate bonds secured with a pledge of equal priority to that securing the credit facility, the fixed rate bonds often have a limited set of events of default and limited remedies that, as a practical matter, may (if a default ever occurs under a credit facility) require the fixed rate bondholders to stand still while the bank exercises its remedies. The practical result is, for two kinds of debt that both enjoy a pledge of revenues of the same tier of priority, the terms of the facilities may be such that bank debt may be paid in advance of fixed rate bonds if the issuer cannot replace the credit facility or if it defaults under the terms of the credit facility. In saying this, we need to highlight two things. First, these arrangements are permitted under the contractual terms of the fixed rate bonds—it is part of the contractual bargain between the issuer and the bondholders. Second, this is a very general description of what in reality are very varying terms of bonds in the municipal securities market. Many fixed rate bonds have extensive protections and it is frequently the case that the rights and remedies between credit facility providers and fixed rate bondholders do not materially differ.

Bank loans in the municipal securities market are similar to credit facilities in that issuers and obligated persons are frequently required to renew or replace them after a three-to-five year period and banks frequently enjoy similar rights and remedies upon a default under the bank loan; but the difference between bank loans and credit facilities for holders of publicly traded bonds is that the terms of bank loans are not transparent to the market. When issuers issued variable rate demand bonds, the basic terms of the related credit facilities have typically been disclosed in the related offering document. Furthermore, after changes to MSRB Rule G-34(c), redacted versions of the credit facilities themselves were posted over EMMA. Accordingly, any holder of other bonds of an issuer who was concerned that the terms of credit facilities of the issuer might impact them could locate the terms of those facilities with relatively little burden. In contrast, bank loans have sometimes caught holders of publicly traded bonds of an issuer by surprise in two ways. First, even the very fact that the issuer has borrowed additional money was not specifically disclosed to the municipal securities market other than by inclusion in the issuer's financial statements which might not be filed for months or even longer after the bank loan is closed. Second, unlike credit facilities covering variable rate demand bonds, holders of bonds had no ability to determine whether the bank loans contained the same kind of terms of credit facilities and, if so, what they were other than, with respect to governmental entities subject to public records laws, specifically requesting the documents from issuers. At its simplest level, the investor desire for the Proposed Amendments is not much more complicated than providing investors the same kind of notification for bank loans that they currently enjoy for credit facilities covering variable rate demand bonds.

While the authors of the Proposed Amendments correctly observed that bank loans are not the only types of obligations that can create these types of concerns for bondholders, the definition of "financial obligation" goes far beyond the kinds of competing debt that give rise to these concerns. We believe that the definition of financial obligation conflates two distinct concerns of investors: concerns related to their relationship to bank debt v. ordinary financial and operating matters. Operating leases, derivatives entered into in the ordinary course, trade guarantees, and a host of other activities of issuers and obligated persons do not represent competing debt and should be excluded from the definition of "financial obligation."

In addition, new listed event (16) does the same. New listed event (16) should not be triggered by a default indicating financial difficulties because that measures a change in the financial and operating condition of the issuer. Instead, new listed event (16) should track these investor concerns of the impact of bank debt.

In addition to outlining what we understand as investors' need for bank loan information, we want to underscore the harm that can be caused by crafting a filing requirement broader than this need. We think that this harm is two-fold. First, by moving outside of a "competing debt" policy concern, it will impose an immense burden on state and local governments. Historically, state and local governments are organized such that the debt finance operations are confined within one department. If properly crafted around competing debt, all of the material "financial obligations" would ordinarily fall within the responsibility of that one department because it tends to be responsible for all debt of the issuer. However, the broad definition of financial obligations includes a host of obligations that would require extensive due diligence by the debt finance department that, depending on the issuer, would be extremely burdensome, if even possible. This is significantly compounded by the 10-day notice requirement. Second, by delving just a little into financial and operating developments, we are concerned that this will lead to *ad hoc*, incomplete and confusing disclosures. For example, if an issuer makes a filing under new listed event (16) and fails to comprehensively update investors concerning the whole financial circumstances surrounding the filing, it could lead to chaotic trading on potentially incomplete and misleading information.

Accordingly, the BDA believes that the definition of financial obligation should be narrowed to include only obligations for borrowed money, leases that operate as vehicles to borrow money, and derivatives that are executed for the purpose of hedging these types of financial obligations. In addition, new listed event (16) should not be triggered based on the occurrence of "financial difficulties," but instead based on the exercise of a right or the right of a holder of a financial obligation to exercise a right that, if exercised, is likely to materially affect the holders of outstanding bonds. In other words, new listed event (16) should not serve as a precursor to larger financial difficulties but instead should be triggered when there has been or could be a material shift in the relationship between debt holders.

The BDA believes that something more than just the use of "material" is necessary if the Proposed Amendments will actually result in widespread compliance within the municipal securities market. The use of the term "material" in new listed event (15) will likely encounter inconsistent and very different interpretations in the municipal securities market among market participants that would likely seriously impact the widespread and uniform compliance with the Proposed Amendments. The BDA believes that one of the most significant benefits of the Proposed Amendments is that they are likely to continue to improve the culture of disclosure in the municipal securities market. We are concerned that with just the use of the term "materiality" in listed event (15) it will diminish the cultural impact of the Proposed Amendments because so much of the industry (rightly or wrongly) approaches the interpretation of that word differently.

Accordingly, the BDA urges the SEC to take one of two paths. First, the SEC could use a mechanical test or a series of mechanical tests for determining whether financial obligations need to be reported. Some of those tests could include a percentage of the financial obligation as compared to total outstanding bonds, annual debt service as compared to annual revenues or expenditures, or some other comparable mechanical measurement. In addition, another potential mechanical test is if the financial obligation is issued under the same indenture or resolution as outstanding bonds. Second, the SEC could retain the word "material" and also adopt an interpretative release that provides a detailed explanation of what the word "material" means in the context of bank loans. This interpretative release would explain the intercreditor impacts of bank loans and their potential, in some cases, to structurally subordinate outstanding bonds. The BDA prefers this second approach because, in addition to providing the necessary clarity around when a financial obligation requires a filing under a continuing disclosure undertaking, it will provide larger guidance concerning the disclosure of bank loans in offering documents as well (which would be particularly important for issuers who have outstanding bonds not covered by a continuing disclosure undertaking subject to the Proposed Amendments).

The BDA believes that the SEC needs to provide interpretative guidance concerning how dealers should due diligence compliance with the Proposed Amendments and ensuring that event filings are material for dealers reporting the related event filings under their time-of-trade duties under MSRB Rule G-47. The Proposed Amendments implicate a host of concerns by dealers relating to their obligations. First, dealers are concerned that they have limited ability to perform any affirmative investigation concerning whether an issuer or obligated person has failed to timely file an event notice under new listed events (15) and (16). As a matter of dealer-wide due diligence policies and procedures, dealers have no way of systematically performing this due diligence other than asking the issuer or obligated person if it entered into a financial obligation or if a default has occurred under the financial obligation that triggered a filing requirement. The BDA strongly requests the SEC to provide clear interpretative guidance that allows a dealer to satisfy its due diligence obligations on these new listed events by obtaining representations from the issuer or obligated person. Otherwise, we fear that the Proposed Amendments will cause chaos and confusion among dealers (and then to issuers and obligated persons) as they seek to understand their due diligence obligations in this area.

Second, dealers are concerned with how they will satisfy their obligations under MSRB Rule G-47 with respect to these new listed events. In particular, if issuers or obligated persons file complex bank loan and other financing documents in satisfaction of these requirements, this inevitably results in a data dump onto investors, many of whom (particularly retail investors) have no capacity to understand the documents let alone the capacity to reduce those documents into the few key facts that should inform their investment decisions in bonds. Dealers should not be put in the position of converting financing documents into statements to retail investors as that should be the responsibility of issuers and obligated persons. In addition, dealers should not be in the position, in order to comply with Rule G-47, of handing off to investors hundreds of pages of financing documents. There is a particular connection between listed event notices filed under continuing disclosure undertakings and the information that dealers send to retail customers in satisfaction of their time-of-trade reporting requirements. The Proposed Amendments should require issuers and obligated persons to include in any filing a description to investors concerning what is material about the listed event. Of course, any such filing can be accompanied by a filing of the documents as long as such a description is provided.

EMMA needs improvements. One of the significant problems with providing investors with the information they need outside of primary offerings is the technological limitations of the EMMA system. Without a more coherent EMMA system, there will remain disconnects between what investors want to see and what issuers post. In particular, EMMA does not allow for an orderly filing of all material agreements of an issuer or obligated person that permit an issuer or obligated person to post all material agreements without worrying about dumping those documents onto investors through voluntary event notices. As a part of any effort to solve the bank loan problems through rulemaking, the MSRB needs to also effectively explore solving some of these problems through technological improvements to EMMA.

In addition, the costs for updating the EMMA system have been mostly borne by the dealer community. What is needed is a more equitable way to find an orderly and accurate mechanism for issuers and other market participants to input and receive information.

Implementation date. BDA requests that the SEC extend the implementation date for the final amendments because we do not think that an implementation period of three months is workable given what market participants will need to do in order to ensure that they are in compliance with the final amendments.

Thank you for the opportunity to submit these comments on the Proposed Amendments.

Sincerely,

Michael Nicholas

Chief Executive Officer