



December 18, 2019

SR-MSRB-2019-13, Release No. 34-87583

**Comments of the National Association of Health and Educational Facilities
Finance Authorities**

The National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”) is the national association representing conduit issuers of tax-exempt debt for nonprofit institutions in health care, education, cultural and other charitable fields. NAHEFFA has been on the forefront of advocacy and support for issues of tax-exempt financing particularly for health and education providers. We lead and facilitate national advocacy, support, networking and education on behalf of our members.

NAHEFFA currently has 37 members and one affiliate member representing 32 states and billions of dollars of financing every year. Several of our members are year after year among the largest issuers in the country and some of our members have relatively small issuance portfolios. Our members’ borrowers range from the largest hospitals and universities in the country to small youth centers, medical clinics and sheltered workshops.

NAHEFFA appreciates the opportunity to comment on the proposed rule change to amend the information facility of the MSRB’s EMMA system. MSRB proposes to use existing information submitted to EMMA to provide for the automated calculation and static display of the number of days between (i) the annual fiscal year end date for the issuer or obligated person and (ii) the date an annual fiscal disclosure is submitted to EMMA for such annual fiscal period. In addition, EMMA would be reconfigured to more prominently display this information.

NAHEFFA is strongly supportive of maintaining and enhancing the disclosure practices of our thousands of borrowing charitable institutions, large and small. As individual authorities and as an association we invest heavily in disclosure educational programs with our borrowers and have worked closely for decades with MSRB and SEC on these important issues. For example, we were pleased to work with MSRB in the last significant revision to EMMA providing input from a conduit financing and borrower’s point of view, even facilitating borrowing institutions’ interaction with MSRB staff, to ensure the ease of both inputting and reviewing information. We are participating actively in the Disclosure Industry Workgroup to provide industry input on measures to

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enhance the municipal market's disclosure objectives in order to advance our mutual goals of quality, timely and meaningful disclosure.

We appreciate the MSRB's stated goal of using existing information submitted by borrowers and MSRB's technology to provide more prominently displayed information to investors. We also appreciate that part of this goal is to avoid more onerous measures requiring greater resources by issuers and our borrowers. Although we firmly support good disclosure practices, we are also mindful that the cumulative regulatory burden of continued federal requirements create incentives for many borrowers, governmental and nongovernmental, to escape or mitigate the tax and securities regulatory cost environment and finance their capital needs through other means which are not ideal in many cases and will result in less public disclosure.

Unfortunately, this seemingly innocuous proposal does not appear to us to be ready for prime time. As far as we can ascertain, it was developed solely internally within MSRB without consultation with any stakeholder. Nor are we aware to what extent, if any, it has been tested in trial or mock disclosures for a variety of issuer and borrower types, governmental and nongovernmental, including for conduit issuances. The result is there are questions, uncertainties and potential issues with the quality and meaningfulness of the disclosures proposed here as compared with undertakings made in the continuing disclosure agreements, the true essential disclosures.

It is possible that some of these issues can be resolved. But, until then we recommend that the SEC stay action or that MSRB withdraw its proposal until there has been fuller consultation with expert industry stakeholders, some piloting or prototyping of the disclosures in a diversity of circumstances and perhaps even focus groups of a variety of investors to determine whether this information is of significant value. Is this proposal a solution in search of a problem? Can we demonstrate that a user of the information is going to prefer purchasing bonds of a borrower that files this information earlier after their fiscal year than one that files later? In other words, will this activity affect purchase decisions?

Below we discuss some of our specific concerns which are more in the nature of questions or issue spotting.

How will errors in data input and misuse of the system be corrected and what will the result be in the quality, utility and non-deceptiveness of the information provided to investors? The MSRB is clear that neither the quality nor accuracy of submissions of financial disclosures to EMMA are reviewed, including whether the right online boxes are checked in the system and spreadsheets are placed in the right place. It seems inevitable that there will be errors, and it is unclear that these errors can be corrected and overridden, preventing or changing erroneous information that is being displayed to the public in a prominent manner. We believe there should be a clear understanding and protocol developed for these circumstances.

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Especially for conduit issuers, will a shortcoming or error attributable to a single borrower potentially end up being a “contagion” for the conduit issuer as a whole? If this information exists on a CUSIP by CUSIP basis what is the possibility that some will aggregate the information at some point and draw conclusions based on an aggregate result which could be terribly unfair to many other borrowers and an issuer?

Further, what is to prevent possible gaming of the system by mislabeled information, for example, being submitted as placeholders for annual and other financial disclosures? Required disclosures may be composed of several items such as audited financials, operating data, tax revenue, and research receipts which could be entered for the calculation.

What are the results of errors or intentional acts in undermining confidence in EMMA and these disclosures as a whole? These issues should be considered before these particular data points become a heightened focus of disclosure.

Treatment of various financial statements. The MSRB filing is unclear, and we do not understand the manner in which annual financial disclosure submissions will be handled versus the date for submission of audited financial statements in terms of what will be displayed to the public. Typically, in our experience, for our institutions both of these documents are completed and often submitted at the same time. But if they are filed separately and only one is displayed in this prominent manner will it provide false and misleading signals to EMMA users?

Conduit financing scenario. In only one place is there a discussion of conduit financings. 84 Fed Reg. 65440, example four. It is an obscurely written scenario relating to annual financial disclosures with multiple obligated persons with different fiscal periods. We believe that this may refer to pooled financings. If so, we do not understand how such financings with borrowers who may have different fiscal periods will be handled without providing significantly misleading information.

It appears, for example, that whichever of a number of obligated persons files the first financial disclosure will have its information displayed for the entire issue, thereby perhaps implying that all obligated persons have filed this information. It also appears that when the next obligated person files that information it will not supplement or change the calculator. Is it considered irrelevant and of no effect? But, at some point the incomplete information about the first filing will be supplanted by a subsequent filing in a manner and rationale which is unclear.

We also wonder if for some reason this example relates to a healthcare system with multiple hospitals in the obligated group that may have different fiscal year ends than the parent? We are not sure whether this would apply since most obligated group systems convert all the hospitals to the same fiscal wide system year-end.

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We will be glad to work with MSRB to sort this out but the guide star here should be above all do no harm and do not mislead investors by blindly applying an algorithm to a pooled financing where it just doesn't work very well.

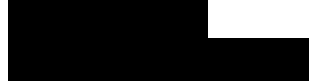
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We raise these issues not to obstruct progress in disclosure. We support taking advantage of the great data and technology offered by EMMA. Rather, we point out that what may seem to be a very simple proposal raises a number of questions which need to be thought through by experts both inside MSRB/SEC and those on the outside. A badly run program will not work to anyone's advantage and will sour and deter future disclosure initiatives.

Respectfully submitted



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