

# Chapman Client Alert

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Current Issues Relevant to Our Clients

## MSRB Decides Not to Pursue Proposal to Require Municipal Advisors to Disclose Bank Loans, but the Discussion Surrounding Bank Loan Disclosure is Far from Over

On August 1st the Municipal Securities Rulemaking Board (“MSRB” or “Board”) released details from its most recent quarterly meeting. Among other things, the press release from the meeting<sup>1</sup> stated that the MSRB will not pursue rulemaking with regard to its concept proposal<sup>2</sup> to require municipal advisors to disclose information about bank loans entered into by their municipal issuer clients. Despite an apparent retreat from the initial proposal, all signs point to a continuing effort by the Board to encourage and improve disclosure of bank loans. At minimum, we expect the Board will further raise awareness of this issue among regulators and urge market participants to take action to increase transparency with respect to bank loans.

Bank loan disclosure is not a new topic at the MSRB.<sup>3</sup> Despite longstanding calls for voluntary disclosure of bank loans, the Board perceives a continued deficiency in that regard, and has limited tools with which to address it. Those circumstances gave rise to the concept release earlier this year in which the Board asked constituents to consider whether municipal advisors should be required to report information regarding bank loans undertaken by their municipal clients. On the whole, public comments<sup>4</sup> were decidedly against the proposal. We will not rehash all the points raised in the comments, but to sum them up, it is far from clear that the incremental benefits from the proposal would outweigh the issues and costs associated with them.

Nevertheless, timely disclosure of bank loans is important for a healthy municipal debt market, and the market remains challenged to ensure prompt access to relevant information by all market participants. Unless market participants coalesce to provide voluntary disclosure, they may find themselves (or their counterparties) subject to a mandatory disclosure requirement with undesirable side effects. In that light, the abandoned concept proposal may be seen not as a setback for the Board, but as a wake up call to participants who may prefer to undertake bank loan disclosure on their own terms.

### [Why Did the MSRB Decide Not to Pursue Rulemaking on the Concept Proposal?](#)

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One obvious answer is the lack of public support evidenced in the comments. The Board cited those comments in the press release, but it is not clear whether they were the determining factor. A related question is whether the Board believed the concept was viable to begin with. The commentators were quick to point out its myriad drawbacks, many of which were probably not lost on the Board when it made the proposal. Perhaps the proposal was in part an extension of the Board’s efforts to raise awareness of the issue. It certainly generated a lot of attention. Finally, the Board may be considering other, more certain paths to achieve its goals regarding bank loan disclosure. Perhaps the feasibility of those alternatives has improved in the months since the proposal was released.

### [What Happens Next?](#)

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Municipal entities and obligors utilizing bank loans and direct purchases should consider posting the relevant documentation (redacted in a manner generally consistent with that permitted under MSRB Rule G-34(c)) promptly after closing. Although there may be instances in which such disclosure is not necessary (e.g., if the issuer or obligor has no

publicly rated debt), disclosure should be considered and discussed with the parties' advisors in all cases. In its press release the MSRB indicated that it will soon announce changes to the EMMA website that will enhance both the submission process as well as the ability of investors to locate available bank loan disclosures.

In the meantime, we await the MSRB's next move in relation to bank loan disclosure. The press release alluded to the Board's efforts with the regulators, which will, no doubt, include continued supplication to the SEC to amend Rule 15c-2-12 to include bank loans and direct-purchase debt as additional material events under a municipal issuer's continuing disclosure requirements.<sup>5</sup> That initiative has been underway for some time now, without an indication of interest by the SEC, but perhaps the Board has reason to be optimistic.

### For More Information

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If you would like further information concerning the matters discussed in this article, please contact your primary Chapman attorney or visit us online at [chapman.com](http://chapman.com).

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- 1 See MSRB press release, available at <http://www.msrb.org/News-and-Events/Press-Releases/2016/MSRB-Holds-Quarterly-Board-Meeting-July-2016.aspx>.
- 2 See MSRB Notice 2016-11, available at <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2016-11.ashx?n=1>.
- 3 See endnote 2 regarding MSRB Notice 2016-11, linked above.
- 4 See public comments, available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2016/2016-11.aspx?c=1>.
- 5 See related letter, available at <http://www.msrb.org/msrb1/pdfs/MSRB-Comment-Letter-on-SEC-Rule-15c2-12-January-2015.pdf>.

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