

# **Bond Case Briefs**

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## **MSRB Asks About Requiring MAs to Disclose Bank Loan Info From Issuers.**

WASHINGTON - The Municipal Securities Rulemaking Board has issued a concept release on whether it should require municipal advisors to disclose information about the bank loans or privately placed municipal securities of their issuer clients.

The nine-page release, which contains 17 specific questions related to the proposal, asks for public comments to be submitted no later than May 27.

The board said it is proposing requiring these disclosures because issuers have only responded on a limited basis to its requests for voluntary disclosures of bank loans on EMMA. These disclosures are important so that investors can better gauge the credit or liquidity profiles of issuers, according to the MSRB.

The board suggested in a notice issued in April 2012 that bank loans be disclosed in the voluntary continuing disclosure category of "Financial/Operating Data - Investment/Debt/Financial Policy for submission. The issuer was asked to indicate in the "Consisting of" free-text field that the documentation consists of "bank loan" disclosures. The board urged issuers to provide documents related to bank loan financings such as the loan or financing agreement or, as an alternative, a summary of some or all the features of the loans. These would include lender, borrower, purpose, security for repayment, third party guarantees, interest rates, tax status of interest and other features, the board said.

However, as of March 28, a search of EMMA for the term "bank loan" resulted in only 143 hits, the MSRB said. Of these, 79 included the words "bank loan" in the issue description and were filed as suggested by the MSRB. Another 23 hits included the words "bank loan" in the issue description, but the documents were reported in other subcategories than the one suggested by the MSRB. The remaining 41 hits, while including the words "bank loan" in a document, did not include any documents under the subcategory suggested by the MSRB.

The board said that generally information about bank loans and private placements is only available in an issuer's financial statements and do not include the key terms of the financings such as provisions that would affect the seniority of bondholders in the event of the issuer's default.

"The MSRB is concerned that the lack of disclosure hinders an investor's ability to truly understand the risks of an investment, thus frustrating the transparency, integrity, fairness and efficiency of the municipal securities market," the MSRB said.

"The MSRB is seeking comment on ways in which more information or more timely information about such financings could be made available to investors, including whether and how to require municipal advisors to disclose information about a municipal entity client's outstanding indebtedness."

The board noted that Section 15B(d)(1) of the Securities Exchange Act of 1934 prohibits the

Securities and Exchange Commission and the MSRB from requiring issuers directly, or indirectly through a broker-dealer, to submit the equivalent of a registration statement or similar documents before the sale of municipal securities.

Section 15B(d)(2), commonly known as the Tower Amendment, prohibits the MSRB from requiring muni issuers directly, or indirectly through a dealer or municipal advisor, certain information relating to them (the issuers) to the MSRB or to purchasers or prospective purchasers of muni bonds.

However, the board said, its existing Rules G-32 on primary offering disclosures, and G-34 on Cusips, new issue, and market information requirements already require dealers to make certain disclosures with respect to sales of munis.

Therefore, "it may be possible to require disclosures by municipal advisors of information about direct purchases and bank loans of their municipal entity clients within the limitations of the Tower Amendment," the board said in the notice. "The MSRB has broad rulemaking authority under the Exchange Act, as amended by the Dodd-Frank Act, over municipal advisors and municipal advisory activities."

"The MSRB believes that the availability or timely disclosure of information about an issuer's direct purchases and bank loans is beneficial to fostering transparency and ensuring a fair and efficient market."

Industry participants have also asked for these kinds of disclosures, the board said.

The MSRB asked for comments on, among other things, what activity should trigger the disclosure requirement - advising on a bank loan or advising on any kind of transaction?

The board also asked how expansive should such disclosures be?

Should such a disclosure obligation apply to dealers? the board asked.

It also wanted to know if there are alternative methods the MSRB should consider for obtaining and publicly disseminating material information related to an issuer's direct purchases and bank loans.

The MSRB asked what types of debt financings, in addition to direct purchases and bank loans, do muni issuers use as alternatives to the direct issuance of muni bonds for which disclosures would be useful to investors.

The board also asked for any historical data, studies or other information relating to the number, value and terms of outstanding bank loans or direct purchases by muni issuers.

## **The Bond Buyer**

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