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## **MSRB Responds to Issuer Complaints and Improves Bank Loan Disclosures On EMMA.**

In late September, the Municipal Securities Rulemaking Board (“MSRB”) announced that it had taken steps to enhance the bank loan disclosure submission process and the display of these documents on MSRB’s Electronic Municipal Market Access (“EMMA”) system.

This latest announcement is in keeping with the MSRB’s previously released advisory notices, in which the self-regulator advocated for state, local and municipal bond issuers to voluntarily disclose bank loans and other alternative financings. Specifically, the MSRB has expressed concerns that these so called “bank loans” could, among other things, potentially impair the rights and seniority status of existing bondholders or adversely impact the liquidity or credit profile of an issuer.

Bank loan financings are entered into directly between an issuer and a bank without the involvement of an underwriter and are not subject to the continuing disclosure rules of Securities and Exchange Commission (“SEC”) Rule 15c2-12. As such, no offering disclosure documents are prepared and issuers are not required to provide information about bank loans via EMMA. Bank loans are seen, therefore, as a less expensive alternative to traditional publicly issued bond transactions.

However, due to the lack of explicit requirements for issuers to disclose bank loans, there is a concern that the investing public may not become aware of an issuer’s bank loan(s) until such issuer’s next public offering or the release of such issuer’s audited financial statements. In the eyes of the MSRB, this “delay” in the release of information related to an issuer’s bank loan(s) could adversely impact the holders of the issuer’s outstanding bonds, as well as potential future investors. In January 2015, the MSRB released Notice 2015-03, Bank Loan Disclosure Market Advisory, in which it encouraged issuers to voluntarily post information about their bank loan(s) “to foster market transparency and to ensure a fair and efficient municipal market.”

The new disclosure submission process is the result of several discussions between the MSRB and market participants which took place earlier this year. Many state, local and municipal officers complained that the submission process was confusing and actually seemed to lose some of the submitted documentation. The officers emphasized that the lack of disclosure of bank loans had less to do with the issuers’ failing to disclose and more with the complexity of the submission process previously in place which made it difficult to correctly submit and find the disclosed materials.

In response to these concerns, the new process the MSRB announced last month provides step-b-step instructions for issuers to use when submitting information on bank loans and alternative financings to EMMA and contains advanced search functions that will allow EMMA users to search for securities associated with bank loan disclosures.

The general consensus among those in the public finance industry is that the issue of disclosing bank loans would be better addressed with a change to the SEC’s Rule 15c2-12. However, the MSRB’s facilitating the process of disclosing bank loans could be seen as indicative of where the federal regulatory authorities are heading.

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### **Miles & Stockbridge**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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