NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

August 30, 2019

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

Release No. 34-86572; File No. SR-MSRB-2019-10

Dear Ms. Countryman:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to comment on proposed changes to MSRB Rule G-17 Interpretive Guidance (Release No. 34-86572). NAMA represents independent municipal advisory firms and individual municipal advisors from around the country and is dedicated to representing municipal advisors ("MA") in regulatory matters, and to help the profession through educational efforts.

We are very supportive of the changes that the MSRB has proposed to its G-17 Interpretive Guidance. These include:

Underwriter Disclosures to Issuers About Municipal Advisors

We especially appreciate the MSRB's proposed changes related to municipal advisors.

NAMA and other organizations have commented that whether directly or inferred, some underwriters continue to deter the use of MAs by clients which is in direct conflict of the fair dealing principles of the Rule. Issuers should be made aware of the ability to have an advisor at the table that only represents their interests, and it is the MA, not the underwriter, that has a fiduciary duty to the issuer.

We have become aware of another practice that some underwriters use in order to deter the use of MAs, stating that they, as underwriter, can tackle the work that municipal advisors provide on a transaction. While the SEC recognizes that an underwriter may, once becoming an underwriter for a particular issuance of municipal securities, provide advice with respect to the structure, timing, terms, and other similar matters concerning that issuance without being deemed an MA, there are critical distinctions between an underwriter and MA that such statements ignore: (i) any such advice provided by the underwriter is provided as a market participant with its own interests at arms-length from the issuer, and not as a fiduciary to the issuer; (ii) no such advice can be provided by the firm prior to becoming the underwriter, so that at that stage, an issuer is left understanding that this type of advice could be provided but must only trust that the underwriter's advice will be good and in the issuer's interest once the firm is hired as underwriter; and (iii) advice on investment strategies, on municipal derivatives, and on myriad other matters that the SEC has identified to be outside the scope of an underwriting (including but not limited to: advising on whether the governing body should authorize

the issuance; on the method of sale; on overall financing options; debt capacity; debt portfolio impact; effects of debt under various economic assumptions or other impacts; on financial feasibility of a new project; on the issuer's non-issue-specific overall rating strategy) cannot in fact be provided by the underwriter. Thus, this statement by some underwriters is clearly untrue, and gives issuers a false sense of who helps who on a transaction. This type of behavior, and the very fact that there are some overlapping areas of activities between MAs and underwriters that give rise to ambiguity around whose interest is being represented when advice is given on these activities, argue for stronger action to ensure issuers understand their options than is currently included in the existing guidance.

Therefore, we strongly support the additional disclosures proposed in the Notice that the underwriter must disclose to the issuer that "the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction," as well as the new language that "Underwriters also must not recommend that issuers not retain a municipal advisor. Accordingly, underwriters may not discourage issuers from using a municipal advisor or otherwise imply that the hiring of a municipal advisor would be redundant because the sole underwriter or underwriting syndicate can provide the same services that a municipal advisor would."

General Underwriter/Syndicate Manager Disclosures to Issuers

- *Bifurcating Underwriter Standard and Transaction Specific Disclosures*. The proposed changes would cause underwriters/syndicate managers ("underwriters") to separate the standard, dealer-specific and transaction-specific disclosures to the issuer. By doing so, issuers would be able to better identify any concerns they may have related to the underwriter conflicts and any complexities of the transaction. The proposed changes would greatly assist issuer clients – both frequent and not – to be able to decipher disclosures that are of greatest interest to them, while also allowing them to be reviewed in their totality.

- *Providing Disclosures for Each Transaction*. The MSRB has proposed that the underwriter/syndicate manager provide disclosures to issuers for each transaction. NAMA believes that this will assist issuers to understand and have the opportunity to review information for each transaction. This is especially helpful as an entity may have staff and leadership changes, so that an issuer that previously had significant experience and knowledge over the course of many transactions may suddenly have new staff and/or leadership who would not be aware of previous disclosures that have been made and not have the same levels of experience and knowledge of their predecessors. The fact that these types of changes can and do occur with some frequency throughout the country for issuers of all sizes and sophistication should continue to inform the MSRB and SEC with regard to any consideration of reducing the content, frequency and/or circumstances in which disclosures are required to be made to issuers. This requirement is further supported by MSRB Rule G-23 which is to view each issuance on an individual basis.

- *Providing Underwriter Disclosures in Sufficient Time and in Accordance with the Timelines Noted*. The proposed changes to the Guidance discuss the need for issuers to receive disclosures from the underwriter in sufficient time to be able to react to any information that could be problematic, including the timelines stated in the Notice (page 348 of the MSRB filing). While the language is not further prescribed by the MSRB, highlighting the need for information to be sent in time – as directed in the Notice - for the client to absorb the information is important.

- *Underwriter Disclosures Must be Made in a Clear and Concise Manner*. In addition to the timeliness of the disclosures, the Notice further discusses that the disclosures from the underwriter to the client be made in a clear and concise manner. This too is helpful for the client to understand and to be able to process the disclosures.

- *Posting Disclosures on EMMA Does Not Qualify as Meeting the Rule G-17 Threshold*. There was discussion about having underwriters post their disclosures on EMMA to meet the G-17 fair dealing requirements. The MSRB is right to not allow such postings to be made in order to achieve compliance with the Rule, as it could dilute the client's awareness to conflicts and other necessary disclosures.

- *Issuers May Not Opt-Out of Disclosures*. We support the MSRB's rejection of allowing issuers to opt-out of receiving any or some disclosures. Underwriters should have to provide the necessary information about their role in a transaction and the issuer should receive such information for each transaction in order to best protect the issuing entity. Further, an entity's staff and governing body should want this information as part of the public record for the issuer's protection.

- *Email Return Receipt is Acceptable From Issuer to Underwriter*. The MSRB proposes allowing an electronic return receipt via email to satisfy the requirement of the underwriter demonstrating that the issuer received the required disclosures. Bringing the requirement up-to-date via electronic means makes it easier for underwriters and issuers alike.

The MSRB's work to strengthen the Rule G-17 Interpretive Guidance is helpful to issuers as well as the marketplace and helps set appropriate guidelines for underwriter fair dealing behavior. The proposal also helps outlay the differences between underwriters and municipal advisors and the services – and duties - each serves to issuers.

We support the proposed changes to MSRB Rule G-17 Interpretive Notice and recommend that the SEC approve MSRB's filing No. 34-86572.

Sincerely,

Susan Gaffney
Executive Director