

Public Law

April 2012

MSRB Tells Issuers How to Use EMMA for Voluntary Disclosure of Private Bank Loans and Purchases

The Municipal Securities Rulemaking Board (MSRB) published [Notice 2012-18](#) on April 3, 2012, encouraging municipal issuers and obligated persons to post information on its Internet portal EMMA regarding private bank loan obligations and/or other non-publicly offered securities. According to the notice, the MSRB “believes that the availability of timely information about bank loan financings is important for market transparency and promoting a fair and efficient market.” The publication of the notice follows several months of discussion among market participants at various conferences about the significant increase in the use of private loan financing by large issuers and private non-profit borrowers such as healthcare institutions as a substitute for publicly offered municipal bonds (including conduit bonds). Investors in the issuer’s outstanding bonds were used to being alerted to the issuance of new bonds through the posting of an official statement or other offering document, which is not typically used for private financing transactions.

The MSRB acknowledges that private bank loan financings are generally not subject to the public disclosure requirements under federal securities laws (including MSRB rules and SEC Rule 15c2-12) because the loans either are not “securities” or, if determined to be securities, would qualify for an exemption or, with respect to MSRB rules, there is no broker-dealer or placement agent involvement. Although additional indebtedness would likely be noted in the financial statements, which, if the issuer is otherwise subject to continuing disclosure requirements, would be posted on EMMA in due course after the end of the fiscal year, the MSRB is encouraging municipal issuers and obligated persons to disclose the terms of new bank loans in advance of the audit filing. Additionally, the MSRB is encouraging issuers to post the entire loan document or a summary of the significant terms of the financing using conventions described in the notice in order to facilitate retrieval by interested persons. Since the EMMA portal does not yet have a special category for the submission of bank loan disclosures, the MSRB suggests issuers submit bank loan financing information under the category of “Financial/Operating Data – Investment/Debt/Financial Policy” and indicate in the “consisting of” text field that the information includes “bank loan” disclosures. The MSRB also points out that an issuer can make a voluntary event filing to alert the holders of its outstanding debt that the bank loan documents are being filed.

If an issuer or obligated person chooses to submit information regarding non-publicly offered debt on EMMA, they should consider including precautionary language to dispel any expectation in the market of any continuing obligation to update the information once filed. The MSRB has suggested there may be improvements made to EMMA in the future to better accommodate voluntary disclosure filings regarding additional debt and/or lease transactions. However, the notice provides guidance to using EMMA for voluntary disclosure purposes in advance of those improvements.

If you would like to talk to one of our public finance lawyers regarding voluntary filings on EMMA, or any other matter, please contact the Squire Sanders lawyer with whom you usually work.

Contacts

Cincinnati

Margaret W. Comey
+1 513 361 1208
margaret.comey@squiresanders.com

Todd L. Cooper
+1 513 361 1239
todd.cooper@squiresanders.com

Cleveland

Jeffrey A. Bomberger
+1 216 479 8761
jeffrey.bomberger@squiresanders.com

Alexander G. Burlingame
+1 216 479 8768
alexander.burlingame@squiresanders.com

Ryan K. Callender
+1 216 479 8395
ryan.callender@squiresanders.com

Timothy J. Cosgrove
+1 216 479 8562
timothy.cosgrove@squiresanders.com

Michael A. Cullers
T +1 216 479 8477
michael.cullers@squiresanders.com

Robert J. Eidnier
+1 216 479 8676
robert.eidnier@squiresanders.com

D. Bruce Gabriel
+1 216 479 8746
bruce.gabriel@squiresanders.com

L. Todd Gibson
+1 216 479 8449
todd.gibson@squiresanders.com

David S. Goodman
+1 216 479 8649
dgoodman@squiresanders.com

Victoria Grunthaner Bowser
+1 216 479 8642
victoria.bowser@squiresanders.com

Pamela I. Hanover
+1 216 479 8763
pamela.hanover@squiresanders.com

Barbara L. Hawley
+1 216 479 8507
barbara.hawley@squiresanders.com

Johnny Hutchinson
T +1 216 479 8046
johnny.hutchinson@squiresanders.com

Robert D. Labes
+1 216 479 8601
robert.labes@squiresanders.com

John S. Larson
+1 216 479 8624
john.larson@squiresanders.com

Richard D. Manoloff
+1 216 479 8331
richard.manoloff@squiresanders.com

Austin McGuan
+1 216 479 8441
austin.mcguan@squiresanders.com

Katherine G. Petrey
+1 216 479 8094
katherine.petrey@squiresanders.com

Michael L. Sharb
+1 216 479 8389
mike.sharb@squiresanders.com

R. Thomas Stanton
+1 216 479 8728
r.thomas.stanton@squiresanders.com

Catherine C. Tompkins
+1 216 479 8470
catherine.tompkins@squiresanders.com

Dana B. Weiss
+1 216 479 8336
dana.weiss@squiresanders.com

Catherine Ziroli Romancheck
+1 216 479 8393
catie.romancheck@squiresanders.com

Ahmed A. Abonamah
+1 216 479 8316
ahmed.abonamah@squiresanders.com

Columbus

Gregory R. Daniels
+1 614 365 2789
greg.daniels@squiresanders.com

Roberta L. Fisher
+1 614 365 2715
bobbie.fisher@squiresanders.com

Christopher J. Franzmann
+1 614 365 2737
chris.franzmann@squiresanders.com

Nathanael J. Jonhenry
+1 614 365 2857
nathanael.jonhenry@squiresanders.com

Matthew L. Sagone
+1 614 365 2701
matthew.sagone@squiresanders.com

Paul F. Sefcovic
+1 614 365 2738
paul.sefcovic@squiresanders.com

Alex Shumate
+1 614 365 2739
alex.shumate@squiresanders.com

Gregory W. Stype
+1 614 365 2742
greg.stype@squiresanders.com

Jonah White
+1 614 365 2889
jonah.white@squiresanders.com

Los Angeles

Andréa Caruso Townsend
+1 213 689 5157
andrea.townsend@squiresanders.com

Harriet M. Welch
+1 213 689 5158
harriet.welch@squiresanders.com

Miami

Albert A. del Castillo
+1 305 577 7758
albert.delcastillo@squiresanders.com

Pedro H. Hernández
+1 305 577 7048
pedro.hernandez@squiresanders.com

Lori Smith-Lalla
+1 305 577 7725
lori.smithlalla@squiresanders.com

Pedro J. Miranda
+1 305 577 7707
pedro.miranda@squiresanders.com

Luis Reiter
+1 305 577 7710
luis.reiter@squiresanders.com

New York

Kenneth W. Bond
+1 212 872 9817
kenneth.bond@squiresanders.com

Jackson B. Browning, Jr.
T +1 212 872 9832
jackson.browning@squiresanders.com

Christopher J. Reitzel
+1 212 872 9874
christopher.reitzel@squiresanders.com

Edward S. Sinick
+1 212 872 9835
edward.sinick@squiresanders.com

Lauren Michelle Trialonas
+1 212 872 9862
lauren.trialonas@squiresanders.com

Phoenix

Jennifer R. Cosper
+1 602 528 4880
jennifer.cosper@squiresanders.com

Charles E. James, Jr.
+1 602 528 4061
charles.james@squiresanders.com

Timothy E. Pickrell
+1 602 528 4031
timothy.pickrell@squiresanders.com

San Francisco

Robert H. Olson
+1 415 393 9819
robert.olson@squiresanders.com

Robyn Helmlinger
+1 415 954 0223
robyn.helmlinger@squiresanders.com

Tampa

David L. Lapidés
+1 813 202 1319
david.lapides@squiresanders.com

Alexandra M. MacLennan
+1 813 202 1353
sandy.maclennan@squiresanders.com

Washington DC

Roger K. (J.R.) Clark
+1 202 626 6884
j.r.clark@squiresanders.com

John C. Henry
+1 202 626 6835
john.henry@squiresanders.com