National Association
of Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005



April 11, 2017

Shagufta Ahmed
Desk Officer for the Securities and Exchange Commission
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503-0009

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed Amendments to Exchange Act Rule 15c2-12,
Comments on the Collection of Information Requirements
File No. S7-01-17
Release No. 34-80130

Dear Ms. Ahmed and Mr. Fields:

Thank you for the opportunity to comment on the collection of information burdens of recently proposed amendments to Exchange Act Rule 15c2-12. The National Association of Bond Lawyers (NABL) is concerned that the Commission's estimates of the burdens of complying with the collection of information requirements of the proposed amendments grossly understate the actual burdens that would be imposed by the amendments. The attached comments explain our concerns and include the results of a survey that NABL conducted of its members. Based in part on the survey, we believe that the actual burdens are more than 100 times those estimated by the Commission, suggesting that the Office of Management and Budget should file comments with the Commission and disapprove the collection of information contained in the proposed amendments pending a revised, reasonable estimate of burden and cost/benefit analysis.

NABL exists to promote the integrity of the municipal securities market by advancing the understanding of and compliance with the law affecting public finance. NABL has more than 2,700 members, almost all of whom regularly represent issuers and other obligated persons, underwriters, and other market participants in the issuance of municipal securities and the preparation, review, and filing of continuing disclosures. Accordingly, NABL members, including those who participated in the preparation of these comments and the NABL survey, are knowledgeable about the collection of information burdens that can reasonably be expected to result if the amendments are adopted as proposed.

These comments concern only the collection of information burdens that would result from the proposed amendments. These comments express no view as to whether the proposed amendments should or should not be adopted or revised.. NABL intends to submit additional comments to the Securities and Exchange Commission concerning those matters, which may include cost/benefit and other recommendations.

These comments were prepared by an ad hoc task force, composed of those NABL members listed in Exhibit B. These comments were approved by the NABL Board of Directors.

Thank you for your consideration.

Sincerely,

Clifford M. Gerber

Enclosure

cc: Securities and Exchange Commission, Public Reference Room

**COMMENTS REGARDING COLLECTION OF INFORMATION BURDEN OF PROPOSED AMENDMENTS TO SEC RULE 15c2-12**

The National Association of Bond Lawyers ("*NABL*") respectfully provides the following comments to the U.S. Office of Management and Budget ("*OMB*") and the U.S. Securities and Exchange Commission (the "*Commission*"). These Comments concern "*collection of information burdens*," as defined in the Paperwork Reduction Act of 1995, as amended (the "*PRA*"), that can be expected to result from amendments (the "*Proposed Amendments*") to Rule 15c2-12 (the "*Rule*") of the Commission, if adopted as proposed by Securities Exchange Act Release No. 34-80130, File No. S7-01-17, adopted March 1, 2017, and published in the Federal Register on March 15, 2017 (the "*Proposing Release*"). To permit adoption of the Proposed Amendments, the Commission submitted to OMB (for approval) proposed revisions to the Commission's current collection of information titled "Municipal Securities Disclosure," which are summarized in the Proposing Release.

## A. Executive Summary of Comments

As explained in more detail below, NABL respectfully submits that:

1. **Collections of Information:** The Proposed Amendments are "collections of information" within the meaning of the PRA because:

   a. ***Issuers:*** the Proposed Amendments effectively require issuers of and other persons obligated on municipal securities ("*obligated persons*" and, collectively with issuers, "*issuers*") to contract to file notices of additional events with the Municipal Securities Rulemaking Board ("*MSRB*"), as recognized in the Proposing Release,

   b. ***Underwriters:*** the Proposed Amendments require underwriters to obtain and review official statements that describe the contract and breaches of prior contracts, also as recognized in the Proposing Release, and

   c. ***Brokers:*** the Proposed Amendments, together with other rules of the Commission and the MSRB, require that brokers obtain and review the filings in connection with each secondary market transaction in affected municipal securities, which is not acknowledged in the Proposing Release or taken into account in estimating resulting burden.

2. **Gross Underestimation of Burden:** The Commission has grossly underestimated the burdens imposed by the Proposed Amendments' collection of information requirements.

   a. ***Reliance on Inapposite, Faulty Prior Estimates*:** The Commission estimated the time required by issuers to prepare and file notices of the new events (2 hours per event), as well as the time required for underwriters to compare issuer certifications of events to filed notices of the events (12 minutes per offering). The Commission, however, simply used prior time estimates for that purpose, even though (a) the new events impose qualitatively different compliance obligations, (b) the Commission was previously informed by knowledgeable industry participants that its prior estimates had greatly underestimated the compliance burdens of the existing Rule, and (c) as discussed in 3. below, as a result of subsequent Commission actions, its prior estimates are no longer indicative.

b. ***Inconsistency with Commission Enforcement Positions:*** In estimating underwriter compliance burdens, the Commission assumed that underwriters would employ procedures that are far less time-consuming than those the Commission previously stated are required to be followed to comply with the antifraud provisions of the federal securities laws.

c. ***Overlooked Compliance Burdens:*** The Commission failed to estimate the time required (a) by issuers to identify and evaluate events for materiality, (b) by underwriters to review financial obligation documents to assess materiality, and (c) by brokers to obtain and review event filings when they conduct secondary market transactions.

d. ***Off by Over Two Orders of Magnitude:*** Based on responses to a questionnaire completed by more than 70 NABL members, NABL estimates the actual annual burdens of the proposed collection of information requirements (in hours) to be as follows, more than 100 times (i.e., more than two orders of magnitude) greater than the Commission's estimates:

| | **NABL Estimate** | **Commission Estimate** | **Factor** |
|---|---|---|---|
| Issuers | 1,150,702 | 4,000 | 287x |
| Underwriters | 334,948 | 2,500 | 134x |
| Brokers | 14,224,229 | N/A | N/A |
| Total | 15,709,879 | 6,500 | 2,417x |

3. **Changed Circumstances:** Even if the Commission's prior compliance estimates had been reasonable when made, they are no longer reliable for estimating compliance burdens that would result from the Proposed Amendments, because:

a. ***Different Events:*** the two new reportable events are different from the existing reportable events for which the prior estimates had been made and will take substantially more work to ascertain, review, and disclose, and

b. ***Impact of Subsequent Commission Action:*** the Commission's actions since it made prior time estimates, including more than 140 settlements under its Municipalities Continuing Disclosure Cooperation (MCDC) initiative, have dramatically increased the collection of information burdens of the existing Rule by (i) making it more difficult to determine whether an event is "material" in the eyes of the Commission and (ii) causing underwriters to construe the term broadly to avoid any possible breach of cease-and-desist orders imposed under the MCDC initiative.

4. **Ambiguous Collection Standards**: Especially in light of the positions taken by the Commission in the MCDC initiative, because the Proposed Amendments rely on the term "material" to ascertain whether a collection of information is required, the Proposed Amendments do not employ "plain, coherent, and *unambiguous* terminology" and will not be "understandable to those who are to respond," as the Commission is to have certified to OMB under the PRA.

5. **Recommended Comments:** In compliance with the Executive Order, Reducing Regulation and Controlling Regulatory Costs, January 30, 2017, the Director of OMB should file comments with the Commission to the effect that (a) the Proposed Amendments impose ambiguous and overly burdensome collection of information requirements, and (b) the

Commission's estimates of the burden of these requirements are not adequate and should be reassessed in light of current market practice.

6. **Conditional Disapproval:** NABL respectfully urges the Director of OMB to disapprove the collection of information requirements contained in the Proposed Amendments unless the Commission (a) revises the Proposed Amendments to draw clear lines that eliminate any obligation to provide or collect information that is not sufficiently important to investors to warrant burdens that can reasonably be expected to result and (b) makes careful, well-informed, and rigorous cost estimates in evaluating the complete resulting benefits and burdens in light of current market practice.

## B. Proposed Amendments

The Proposed Amendments would require that, in offering municipal securities in primary offerings, participating underwriters must confirm that the issuer (or an obligated person) has entered into a continuing disclosure agreement (CDA) by which it has agreed to provide timely notice of any of the following events (in addition to the 14 events currently included in the Rule) to the MSRB:

> "(15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
>
> "(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

In addition, participating underwriters must obtain, review, and distribute an official statement that describes the CDA and any instance in the previous five years in which the issuer has failed to comply, in all material respects, with any CDA.

For these purposes, "*financial obligation*" would be defined as a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding," other than municipal securities for which a final official statement has been provided to the MSRB. The Proposed Amendments do not define "material."

The Proposing Release makes clear that "financial obligation" is to be broadly interpreted, indicating for example that it captures both short-term and long-term debt obligations within the phrase "debt obligations" and captures both capital leases and operating leases as "leases." The Proposing Release states that the term "derivative instrument" includes any swap, security-based swap, futures contract, forward contract, option, or similar instrument entered into by the issuer, which could include short-term fuel hedges as well as interest rate derivatives.

The Proposed Amendments would affect all issuers and obligated persons entering into CDAs regardless of size or type, affecting states, cities, counties, fire districts, public power providers, public and nonprofit hospitals and healthcare systems, public and private universities and colleges, school districts, affordable housing providers, water and sewer districts, public seaports and airports, and a host of other state, local, and nonprofit entities. In the Commission's

2012 *Report on the Municipal Securities Market*, the Commission said there were "close to 44,000 issuers." Collectively these entities enter into a staggering number of leases and other financial obligations, as defined in the Proposed Amendments, in the ordinary course of providing important services to the public.

The Commission adopted its initial continuing disclosure amendments to the Rule in 1995, subsequently expanded them, and (through interpretations of the amendments and antifraud provisions) has imposed additional duties on underwriters in complying with them. It has done so in an effort to improve market practices by effectively imposing EDGAR-like filing requirements on municipal securities issuers (by requiring underwriters to ensure that issuers enter into and comply with CDAs), even though the Commission does not have statutory authority to regulate issuers directly.

## C. Commission-Estimated Burden of Proposed Amendments

In the Proposing Release, the Commission estimates that, of the estimated 20,000 issuers that file event notices annually, only 2,000 will be required to file notices under the amendments, and that it will take issuers on average two hours per filing to comply for a total of 4,000 hours. The Commission does not estimate compliance times (especially for the thousands of issuers who may not file in a given year) to develop and implement procedures to centralize information regarding all financial obligations, to monitor for potential filing requirements, or to make materiality decisions to determine whether filings are required. If all of the estimated burden were allocated to these pre-filing activities, which could be undertaken by 35,000[1] or more issuers, then the estimated 4,000-hour burden equates to only a few minutes per year per issuer before taking into account any time required to prepare and file a notice. The Commission also concluded that issuers generally would not incur external costs in complying with amended CDAs, suggesting that they would not rely on outside counsel or municipal advisors in reaching materiality decisions or drafting summaries of financial obligations, amendments, or other new events. Particularly because of the ambiguities in the Proposed Amendments, NABL submits that filers would, in fact, seek outside legal assistance in complying with the new requirements as proposed.

In the Proposing Release, the Commission estimates that it will take each of an estimated 250 underwriters on average 30 minutes to give notice of the amendments to affected personnel and an additional 10 hours per year to comply with the amendments. Since the Commission has assumed 12,000 issues per year in estimating collection of information burdens, the Commission has estimated that the amendments will result in an average additional underwriter burden of approximately 12 minutes per issue. To reach this conclusion, the Commission described the underwriters' review procedures as follows, starkly departing from its prior descriptions of their duties (made when not estimating compliance burdens, as described below under "Commission Interpretation of Underwriter and Broker Requirements"):

> "Determining whether an issuer or obligated person has filed continuing disclosure documents will usually include an examination of the filings made over a five-year period on the MSRB's EMMA system. An underwriter may also ask questions of an issuer, and, where, appropriate, obtain certifications from an issuer, obligated person, or other appropriate party about facts such as the

[1] Based on annual audited financial statements or CAFRs filed with EMMA in 2016. MSRB 2016 Fact Book. See "Reasonable Estimates of Burden" below.

occurrence of specific events listed in paragraph (b)(5)(i)(C) of the Rule and the timely filing of annual filings and any required event notices or failure to file notices."

Release No. 34-80130 (March 1, 2017) at notes 130-31. The Commission ignored the additional diligence tasks that it previously stated are required. (These are described under "Commission Interpretation of Underwriter and Broker Requirements" below.) The Commission also ignored the time required to adopt modified procedures. It also included no estimated additional burden for brokers in the secondary market.

For the reasons stated below, NABL believes that the Commission grossly underestimated the burdens of complying with the collection of information requirements that would be imposed by the Proposed Amendments, especially those burdens arising as a result of the uncertainty that has resulted from the Commission's interpretation of "material" in settlements under the MCDC initiative.

## D. Commission Readings of "Material" and Resulting Ambiguity

If the Proposed Amendments are adopted as proposed, (a) issuers will need to determine whether financial obligations they incur, or amendments to or waivers or breaches of those obligations, are "material" (after they enter into a CDA that satisfies the Rule, as amended), and (b) underwriters will need to make the same determination in order to determine whether each subsequent offering document omits a description of any material breach of such a CDA in the prior five years. Particularly since the MCDC initiative, Commission interpretations of "material" are too vague, ambiguous, and unpredictable to enable issuers and underwriters to clearly determine when notice of an event must be filed or when a failure to file must be disclosed. The Commission used the term "material" to identify reportable events under the existing Rule, but it was adopted before the Commission's positions in the MCDC initiative. The fact that underwriters accounting for 96% of the municipal market were subjected to administrative actions for violating the existing Rule requirement (to obtain official statements that describe "material" breaches) is evidence that the term "material" is ambiguous, not that the term is understandable (as stated in the Proposing Release).

**1. Ambiguity of "Material."** "Material," as used in the Rule, has the meaning ascribed to such term in the Securities Exchange Act of 1934, as amended. Exchange Act Rule 0-1(b). Under the antifraud provisions of that act and the Securities Act of 1933, as interpreted by the U.S. Supreme Court, "information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding" how to vote or make an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988). An omission is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Id.*

Commission staff has stated that materiality determinations cannot be reduced to a numerical formula and that evaluations of materiality require both quantitative and qualitative considerations. Staff Accounting Bulletin No. 99, Release No. SAB 99 (Aug. 12, 1999), 64 FR 45150 (Aug. 19, 1999). Consequently, neither issuers nor underwriters may safely conclude that a financial obligation is not material because, for example, it comprises less than 5% of the issuer's total indebtedness.

The Commission has consistently declined to give advance advice as to whether a fact is material. Instead, market participants must review voluminous, often inconsistent court decisions and administrative orders in an attempt to give clarity to the term. The Commission's own Investor Advisory Committee spoke to the expense of making judgments about materiality when it criticized a Financial Accounting Standards Board (FASB) proposal to modify the materiality standard in generally accepted accounting principles to more closely resemble the meaning given to "material" in the antifraud provisions of federal securities laws:

> "[T]he 'Conceptual Framework' Proposal does not adequately discuss the impact of the change on the disclosure process, *including the increased costs that will likely result*. In particular, the Proposal does not sufficiently take into account that, by "clarifying" the legal nature of the definition, counsel will likely have an increased role in the process. *Whatever the current role, issuers wanting greater comfort on the proper application of the "legal concept of materiality" will presumably have an increased incentive to seek the views or opinions of counsel.* Particularly if this type of review becomes common, the additional costs may be significant. Beyond costs, the risk exists that, by replacing the current, differentiated professional accounting standard with a *case-law driven legal standard*, close questions of judgment will ultimately devolve to lawyers rather than accountants."

Letter of SEC Investor Advisory Committee to Technical Director, FASB, dated February 14, 2017 (emphasis added).

**2. Commission Applications of Materiality.** While the Commission has declined to give advance advice about whether a fact is material, it regularly makes *ex post facto* judgments about materiality in administrative and civil enforcement actions.

In various orders implementing settled administrative actions under the Commission's MCDC initiative, the Commission has taken extreme positions on materiality that seem to exclude only very minor or "foot-fault" instances of noncompliance, alleging that the following undisclosed failures to make filings with the MSRB under CDAs, among others, were "material":

- In a 2013 primary offering, an undisclosed failure to timely file an annual report in 2007 was described as a material omission, even though the issuer did disclose that it failed to file timely reports in 2008, 2009, and 2010, thus informing investors that the issuer's CDA could not be relied on. *In the Matter of City of Andover, Kansas*, Securities Act of 1933 Release No. 10139, August 24, 2016.

- A city's failure to describe late filings of audited financial statements in two years was material, even though they were contained in official statements filed with EMMA, because the city failed to link the official statements on the EMMA continuing disclosure page for previously issued securities. *In the Matter of the City of Cedar Rapids, Iowa,* Securities Act of 1933 Release No. 10141, August 24, 2016.

- An undisclosed failure to file annual financial and operating data until 36 days after the filing deadline was described as a material breach, without regard to the fact that investors regularly purchase securities with filing deadlines that are more than 36 days later than the deadline in question, at comparable yields for issues with comparable credits. *In the Matter of Borough of Roselle Park in the County of Union, New Jersey,* Securities Act of 1933, Release No. 10134, August 24, 2016.

In addition, Commission staff has said that, in bringing administrative actions under the MCDC initiative, it disregarded whether information that was not timely filed with EMMA was nevertheless accessible to investors on the issuer's website or under state law equivalents of the federal Freedom of Information Act, thus elevating investor inconvenience in accessing information to the level of "material."

These orders inform issuers and underwriters of the yardstick the Commission is likely to apply, *ex post facto*, in judging their compliance with CDA and requirements to disclose material breaches. In view of these orders, to avoid the expense, risks, and reputational damage that a Commission enforcement action could entail, issuers and underwriters will construe "material" expansively, contributing to a much higher compliance burden than estimated by the Commission, which relied on pre-MCDC estimates in estimating the burden of the Proposed Amendments.

**3. Underwriter Cease-and-Desist Orders.** In settling administrative actions under the MCDC initiative, the Commission issued orders against 72 underwriters, who collectively had a 96% market share for municipal securities underwritings, to cease and desist from violating Section 17(a)(2) of the Securities Act of 1933. A violation of these cease-and-desist orders allows the Commission to bring an action in federal district court to impose civil penalties of up to the greater of either $500,000 or the pecuniary gain that resulted from the violation. 17 U.S.C. 77t(d). Further, a violation of these orders could be considered an independent violation of Section 17(a)(2) and expose underwriters to a fine of up to $10,000 under 15 U.S.C. § 77x, and to separate cease-and-desist proceedings with fines of up to $725,000 under 15 U.S.C. § 77h-1(g)(2)(C). In addition, any further violation while a cease-and-desist order is in place could result in a permanent bar from participating in the securities markets. Consequently, the orders, coupled with past Commission precedent, have caused underwriters to dramatically change their practices and make very conservative readings of "material" (i.e., to include more instances of noncompliance) when reviewing for undisclosed breaches of an issuer's prior CDAs. They would almost certainly apply the same practices in evaluating an issuer's compliance with the proposed new requirement to give event notices. Consequently, underwriters are likely to spend substantially more time than the Commission estimates in reviewing issuer records to determine the existence of financial obligations, amendments, and breaches and evaluating whether they may be material.

**4. Consequence of Ambiguity.** The same word, "material," is used in the Rule to describe both when a breach of a prior filing undertaking must be disclosed and also which events require notice filings. Since the Commission has read "material" expansively (reaching many more failures to file than market participants believe to be warranted), issuers and underwriters (and their counsel) reasonably fear that it will apply the same expansive reading to determine, *ex post facto*, whether financial obligations and related events are material. Consequently, given the ambiguity of the term, the Proposed Amendments are likely to lead issuers to implement procedures to centralize information regarding even routine financial obligations, and to file notice of the incurrence of almost every financial obligation, resulting in many additional notices of events that are not material. In addition, issuers can be expected to file complete copies of often voluminous financial obligation documents rather than attempt to prepare a summary of "material" terms, since (a) an inadequate summary of a financial obligation or amendment could expose an issuer to liability under the antifraud provisions of the securities laws, (b) a complete copy may be redacted in less time (and therefore with less expense) than it may be summarized accurately and fairly, and (c) issuers will be required to file notices within a short time frame – 10 business days.

Consequently, if the Proposed Amendments are adopted, we can expect that EMMA will be flooded with numerous filings of long documents, through which underwriters and brokers will need to wade to comply with Commission descriptions of their duties. Given the ambiguity of the term "material," the Proposed Amendments are also likely to lead underwriters to devote significantly more time looking for undisclosed failures to file notices of events that are not, in fact, material. We can expect that issuers and underwriters will take this cautious, inclusive approach unless the Proposed Amendments are revised to use, when describing the events for which issuers must commit to file notices, "plain, coherent, and unambiguous terminology" so as to be "understandable to those who are to respond."

## E. Commission Interpretation of Underwriter and Broker Requirements

To estimate the collection of information burden that would be imposed on underwriters and brokers by the Proposed Amendments, it is first necessary to understand the legal duties of underwriters and brokers, as imposed or interpreted by the Commission and the MSRB, and how those duties inform the steps that underwriters and brokers would take to comply with the new collection of information requirements.

**1. Review of Official Statement.** As noted above, underwriters participating in an offering of municipal securities must obtain, review, and distribute an official statement that describes each material breach of an issuer CDA that occurred in the prior five years. Securities Exchange Act Rule 15c2-12(b). To do this with regard to the Proposed Amendments in accordance with Commission interpretations, as explained in more detail below, underwriters would have to ascertain all of the financial obligations (or modifications of obligations specified in proposed paragraph (15)) of an issuer entered into in the prior five years, determine if any of those obligations or modifications were material and, if so, if were they reported to EMMA within 10 business days. Underwriters would have to undertake a similar exercise for the events, such as default, acceleration, modification of terms, or "other similar events," described in proposed paragraph (16) for the same period.

The Commission has stated that underwriters "must exercise reasonable care to evaluate the accuracy of statements in issuer disclosure documents." Release No. 34-26100 (September 22, 1988) at note 77. More specifically, in its 2009 release proposing the amendments to the Rule, the Commission stated that underwriters must investigate the issuer's prior compliance with its CDAs (to assure that prior material breaches are described in the official statement), and that *they may not merely rely on certifications by the issuer*:

> "As articulated in a prior interpretation, the Commission believes that it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of the issuer's or obligated person's ongoing disclosure representations, if such issuer or obligated person has a history of persistent and material breaches or if it has not remedied such past failures by the time the offering commences. The Commission believes that, if the underwriter finds that the issuer or obligated person has on multiple occasions during the previous five years, failed to provide on a timely basis continuing disclosure documents, including event notices and failure to file notices, as required in continuing disclosure agreements for prior offerings, it would be very difficult for the underwriter to make a reasonable determination that the issuer or obligated person would provide such information under a continuing disclosure agreement in connection with a subsequent offering. In the Commission's view, it is doubtful that an underwriter could meet the reasonable belief standard without the underwriter affirmatively inquiring as to that filing history. The

> underwriter's reasonable belief would be *based on its independent judgment, not solely on representations of the issuer or obligated person as to the materiality of any failure to comply with any prior undertaking*. If the underwriter finds that the issuer or obligated person has failed to provide such information, the underwriter should take that failure into account in forming its reasonable belief in the accuracy and completeness of representations made by the issuer or obligated person."

Release No. 34-60332 (July 17, 2009) (footnotes omitted, emphasis added).

In adopting the then proposed amendments, the Commission reiterated that an underwriter must check the accuracy and completeness of an official statement and that "[t]he underwriter's reasonable belief should be based on its independent judgment, not solely on representations of the issuer or obligated person as to the materiality of any failure to comply with any prior undertaking." Release No. 34-62184A (May 26, 2010) at note 351. The Commission stated that, when an underwriter cannot independently determine whether an event has occurred, it may rely on certifications of the issuer to that effect. The Commission cautioned:

> "However, as discussed above, the underwriter *may not rely solely upon the representations of an issuer or obligated person concerning the materiality of such events* or that it has, in fact, provided annual filings or event notices to the parties identified in its continuing disclosure agreements (i.e., NRMSIRs, MSRB, and State Information Depositories). Instead, an underwriter should *obtain evidence reasonably sufficient to determine whether and when such annual filings and event notices were, in fact, provided*. The underwriter therefore must *rely upon its own judgment, not solely on the representation of the issuer or obligated person, as to the materiality of any failure by the issuer or obligated person to comply with a prior undertaking*."

Release No. 34-62184A (May 26, 2010) at notes 360-62 (footnotes omitted, emphasis added).

**2. Requirements for Secondary Market Transactions.** No broker, dealer, or municipal securities dealer may sell a municipal security to a customer, or purchase a municipal security from a customer, including in a secondary market transaction, without disclosing to the customer all material information known about the transaction, as well as material information about the security that is "reasonably accessible to the market," i.e., "available publicly through established industry sources." MSRB Rule G-47. Consequently, if the Proposed Amendments are adopted, brokers will be required to obtain and review new event notices filed by the issuer of a municipal security before engaging in a secondary market transaction in the security. This requirement imposes an additional collection of information burden that would result from the Proposed Amendments. The Commission failed to acknowledge or estimate this burden.

**3. Requirements for Policies and Procedures.** Brokers, dealers, and municipal securities dealers must implement processes and procedures to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer. MSRB Rule G-47 (Supplementary Material .04). In addition, it is unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless it has implemented procedures that provide reasonable assurance that it will receive prompt notice of any event disclosed to the MSRB pursuant to a CDA. Securities Exchange Act Rule 15c2-12(c). "To comply with the rule's requirement, . . . dealers should make certain that . . . systems receive, directly or indirectly, material event notices for issues the dealer recommends. In addition, dealers should develop

procedures to ensure that notices of such events will be available to the staff responsible for making recommendations." Exchange Act Release No. 34-34961 (November 10, 1994) (following note 142). The "burden" of a collection of information requirement includes resources required "for reviewing instructions; acquiring, installing, and utilizing technology and systems; [and] adjusting the existing ways to comply with any previously applicable instructions and requirements." The Commission failed to acknowledge or estimate the resources required for underwriters to change their policies and procedures, as opposed to merely providing notice of the changes to affected employees.

## F. Additional Burdens of the Proposed Amendments

If the Proposed Amendments are adopted, they will impose annual collection of information burdens on all issuers with outstanding, possibly material financial obligations, not merely on issuers that incur, amend, or default under a financial obligation in the year. Given existing precedent, the great majority of issuers will have outstanding financial obligations that the Commission could deem material, unless the meaning of "material" as used in the Proposed Amendments is clarified and limited to avoid that result or a different standard for reporting is applied. Accordingly, unless the meaning of "materiality" is clarified and limited, (a) issuers would be burdened by time-consuming collection and reporting requirements, (b) underwriters would be obliged to employ time-consuming additional due diligence procedures in most primary offerings of municipal securities, and (c) brokers would be required to obtain and review numerous, voluminous filed documents before effecting transactions in an issuer's securities.

**1. Issuers.** If the Proposed Amendments are adopted as proposed, then issuers must (a) in their next offering of municipal securities that is not exempt from the Rule, execute a CDA that obligates them to give notice of any event described in the Proposed Amendments and (b) thereafter comply with that CDA.

To comply with any such CDA, issuers will need to establish procedures to identify and alert a responsible official of each such event. These procedures likely should (a) identify the departments or officials who may first become aware of the event, (b) establish guidelines or a process for determining when an event may be material, (c) implement reporting requirements to bring such events to the attention of the official charged with giving notices under the CDA, (d) establish a system of periodic inquiries of those described in (a) to determine whether they may have failed to recognize or report an event, and (e) add these procedures to periodic disclosure training of issuer officials and staff. They should also be designed to enable all of these steps to be taken within 10 business days after an event has occurred. Particularly since the proposed definition of "financial obligations" includes leases (even vehicle and other equipment leases) and financial hedges (e.g., fuel hedges), it is likely that purchasing, real estate, and facilities management staff, rather than financial or legal personnel, may be the first within an issuer to become aware of a potentially material event.

To determine whether an event discovered under the issuer's procedures could be material, issuers likely will need to both (a) review and stay abreast of Commission and judicial precedent and relevant industry guidelines, or seek professional (commonly outside) legal advice, to judge when such an event may be material and (b) evaluate the event in light of the precedent and guidelines. To do so, they may need to determine whether the financial obligation or amendment subjects the issuer to credit (including liquidity) or other risks, whether the risks differ from those

presented by other securities and previously disclosed to investors, the magnitude of the risks, the financial resources that are available to the issuer to deal with the risk, and whether the resulting incremental risk would be important to a reasonable investor. Importantly, issuers would be obligated to report material events that reduce risk as well as those that increase risk. Given the imprecise definition of "material" and the expansive meaning given to the term in Commission orders and releases, issuers may have tens or hundreds or, in the case of a state or large city, thousands of financial obligations to review.

To give notice of a financial obligation or revision that they have determined may be material, issuers will need either (a) to file the entire loan, lease, master, or other agreement or indenture by which it is incurred or (b) to prepare and file a summary of the financial obligation or revision. In either case, the issuer will need to identify whether it may make public disclosure of the terms of the financial obligation consistent with confidentiality agreements with the other party to the agreement, including providing any required notices and obtaining any required consents. To file the entire obligation or revision, an issuer will need to (a) first redact identifying personal or confidential information and (b) then determine whether the unredacted language makes fair disclosure of the event. To prepare a summary of the financial obligation or revision, issuers almost certainly will engage outside counsel (as they do in summarizing the legal terms of municipal securities and supporting documents to investors in primary offerings). Since loan, lease, and master agreements and indentures are commonly detailed and lengthy, preparing a summary would be a time-consuming process. Even if an issuer were inclined to incur the expense required to prepare a summary in order to reduce the review burden imposed on investors, they may not have sufficient time to do so before the proposed 10-business-day deadline for filing. Accordingly, it is likely that issuers will choose simply to upload redacted versions of their financial obligations and revisions.

To prepare a notice of a default under a financial obligation, issuers will need to carefully describe both the event and its likely or reasonably foreseeable consequences to investors.

The Commission made no estimate of the time required for issuers to take *any* of the above steps, other than filing notice of an event, once it has been identified as having occurred and as being material. The Commission's estimate of the average time required to file (2 hours) is not sufficient to cover the other steps, especially since those steps would have to be taken by the great majority of issuers, once the Proposed Amendments have been in effect for a few years, not just by those who must file event notices.

**2. Underwriters.** It is unreasonable to believe that initial underwriter compliance steps could be completed in 30 minutes, as estimated by the Commission. If the Proposed Amendments are adopted, then underwriters would have to modify their policies and procedures to assure (and preserve a record of) compliance with their resulting additional duties. To do so prudently, they would have to identify their resulting duties, develop procedures for complying with them (including means for determining appropriate review levels and materiality judgments in commonly recurring circumstances), communicate the procedures to applicable personnel, and include the procedures in periodic training. The procedures would have to address both acting as an underwriter in a primary offering and effecting a secondary market transaction as a broker or dealer.

If the Proposed Amendments are adopted, then underwriters would have to undertake significant additional actions to comply with the Commission's interpretation of their duties in primary offerings of municipal securities offerings. They likely would have to (a) obtain a list of all financial obligations (bonds, notes, leases, guarantees, derivatives, and monetary obligations from judicial, administrative, or arbitration proceedings, unless an official statement for them has been filed with the MSRB) entered into by or against each issuer in the prior five years, (b) obtain a copy of the financial obligation and the loan, lease, or master agreement or indenture by which it is evidenced or under which it is issued, (c) obtain a list and copy of each amendment, waiver, release, or other modification of any such agreement or indenture entered into in such 5-year period with respect to such financial obligations or any other financial obligations outstanding during the period, (d) review each modification to determine whether it affects securities holders, (e) review each such agreement, indenture, and modification to determine whether it is material, (f) obtain a list of any event of default or similar event under any such agreement or indenture, whether or not material, that has occurred in such 5-year period, (g) compare the information received from the issuer to its own knowledge and readily accessible sources for accuracy and completeness, (h) determine, from this work, whether the issuer should have filed notice of one or more of these events with the MSRB, (i) review EMMA to determine whether event notices were filed and, if so, whether they were filed within 10 business days of the occurrence of the event, and (j) review the event notices to determine whether they accurately and completely disclosed the events. It is unreasonable to believe that these steps may be completed in approximately *12 minutes* on average, which is the Commission's estimate of per offering burden on underwriters.

**3. Brokers.** If the Proposed Amendments are adopted, before effecting transactions in municipal securities on the secondary market, brokers will have to review additional event filings made with respect to the securities. If the issuer has filed lease, loan, or master agreements or indentures in full (albeit redacted) text, the broker will have to review relevant provisions of the filings (which may total hundreds or thousands of pages) to determine whether they present material information that the broker must disclose to its customer. The requirement that brokers obtain and review event notices filed with the MSRB is a collection of information requirement. If the Proposed Amendments are adopted as proposed, underwriters will be obligated to make issuers enter into CDAs that undertake to provide additional documents to EMMA, which in turn will increase the collection of information burden of brokers, since they will be obligated to access and review substantially more paperwork. Nevertheless, in the Proposing Release the Commission has made no estimate of the burden imposed on brokers in secondary market transactions.

## G. Prior Commission Estimates of Rule 15c2-12 Burden

In estimating collection of information burdens that would be imposed by the Proposed Amendments, the Commission has relied on estimates made by it in connection with prior amendments to the Rule. These prior estimates were roundly criticized by knowledgeable industry participants, including NABL, as described below. (Neither NABL's nor, to our knowledge, other participants' prior criticism was shared with OMB, but rather was included in comment letters sent to the Commission alone, partly because of the challenge of clearing comments quickly enough to be useful to OMB and partly out of deference to the Commission. Consequently, the prior criticisms could not have been taken into account by OMB in reacting to the Commission's prior proposed amendments to the Rule.) However, despite having been told of the gross inaccuracies of prior Commission estimates, the Commission largely relied upon and repeated them in

estimating the burden that would result from the Proposed Amendments. Consequently, NABL is submitting these Comments to OMB as well as the Commission.

The 1995 amendments to the Rule, which created the initial continuing disclosure regime for municipal securities, were promulgated before the effective date of the PRA. Consequently, the proposing release did not include any estimate of the burden of compliance. (NABL is unaware of any filing that the Commission may have made with OMB under the Federal Reports Act of 1942.) The Commission did make estimates of the collection of information burdens imposed by the existing Rule when it adopted amendments to the Rule in 2009 and 2010.

**1. 2009 Amendments.** In 2008, the Commission proposed the first amendments to the Rule that were subject to the PRA. The amendments changed the place where and medium by which information must be contracted to be provided by issuers. In the proposing release, the Commission estimated that 200 to 250 broker-dealers "potentially could serve as Participating Underwriters in an offering of municipal securities," based on data provided by the MSRB. Release No. 34-60332 (July 17, 2009). It estimated that it would take each broker-dealer an average of approximately one hour per year to comply with the proposed amendments' collection of information requirements (i.e., checking that CDAs comply with the amended Rule) and an additional half hour initially to inform its personnel of the new requirements. The Commission also estimated that it would take each issuer approximately 15 additional minutes to submit each of an estimated 15,000 annual information fillings and 60,000 event notices to the MSRB (to accommodate the new requirements for searchable formats and identifying information), bringing the average compliance time for each submission of information to 45 minutes. Release No. 34-58255 (July 30, 2008).

**2. 2010 Amendments.** In 2009, the Commission proposed amendments to the Rule that extended the continuing disclosure regime to demand securities, added to and revised the list of events of which issuers must contract to provide timely notice to the MSRB, and required event filings within 10 business days after the event. In proposing the amendments, the Commission relied upon its estimate of compliance burdens included in the 2008 proposing release. Despite adding several new events to the list of those for which an issuer must undertake to provide notice (and any material breach of which undertaking must be described in the official statement the Rule requires underwriters to receive and check), the Commission estimated that no additional burden would be imposed on underwriters as a result of these amendments to the Rule's event notice requirements. With respect to issuers, the Commission estimated that requiring notice within 10 business days after an event would not increase their collection of information burden, and that eliminating materiality qualifiers from many of the events and adding four additional events would result in an average time burden of 45 minutes per notice filed (and presumably none for issuers who do not file notices).

NABL submitted a letter commenting on these proposed amendments on September 23, 2009. In its letter, NABL observed that:

> "The Commission's estimates of costs and other regulatory impacts so greatly underestimate the likely impact of the amendments that the Commission staff should recompute and resubmit its impact estimates to the Office of Management and Budget for further review, and ideally resubmit the amendments for public comment, before the Commission considers adoption of the amendments as proposed."

As an example, NABL stated:

> Consider, for example, the proposed requirement to provide notice of rating changes within ten business days after they occur. In its release adopting the 1994 Rule amendments, the Commission noted that any determination of whether an event notice has been provided in a timely manner "must take into consideration the time needed to discover the occurrence of the event." Accordingly, many issuers and obligated persons have considered notices to be timely if provided promptly after they have ascertained that the event has occurred. Consequently, many issuers and obligated persons have not instituted procedures to ascertain whether events outside of their control and knowledge have occurred. They clearly would need to do so if the Rule were to require an undertaking to file within ten business days after the occurrence of an event, whether or not the event is known to them. In fact, if the Commission were to require an event notice within ten business days after the occurrence of the specified event, it would force conscientious issuers to undertake weekly diligence to determine whether an event that might not otherwise be known to them has occurred. In order to ensure compliance with event disclosure requirements, an issuer would have to check with each rating agency for any change in rating of the insurers of its bonds on at least a weekly basis (52 times a year), which on average (given three rating agencies, internet access for the issuer and appropriate training), one would expect to take at least 30 to 60 minutes per week (or 26 to 52 hours a year), simply to monitor for the occurrence of one of the specified events. Many issuers request that their counsel or financial advisors prepare event notices for filing (and, in some cases, determine whether an event notice should be filed). If the issuer were to outsource the due diligence efforts to determine whether listed events have occurred, its costs would be substantially higher. The Commission, on the other hand, includes in its cost estimates only 45 minutes of time per notice filing and no time to ascertain whether an event has occurred.

**3. 2014 PRA Notice.** On November 18, 2014, the Commission published a notice soliciting comments on its estimates of the collection of information burden imposed by the Rule. The notice was issued to comply with the requirements for updating its registration of the Rule under the PRA. The Notice essentially repeated estimates from earlier Rule amendment proposals, largely ignoring criticism of its estimates received in prior comments to previously proposed amendments. In response to the 2014 notice, NABL submitted comments, dated January 17, 2015, to the Commission's Chief Information Officer. In its comments, NABL observed that "the estimates of issuer and underwriter compliance times are significantly lower than actual average compliance times." NABL explained why the burden of event filing requirements on issuers was substantially understated by the Commission:

> "To comply with these filing requirements, issuers must establish and operate verification and reporting mechanisms to ascertain whether a reportable event has occurred. Since events must be reported within 10 business days of occurrence (not discovery), Rule 15c2-12 forces issuers to search frequently for information that may not be readily known to them. Many issuers will spend a substantial amount of time to monitor for the occurrence of events that might require consideration for disclosure so that, even in years in which no event occurs, an issuer will be devoting significant time to ensure compliance with the event notice requirement. If an event occurs and is discovered, issuers then have to determine whether the event is material (if the filing requirement is conditioned on materiality) and will have to describe the event in a way that is accurate, is not misleading, and does not make the event seem more or less alarming to investors than it should. As noted above, making these determinations and crafting these descriptions involves reviews by various officers and, often, outside counsel. Consequently, in NABL's experience, an estimate that issuers spend an average of 45 minutes per reported event in complying with their event filing requirements is a substantial underestimation."

NABL also explained why the burden of event filing requirements on underwriters was substantially understated by the Commission:

> "To comply with their duties to receive an official statement with disclosure of prior noncompliance, the SEC has said (in its 2010 release adopting amendments to Rule 15c2-12) that underwriters must make a reasonable investigation into whether, over the five years preceding each offering, events occurred that might require a notice and whether required annual reports and event notices were filed in a timely manner. Consequently, to comply with Rule 15c2-12's requirement to receive a qualifying official statement, underwriters must spend substantial "due diligence" time that they would not otherwise be required if Rule 15c2-12 did not require continuing disclosure undertakings or disclosure of past noncompliance. The November 2014 notice estimates total compliance time of 300 hours for all underwriters. According to the MSRB, there were more that 12,000 new issues of municipal securities last year. Assuming that 10,000 were primary offerings subject to Rule 15c2-12, the November 2014 notice estimates that underwriters can comply in less than two minutes per issue. That estimate is clearly inadequate."

## H. Reasonable Estimates of Burden

To check the Commission's estimates of the collection of information burdens that would result from the Proposed Amendments, NABL invited its members to complete and return the attached questionnaire (see Exhibit A). NABL members represent both issuers and underwriters when they establish disclosure procedures and make disclosures to investors in primary offerings and under CDAs. Accordingly, they are knowledgeable about the time that would be required to perform the obligations of issuers and underwriters under the Proposed Amendments, should they be adopted. More than 70 members responded. The mean and median averages of the compliance times that the responders estimated are set forth in the attached questionnaire.

Based in part on the NABL survey responses, as well as the experience of NABL members who participated in the preparation of these Comments, NABL estimates annual collection of information burdens (after phase-in of the Proposed Amendments but without regard to initial set-up costs) that would result from the Proposed Amendments (as well as differences from the Commission's estimates) as follows:

**ESTIMATED COMPLIANCE TIMES**

| | NABL Estimate | Commission Estimate | Difference |
|---|---|---|---|
| **Issuer annual compliance burden (in hours):** | | | |
| Monitor for and elevate possibly reportable events (NABL: 34,696 issuers[2] x 25 hrs.) | 867,400 | N/A | N/A |
| Evaluate possibly reportable events (NABL: 34,696 issuers x 50% x 10 hr.) | 173,480 | N/A | N/A |
| Prepare and file notice of financial obligations (NABL: 34,696 issuers x 25% x 3 notices x 4.2 hrs.[3]) (assumes redacted versions filed) | 109,292 | N/A | N/A |
| Prepare and file notice of financial obligation default or acceleration (NABL: 100 notices x 5.3 hrs.[4]) | 530 | N/A | N/A |
| Subtotal | 1,150,702 | 4,000 | 287x |
| **Underwriters' Compliance Burden (in hours):** | | | |
| Perform diligence for possible undisclosed material breaches (NABL: 14,314 issues[5] x 23.4 hrs.[6]) | 334,948 | 2,500 | 134x |
| **Brokers' Compliance Burdens (in hours):** | | | |
| (NABL: 9,358,046[7] transactions x 76%[8] x 2 hrs.[9]) | 14,224,229 | N/A | N/A |
| Total | 15,709,879 | 6,500 | 2,417x |

While neither responses to NABL's questionnaire nor the above estimates are the product of a statistically supported review, the great disparity between NABL's estimates and those made by the Commission do suggest, at a minimum, that the Commission's estimates be redone to comply with the PRA.

[2] Based on annual audited financial statements or CAFRs filed with EMMA in 2016. MSRB 2016 Fact Book.

[3] Mean response to Q.7 of attached NABL questionnaire. See also mean response to Q.5.

[4] Mean response to Q.8 of attached NABL questionnaire.

[5] Based on number or primary market submissions to EMMA in 2016. MSRB 2016 Fact Book.

[6] Mean response to Q.9 of attached NABL questionnaire.

[7] Based on total number of reported municipal securities trades in 2016. MSRB 2016 Fact Book.

[8] Mean response to Q.3 of attached NABL questionnaire. See also the mean response to Q.4.

[9] *See* the mean response to Q.4 of the attached NABL questionnaire, which estimates that the redacted financial obligations to be reviewed would average 39 pages in length.

## I. Requested Action

The PRA was enacted, among other reasons, to "minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government" and to "strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government." 44 U.S.C. § 3501. Municipal securities are the principal source of funds for public infrastructure in the U.S. It is widely recognized, including by the President, that substantially greater investment in U.S. public infrastructure is needed. The Proposed Amendments would substantially increase the collection of information burdens imposed on State, local, and tribal governments, which in turn would decrease their resources available to invest in infrastructure. Accordingly, especially given the purpose of the PRA, the Proposed Amendments should be subject to strict scrutiny under the PRA.

Moreover, "It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." Executive Order, Reducing Regulation and Controlling Regulatory Costs, January 30, 2017 (the "*Executive Order*"). While, due to the Commission's statutory independence, the Executive Order may not be binding on the Commission, it should give direction to OMB in discharging its duties with respect to the Proposed Amendments under the PRA.

OMB should require the Commission to comply scrupulously with the requirements of the PRA in considering the Proposed Amendments, especially since the Proposed Amendments require the collection of information from State, local, and tribal governments and the PRA is intended to minimize the paperwork burden imposed on them by the federal government.

For these reasons and the other reasons stated above, NABL respectfully requests that the Director of OMB:

1. **Comments:** file comments on the Proposed Amendments with the Commission to the effect that (a) the Proposed Amendments impose ambiguous and overly burdensome collection of information requirements, and (b) the Commission's estimates of the burden of these requirements are not adequately supported and should be reassessed in light of current market practice; and

2. **Disapproval:** disapprove the collection of information contained in the Proposed Amendments unless the Commission (a) revises the Proposed Amendments to draw clear lines that eliminate any obligation to provide or collect information that is not sufficiently important to investors to warrant burdens that can reasonably be expected to result and (b) makes careful, well-informed, and rigorous cost estimates in evaluating the complete resulting benefits and burdens in light of current market practice.

**EXHIBIT A**

**NATIONAL ASSOCIATION OF BOND LAWYERS**

**COMPLIANCE BURDENS OF PROPOSED SEC RULE 15c2-12 AMENDMENTS**

**N=72**

**Baseline Information**

1. Of the municipal debt sales and derivative transactions in which you participated in the last year, what percentage were privately placed without providing an official statement to the MSRB? **29% (mean); 20% (median)**

2. Of the issuers for whom you participated in municipal securities offerings in the last year, what percentage had outstanding "financial obligations," determined *without* regard to their materiality, e.g., school bus leases, fuel hedges, etc.? **87% (mean); 100% (median)**

3. Of the issuers for whom you participated in municipal securities offerings in the last year, what percentage have outstanding "financial obligations" that you believe the SEC might determine to be material, e.g., as evidenced by its materiality conclusions in MCDC consent orders? **76% (mean); 90% (median)**

4. Of the "financial obligations" described in question 3, what is the average length of the financial obligation or the agreement under which it was issued or incurred, e.g., loan agreement, lease agreement, ISDA master agreement and schedule, etc.? **39 pages (mean); 30 pages (median)**

**Issuer Compliance Burden**

5. If asked to prepare a summary (accurate and complete in all material respects) of a financial obligation described in question 3, on average how many hours would be required to comply? **6.7 hrs. (mean); 4 hrs. (median)**

6. If asked to prepare a summary (accurate and complete in all material respects) of an amendment, waiver, or other modification of a financial obligation described in question 3, on average how many hours would be required to comply? **3.8 hrs. (mean); 2 hrs. (median)**

7. If asked to prepare a redacted copy of a financial obligation described in question 3 for filing with EMMA, on average how many hours would be required to comply, including by obtaining any required permission to file unredacted information from another party to the financial obligation? **4.2 hrs. (mean); 3 hrs. (median)**

8. If asked to prepare a summary (accurate and complete in all material respects) of a default, acceleration, or similar event occurring with respect to a financial obligation described in question 3, on average how many hours would be required to comply? **5.3 hrs. (mean); 3 hrs. (median)**

**Underwriter Compliance Burden**

9. If asked to assist an underwriter in determining whether an official statement discloses all material breaches of an issuer's CDA undertaking to give timely notice of the events described in paragraphs (15) and (16), on average for the "financial obligations " described in question 3, how many hours would be required to:

- obtain a list of all “financial obligations” of the issuer,
- obtain a copy of each such financial obligation entered into in the last 5 years and the loan, lease, or master agreement or indenture by which it is evidenced or under which it was issued,
- obtain a list and copy of each amendment, waiver, release, or other modification of any such agreement or indenture entered into in such 5-year period with respect to such financial obligations or any others that were outstanding during the 5-year period,
- review each modification to determine whether it affects securities holders,
- review each such agreement, indenture, and modification to determine whether it is material,
- obtain a list of any event of default or similar event under any such agreement or indenture, whether or not material, that has occurred in such 5-year period,
- determine whether any such event was material,
- from this work, determine whether the issuer should have filed notice of one or more of these events with the MSRB,
- review EMMA to determine whether event notices were filed and, if so, when, and
- review each event notice to determine whether it adequately disclosed the event?

**23.4 hrs. (mean); 20 hrs. (median)**

**EXHIBIT B**

## MEMBERS OF NABL AD HOC TASK FORCE


**Fredric A. Weber**
Norton Rose Fulbright US LLP
1301 McKinney St., Suite 5100
Houston, TX 77010-3095
Telephone: [redacted]
Email: [redacted]

**Kenneth R. Artin**
Bryant Miller Olive P.A.
255 S Orange Ave., Suite 1350
Orlando, FL 32801-3445
Telephone: [redacted]
Email: [redacted]

**Stacey Crawshaw-Lewis**
Pacifica Law Group LLP
1191 2nd Ave., Suite 2000
Seattle, WA 98101-3404
Telephone: [redacted]
Email: [redacted]

**Daniel M. Deaton**
Nixon Peabody LLP
300 S Grand Ave., Suite 4100
Los Angeles, CA 90071-3151
Telephone: [redacted]
Email: [redacted]

**Clifford M. Gerber**
Norton Rose Fulbright US LLP
555 California St., Suite 3300
San Francisco, CA 94104-1609
Telephone: [redacted]
Email: [redacted]

**Teri M. Guarnaccia**
Ballard Spahr LLP
300 E Lombard St., Floor 18
Baltimore, MD 21202-3268
Telephone: [redacted]
Email: [redacted]

**Alexandra M. MacLennan**
Squire Patton Boggs (US) LLP
201 N Franklin St., Suite 2100
Tampa, FL 33602-5813
Telephone: [redacted]
Email: [redacted]

**Carol J. McCoog**
Hawkins Delafield & Wood LLP
200 SW Market St., Suite 350
Portland, OR 97201-5753
Telephone: [redacted]
Email: [redacted]

**Glenn E. Weinstein**
Pugh, Jones & Johnson, P.C.
180 N La Salle St., Suite 3400
Chicago, IL 60601-2807
Telephone: [redacted]
Email: [redacted]