May 15, 2017

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

Re: File No. S7-01-17

Dear Secretary Fields,

The National Association of State Treasurers (NAST) appreciates the opportunity to comment on the proposed amendments to the Securities and Exchange Commission (SEC) Municipal Securities Disclosure Rule 15c2-12 (Rule).

NAST encourages and promotes the frequent and timely disclosure of information to the municipal securities market. To this end, NAST is prepared to work with the SEC and other organizations to better define what financial, operating and other information is relevant and useful to the market, recognizing the significant differences of issuers by size, sector and frequency of issuance. However, NAST is opposed to the proposed amendments and the basis for opposition are noted below.

Background

The proposed amendments to the Rule would amend the list of event notices that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities subject to the Rule must reasonably determine that an issuer or obligated person has undertaken, in a written agreement for the benefit of holders of municipal securities, to provide to the Municipal Securities Rulemaking Board (MSRB) within ten business days of the event's occurrence.

Specifically, the proposed amendments would add two new events to the list included in the Rule:

- Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The proposed amendments also would set forth a definition for the term "financial obligation."

Points of Opposition

- **Overly broad definition of "financial obligations."** While we believe that enhanced and uniform disclosure related to *bank loan debt* would be beneficial for issuers and investors, the proposed rule contains an overly broad definition of "financial obligations," which includes not only direct placements and swap agreements, but also lease agreements, guarantees, judgments, and management and service agreements *determined to be material*. For many issuers, such financial obligations are nominal in size, infrequent in occurrence, and very difficult to track across multiple state agencies which tend to maintain high degrees of autonomy. Further, many such financial obligations are reported in issuers' Consolidated Annual Financial Reports (CAFRs) with the degree of frequency commensurate with their relevance to investors. NAST understands that improved disclosure of bank loans, per se, is of critical priority to investors, and therefore supports amendments to the Rule that are focused on achieving this end.
- **Lack of SEC guidance on standards for determining "materiality" would create an excess of disclosure and dislocations in the debt issuance process.** Heretofore, the SEC has not provided a standard for the determination of an event's "materiality," which imposes an excessive degree of ambiguity upon issuers and underwriters. The natural response that issuers and obligated persons will have to such ambiguity under the proposed amendments is to "hyper-disclose," imposing upon the investor community an avalanche of information *that ultimately serves to reduce, not improve transparency*. When issuing bonds, states would face a daunting and costly task of trying to satisfactorily prove compliance with the proposed amendments to underwriters. Unlike the current list of reportable events under Rule 15c2-12 (which are distinct and relatively straightforward to prove or disprove), a state could have thousands of financial obligations or agreements which could impact its compliance with the broad language of the proposed amendments. The proposed amendments would require that, in many cases, issuers provide a voluminous amount of information to underwriters to reasonably prove compliance, resulting in frequent discrepancies between issuer and underwriter (and even among different underwriters) in establishing consensus around that which constitutes "material financial obligations," amendments, or events which reflect financial difficulties. This could create unnecessary impediments, delays, and costs to states working to access the public municipal debt market.
- **Difficulties and costs that states would bear in their attempts to monitor their various agencies for the occurrences of events outlined within the proposed**

amendments far outweigh any benefits the market might realize from the proposed amendments, and estimates of the costs associated with the recommended changes to the Rule vastly understate the actual costs states will incur. States are divided into different branches, departments, agencies and offices that have varying degrees of autonomy to enter into financial obligations and agreements. Generally, internal reporting of financial obligations may not be required until the information is needed to prepare a state's annual financial statement or comprehensive annual financial report (CAFR), and may only include the financial terms of the financial obligation, not descriptive details of the covenants, events of default, remedies, priority rights, or other similar terms. States will be required to commit substantial time and resources in order to provide the required notices within 10 business days as recommended. In order to report the incurrence of a financial obligation or an agreement, a minimum of weekly reporting by each branch, department, agency or office would be required. Additional review of each filed financial obligation or agreement would be required by some central group within the state to determine whether the financial obligation or agreement is material and which terms should be disclosed. This may require additional coordination with the originating branch, department, agency or office, the counterparty to such financial obligation or agreement, and the state's counsel to determine what, if anything, must be redacted prior to submission. This must all occur on an expedited basis to ensure that event notices can be filed in compliance with the 10 business day requirement. Significant incremental legal expenses would likely be incurred, as states will feel compelled to contract with outside counsel to assist in making determinations of "materiality." These processes would impose profoundly unnecessary administrative burdens and costs on states, *while failing to provide investors with a substantial benefit*.

Given the expedited nature of the filing requirements put forth in the proposed amendments and the potential for differences of opinion on that which is "material," it is likely, should the proposed amendments take effect, that states will commonly forego the process of determining materiality of financial obligations or agreements and will simply "file everything." Immaterial notices may flood EMMA due to the overreaching breadth of the proposed amendments and the overriding desire states will have to ensure their compliance with them. This deluge of information would likely dilute the effectiveness of disclosures in general, as investors will be confronted with too much information, and it will become increasingly *difficult for investors to determine which information is actually material*. Investors will be less able or willing to review all disclosures and will therefore be more prone to overlooking information which is truly material, while coping with the distraction created by excessive disclosure of information, much of which is *effectively immaterial.* This serves to *undermine, not support* the underlying purpose of Rule 15c2-12.

We appreciate this opportunity to offer our concerns and views on this proposal. Thank you for considering our response.

Sincerely,

NAST President
Treasurer, State of Oklahoma