

**NATIONAL ASSOCIATION OF BOND LAWYERS  
BOARD OF DIRECTORS MEETING  
May 12-13, 2011**

The Board of Directors of the National Association of Bond Lawyers (NABL) met on May 12-13, 2011 in the Galeria Room at the La Valencia Hotel in La Jolla, California.

Those present at the meeting were:

**Present**

John M. McNally	Kristin H. R. Franceschi
Kathleen C. McKinney (by phone)	Scott R. Lilienthal
Antonio D. Martini	Michael L. Spain
Kenneth R. Artin	Brenda S. Horn
Faith Li Pettis	Kimberly A. Casey
Allen Robertson	Clifford Gerber

Director of Governmental Affairs Victoria P. Rostow and Chief Operating Officer Linda Wyman were present by invitation.

**1. Call to Order; Conflict of Interest Disclosure; Approval of Minutes**

President John M. McNally called the meeting to order at 10:00 a.m. PDT on May 12, 2011, and asked if any member had any conflict of interest to disclose as required by the Board's conflict of interest policy. No Board member responded affirmatively. Minutes from NABL's Board of Directors meeting held on March 2, 2011 were approved by consensus, subject to corrections provided at the meeting.

**2. Report on Nominating Committee**

President McNally reported briefly on the schedule for NABL's 2011 Nominating Committee, which will be convening in August. President McNally noted that, as provided in NABL's bylaws, Immediate Past President McKinney would be chairing the 2011 Nominating Committee and that he would be serving on the committee as Vice Chair. President McNally stated that he would circulate to the Board the rosters for past Nominating Committees, with a view to approving the three remaining members of the 2011 Nominating Committee at the NABL Board meeting in July.

**3. NAHEFFA Request**

Immediate Past President McKinney reported on a request from the National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) that NABL send a representative to its strategy meeting in Chicago in June. After a brief discussion, the Board agreed that Brenda Horn should represent NABL at the meeting.

#### **4. Report of the Director of Governmental Affairs**

Director of Governmental Affairs Rostow reported on various legislative and regulatory initiatives and topics, including pension reform (such as the Public Pension Transparency Act proposal that is pending in Congress), prospects for the resurrection of direct-pay bonds, “traditional” tax credit bond proposals (such as the Wyden-Coates bill, also pending in Congress), the covered bonds proposal relating housing market reform, and other broad-based tax reform topics. She also noted that the Congressional Budget Office has released a report advocating a 15% direct-pay subsidy for state and local bonds in lieu of tax exemption as a way to save \$143 billion over ten years. In addition, Director of Governmental Affairs Rostow led a discussion of a draft of a chart summarizing significant proposals and reports relating to tax reform that would affect tax-exempt financing. The Board expressed its sense that the summary chart should be made available to NABL’s members and that other means of updating the membership on tax reform developments should be explored, including through website postings and webinars.

#### **5. Finance Committee**

**a. Discussion with McGladrey.** Treasurer Scott Lilienthal introduced Bill O’Brien and Andy Rooney of McGladrey, who joined the meeting by phone to lead a discussion of NABL’s audited financial statements for 2010. The McGladrey representatives noted that they had delivered a clean, unqualified opinion in connection with NABL’s 2010 financials, as expected. Other matters relating to NABL’s financial statements, including the methodology for recognizing liabilities associated with the Chicago office lease in NABL’s 2011 financials, also were discussed. The Board also engaged in a brief discussion with O’Brien and Rooney about NABL’s draft IRS Form 990 return for 2010.

**b. Investment Performance Review and Investment Policy Revisions.** After the McGladrey representatives signed off, Treasurer Lilienthal led a discussion of Olcott’s Quarterly Investment Review for the quarter ended March 31, 2011. He noted that investment performance for the quarter was generally ahead of the relevant benchmarks. Treasurer Lilienthal next described the proposals of the Finance Committee (i) to consolidate NABL’s Capital and Special Projects Reserve into the Surplus Fund and (ii) to grant limited discretionary authority to Orion (Olcott’s affiliate, which was selected to serve as NABL’s investment advisor after an RFP process conducted by the Finance Committee earlier in 2011) to redirect investments within NABL’s Catastrophe Reserve and Surplus Fund, all as reflected in the draft revisions to NABL’s Investment and Spending Policy, which were circulated to the Board in advance of the meeting. After discussion, the Finance Committee’s recommendation that the Board approve the draft revisions to NABL’s Investment and Spending Policy in order to accomplish the ends described above was approved by the Board by unanimous consent.

**c. Year-to-Date Budget Performance.** Finally, Treasurer Lilienthal led a discussion of NABL’s year-to-date budget performance. The Board noted, among other things, that the office consolidation project will make 2011 an atypical year in terms of budget, because certain expenses, such as retention bonuses and severance payments, will be front-loaded as a result of the consolidation. In the course of the discussion, President McNally tasked the Education Committee with a review of reimbursement policies for all of NABL’s educational seminars,

with a view to enhancing the efficient management of costs for seminar-related activities, such as the Bond Attorneys' Workshop Steering Committee meeting.

## **6. Pension Disclosure Project Update**

President McNally described the process drafting and vetting for NABL's *Considerations in Preparing Defined Benefit Pension Plan Disclosure for Official Statements*, released on May 2, which provides an descriptive overview of GASB guidelines and significant recent precedents and examples of robust pension disclosure, such as those produced by the City of San Diego, the State of New Jersey and the State of Illinois. President McNally noted that he met with Elise Walter and SEC staff to introduce the piece to them. He then described the next steps for the pension disclosure project, including the scheduling of a roundtable meeting in June with all of the major stakeholder groups, and the path to the ultimate aim of the project, which is to produce, around the end of 2011, a final disclosure piece, which would build on the descriptive material in *Considerations*, provide substantive guidance on the subject and reflect a broad industry consensus.

## **7. Securities Law Committee**

Board liaison Ken Artin reported briefly on the Securities Law Committee's activities, apart from the pension disclosure project. He noted that the Securities Law Committee is considering a submission soliciting updated SEC guidance relative to the 1994 Interpretive Release on continuing disclosure to clarify (i) whether and to what extent the remarketing of instruments such as variable rate demand obligations (VRDOs) constitutes a "primary offering" giving rise to new or different continuing disclosure obligations for issuers and (ii) the treatment under the 10b-5 standard of unaudited financial statements posted by an issuer on an interim basis to an electronic municipal disclosure system such as EMMA. He also noted that the Committee has begun a project to provide guidance on disclosure for VRDOs and associated interest rate hedging instruments.

## **8. *The Function and Professional Responsibilities of Bond Counsel***

Board member Allen Robertson led a discussion of the latest, revamped draft of the third edition of NABL's *The Function and Professional Responsibilities of Bond Counsel*. He solicited comments on the draft from Board members following the meeting and advised that an updated draft would be available for review at the July Board meeting. He noted that his goal is to have a final version of the third edition ready for circulation to NABL's members in September, in advance of Bond Attorneys' Workshop.

## **9. Report of the Chief Operating Officer**

Chief Operating Officer Wyman submitted a request to the Board for one additional office space within the Washington DC office to serve as a workroom. After discussion, a motion to delegate to the Executive Committee the authority to approve a second amendment to the sublease for the Washington DC office was made, seconded and approved by the NABL Board by unanimous consent. COO Wyman also reported that NABL's new, dedicated phone lines are expected to be operational later in May. She then gave a brief update on efforts to

secure a sublease for the Chicago office. Finally, she noted that the Board must decide soon on the 2013 venues for the Tax and Securities Law Institute and the Fundamentals Seminar (TSLI).

## **10. Municipal Law Committee**

Board liaison Casey reported that a draft of the municipal bankruptcy primer is expected to be delivered on May 10 and that her goal is to have the primer ready for final review and approval by the Board at the July meeting. In addition, she reported that Municipal Law Committee members would be commissioned to review NABL's prior submissions on the subjects of bond lawyer pay-to-play and issuer selection of underwriter's counsel, with a view to determining whether additional Municipal Law Committee efforts on these topics are warranted at this point. Board liaison Casey also noted an issuer's counsel opinion project is getting underway, with the team currently focused on a survey of forms of opinion in use in the market. Finally, she confirmed that the idea of an interactive swaps forum is not being pursued at this point, though it had been discussed previously, because of the scarcity of new swaps transactions in the market.

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Following the Municipal Law Committee discussion, the Board adjourned for the day at 5:11 p.m. PDT on May 12, 2011. The Board reconvened the following morning, at 9:10 a.m. PDT on May 13, 2011.

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## **11. Tax Law Committee**

Board liaison Cliff Gerber reported on the status of various projects and initiatives of the Tax Law Committee, including (i) a pending project to submit a request to the IRS for priority guidance pursuant to Notice 2011-39, (ii) consideration of a supplemental submission on IRS Notice 2010-81, relating to the timing of issuance and "draw-downs" of state and local bonds, including Build America Bonds, and the implication of these transaction for allocations of private activity volume cap, (iii) the near-completion of comments to Treasury and IRS on the issue of the merger of interests with respect to (*i.e.*, the "extinguishment" of) Build America Bonds and other direct-pay obligations, (iv) the drafting of legislation authorizing Treasury to prescribe rules for the refunding of Build America Bonds and other direct-pay obligations, (v) the management contract update project and (vi) various other projects, including a project to request guidance from Treasury and IRS under the private activity bond rules for clinical trial arrangements at research facilities, hospitals and other health care institutions. Board liaison Gerber also reported on the impending release by the ACT committee of its 2011 report, which will address the role of conduit bond issuers in tax compliance.

## **12. Bond Attorneys' Workshop**

Bond Attorneys' Workshop Chair Faith Li Pettis reported that the Steering Committee's planning meetings for the Workshop were held in Las Vegas on March 20-21, 2011 and were very successful. She stated that the sense of the Steering Committee is that substantial improvements are required in several areas, including the formatting of the General Session, the

choice of a keynote speaker and the program book for the Workshop. She also described the discussions at the Steering Committee that focused on improving presentation/delivery styles in order to be responsive to survey comments from the 2010 Workshop and generally to improve the quality of the educational experience for attendees. She noted that the 2011 Workshop would continue with, and expand, the “two-tracking” approach for various panels, which would permit attendees to choose between introductory- and advanced-level panel presentations. Chair Pettis next described the ongoing process for formatting Thursday lunch at the Workshop, noting that the free lunch is likely to be offered again, although gift cards probably would not be provided. She then turned to various curriculum-related topics, including the addition of a tax reform panel to discuss pending proposals for tax law changes that may affect state and local bond financing and the possibility of offering “mini” general sessions on pension disclosure and tax law oral history, for which the Board expressed support. The Board also expressed support for Chair Pettis’ proposal to use a portion of NABL’s diversity budget to pay for a suite at the Workshop to host a diversity reception. A motion to delegate to Chair Pettis and President McNally the authority to determine what amount to allocate from the diversity budget for the diversity reception at the Workshop was made, seconded and approved by the NABL Board by unanimous consent.

### **13. *The Bond Lawyer***

Dean Pope and Julianna Ebert joined the Board by phone to discuss the editorial development of *The Bond Lawyer* in the past and its current direction as editorial responsibility for the journal passes from Ms. Ebert to Mr. Pope. A key focus of the discussion was to consider ways to ensure that the journal is consistently published on a regular schedule in the future, with content that is timely and useful for NABL members, though the Board recognized that these goals can sometimes be in tension. President McNally stated that he is comfortable delegating to Mr. Pope the editorial discretion to decide how best to achieve these goals. The Board noted that NABL’s communications specialist, Beth Walkos, should be ready to assist with production of *The Bond Lawyer*, and President McNally stated that he would follow up with Mr. Pope to further discuss the editorial direction of the journal.

### **14. *Education Committee***

Board liaison Michael Spain provided a report on the results of the 2011 TSLI. He recommended that Mike Botelho, TSLI’s 2011 Vice Chair, be named Chair for 2012, and the Board unanimously agreed. The selection of a 2012 Vice Chair for TSLI was deferred for discussion until a later date. Board liaison Spain next discussed the concept of holding a one-day seminar in Washington DC early next year as a way to respond to the budget-related travel restrictions that are currently being imposed on staff of the federal agencies. Board liaison Spain indicated that the Education Committee’s tentative thinking is that the seminar could be presented as a teleconference in 2012 and possibly as an in-person event in 2013. He next reported the Education Committee’s recommendation that Rich Moore of Orrick Herrington & Sutcliffe in San Francisco be named as Chair of Bond Attorneys’ Workshop for 2012 and that Sara Davis Buss of Campbell & Levine in Pittsburgh be named Second Vice-Chair for the Workshop in 2012. After discussion, a motion to name Rich Moore Chair of Bond Attorneys’ Workshop for 2012 and to name Sara Davis Buss Second Vice-Chair for the Workshop in 2012 was made, seconded and approved by the NABL Board by unanimous consent. Board liaison

Spain then reported that the Education Committee is recommending that Chicago be added to the roster of cities (together with Orlando and Atlanta) in which the Fundamentals Seminar will be held in the future, and the Board unanimously approved the recommendation. Finally, Board liaison Spain reported on the Education Committee's recent reappraisal of the peer review process for education materials presented at NABL's seminars and noted the recommendations made by the Education Committee on pages 8-10 of the May 3, 2011 memorandum circulated to the Board on the subject. After discussion, a motion to approve a bi-annual review process for materials in the Fundamentals Book, as described in the May 3 memorandum, was made, seconded and approved by the NABL Board by unanimous consent. The Board tabled for later discussion the other peer review recommendations set out in the May 3 memorandum.

**15. Section 103 Editorial Committee**

Secretary Antonio Martini made a brief report on the status of the replacement project for the first four volumes of *Federal Taxation of Municipal Bonds*, noting that the editors have recently commenced work on the project, which is expected to be released in Fall 2012.

**16. Revisions to Procedures for NABL Written Submissions**

Secretary Martini led a brief discussion of proposed changes to the Procedures for NABL Written Submissions, which were circulated to the Board in advance of the meeting. After discussion, a motion to adopt the proposed changes was made, seconded and approved by the NABL Board by unanimous consent. A copy of the Procedures as approved, is attached hereto.

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There being no other business, the meeting was adjourned at 11:50 a.m. PDT on May 13, 2011.

Respectfully submitted,

Antonio D. Martini  
Secretary