



**National Association  
of Bond Lawyers**

PHONE 202-682-1498 601 Thirteenth Street, N.W.  
FAX 202-637-0217 Suite 800 South  
www.nabl.org Washington, D.C. 20005

September 22, 2008

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**WILLIAM A. HOLBY**  
Atlanta, GA

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Baltimore, MD

Ms. Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-1090

Re: **SEC Release No. 34-58255; File No. S7-21-08**  
**NABL Comments on Proposed Amendment to Municipal Securities  
Disclosure**

*Directors:*

**BRENDA S. HORN**  
Indianapolis, IN

**SCOTT R. LILIENTHAL**  
Washington, DC

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San Francisco, CA

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Spokane, WA

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Charlotte, N.C.

**CHARLES P. SHIMER**  
Richmond, VA

**MICHAEL L. SPAIN**  
San Antonio, TX

*Immediate Past President*  
**J. FOSTER CLARK**  
Birmingham, AL

Dear Ms. Harmon:

The National Association of Bond Lawyers (“NABL”) respectfully submits the enclosed response to the Securities and Exchange Commission’s (“SEC”) solicitation of comments relating to the SEC Release No. 34-58255, dated July 30, 2008. The comments were prepared by an *ad hoc* subcommittee of NABL’s Securities Law and Disclosure Committee, as listed in Exhibit I.

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Chicago.

If you have any questions concerning the comments, please feel free to contact me at 404/572-4663 (bholby@kslaw.com) or the NABL Governmental Affairs office at 202/682-1498 ([governmentalaffairs@nabl.org](mailto:governmentalaffairs@nabl.org)).

Thank you in advance for your consideration of these comments.

Sincerely,

William A. Holby

Enclosures

*Executive Director*  
**KENNETH J. LUURS**  
230 West Monroe Street  
Suite 320  
Chicago, IL 60606-4715  
Phone 312-648-9590  
Fax 312-648-9588

cc: *Ad hoc* subcommittee, NABL Securities Law and Disclosure Committee



# National Association of Bond Lawyers

**COMMENTS  
OF THE  
NATIONAL ASSOCIATION OF BOND LAWYERS  
REGARDING  
SECURITIES AND EXCHANGE COMMISSION RELEASE NO. 34-58255  
  
PROPOSED AMENDMENT TO MUNICIPAL SECURITIES DISCLOSURE**

The following comments are submitted to the United States Securities and Exchange Commission (the “SEC” or the “Commission”) on behalf of the National Association of Bond Lawyers (“NABL”) relating to SEC Release No. 34-58255—Proposed Amendment to Municipal Securities Disclosure (the “Release”). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL welcomes this opportunity to respond to the Commission’s proposed amendments to Rule 15c2-12 (the “Rule” or “Rule 15c2-12”) under the Securities Exchange Act of 1934 relating to municipal securities disclosure. NABL’s comments are focused on those particular questions to which NABL believes it has relevant expertise.

**1. Transition to Revised Rule 15c2-12.**

The Commission requests comments in numerous places on how best to effect transition from the current Rule 15c2-12 to the revised Rule 15c2-12 (assuming the proposed amendments are adopted). Under the current Rule 15c2-12, issuers and obligated persons (collectively, “issuers”) in non-exempt offerings agree to make continuing disclosure filings with each of the existing nationally recognized municipal securities information repositories (the “NRMSIRs”) and any applicable state information depository (the “SIDs”). In some instances, issuers may make filings with the Municipal Securities Rulemaking Board (the “MSRB”).

Under the revised Rule 15c2-12, issuers would make all continuing disclosure filings with the MSRB. This transition would be effected by eliminating references in Rule 15c2-12 to the NRMSIRs and SIDs and substituting references to the MSRB. In addition, to transition existing undertakings from multiple repositories to a single repository, the Commission is considering whether to direct its staff to withdraw the “no action” letters issued to the NRMSIRs and to designate the MSRB as the sole NRMSIR.

NABL supports the Commission’s goal of allowing issuers to make filings at a single repository<sup>1</sup>, but NABL suggests the following additional changes to the Rule to facilitate this transition. NABL understands that undertakings made under the existing Rule do not require issuers to make their continuing disclosure filings in electronic format or in the manner prescribed by the MSRB. (Of course there is nothing in such undertakings that would prohibit issuers from making their filings electronically.) NABL also understands that the MSRB does not expect to accept continuing disclosure filings in “paper” (that is, non-electronic) format.

To ensure that issuers make filings with the MSRB under continuing disclosure undertakings entered into prior to the amendments to Rule 15c2-12 contemplated by the Release, the Commission could take two actions. First, the Commission could require that any continuing disclosure undertaking

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<sup>1</sup> For certain issuers, filings would still be required to be made, pursuant to state law, with the appropriate SID.

made pursuant to the revised Rule provide that, from the date of such undertaking, issuers make filings with the MSRB electronically with respect to the new undertaking and all undertakings previously entered into by such issuers. Second, the Commission also could issue an interpretive letter stating that an issuer that chooses to satisfy an existing undertaking (that is, one that requires annual filings be made to the NRMSIRs as opposed to the MSRB) by transmitting filings to the MSRB is acting in a manner consistent with the intent of Rule 15c2-12. The Commission issued a similar interpretive letter on September 7, 2004, to facilitate establishment of the Municipal Advisory Council of Texas's DisclosureUSA filing system.

## **2. Revision of the Small Issuer Exemption.**

The Commission's proposed amendments to Rule 15c2-12 have the practical effect of repealing the Rule's exemption to the annual filing requirement specified in paragraph (d)(2) of Rule 15c2-12 (the so-called "small issuer exemption"). The proposed amendments require that issuers described by Rule 15c2-12(d)(2) file annually "that financial information and operating data which is customarily prepared by such obligated person and is publicly available". For issuers subject to public disclosure laws (that is, "sunshine" laws), the amount of publicly available financial information and operating data may exceed that which would be included in an official statement (and thus subject to disclosure under Rule 15c2-12(b)(5)).

At NABL's 2008 Bond Attorneys' Workshop, numerous NABL members indicated that their issuer clients frequently make use of the small issuer exemption. These members indicated that issuers making use of the small issuer exemption rarely receive requests from investors for financial information. They also believed such issuers would incur increased costs associated with filing such information electronically, particularly because such information may be considerably more extensive than that required to be filed by issuers that are subject to the Rule. For these reasons, NABL suggests that the Commission retain the small issuer exemption in its current form.

If the Commission concludes that a revision of the small issuer exemption is appropriate, NABL suggests that the Commission delete paragraph (d)(2) of Rule 15c2-12 altogether. This would avoid any confusion that might arise on account of the different language contained in paragraphs (b)(5)(i)(A) and (d)(2); in other words, the official statement (and not whether the information is "publicly available") should define the scope of the information to be submitted on an annual basis.

## **3. Definition of "Final Official Statement".**

The first sentence of the definition of "final official statement" is not changed by the proposed amendments to Rule 15c2-12. The last clause of that sentence requires a final official statement to include a "description of . . . any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section". Paragraph (b)(5)(i) of Rule 15c2-12, however, will be revised if the proposed amendments are adopted in their current form, and issuers obligated by undertakings made before the effective date of the proposed amendments will not have entered into a "written contract or agreement specified in paragraph (b)(5)(i)" (because paragraph (b)(5)(i) currently requires different terms of the continuing disclosure undertaking). Therefore, NABL suggests that a transition provision be added to paragraph (g) of the Rule stating:

For purposes of paragraph (f)(3), the phrase "any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section" shall be deemed to include previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) as such paragraph read immediately prior to [effective date of the amendments].



# National Association of Bond Lawyers

## **EXHIBIT I**

NABL SECURITIES LAW AND DISCLOSURE COMMITTEE  
AD HOC SUBCOMMITTEE MEMBERS  
NABL COMMENTS ON PROPOSED AMENDMENT TO MUNICIPAL SECURITIES  
DISCLOSURE (RELEASE NO. 34-58255)

Joseph E. ("Jodie") Smith (Chair)  
Maynard, Cooper & Gale, P.C.  
Birmingham, AL  
(205) 254-1109  
[jodie.smith@maynardcooper.com](mailto:jodie.smith@maynardcooper.com)

John M. McNally  
Hawkins Delafield & Wood LLP  
Washington, DC  
(202) 682-1495  
[jmcnally@hawkins.com](mailto:jmcnally@hawkins.com)

Wayne D. Gerhold  
Law Office of Wayne D. Gerhold  
Pittsburgh, PA  
(412) 298-5804  
[wdgerhold@aol.com](mailto:wdgerhold@aol.com)

Jeffrey C. Nave  
Foster Pepper PLLC  
Spokane, WA  
(509) 777-1601  
[navej@foster.com](mailto:navej@foster.com)

Teri M. Guarnaccia  
Ballard Spahr Andrews & Ingersoll, LLP  
Baltimore, MD  
(410) 528-5526  
[guarnacciat@ballardspahr.com](mailto:guarnacciat@ballardspahr.com)

Rebecca J. Olsen  
Ballard Spahr Andrews & Ingersoll, LLP  
Washington, DC  
(202) 661-2200  
[olsenr@ballardspahr.com](mailto:olsenr@ballardspahr.com)

Curt Gwathney  
Balch & Bingham LLP  
Birmingham, AL  
(205) 226-3446  
[cgwathney@balch.com](mailto:cgwathney@balch.com)

Walter J. St. Onge  
Edwards Angell Palmer & Dodge LLP  
Boston, MA  
(617) 239-0389  
[wstonge@eapdlaw.com](mailto:wstonge@eapdlaw.com)

William L. Hirata  
Parker Poe Adams & Bernstein LLP  
Charlotte, NC  
(704) 335-9887  
[billhirata@parkerpoe.com](mailto:billhirata@parkerpoe.com)

William Taylor  
McKennon Shelton & Henn LLP  
Baltimore, MD  
(410) 843-3506  
[william.taylor@mshllp.com](mailto:william.taylor@mshllp.com)

Michael T. Kersten  
Ballard Spahr Andrews & Ingersoll, LLP  
Baltimore, MD  
(410) 528-5853  
[Kersten@ballardspahr.com](mailto:Kersten@ballardspahr.com)

Fredric A. Weber  
Fulbright & Jaworski LLP  
Houston TX  
(713) 651-3628  
[fweber@fulbright.com](mailto:fweber@fulbright.com)

Andrew R. Kintzinger  
Hunton & Williams  
Washington, DC  
(202) 955-1837  
[akintzinger@hunton.com](mailto:akintzinger@hunton.com)