

VIA ELECTRONIC MAIL

October 10, 2017

Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Rule Change to Amend MSRB Rule G-34 on CUSIP Numbers,
New Issue, and Market Information Requirements
SR-MSRB- 2017-06

Dear Mr. Fields:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the above proposed rule change filed by the Municipal Securities Rulemaking Board (MSRB) with the Securities and Exchange Commission (Commission). ABA members regularly purchase municipal obligations directly from obligors and extend loans and provide other credit accommodations to municipalities and conduit borrowers. In addition, many of our members provide services as regulated municipal securities dealers, either through separately identifiable departments in commercial banks or through broker-dealer affiliates of commercial banks.

On March 1, 2017, the MSRB sought industry input on draft amendments to Rule G-34(a) that (1) confirm the requirement for a dealer to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases where the dealer acts as a placement agent; and (2) add a new requirement that municipal advisors that are not dealers must also obtain CUSIP numbers for new issue securities when acting as a financial advisor in new issue municipal securities sold in a competitive offering. The proposal also sought input on an exception to the requirement to obtain CUSIP numbers in private placements of municipal securities to a single purchaser.

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

In ABA's March 24, 2017 response,² we presented our views on the importance and efficacy of the direct placement market and offered strong support for such an exception. On June 1, 2017, the MSRB issued a second request for comments on the proposal offering specific language for a limited exception to the CUSIP requirement. In our June 30, 2017 response,³ we provided comments and clarifications on the language to address the realities of the direct purchase market.

Support for the Exception

ABA strongly supports the exception for dealers and municipal advisors in private placements of municipal obligations to a single bank, its affiliates (other than a registered broker-dealer) or a consortium of such entities. We believe such an exception would help alleviate the concerns of MSRB-regulated entities with respect to whether a particular financial obligation is a loan or a security, while at the same time it would facilitate their compliance with applicable securities laws⁴ and MSRB rules, as well as address the concerns of our member banks who treat the obligation as a loan. Importantly, it would recognize that the need for a CUSIP number is obviated in the case where the purchaser(s) does not intend to sell or distribute the obligation in the public markets.

In its filing with the Commission, the MSRB proposes to add new subsection F to Rule G-34 as follows:

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or a municipal advisor advising the issuer with respect to a competitive sale of a new issue, which is being purchased directly by a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities, may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to *maturity* [emphasis added].

² Available at

<https://www.aba.com/Advocacy/commentletters/Documents/Clarifications%20of%20MSRB%20Rule%20G-34%20on%20Obtaining%20CUSIP%20Numbers.pdf>.

³ Available at <https://www.aba.com/Advocacy/commentletters/Documents/cl-G34-2017.pdf>.

⁴ See, MSRB Regulatory Notice: Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market (April 4, 2016).

After discussing our concerns with MSRB staff, we are pleased that the Board has largely adopted regulatory language consistent with our recommendations. However, we believe the requirement that purchasers represent that they have a “present intent . . . to hold the municipal securities to *maturity*” reflects a misunderstanding of the fundamental workings of the direct purchase market. Because such municipal obligations may mature in 20 or 30 years, the transaction documents typically include a call provision at five or ten years to permit a refinancing or other restructuring, a provision that provides significant benefits to both the municipal borrowers and the direct purchasers.

The language ABA proffered for the exception included a representation that the municipal securities are being purchased for [the purchaser’s] own account, *with no present intent to sell or distribute* the municipal securities. This language reflects the realities of direct purchase transactions and, critically, that *there is no intent that the securities will enter the public market*. It will also alleviate any concerns purchasers may have about representing that they will hold the obligations to maturity *when the transactions documents include call provisions*. For these reasons, we strongly urge the MSRB and the Commission to adopt this language.

Conclusion

ABA appreciates the MSRB’s acknowledgment of the banking industry’s concerns. We believe the representation language offered above reflects the realities of this important market and will allay concerns of purchasers with respect to representations. We look forward to continuing to work with the Commission and MSRB on this proposal. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Cristeena G. Naser
Vice President and Senior Counsel
Center for Securities, Trust & Investment

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