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October 10, 2017

VIA ELECTRONIC MAIL

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

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

Dear Mr. Fields:

Acacia Financial Group, Inc. (“Acacia”) is a national municipal advisory firm that serves a wide range of municipal bond issuing clients including high profile issuers, local small issuers and infrequent issuers. Our firm serves as municipal advisor on numerous competitive deals each year and we work with clients who enter into bank loans, direct purchases and private placements. We are submitting comments on the MSRB’s proposed G-34 Rule changes, in particular the requirements regarding CUSIP numbers for competitive deals and private placements and to express our strong opposition to the proposed changes.

We believe the MSRB’s proposed changes to G-34 do nothing to improve efficiency or transparency in the marketplace. Establishing a single regime for obtaining CUSIP numbers for both competitive and negotiated sales would serve to increase efficiencies and predictability into the process. Instead, the MSRB chose to keep in place a practice that does not cover all competitive sales, but only those for which there is a municipal advisor (MA). Thus, this proposal has no measurable benefit to anyone. Additionally, Acacia is extremely concerned with the requirement requiring municipal advisors to interact with investors to determine their intent when purchasing bonds in connection with private placement transactions. Such a requirement brings municipal advisor dangerously close to the line in engaging in broker dealer activity and places them in an untenable position of potentially violating the Exchange Act.

It should be noted that there is no requirement for any issuer to use the services of a municipal advisor. The MSRB has broadly assumed it can impose regulations on advisors and that it will not impact an issuer’s decision to use a municipal advisor. Nothing could be further from the truth, as issuers will not seek the services of an advisor if by doing so, it will potentially cost them additional monies or threaten the successful execution of a transaction.

Our concerns with respect to the proposed rule changes are as follows:

Municipal Advisors Applying for CUSIPs in Competitive Sales

Acacia strongly believes the municipal marketplace would be well served by simply requiring underwriters to be the entity to obtain CUSIP numbers after the award is given on the bonds for both competitive and negotiated sales. The reasons are simple and practical:

- Not all competitive transactions use a municipal advisor. Therefore, in some instances the underwriter needs to still apply for CUSIP numbers. It would be far simpler if underwriters always were able to follow the same procedure and obtain CUSIP numbers when they are awarded the bonds. *This would create a uniform standard in the industry, thereby improving efficiency in the marketplace as it will clearly define this as an underwriter responsibility.*
- Payment for the cost of CUSIP numbers should rest solely with the underwriter. Issuers would still look to have the cost of CUSIP numbers paid for by the winning underwriter. Billing would be made simpler and any possible confusion would be eliminated if the winning underwriter simply applied for the CUSIP thereby eliminating an intermediary in the process.
- Change of structure or postponement or cancellation of sale would lead to assignment of unneeded CUSIPs. Requiring CUSIP numbers in advance of the sale could create issues if the structure of the transaction changes or the deal is delayed or cancelled. Structural changes and delays are very common in the municipal bond market.
- Market efficiencies and market transparency are not enhanced by this proposal. *The regulatory imbalance between non-dealer municipal advisors and dealer municipal advisors is a red herring most easily remedied by changing G-34 to remove the responsibility of obtaining CUSIP numbers from dealer municipal advisors and simply requiring the underwriter who wins the competitive bid to obtain the CUSIP numbers.* Again, Acacia believes the market is better served by requiring the underwriter to apply for CUSIPs creating a single regime that would streamline operations for all concerned.
- Cost Impacts. Removing the requirement from broker dealer MAs would result in *cost savings* to this segment of the MA community and it would not impose additional costs on independent MAs. As noted by multiple commenters in the two rounds of comment on the MSRB proposed rule changes, and noting that those comments came from smaller MA firms, extending this requirement to non-dealer municipal advisors does not acknowledge the increase in work or cost on many of the small firms that currently engage in competitive transactions. *This one simple change will remove the regulatory imbalance while improving the efficiency of the marketplace by having the responsibility rest with the one participant necessary in all competitive and negotiated transactions, the underwriter.*
- Finally, the MSRB provides no statistics or factual data that this change will improve efficiency in the marketplace.

We echo the comments made by the National Association of Municipal Advisors earlier this year who stated that it is unclear what problem the MSRB is trying to correct. We urge the SEC to re-examine this issue of CUSIP numbers in light of the current market environment. It has become standard practice for the winning underwriter in a competitive sale to apply for the CUSIP numbers. **Changing this process benefits no one.** The way to achieve parity is **not** by increasing the duties of municipal advisors but by lessening the obligation of dealer MAs and maintaining the duties with the underwriting community to apply for CUSIPs for both competitive and negotiated transactions. The MSRB clearly did not consider the impact of this proposed change on the many small municipal advisory firms for whom this duty would create an additional burden and economic cost and the cost savings to dealer MAs by removing this obligation.

We strongly urge the SEC to reject this proposed change to G-34 and instead implement the suggestion of the many municipal advisors who submitted comments to the MSRB to create regulatory parity by removing this burden from broker dealer municipal advisors.

Proposed Exception from CUSIP Numbering Requirements for Private Placements

Acacia is pleased to see the proposed exception for private placements. However, we have serious concerns on how placement agents or MAs would establish policies and procedures “to assist in arriving at a reasonable belief as to the likelihood that the bank would hold the municipal securities to maturity or limit any resale to another bank”. The only way to accomplish this would be to require the bank to certify to this representation, whether through the documentation of the transaction or in a separate certification. We believe the current proposal does not adequately address this concern. There could be no other way for a placement agent or a MA to arrive at this conclusion without the supporting representations from the banks that they will not trade the securities they are planning to hold in their portfolio.

While the new notice exempts private placements from the CUSIP rules, it is imposing an additional regulatory burden on both placement agents and MAs to determine if a CUSIP number is required. This will have significant regulatory costs to both placement agents and MAs as new policies and procedures will need to be developed to document why a CUSIP number was not assigned. Given the intense focus of regulators on bank loans and private placements, requiring placement agents and MAs to determine if an issue is a loan or a security is over-reaching and is full of peril. We would urge the SEC to withdraw this aspect of the proposed rule change.

Conclusion

Acacia urges the SEC to level the playing field by eliminating the requirement for dealer MAs to obtain CUSIPs for competitive sales. This will benefit the entire MA community by removing costs associated with obtaining CUSIPs. Underwriters who bid on competitive sales will know they are required to pay for and apply for CUSIPs, alleviating any possible confusion regarding costs and duties. The responsibility for obtaining CUSIPs for both competitive and negotiated sales will be identical and will ultimately result in greater efficiencies in the market.

Acacia is supportive of the exception for CUSIP numbers for private placements; however, shifting the burden to determination of the intent of banks to the MA should not be implemented at this time because of the impractical nature of the task. Furthermore, this requirement does not fall under the fiduciary duties owed to our clients and instead places the MA in the position of interacting with investors and performing broker dealer activity, which would be a violation of the Exchange Act.

Acacia recognizes the MSRB was driven by the laudable goals to increase market disclosure of private placement transactions through the use of CUSIP numbers and sought to make additional changes to have a level playing field for all participants. Nevertheless, the change to G-34 does nothing to improve transparency or efficiency in the market. The MSRB has presented no compelling reasons for the changes it has proposed. Therefore, we respectfully request the SEC limit any change in G-34 to the removal of the requirement for dealer MAs to apply for CUSIPs in a competitive sale. Thank you for this opportunity to provide our comments.

Sincerely:



Noreen P. White
Co-President



Kim M. Whelan
Co-President