



October 10, 2017

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

**Re: File No. SR-MSRB-2017-06; Proposed Rule Change to Amend MSRB Rule G-34, on CUSIP Numbers, New Issue, and Market Information**

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to respond to the Municipal Securities Rulemaking Board’s (“MSRB’s”) proposed rule filing SR-MSRB-2017-06 (the “Proposal”),<sup>2</sup> which would amend MSRB Rule G-34 (“Rule G-34”), on CUSIP numbers, new issue and market information. We appreciate the MSRB’s solicitations for comment and their revisions to the original proposal to date.<sup>3</sup> For the reasons stated below, SIFMA urges the Securities and Exchange Commission (“SEC” or “Commission”) to institute disapproval proceedings regarding the Proposal in its current form, because the amendment as filed is unduly restrictive for market participants and lacks clarity in material respects.

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<sup>1</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> 82 Fed. Reg. 43587 (Sept. 18, 2017) (File No. SR-MSRB-2017-06).

<sup>3</sup> See, MSRB Notice 2017-05 (March 1, 2017) (the “First Notice”) and MSRB Notice 2017-11 (June 11, 2017) (the “Second Notice”). See also, letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ron Smith, Secretary, MSRB, dated March 31, 2017 (“SIFMA Letter I”) and, letter from Leslie M. Norwood, Managing Director and Associate General Counsel, the SIFMA, to Ron Smith, Secretary, MSRB, dated June 30, 2017 (“SIFMA Letter II”).

## **I. Relevant Regulatory History**

SIFMA questions the expressed rationale for the MSRB's proposed rulemaking, as the sole purpose for the original proposal to adopt Rule G-34 was merely to facilitate clearance and settlement of municipal securities; not to define the term "underwriter."

As originally adopted in 1983 and as it stands today, the scope of Rule G-34 has been read by the MSRB's regulated community as follows: a broker, dealer or municipal securities dealer (collectively, "dealer") who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue is for purposes of the rule, an underwriter, as they would be under the Securities Act definition of underwriter for any non-exempt security, such as a taxable private activity bond not within the exemption provided by Rule 131(b), and is required to obtain CUSIPS, if the issue is CUSIP eligible.

In 1992, the MSRB requested comments on a suggested revision to Rule G-34's CUSIP eligibility standards. At that time, if the MSRB had wanted or intended to use the same definition of underwriter as set forth in the 1989 proposal for SEC Rule 15c2-12, it could have done so. However, the MSRB chose not to so define the term in that manner. By its express terms, Rule G-34 does not require CUSIPs if a dealer *does not acquire* a new issue when acting as placement agent in a transaction *that is not a distribution*.

SIFMA and its members feel that this amendment is a clear expansion of the scope of Rule G-34, beyond what Rule G-34 originally intended, adding placement agents that do not "acquire" securities as do underwriters. Should the Commission agree with the MSRB that, after 29 years, the definition of underwriter in Rule G-34 be conformed to the definition adopted in Rule 15c2-12, we query whether the Commission should also include the exemption provided under Rule 15c2-12(d)(1) from the requirement to obtain a CUSIP. To do otherwise would not be a matter of conforming, but of removing the exemption from the CUSIP requirement clearly existing for transactions under a plain reading of the current Rule G-34 in which the securities are *not acquired* by a dealer.

## **II. Agree Clarification or Rule Change Should Be Prospective Only**

As a fairness matter, and in light of the industry's historical interpretation of Rule G-34 as described in Section I above, we appreciate that the MSRB has stated that the draft changes to Rule G-34 shall only be applied prospectively. It is important to have clarity on this point to avoid unintended consequences during a subsequent FINRA or SEC examination. The MSRB has recognized and understands that the application of Rule G-34(a) to private placements, including direct purchase transactions, has been

uneven.<sup>4</sup> SIFMA and its members believe that Rule G-34, under a fair reading of the current language, exempts transactions that are neither “acquired”, nor “distributed.”<sup>5</sup> As such, we agree that prospective application is the appropriate and correct solution in connection with any changes to Rule G-34, and that any changes to Rule G-34 should not affect outstanding transactions completed under the current language of Rule G-34.

### **III. Refine the Exception and Clarify Documentation Sufficient to Satisfy Exception**

SIFMA and its members request that the exception be refined as described below and that more clarity be provided as to the documentation underwriters and municipal advisors may be required to produce during an examination by FINRA or the SEC. Clarification of the documentation required to support a dealer’s reliance on the exception will make implementation of the exception smoother and reduce legal costs for the transaction.

Investors are not reliably willing to sign a letter setting forth their present intention to hold a security until maturity, both because they are unwilling to make a statement that can be second-guessed if they, many years later, determine to sell their holdings, and because a certification of this sweeping nature (given the time horizons of municipal debt) does not exist elsewhere in the securities market. Therefore, the requirement of the exception should be refined such that the underwriter or municipal advisor must only have a reasonable belief (e.g., by obtaining a written representation) that purchasing entity or entities has no present intent to sell or distribute the municipal securities. The current language in Rule G-34(a)(ii)(A)(3) restricts the exception to situations where the present intent of the purchasing entity is to hold the municipal securities “to maturity”. This language is unduly restrictive in a market where many bonds are long-dated securities. For a bond maturing in 20 or 30 years, it is typical to include a call or mandatory tender date at 5 to 10 years to permit a refinancing or other restructuring.<sup>6</sup> Although a purchasing entity may have no present intent to sell the bond, they may feel less comfortable certifying that they have a present intent to hold the bond until maturity.

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<sup>4</sup> See the First Notice, at fn. 12.

<sup>5</sup> The language of current Rule G-34(a)(i) refers to a broker, dealer, or municipal securities dealer (“dealers”) and others who “acquire” a new issue of municipal securities as principal or agent, “for the purpose of a distribution.” In contrast, in a private placement, the instrument is typically acquired directly from the issuer by the bank or other purchaser.

<sup>6</sup> If the intent of the language “to maturity” is to refer to interim maturities or mandatory tender dates, this should be clarified in the final language of the amended Rule G-34.

Further, SIFMA and its members would appreciate the comfort that a reasonableness standard will be applied, and that sufficient documentation would include any reasonable indicia of an investor's present intent, including, without limitation, an investor letter or other certification, a term sheet stating the conditions for the transactions, deemed representations that apply to investors in the transaction, whether contained in an agreement (such as, "by buying this transaction, the purchaser represents the following . . .") or otherwise, and representations in a loan or purchase agreement related to the transaction. Such written guidance from the SEC supporting the MSRB's statements would be extraordinarily helpful to avoid any misunderstandings or misinterpretation of the requirements of the exception to Rule G-34 during future examinations.

#### **IV. Intergovernmental Purchases of Securities**

SIFMA and its members agree with previous comments by the Government Finance Officers Association<sup>7</sup> that suggest the MSRB should expand the exception in Rule G-34 also to apply to state and local governments, and their instrumentalities, privately purchasing municipal securities. We have serious concerns that it is not clear whether the CUSIP number requirements of Rule G-34(a)(i) would apply and believe the need to specifically expand the exception to include these scenarios is necessary. In these instances, states and local governments, and their instrumentalities, privately purchase government-issued bonds, notes or issues loans to local governments. These types of indebtedness are sometimes then pooled to secure a bond issuance (e.g., by a state revolving fund or bond bank issuer) or, alternatively, held as individual investments. State and local governments, and their instrumentalities, should not be required to obtain CUSIP numbers for these types of investment purchases which will never enter the secondary market. Therefore, the exception for private placements of securities should specifically include state and local government bonds purchased by other state and local governments with no intention to resell.<sup>8</sup>

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<sup>7</sup> See, letter from Emily Brock, Director, Federal Liaison Center, GFOA, to Ron Smith, Secretary, MSRB, dated June 30, 2017.

<sup>8</sup> For example, SIFMA notes that MSRB Rule G-23(d)(ii), which creates an exemption from the role-switching prohibition of Rule G-23 for this type of intergovernmental placement agent activity as follows:

(ii) Notwithstanding subsection (d)(i), a broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities shall not be prohibited from acting as agent for the issuer in arranging the placement of the entire issue with any state, local or federal governmental entity as part of a plan of financing by such entity for or on behalf of the issuer, but only if such broker, dealer or municipal securities dealer does not receive compensation from any person other than with respect to financial advisory services related to such placement and does not receive compensation from any person for underwriting

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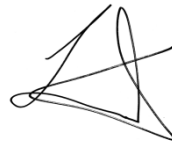
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SIFMA agrees with GFOA's comment about the need for an exemption from Rule G-34's CUSIP requirement when a dealer municipal advisor places the security of a local government with a state or other local issuer regardless of whether the purchaser issues its own bond secured by the local bond, as permitted by Rule G-23(d)(ii), as the local government security will be held by the state or other issuer and not traded in the secondary market.

**V. Conclusion**

Again, SIFMA and its members urge the SEC to consider our comments on the MSRB's proposed amendment to Rule G-34, and ask the SEC to institute proceedings for disapproval if SIFMA's comments are not incorporated into the Proposal. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at [REDACTED].

Sincerely yours,



Leslie M. Norwood  
Managing Director and  
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***  
Michael L. Post, General Counsel  
Margaret R. Blake, Associate General Counsel

***Financial Industry Regulatory Authority***  
Cynthia Friedlander, Director, Fixed Income Regulation

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any contemporaneous financing transaction directly or indirectly related to such issue undertaken by the state, local, or federal governmental entity with which such issue was placed.