MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

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Market Transparency

Affected Rules
Rule G-34

Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements, to clarify existing application of the rule to certain new issue municipal securities, to expand the application of the rule to certain additional industry participants and to make definitional and technical changes. In addition, the MSRB seeks to remind brokers, dealers and municipal securities dealers ("dealers") of their existing obligation under Rule G-34(b) to obtain CUSIP numbers for certain secondary market securities.

Specifically, the MSRB is seeking comment on draft amendments to Rule G-34(a) that would clarify 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 would require municipal advisors that are not dealers also to be subject to the CUSIP requirement for new issue securities when acting as a financial advisor in new issue municipal securities sold in a competitive offering. Additionally, the MSRB is requesting comment on definitional changes and technical and non-substantive changes to the rule as set forth below. Upon review and consideration of comments received, the MSRB will determine whether to proceed with or reconsider the draft amendments.

Comments should be submitted no later than March 31, 2017, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities

Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Margaret R. Blake, Associate General Counsel, at 202-838-1500.

Background

In 1983, the U.S. Securities and Exchange Commission (SEC) approved MSRB Rule G-34, on CUSIP numbers.[2] The MSRB adopted Rule G-34 to improve efficiencies in the processing and clearance activities of the municipal securities industry, being of the view that "if all eligible municipal securities have CUSIP numbers assigned to and printed on them, dealers will be able to place greater reliance on the CUSIP identification of these securities in receiving, delivering, and safekeeping" them.[3] The new rule required, among other things, that dealers make application for a CUSIP number based on eight specified items of information about the new issue.[4] Shortly after adopting Rule G-34, the MSRB recognized that "[c]ertain events may occur after the underwriting of a particular new issue of municipal securities which affect the integrity of the CUSIP numbers originally assigned to the issue and may prevent the use of these numbers to uniquely identify securities of the issue."[5] The MSRB subsequently adopted amendments to Rule G-34 to, among other things, require CUSIP numbers be obtained for secondary market securities where the terms of a portion of an issue were altered so as to no longer be part of a fungible group of securities.[6]

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[1] Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

[2] Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).

[3] Exchange Act Release No. 18959 (Aug. 13, 1982), 47 FR 36737-03 (Aug. 23, 1982) (SR-MSRB-82-11).

[4] These eight items are contained in current Rule G-34(a)(i)(A)(4)(a) through (h) and were part of CUSIP Service Bureau's original standards for issuing CUSIP numbers.

[5] Exchange Act Release No. 22128 (Jun. 7, 1985), 50 FR 25140 (Jun. 17, 1985) (SR-MSRB-85-14).

[6] Exchange Act Release No. 25020 (Oct. 14, 1987), 52 FR 39580-01 (Oct. 22, 1987) (SR-MSRB-87-10).

Rule G-34(a), regarding new issue securities, applies only to a dealer acting as an "underwriter" in new issue securities or a dealer acting as a "financial advisor" in a competitive sale of new issue securities. This application of the CUSIP number requirement only to dealers is largely the result of Rule G-34 pre-dating the municipal advisor regulatory regime that resulted from the Dodd-Frank Wall Street Reform and Consumer Protection Act.[7]

The MSRB understands that there have been questions in the industry regarding the application of Rule G-34(a) to private placements of municipal securities, including direct purchase transactions in which a dealer acts as a placement agent.[8] In particular, the MSRB understands that at least some industry participants, including banks in direct purchase transactions, may believe a CUSIP number is not required or is optional with respect to certain municipal securities. In addition, the MSRB understands that there may be some uncertainty regarding the application of Rule G-34(b), on secondary market securities, in situations where the characteristics of an issue have been altered (*e.g.*, remarketings or the purchase of insurance on a part of an issue). Finally, the MSRB believes that the application of the requirements in Rule G-34(a) only to a dealer acting as a financial advisor in a competitive sale of a new issue may cause a regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors advising on competitive sales of new issue municipal securities.

As set forth in more detail below, the MSRB is seeking comment from interested industry participants on draft amendments to Rule G-34 to: 1)

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[7] Pub. L. 111–203, H.R. 4173 (2010). The MSRB amended Rule G-34(a) in 1986 to apply the CUSIP requirements to dealers acting as financial advisors in competitive sales of a new issue. Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

[8] When a dealer or municipal advisor works with a municipal securities issuer on a financial transaction to raise capital for the issuer, the regulated entity should have reasonably designed policies and procedures in place to make a determination as to whether the transaction involves a municipal security that results in the application of MSRB rules. If the transaction is not an issuance of a municipal security (*e.g.*, a commercial loan), there is no Rule G-34 requirement to apply for a CUSIP number. The draft amendments do not affect the necessity for this determination. The Supreme Court set forth the relevant guidance in *Reves v. Ernst & Young, Inc.,* 494 U.S. 56 (1990), and the MSRB has reminded the industry of the requirement to conduct the appropriate analysis in an offering prior to applying for a CUSIP number. *See* MSRB Notice 2011-52 (Sept. 12, 2011) and MSRB Notice 2016-12 (Apr. 4, 2016) (noting that the placement of what might be referred to as a "bank loan" may, as a legal matter, involve a municipal security and therefore trigger the application of various federal securities laws, including MSRB rules such as Rule G-34).

revise the definition of "underwriter" in Rule G-34 to clarify the current application of the requirements of Rule G-34(a) to private placement securities transactions, including direct purchases of municipal securities in which the dealer acts as placement agent; and 2) expand the scope of Rule G-34(a) to include all municipal advisors advising on competitive new issue transactions, whether dealer or non-dealer. In addition, the MSRB is reminding dealers of their existing obligations under Rule G-34(b) regarding obtaining CUSIP numbers for secondary market securities.

Summary of Draft Amendments to Rule G-34

Clarification of Rule G-34(a) Application to Private Placements

Rule G-34(a) requires a dealer, whether acting as agent or principal, that acquires an issuer's securities "for the purpose of distributing such new issue" to obtain a CUSIP number for the new issue. The MSRB understands that some dealers have questioned whether the obligation to obtain a CUSIP number pursuant to Rule G-34(a) is conditioned on the underwriter's intent to conduct a distribution of the new issue, and therefore, applies only to public offerings and not private placements. The MSRB has publicly stated the view, however, that private placements of municipal securities "generally are eligible for CUSIP numbering and thus are subject to the requirements of [R]ule G-34."[9] Similarly, the MSRB has indicated that, unless otherwise noted, "references to 'underwriter' in the context of Rule G-34 are meant to include placement agents as well as dealers that purchase securities from the issuer as principal,"[10] and that "references to 'syndicate and selling group members' in this context are meant to include managers of syndicates as well as sole underwriters or placement agents in non-syndicated offerings."[11] Despite the guidance, questions remain.

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[9] CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992) (emphasis in original). In this notice, the MSRB defined "private placement" to mean "any new issue of municipal securities that is 'placed' by a dealer, on an agency basis, with one or more investors."

[10] *See* Exchange Act Release No. 50773 (Dec. 1, 2004), 69 FR 70731-02 (Dec. 7, 2004) (SR-MSRB-2004-08).

[11] *Id. See also* MSRB Notice 2008-28 (Jun. 27, 2008) ("Rule G-34 defines 'underwriter' very broadly to include a dealer acting as a placement agent . . ."). Note further that in MSRB Notice 2008-23 (May 9, 2008), the MSRB filed a proposed rule change to amend Rule G-34 to require underwriter registration and testing with DTCC's New Issue Information Dissemination System (NIIDs). The proposed amendment required all dealers underwriting municipal securities with nine months or greater effective maturity to register to participate in NIIDs and required the dealers to successfully test NIIDS prior to acting as underwriter on

The MSRB acknowledges that a contributing factor in the issue over the application of Rule G-34(a) to private placements may be the definition of the term "underwriter" as it is used in the rule and the inclusion of "distributing" as a component of that definition.[12] Rule G-34(a) defines "underwriter" as

> each broker, dealer or municipal securities 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.

However, other MSRB rules define underwriter by reference to Securities Exchange Act Rule 15c2-12(f)(8),[13] which defines an underwriter as

> any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or

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a new issue of municipal securities. The MSRB noted that "underwriter" in this context was defined "very broadly to include a dealer acting as a placement agent . . . ."

[12] The term "distributing" as used in the rule is not defined, and based on general industry perception may cause market participants to interpret it to mean, for example, that the Rule G-34(a) requirements apply only in public offerings to public purchasers and does not include private placements. For example, the SEC in its explanatory comment to Rule 144 of the Securities Act of 1933, on persons deemed not to be engaged in a distribution and therefore not underwriters, noted that

> A person satisfying the applicable conditions of the Rule 144 safe harbor is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of [Securities Act of 1933] section 2(a)(11). Therefore, such a person is deemed not to be an underwriter when determining whether a sale is eligible for the [Securities Act of 1933] Section 4(1) exemption for 'transactions by any person other than an issuer, underwriter, or dealer.'

Preliminary note to 17 CFR 230.144.

[13] 17 CFR 240.15c2-12(f)(8).

> municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

It is well-understood that this definition of "underwriter" includes both a public offering and a private placement of a municipal security and is therefore not limited to public distributions. Indeed, when adopting Rule 15c2-12, to ensure private placements of municipal securities were included, the SEC changed its originally proposed definition of "underwriter" to refer to "offerings" of municipal securities, as opposed to "distributions" of municipal securities, specifically noting[14]

> Some commentators suggested that since the term 'underwriter' in the Proposed Rule was defined as a broker, dealer, or municipal securities dealer who participated in a 'distribution' the Commission had created an implicit private placement exception. Specifically, they noted that persons selling securities in an offering that did not involve a distribution would not be subject to the Rule. The word 'distribution,' which was used in the definition of "underwriter" in the Proposed Rule, has been replaced with the term 'offering'. This change is intended to clarify that a broker, dealer or municipal securities dealer may be acting as underwriter, for purposes of the Rule, in connection with a private offering.

The MSRB believes that amending the definition of "underwriter" to cross reference to the definition set forth in Rule 15c2-12(f)(8) would codify existing guidance and clarify that dealers acting as placement agents in private placement transactions, including direct purchases of municipal securities, are subject to the CUSIP-related requirements set forth in Rule G-34(a).

Questions

1. Does the proposed amendment to the definition of "underwriter" in Rule G-34 sufficiently clarify that CUSIP numbers are needed in public

[14] Exchange Act Release No. 26985 (Jun. 28, 1989), 54 FR 28799-01 (Jul. 10, 1989) (Final rule adopting Exchange Act Rule 15c2-12). The MSRB believes its prior interpretations of Rule G-34 regarding the need for CUSIP numbers in private placements of municipal securities are consistent with the SEC's position. *See e.g.,* CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992), Exchange Act Release No. 50773 (Dec. 1, 2004), 69 FR 70731-02 (Dec. 7, 2004) (SR-MSRB-2004-08) and MSRB Notice 2008-28 (Jun. 27, 2008).

offerings and private placements? Is there another more effective way of achieving this desired result?

2. If a dealer is involved in a private placement of municipal securities and does not apply for a CUSIP number because it does not believe it is an underwriter, is it customary for the dealer to obtain assurances from the purchaser that it will not be reselling the municipal security? Do dealers obtain assurances when a transaction is booked by the purchaser as a loan?

3. The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Do the draft amendments alleviate this issue?

4. Should the MSRB provide an exception from the requirements of Rule G-34(a) for dealers and/or municipal advisors in private placements of municipal securities to a single purchaser? How difficult would it be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales?

5. The draft amendments are intended to codify existing guidance regarding the application of Rule G-34(a). Do commenters believe the proposed codification would impact the existing obligations on underwriters under Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information? If so, how?

Clarification of the Application of Rule G-34(b) to Certain Secondary Market Securities

Rule G-34(a) addresses the requirement to obtain CUSIP numbers for "new issue securities," while Rule G-34(b) addresses the requirement to obtain CUSIP numbers for "secondary market securities." As noted above, after adopting Rule G-34, the MSRB recognized the potential for certain actions to create "a distinction in a previously fungible issue of securities which causes the previously assigned CUSIP number no longer to uniquely identify a single, fully fungible issue."[15] The MSRB noted that where a transaction in secondary market securities altered a part of a maturity of an issue of municipal securities such that the features of the original security were no

[15] Exchange Act Release No. 22128 (Jun. 7, 1985), 50 FR 25140 (Jun. 17, 1985) (SR-MSRB-85-14).

longer identical, new CUSIP numbers would be required.[16] Where the entire maturity is modified in the same manner, however, a new CUSIP number would not be required (e.g., a remarketing of a maturity where the terms of the entire maturity are identical after the remarketing).

In 1987, the MSRB amended Rule G-34 to, among other things, add sections (b)(i) and (b)(ii) to address these secondary market securities scenarios.[17] In particular, pursuant to Rule G-34(b)(i), where a dealer, in connection with the sale or offer of a part of a maturity of an issue of municipal securities, acquires a transferable instrument that applies to the part of the maturity being offered, the dealer selling that part of the maturity is required to obtain a new CUSIP number for the altered portion. Examples of transferable instruments that may alter a part of an issue of municipal securities under the rule include insurance with respect to the payment of debt service on a portion of the maturity, a put or tender option, a letter of credit guarantee or other similar instruments. Rule G-34(b)(ii) requires a dealer to obtain a new CUSIP number in connection with the sale or offer for sale of any municipal securities that were assigned a CUSIP number that no longer designates securities that are identical with respect to certain features. That is, where any of the eight specific items of information in Rule G-34(a)(i)(A)(4) used to determine CUSIP number assignment have been altered such that part of the particular maturity is no longer identical with respect to those features, a new CUSIP number should be obtained for the altered securities. An example of this type of secondary market security includes a remarketing in which part of a maturity of an issue is altered so as to no longer be identical with the rest of the maturity.

Despite earlier guidance and the requirements of the rule, the MSRB understands that there is uncertainty regarding when a new CUSIP number must be obtained for secondary market securities. The MSRB reminds dealers of the application of the rule to secondary market securities in instances where, for example, insurance has been obtained with respect to a

[16] For example, the MSRB noted that "some issues of municipal securities contain remarketing provisions that allow portions of an issue previously subject to the same put option to be remarketed after the put date as different groups of securities, subject to different put options." CUSIP Numbers for Secondary Market Securities: Rule G-34, MSRB Reports, Vol. 7, No. 2 (Mar. 1987).

[17] In 1985, the MSRB amended Rule G-34(a) to address the need for new CUSIP numbers in refundings where an issue is used to refund an outstanding issue of municipal securities to more than one date or price. Exchange Act Release No. 22128 (Jun. 7, 1985), 50 FR 25140-01 (Jun. 17, 1985) (SR-MSRB-85-14).

portion of the issue, or a remarketing has occurred resulting in modification to the terms of a part of a maturity of an issue. In addition, the MSRB notes that there may be instances where certain activity with respect to secondary market securities does not result in a requirement to obtain a new CUSIP number. These scenarios would include, for example, mode changes, such as when a daily interest rate is reset to a weekly rate and the change applies to the entire issue.

The MSRB believes that reminding dealers of existing obligations regarding when a new CUSIP number is required for secondary market securities is critical to the integrity of the CUSIP numbering system. If the same CUSIP number is used to identify municipal securities that are no longer interchangeable in the market, the usefulness of the CUSIP numbering system becomes diminished. The MSRB believes reminding dealers of their obligation is necessary to ensure that each CUSIP number assigned to secondary market securities identifies a single, fungible group of municipal securities.[18]

Questions

1. Does Rule G-34(b) clearly indicate when dealers must obtain a new CUSIP number with respect to secondary market securities? Is further clarification needed?

2. Is it understood in the industry that mode changes in a remarketing do not require a new CUSIP number as long as the entire maturity of a particular CUSIP number changes in the same way? Are there other scenarios where a new CUSIP number might not be necessary?

3. Is further clarification necessary of those instances when a new CUSIP number would not be required under Rule G-34(b)?

4. Are the eight specific information items listed in Rule G-34(a)(i)(A)(4)(a) - (h) the appropriate items to evaluate for fungibility? Have instruments in public finance changed such that the items to be considered should be different than those set out in Rule G-34(a)(i)(A)(4)(a) - (h)?

[18] The draft amendments would conform the citations in Rule G-34(b)(i) and (ii) to correctly reference Rule G-34(a)(i)(A)(4)(a) through (h).

Application of Rule G-34 CUSIP Requirements to Certain Municipal Advisors

As noted above, Rule G-34(a) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities. Financial advisory activities are now generally defined also as municipal advisory activities. Nevertheless, non-dealer municipal advisors are not subject to the CUSIP application requirements under the current rule.

The MSRB is aware that a significant number of non-dealer municipal advisors advise with respect to competitive sales of new issues. As a result, Rule G-34(a), in its current form, may create a regulatory imbalance between dealer and non-dealer municipal advisors.

In addition, in 1986, the MSRB amended Rule G-34(a) to require a dealer acting as a financial advisor in a competitive sale of a new issue to obtain CUSIP numbers "in sufficient time to allow for assignment of a number prior to the date of award."[19] From a policy standpoint, the market efficiencies served by the 1986 amendments would also be served by these draft amendments because a dealer no longer would be required to obtain the CUSIP number after the award in a competitive sale where a non-dealer municipal advisor has been engaged.

The draft amendments, therefore, would apply the requirements of Rule G-34(a) to municipal advisors (whether dealers or non-dealers) in a competitive sale of a new issue of municipal securities. The draft amendments would include a definition of "municipal advisor" that would make clear that the CUSIP number requirements apply only to a municipal advisor in a competitive sale of new issue municipal securities and would not apply on the grounds that the municipal advisor is a solicitor or advising on municipal financial products. The MSRB seeks comment on these draft amendments and the impact of this requirement on dealer and non-dealer municipal advisors alike.

Questions

1. Is the assumption correct that if non-dealer municipal advisors are not subject to Rule G-34(a), this may create a regulatory imbalance between dealers and non-dealer municipal advisors? Is it accurate that issuers or purchasers desiring to avoid obtaining CUSIP numbers

[19] Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

for a private placement currently might forgo working with a dealer and instead work with a non-dealer municipal advisor?

2. Would issuers forgo working with either dealers or municipal advisors in certain circumstances to avoid the CUSIP numbering requirements?

3. Is there another way to achieve the desired requirements of the draft amendments without including non-dealer municipal advisors?

Other Draft Amendments

The draft amendments would include a definition section to clarify certain terms as used in Rule G-34. For example, the current definition of "underwriter" would be deleted and a new definition would be added that would map to the term as defined in Exchange Act Rule 15c2-12(f)(8). In addition, definitions currently in the body of the rule that continue to apply, such as that for "remarketing agent," would be moved to the proposed definition section. Finally, as previously noted, the draft amendments would include a definition of "municipal advisor" as it applies in the context anticipated for this rule (i.e., non-solicitor municipal advisors advising on the issuance of municipal securities, not on municipal financial products).

The MSRB also would seek to make technical and conforming changes throughout the rule as needed to ensure clarity and consistency in the application of the rule.

Question

1. Are there additional definitions that should be included in the definition section of the draft amendments?

Economic Analysis

1. **The need for the draft amendments to Rule G-34 and how the draft amendments to Rule G-34 will meet that need.**

The need for the draft amendments to Rule G-34(a) to clarify the requirement to obtain CUSIP numbers in private placements of municipal securities, including direct purchases where the dealer acts as a placement agent, arises from instances where underwriters are not consistently obtaining CUSIP numbers in sales of new issue municipal securities sold in private placements. As such, the existing rule may result in unequal costs and regulatory treatment for dealers that comply with the requirement to obtain CUSIP numbers in such instances as opposed to dealers that do not. The

existing rule may also result in a diminished level of information available to investors regarding new issue municipal securities sold in a private placement where CUSIP numbers are not obtained. The MSRB believes that the draft amendments will clarify the requirement that the CUSIP numbers should be obtained for all new issue municipal securities including private placements. Further, in addition to clarifying its existing view, the MSRB believes that the draft amendments will create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned by underwriters in private placements.

The draft amendment to Rule G-34(a) to require all municipal advisors acting as a financial advisor in a competitive sale of new issue municipal securities is necessary to alleviate any existing regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors.

Finally, the clarification of the need for CUSIP numbers in certain secondary market securities is necessary to alleviate problems that arise in the market when parts of a maturity of an issue are materially altered but continue to trade under the same CUSIP number.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-34 can be considered.

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference in comparison to the expected state with the draft amendments in effect. The economic impact of the draft amendments is generally viewed to be the difference between the baseline and the expected states.

The relevant baseline for purposes of the proposed amendment to Rule G-34(a) regarding the clarification of the requirement to obtain CUSIP numbers in private placements including a direct purchase where the dealer acts as a placement agent is existing Rule G-34(a) which, as noted above, requires that:

> each broker, dealer or municipal securities 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 ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue . . . .

Rule G-34(a) also serves as a baseline for the requirement that all municipal advisors acting as a financial advisor in a competitive sale of new issue municipal securities be required to obtain CUSIP numbers for such new issues. Under the current rule, only dealer municipal advisors are required to obtain CUSIP numbers in competitive sales of new issue municipal securities. Non-dealer municipal advisors are not currently subject to the requirements of the rule.

In the case of the reminder regarding the need for CUSIP numbers for certain secondary market securities, current Rule G-34(b) serves as a baseline, and MSRB guidance has indicated that Rule G-34(b) already requires dealers to obtain a new CUSIP number for those secondary market securities.[20] The intent of the request for comment is to remind the industry of these requirements.

3. Identifying and evaluating reasonable alternative regulatory approaches.

Rule G-34(a) requires underwriters to obtain CUSIP numbers when conducting a private placement of new issue municipal securities. The draft amendment only serves to remind the underwriters of this requirement. An alternative would be to leave Rule G-34(a) without amending the definition of "underwriter" to clarify the requirement. However, this may lead to further non-compliance.

Similarly, with regard to secondary market securities, current Rule G-34(b) requires underwriters to obtain CUSIP numbers in certain secondary market securities, including remarketings. The request for comment only serves as a reminder of the existing requirement. Hence, an alternative would be to leave Rule G-34(b) without providing a further reminder or clarification of the existing obligation. Again, however, this likely would result in continued confusion over the application of the CUSIP number requirements in secondary market securities.

[20] Rule G-34(b)(i) requires a dealer selling a part of a maturity of an issue of municipal securities that acquires a transferable instrument applicable to the part of the maturity which alters the security or source of payment, to obtain a new CUSIP number to designate the part of the maturity of the issue that is the subject of the instrument when traded with the instrument attached. Rule G-34(b)(ii) requires a dealer to obtain a new CUSIP number in connection with the sale or offer for sale of any municipal securities that were assigned a CUSIP number that no longer designates securities that are identical with respect to certain features.

The draft amendments would require, under Rule G-34(a), non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities. This requirement is new. The MSRB could leave Rule G-34(a) as is, and only require dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue municipal securities. However, by not including non-dealer municipal advisors, this likely would continue to cause a regulatory imbalance between dealer and non-dealer municipal advisors in competitive sales.

4. Assessing the benefits and costs of the draft amendments to Rule G-34 and the main alternative regulatory approaches.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the draft amendments with the draft amendments fully implemented against the context of the economic baseline. As elaborated above, only the requirement for non-dealer municipal advisors to obtain a CUSIP number when acting as a financial advisor in a competitive sale of new issue municipal securities is a new requirement, while the requirements for dealers to obtain CUSIP numbers for a private placement of new issue securities, including direct purchases where the dealer is a placement agent, as well as for certain secondary market securities, are not new.

The MSRB is seeking, as part of this request for comment, additional data or studies relevant to the amendments, specifically the frequency of private placements and secondary market securities without CUSIP numbers and the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances. In addition, the MSRB is seeking data or studies relevant to the draft amendment to require non-dealer municipal advisors acting as a financial advisor in a competitive sale of municipal securities to obtain CUSIP numbers. In addition, the MSRB seeks estimates of the cost of obtaining and maintaining a CUSIP number in each of these instances.[21]

Benefits

The MSRB believes that clarifying the intent of Rule G-34(a) for underwriters in a private placement of new issue securities as well as in secondary market securities would benefit investors and other market participants by enhancing compliance with the CUSIP number requirement, and therefore would provide increased transparency with respect to relevant market

[21] The MSRB is aware of the present CUSIP issue fee charged by CUSIP Global Services.

information associated with private placements and secondary market securities. CUSIP numbers are an important tool for reducing asymmetric information between retail and institutional investors on one side, and other market participants, such as issuers, municipal advisors, and broker-dealers on the other side. In economics, information asymmetry refers to transactions where one party has more or better information than the other. Asymmetric information may cause market price distortion and/or transaction volume depression, therefore has an undesirable impact on the municipal securities market, including the market for the private placement of municipal securities.

Specifically, the MSRB believes that all market participants would benefit from increased transparency and reduced information asymmetry in the private placement of municipal securities, including sophisticated institutional investors.[22] Since issues that lack CUSIP numbers circumvent the MSRB's (and other regulatory agencies') market transparency initiatives, clarifying the CUSIP number requirement would improve the information available to investors.

The requirement to obtain CUSIP numbers for secondary market municipal securities has similar benefits. For example, remarketing parts of a maturity of an issue can also result in information asymmetry if a new CUSIP number is not obtained. In such a scenario, original issues and remarketed securities are indistinguishable to investors and others not involved in the remarketing. By requiring new CUSIP numbers in these instances, investors and others benefit from greater transparency and improved information.

The draft amendment to require non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities benefits dealer municipal advisors in that they will be subject to less regulatory imbalance in relation to non-dealer municipal advisors engaged in the same activity.

Costs

The analysis of the potential costs does not consider the aggregate costs associated with the draft amendments, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs

[22] For example, even if there is no intent to distribute municipal securities publicly following a private placement, when CUSIP numbers are not obtained in a private placement or direct purchase, investors may have difficulty understanding an issuer's total indebtedness. This could cause investors to improperly evaluate the credit risk of potential investments in an issuer's municipal securities.

associated with the baseline state are, in effect, subtracted from the costs associated with the draft amendments to isolate the costs attributable to the incremental requirements of the draft amendments.

Since the baseline already includes a requirement for underwriters to obtain CUSIP numbers in private placements of municipal securities, and the interpretation of Rule G-34(a) does not change, there should be no incremental costs above the baseline associated with the draft amendments as they relate to these types of securities, except for certain underwriters who are not in compliance presently.

Likewise, since the baseline already includes a requirement to obtain CUSIP numbers for certain secondary market securities, and the interpretation of Rule G-34(b) does not change, there should be no incremental costs above the baseline associated with the draft amendments as they relate to these types of securities.

The draft amendments would create a new burden on non-dealer municipal advisors by requiring them to secure a CUSIP number when acting as a financial advisor in a competitive sale of new issue municipal securities.

Although municipal advisors are likely to incur up-front costs associated with securing a CUSIP number, greater benefits should accrue to investors over time as a result of improved transparency, reduced information asymmetry and price dislocation, and therefore potentially improved investor appetite for the relevant issues. In the long term, transparency also may lead to surging interest from investors, which would benefit issuers, dealers, and municipal advisors, and the long-term benefits could offset or exceed the aforementioned up-front costs.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the draft amendments may improve the operational efficiency of the municipal securities market by promoting consistency and transparency. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation but believes that the benefits outweigh the costs. Additionally, the MSRB believes that the draft amendments would encourage fair competition by ensuring compliance with existing CUSIP number requirements by underwriters in a private placement of new issue securities as well as by dealers in secondary market securities. It should also encourage fair competition between dealer municipal advisors and non-dealer municipal advisors acting as financial advisors in competitive sales of municipal securities by eliminating any regulatory imbalance. The MSRB believes that the draft amendments could also reduce confusion and risk to investors and

allow them to make more informed investment decisions. Competition, however, may be adversely affected if, to reduce costs and regulatory burden, issuers refrain from using dealers and municipal advisors and instead engage directly with financial institutions for direct purchase private placements.

Conclusion

The MSRB believes that these draft amendments will provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices. The MSRB is soliciting estimates of these costs in this request for comment, but assumes that they will be significantly less than the benefits that will accrue over time to investors as well as the market as a whole.

Questions

1. Are there other relevant baselines the MSRB should consider when evaluating the economic impact of the proposal?

2. If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?

3. Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?

    a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments?

    b. What is the frequency of private placements and secondary market securities without municipal CUSIP numbers?

    c. What is the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances?

    d. What is the frequency of dealer municipal advisors acting as a financial advisor in a competitive sale of municipal securities without obtaining CUSIP numbers?

    e. Is there an estimate of the total cost of obtaining and maintaining a CUSIP number in each of these instances?

4. What specific changes would dealers and municipal advisors need to make to their systems to implement the draft amendments (only if there are system changes that might be required)?

March 1, 2017

* * * * *

Text of Draft Amendments*

Rule G-34: CUSIP Numbers, New Issue, and Market Information Requirements

(a) *New Issue Securities*.

(i) *Assignment and Affixture of CUSIP Numbers.*

(A) Except as otherwise provided in this section (a) and section (d), each broker, dealer or municipal securities dealer acting as an underwriter (which includes a placement agent) in ~~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 ("underwriter")~~ and each municipal advisor ~~broker, dealer or municipal securities dealer acting as a financial advisor~~ in a competitive sale of a new issue of municipal securities, ~~("financial advisor")~~ shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

(1) No change.

(2) No change.

(3) The municipal advisor in a competitive sale ~~A financial advisor~~ shall make an application by no later than one business day after dissemination of a notice of sale. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) No change.

(5) Any changes to information identified in ~~this~~ paragraph (a)(i)(A)(4) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

* Underlining indicates new language; strikethrough denotes deletions.

(B) The information required by subparagraph (i)(A)(4) of this section (a) shall be provided in accordance with the provisions of this subparagraph. The application shall include a copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A)(4) of this section (a). Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A)(4) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form, is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) – (E) No change.

(ii) - (iv) No change.

(b) *Secondary Market Securities*.

(i) No change.

(ii) Each broker, dealer or municipal securities dealer, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities which is assigned a CUSIP number that no longer designates securities identical with respect to all features of the issue listed in items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4) of this rule, shall apply in writing to the Board or its designee for a new CUSIP number or numbers to designate the part or parts of the maturity which are identical with respect to items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4).

(iii) No change.

(A) No change.

(B) all information on the features of the maturity of the issue listed in items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4) of this rule and documentation of the features of such maturity sufficient to evidence the basis for CUSIP number assignment; and,

(C) No change.

(c) *Variable Rate Security Market Information*. ~~The Board operates a facility for the collection and public dissemination of information and documents about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System).~~

(i) Auction Rate Securities. ~~Auction Rate Securities are municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an agent responsible for conducting the auction process on behalf of the issuer or other obligated person with respect to such Auction Rate Securities ("Auction Agent") that receives orders from brokers, dealers and municipal securities dealers~~.

(A) Auction Rate Securities Data.

(1) Each ~~broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process ("p~~Program d~~Dealer")~~ shall report, or ensure the reporting of, the following information about the Auction Rate Security and concerning the results of the auction to the Board:

(a) – (m) No change.

(2) – (6) No change.

(B) No change.

(ii) Variable Rate Demand Obligations. ~~Variable Rate Demand Obligations are securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically with specified advance notice ("Notification Period"), and a broker, dealer or municipal security dealer acts as a remarketing agent ("Remarketing Agent") responsible for reselling to new investors securities that have been tendered for purchase by a holder.~~

(A) – (B) No change.

(d) No change.

(e) *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i) The term "auction agent" shall mean the agent responsible for conducting the auction process for auction rate securities on behalf of the issuer or other obligated person with respect to such securities and that receives orders from brokers, dealers and municipal securities dealers.

(ii) The term "auction rate security" shall mean municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an auction agent.

(iii) The term "municipal advisor" shall have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on (A) the provision of advice with respect to municipal financial products as defined in Section 15B(e)(5) of the Act; (B) activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder; or (C) any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv) The term "notification period" shall mean the specified advance notice period during which an investor in a variable rate demand obligation has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person.

(v) The term "program dealer" shall mean each broker, dealer or municipal securities dealer that submits an order directly to an auction agent for its own account or on behalf of another account to buy, hold or sell an auction rate security through the auction process.

(vi) The term "remarketing agent" shall mean, with respect to variable rate demand obligations, the broker, dealer or municipal securities dealer responsible for reselling to new investors securities that have been tendered for purchase by a holder.

(vii) The term "SHORT system" shall mean the Short-term Obligation Rate Transparency System, a facility operated by the Board for the collection and public dissemination of information and documents about securities bearing interest at short-term rates.

(viii) The term "underwriter" shall mean an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8).

(ix) The term "variable rate demand obligation" shall mean securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, where an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically within a notification period, and a broker, dealer or municipal securities dealer acts as a remarketing agent responsible for reselling to new investors securities that have been tendered for purchase by a holder.

EXHIBIT 2b

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2017-05 (March 1, 2017)

1. Acacia Financial Group, Inc.: Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, dated March 31, 2017

2. American Bankers Association: Letter from Cristeena G. Naser, Vice President and Senior Counsel, Center for Securities, Trust and Investment, dated March 24, 2017

3. Bloomberg, L.P.: Letter from Peter Warms, Senior Manager of Fixed Income, Entity, Regulatory Content and Symbology

4. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated March 31, 2017

5. CUSIP Global Services: Letter from Scott J. Preiss, Managing Director, Global Head, dated March 30, 2017

6. Dixworks LLC: E-mail from Dennis Dix, Jr., Principal, dated March 29, 2017

7. First River Advisory LLC: E-mail from Shelley Aronson dated March 22, 2017

8. George K. Baum & Company: Letter from Guy E. Yandel, EVP and Co-Manager Public Finance, Dana L. Bjornson, EVP, CFO and Chief Compliance Officer, and Andrew F. Sears, EVP and General Counsel, dated March 31, 2017

9. Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated March 31, 2017

10. National Association of Health and Educational Facilities Finance Authorities: Letter from Donna Murr, President, and Martin Walke, Advocacy Committee Chair, dated March 31, 2017

11. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated March 31, 2017

12. National Federation of Municipal Analysts; Letter from Julie Egan, Chair, and Lisa Washburn, Industry Practices and Procedures Chair, dated March 31, 2017

13. Opus Bank: E-mail from Dmitry Semenov, Senior Managing Director, Public Finance, dated March 15, 2017

14. PFM: Letter from Cheryl Maddox, General Counsel, and Leo Karwejna, Chief Compliance Officer, dated March 31, 2017

15. Phoenix Advisors, LLC: Letter from David B. Thompson, CEO, dated March 21, 2017

16. Piper Jaffray & Co.: Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Managing Director, Associate General Counsel, Public Finance and Fixed Income, dated March 31, 2017

17. Rudy Salo: E-mail dated March 31, 2017

18. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 31, 2017

19. Southern Municipal Advisors, Inc.: E-mail from Michael Cawley dated March 21, 2017

20. State of Florida, Division of Bond Finance: Letter from J. Ben Watkins III, Director, dated April 7, 2017

EXHIBIT 2c

ACACIA
FINANCIAL GROUP, INC.

601 Route 73 North
Suite 206
Marlton, NJ 08053
(856) 234-2266 Phone
(856) 234-6697 Fax

March 31, 2017

VIA ELECTRONIC MAIL
Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-05, Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

Acacia Financial Group, Inc.("Acacia") is a national financial advisory firm that serves a wide range of 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 our comments on both the need for non- dealer municipal advisors to obtain CUSIP numbers for competitive transactions and on the need for CUSIP numbers for direct purchases, bank loans or private placements.

With respect to the questions raised in the request for comment on non-dealer municipal advisors obtaining CUSIP numbers the following are Acacia's responses:

1. The regulatory imbalance between non-dealer municipal advisor and dealer municipal advisors can easily be 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. We believe that this is the single most efficient way to deal with this requirement as all competitive public deals have an underwriter. 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 do competitive transactions. This approach would also render moot any concerns regarding an issuer or purchaser from electing to use a non-dealer municipal advisor instead of a dealer municipal advisor for a transaction where the issuer or purchaser does not want to have a CUSIP number.
2. Acacia does not believe that issuers would not use a municipal advisor merely because of CUSIP numbering requirement. Based on the clients that we have worked with over the years on direct purchases, bank loans or private placements, our clients have no opinion on the use of CUSIP numbers and defer to the underwriter or purchaser on the need for a CUSIP on the transaction.

3. We believe that the way to achieve the CUSIP numbering requirement is to require the underwriter in negotiated, competitive and private placements to obtain the CUSIP numbers. We recognize that at the time the initial rule was adopted there were real concerns on obtaining CUSIP numbers; however, over the years, it has become standard practice for the winning underwriter in a competitive sale to apply for the CUSIP numbers. We think changing that process benefits no one. The way to achieve parity is not by increasing the duties of municipal advisor but by maintaining the duties with the underwriting community. The MSRB must consider the impact of this proposed change on the many small municipal advisory firms for whom this duty would create an additional burden.

Lastly, Acacia believes the MSRB did not adequately account for the economic impact on non-dealer municipal advisor with this requirement and the positive economic benefit to dealer municipal advisors by removing this burden. This is an instance where the simplest approach is the best and this approach would achieve the MSRB's stated goal to alleviate the "regulatory imbalance" while not increasing the regulatory burden unnecessarily.

With respect to the need for CUSIP numbers for private placements, we are not clear on why the MSRB believes that CUSIP numbers are needed for private placements that are booked as loans by banking institutions who intend to hold the loan until maturity. It is our understanding that the treatment by a bank of a loan versus a municipal security impacts their credit evaluation and pricing. Therefore, we can see no benefit from requiring a CUSIP in these instances, but rather believe there could be unintended consequences on those issuers who use bank loans or direct purchases to cost effectively finance their capital needs. Acacia believes there is adequate guidance that such instruments be disclosed and we do not view this requirement as creating a better way to have these instruments disclosed by issuers.

We appreciate the opportunity to comment on the proposed changes to Rule G-34.

Sincerely:

Noreen P. White
Co-President

Kim M. Whelan
Co-President

American Bankers Association

Cristeena Naser
Vice President
Center for Securities, Trust & Investments
202-663-5332
cnaser@aba.com

VIA ELECTRONIC MAIL

March 24, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-05, Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the above proposal issued by the Municipal Securities Rulemaking Board (MSRB). ABA members regularly purchase municipal obligations directly from the 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.

The MSRB seeks comment 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.[2] Our comments will be limited to issues in the proposal relating to the requirement to obtain CUSIP numbers for new issue of municipal securities sold in private placement transactions.[3]

[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.
[2] The proposal would amend the text of Rule G-34(a)(i)(A) to delete the existing phrase "for the purpose of distributing such new issue," to make clear that the CUSIP requirement applies to placement agents.
[3] We understand the proposal will apply to newly issued obligations of both municipalities and conduit borrowers.

The MSRB asserts that "the existing rule may result in unequal costs and regulatory treatment for dealers that comply with the requirement to obtain CUSIP numbers . . . as opposed to dealers that do not. The existing rule may also result in a diminished level of information available to investors regarding new issue municipal securities sold in a private placement where CUSIP numbers are not obtained."[4] The proposal further states, "[s]ince issues that lack CUSIP numbers circumvent the MSRB's (and other regulatory agencies') market transparency initiatives, clarifying the CUSIP number requirement would improve the information available to investors."[5]

We have no issue with these statements on their face. However, while the proposal is framed as being applicable solely to "municipal securities" – indeed the only type of instrument over which the MSRB has jurisdiction – the questions raised in the proposal clearly implicate loans from commercial banks.to municipal entities and other municipal market participants.[6]

The proposal states that banks making direct purchases "often request that dealers not obtain a CUSIP for the transaction."[7] ABA believes this is the case because banks have determined for the most part that these direct purchases are loans which the bank has underwritten in accordance with its loan credit process and attendant credit committee approvals and, therefore, no CUSIPs or other identifiers are necessary. We are unaware of any federal case law precedent that considers an identifier as a factor in the determination of whether an instrument is a loan or security. Nonetheless, marketplace participants believe that this identifier – rightly or wrongly – is an indicator that an instrument is a security.[8]

We are concerned that a practice by placement agents, out of an abundance of caution, of attaching CUSIP numbers to obligations identified as loans could ultimately unduly influence the accounting determination itself of whether an instrument is a loan or security. Applying what is believed by segments of the market to be a significant indicium of a security to bank loans could result in an after-the fact review by examiners using this cursory characterization – a review which could have potentially significant economic and regulatory consequences – one of which could be a requirement for the bank to mark the obligation to market.[9]

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[4] Release 2017-05 at 11.
[5] *Id*. at 15.
[6] In this letter we use the term "bank" as including bank subsidiaries and affiliates, some of which may be non-bank subsidiaries that originate loans to municipalities.
[7] *Id.at 7.*
[8] In the context of this proposal, that view is further supported by the requirement of G-34(a)(ii) that the underwriter apply for depository eligibility. We note that a key element of The Depository Trust Company's new issue eligibility criteria is that the security is "freely tradable." *See*, http://www.dtcc.com/en/matching-settlement-and-asset-services/underwriting/new-issue-eligibility.
[9] Due to the illiquid nature of these instruments, marking these obligations to market is an arduous process that can subject the bank to volatile swings in regulatory capital. Over the long term, such swings could increase the credit cost to the borrowers.

We believe that the increase in the number of bank loans over recent years reflects the cost effectiveness and utility of this funding mechanism to municipal entities and other municipal market participants, especially at a time when their own resources are so strained. Bank loans afford a broader menu of funding options to a wider range of issuers and obligors than those served primarily by the publicly offered municipal securities market. This benefits both large issuers and obligors (which at times prefer bank loan funding for specialty transactions) and smaller issuers and obligors (which may face limited, costly access to the publicly offered municipal securities market).

A possible consequence of adopting this proposal could be that banks, facing uncertainty from examiners as to proper accounting treatment, may reduce their presence in or be forced to exit this market leaving some issuers or obligors without an affordable funding source. Smaller, unusual (*e.g.* special districts), and infrequent municipal market issuers confront an information asymmetry problem that can create misperceptions of their inherent credit risk which adds to the time and expense of issuing debt in the public market and creates execution challenges. By contrast, banks – by virtue of their willingness both to evaluate small and nontraditional issuers and to negotiate specialized credit terms – have significantly mitigated this issue over the past five years through their increasing activity in the municipal market.

To disrupt an extremely beneficial credit mechanism for issuers we believe serves neither municipal entities nor other municipal market participants. While the intended outcome of leveling the costs for dealers may be achieved, the unintended consequence would likely be an increase, perhaps significant, in the financing costs for certain municipal entities, particularly smaller issuers that can least afford such additional costs.

Support for Exception

Because of these concerns, ABA strongly supports a proposed exception from the CUSIP and depository eligibility requirements of Rule G-34(a) for dealers and municipal advisors in private placements of municipal obligations to a single bank or bank affiliate purchaser or consortium of banks 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 facilitating their compliance with securities laws[10] as well as addressing the concerns of our member banks raised in this letter.

ABA recognizes that market transparency and investor protection are the drivers of the MSRB's approach. With respect to a perceived security identifier in particular, we believe the key concern should be to ensure that instruments that are expected to trade in the market can be tracked.

By contrast, however, direct purchase transactions are not expected to make their way into the hands of investors in the public market. Banks and their affiliates offering loans or

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

direct purchases to municipal entities or other municipal market participants generally intend to hold the obligations in their loan portfolios to maturity and make that intent clear in the transaction documents. Many banks include in their transaction documents language limiting transfers, in support of their determination to treat the instrument as a loan. Therefore, we believe MSRB-regulated entities would have little difficulty obtaining a certificate or other representation that the bank, bank affiliate or consortium of banks is acquiring the obligation for its/their own account, and has no present intent to distribute the instrument in a public offering.

Conclusion

ABA acknowledges the MSRB's view that the proposed amendments serve merely to confirm its existing position that CUSIPs must be obtained both for publicly offered and privately placed municipal securities. However, for MSRB-regulated entities, the proposal raises the threshold issue of whether an obligation is a loan or security and their possibly conflicting duties under securities laws. To mitigate such concerns, as discussed above, ABA strongly supports an exception for MSRB-regulated entities from the requirements of Rule G-34(a) for private placements of municipal securities to a single bank, bank affiliate or consortium of banks in those transactions where the bank, bank affiliate or consortium of banks is acquiring the obligations for its/their own account without any present intent to distribute the instrument in a public offering.

ABA would be pleased to discuss this issue further with you.

Sincerely,

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

Bloomberg

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Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Submitted Electronically

Re: MSRB - Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Bloomberg, L.P.'s Open Symbology Group ("Bloomberg") thanks the Municipal Securities Rulemaking Board ("MSRB") for the opportunity to comment on the Draft Amendments to and Clarifications of MSRB Rule G-34 (the "Proposed Amendments") published on March 1, 2017.

Bloomberg, the global business and financial information and news leader, gives influential decision makers a critical edge by connecting them to a dynamic network of information, people and ideas. The company's strength – delivering data, news and analytics through innovative technology, quickly and accurately – is at the core of the Bloomberg Professional service, which provides real time financial information to more than 325,000 subscribers globally. Bloomberg has deep experience with product identification, the development of open symbologies, and data management pursuant to the multiple symbologies used by our customers.

The Proposed Amendments would result in a further expansion of the mandate, under the MSRB's rules, to use Committee on Uniform Security Identification Procedures ("CUSIP")[1] numbers to identify municipal securities. On one level, Bloomberg recognizes that the MSRB's intent is largely to codify existing guidance for dealers and municipal advisors to obtain CUSIP numbers for new issue securities. However, on a broader level, the MSRB is extending the mandate to use CUSIP numbers under MSRB rules. Given global efforts to promote the use of open standard identifiers for financial transactions and products, and the existence of such identifiers for municipal securities, Bloomberg recommends that, as the MSRB considers these changes, it also considers allowing appropriate open-standard identifiers to be used in place of CUSIP numbers as a regulatory alternative to mandating that only CUSIP numbers can be used.

As noted in the Proposed Amendments, MSRB Rule G-34 currently requires the assignment, and therefore the use of, CUSIP numbers to identify new issues of securities. CUSIP is a closed, proprietary numbering system and there is a fee for obtaining a CUSIP number as well as licensing fees that apply for their use. Regulatory supervision and the oversight of increasingly interconnected, global financial markets requires an approach to data infrastructure that allows regulators to aggregate, manipulate, and analyze financial data across asset classes, entities, markets, and jurisdictional borders. The current state

[1] https://www.cusip.com/cusip/index.htm.

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of market data technology and identification standards readily allows for the consideration of regulatory alternatives to requiring the usage of closed, proprietary numbering systems like CUSIP.

Since the 2008 financial crisis, financial regulators, under the auspices of the Financial Stability Board (FSB)[2] and Committee on Payments and Market Infrastructures - International Organization of Securities Commissions (CPMI-IOSCO),[3] have been working to develop uniform, open standards for identifying financial entities and transactions to enhance their ability to monitor and address financial and market risks. At the heart of this effort is the need to classify and aggregate financial transactions and positions across markets, jurisdictions, and asset classes. Being able to group financial positions appropriately and value them is critical to regulators' efforts to understand financial markets. The FSB has recognized the importance of identifiers that are based on open standards and free of license or redistribution restrictions to this effort.[4] The MSRB's consideration of allowing open standard alternatives to CUSIP would allow the MSRB to leverage this work to reduce costs and promote efficiencies for regulators and market participants alike.

Bloomberg notes that the MSRB already allows the use of Legal Entity Identifiers ("LEI")[5] on its Form A-12 for identification of legal entities.[6] The LEI is a global, open, uniform standard for identifying legal entities not just for the financial sector, but for any use where legal entity identification is required. While there can be a fee for getting and maintaining an LEI number, there are no fees or license restrictions for referencing an LEI, republishing an LEI, or using an LEI for derivative works. Bloomberg recommends that the MSRB similarly consider allowing the use of open-standard alternative identifiers that can fulfill the same function as CUSIP numbers.

The Financial Instrument Global Identifier ("FIGI") is an example of an open-standard identifier framework that can be used as an alternative to CUSIP for the identification of municipal securities. FIGI was developed by Bloomberg to establish an identifier and symbology that could: 1) provide unique identification at multiple levels of granularity across asset classes, 2) be used across product lines and markets, and 3) solve shortcomings of existing identifiers.

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[2] http://www.fsb.org/.

[3] http://www.bis.org/cpmi/index.htm?m=3%7C16.

[4] *See*, Financial Stability Board, Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier (LEI) System (5 November 2012) at pg. 2, available at http://www.fsb.org/wp-content/uploads/r_121105c.pdf; Feasibility study on approaches to aggregate OTC derivatives data (19 September 2014) at pg. 37, available at http://www.fsb.org/wp-content/uploads/r_140919.pdf; and Proposed governance arrangements for the unique transaction identifier (UTI) (13 March 2017) at pg. 5-6, available at http://www.fsb.org/wp-content/uploads/Proposed-governance-arrangements-for-the-unique-transaction-identifier-UTI.pdf.

[5] Bloomberg is a candidate to become a Local Operating Unit (LOU) for the Global LEI System (GLEIS). LOUs are responsible for issuing LEIs.

[6] *See*, http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf.

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In 2014, Bloomberg assigned all rights and interests in FIGI to the Object Management Group (OMG)[7] who now administers FIGI as an open data standard. Bloomberg has been chosen by the OMG to be the Registration Authority for FIGI identifiers. FIGI is the only existing standard identification symbology currently in production that is a fee-free, license-free activity as per the requirements set out by the OMG. There are no restrictions on use or redistribution. FIGI currently covers more than 330 million financial instruments, including municipal securities. Bloomberg is working with the International Standards Organization (ISO) to have FIGI adopted as an ISO standard financial instrument identifier.

FIGIs are 12 character, alphanumeric, randomly generated IDs covering hundreds of millions of active and inactive financial instruments. In total, there are over 300 trillion potential identifiers available. The identifier itself acts as a Uniform Resource Identifier ("URI") to link to a set of metadata that uniquely and clearly describes an instrument. This method of constructing symbols was chosen based on client feedback which demonstrated the need for a random sequence that produces a unique, non-changing number. FIGIs provide a flexible identification framework and can be assigned at whatever level of granularity a regulator or market participant might need for identification, reporting or aggregation.

FIGI provides broad coverage across multiple asset classes, real-time availability, and flexibility for use in multiple functions. FIGI covers asset classes that do not normally have a global identifier, including loans, futures and options. FIGI numbers currently exist or can be obtained for all municipal bonds having CUSIP numbers and may be looked up and used free of charge through www.openfigi.com or the OpenFIGI Automated Program Interface (API). FIGI numbers can be readily obtained for municipal securities that are not currently required to have CUSIP numbers, as well.

A FIGI can be obtained early in the process of issuing a municipal security and never has to be changed, unlike CUSIPs that can only be obtained on a T+1 basis. This facilitates less manual intervention, fewer data errors, and quicker bookings.

Beyond being able to serve as an identifier for municipal securities, FIGI serves as a framework that enables linking existing identifiers into a standardized relationship structure based on the relevant metadata associated with different identification approaches and symbologies. Access to a centrally available symbology that ties different symbologies together underneath it eliminates firms' need to perform their own mapping exercises, streamlines the trade workflow, reduces operational risk and enables greater data quality.

According to a recent TABB Group report, FIGI is being adopted by vendors, investment managers, hedge funds, exchanges, and regulators because of its utility. Almost a quarter of asset management firms surveyed in that report said they were embracing the Financial Instrument Global Identifier (FIGI) expressly to address data quality and operational reconciliation issues.[8]

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[7] The Object Management Group® (OMG®) is an international, open membership, not-for-profit technology standards consortium, founded in 1989. OMG standards are driven by vendors, end-users, academic institutions and government agencies. OMG Task Forces develop enterprise integration standards for a wide range of technologies and industries. OMGs members include hundreds of organizations including software end-users in over two dozen vertical markets such as finance, healthcare, automotive, insurance and virtually every large organization in the technology industry.

[8] TABB Group, Building a Framework for Innovation and Interoperability (March 2017) pg. 13-14, available at

Bloomberg

Given their existence and growing usage, FIGI and other appropriate open-standard identifiers should be considered as regulatory alternatives to solely mandating CUSIP numbers in Section 3 of the economic analysis accompanying the Proposed Amendments. Financial market participants would benefit significantly from the reduced costs flowing from the MSRB's allowing the use of FIGI numbers or other appropriate open-standard identifiers as acceptable alternatives to using CUSIP numbers for municipal securities. The MSRB's decision to allow the use of open-standard identifiers as alternatives to closed, proprietary standards such as CUSIP could have wider benefits for regulators and market participants than those related just to the municipal securities covered by the Proposed Amendments. Such a decision could help facilitate the use of open-standard identifiers across multiple asset classes as it would broaden the classes of assets that allow the use of open-standard identifiers for identification.

Therefore, given the existence of open-standard alternatives to CUSIP numbers and the growing interest globally in promoting the use of open-standard identifiers, Bloomberg respectfully suggests that the MSRB consider the availability of such open-standard identifiers in making decisions regarding whether to further mandate the use of CUSIP numbers.

Thank you, once again, for the opportunity to provide comments on the Proposed Amendments. If Bloomberg can answer any further questions or be of further assistance, please feel free to contact me or Eric Juzenas, Global Regulatory Policy Group, 202-807-2038, ejuzenas@bloomberg.net.

Best regards,

Peter Warms
Senior Manager of Fixed Income, Entity,
Regulatory Content and Symbology

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http://tabbforum.com/opinions/standards-would-ease-market-data-pain-spur-innovation.

BDA Bond Dealers of America

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March 31, 2017

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's request for comment on proposed draft amendments ("Draft Amendments") to MSRB Rule G-34 on obtaining CUSIP numbers. The BDA supports the MSRB's effort to make the requirements of underwriters to obtain CUSIP numbers as clear as possible, but we disagree with how the MSRB has fashioned that requirement and suggest some alternative considerations below. Our most fundamental point is that the MSRB should not craft a rule that requires CUSIP numbers in transactions where the issuer and purchasing investors strongly do not want a CUSIP number and doing so will have substantial unintended consequences that will hurt the entire market.

The Draft Amendments will not permit issuers to issue and investors to purchase privately placed municipal securities without CUSIP numbers even though there are good reasons why issuers and investors alike may not want the securities to be assigned a CUSIP number.

Issuers and investors have very good, legitimate reasons to elect not to have municipal securities assigned a CUSIP number. While municipal securities are exempt under the Securities Act of 1933, with limited offerings under Rule 15c2-12, dealers, issuers, and investors need to make sure that investors are not purchasing the municipal securities for the purpose of distribution. In the appropriate fact pattern, ensuring that the municipal securities do not have a CUSIP number is one way to accomplish that. In addition, banks who directly purchase bonds or notes that may be construed as a municipal security ("direct purchase transactions") may need to establish that they are not

purchasing the bonds or notes in the investment market in order to secure appropriate internal accounting treatment for banking regulatory purposes. The Draft Amendments forego any of this flexibility if a placement agent is involved in the transaction. The Draft Amendments should allow the private placement transaction participants to decide whether a CUSIP number makes sense under the circumstances because there do in fact exist very good, legitimate reasons for them to do so.

To the extent that the MSRB views the Draft Amendments as a solution to direct bank transactions, the BDA believes that the Draft Amendments would be ineffective and cause unintended consequences.

To the extent that the MSRB believes that the Draft Amendments would provide greater market visibility for direct bank transactions, we do not believe that the Draft Amendments will have such an impact. The BDA has been highly supportive of every effort of the securities regulators to bring better visibility to direct bond transactions to investors in the municipal securities market. But we do not believe that the Draft Amendments will improve "market visibility" for direct bank transactions for two reasons. First, we believe that a CUSIP requirement would be ineffective to solve the problem. Investors need to know much more about direct bank transactions than just their existence. In addition, should the Draft Amendments become final, as we explain below, if an issuer and a bank do not want a direct bank transaction to have a CUSIP number, all that will mean is that they will avoid including a placement agent as a component of the transaction. Second, it could lead to unfair trading. CUSIP numbers improve visibility but only for institutional investors because it requires considerable technology infrastructure in order to be able to know a CUSIP number has been created for a security, and thus the Draft Amendments do not further a market-wide solution to the problem.

The SEC is already in the process of providing a much more complete solution to the problem. The recent proposed amendments to Rule 15c2-12 represent the kind of market-wide solution to this problem which, once the proposal is tightened, refined, and approved, will provide investors with the relevant information they need, when they need it, and do so in way that does not unfairly advantage some investors over others, or some market participants over others.

BDA believes that requiring CUSIP numbers in private placements will have the effect of eliminating placement agents in many transactions.

In many transactions, such as direct bank transactions, there is no absolute need for a placement agent to be a part of the transaction. If the parties to a privately placed transaction have a compelling reason for not assigning a CUSIP number to an issuance of municipal securities, the BDA believes that market participants will adjust around the

Draft Amendments by foregoing the use of placement agents. We see this as particularly the case with direct bank transactions where many banks will not participate in the transaction if the instrument is assigned a CUSIP number. The presence of a dealer in a transaction injects a professional presence and a person who is subject to the jurisdiction of securities regulators, and thus affords a degree of regulatory presence. The MSRB should not adopt rules that create such a clear incentive on the parties to not involve placement agents because the only impact in many cases will be to remove the placement agent from the transaction.

BDA believes that requiring CUSIP numbers in private placements may create an un-level playing field with non-dealer affiliated municipal advisors in direct bank transactions.

Our members have experienced instances where non-dealer affiliated municipal advisors will frequently take an aggressive interpretation of when a direct bank transaction constitutes a security because they are not subject to FINRA examinations and are only now starting to be subject to SEC examinations. Consequently, the Draft Amendments will likely have the effect of encouraging issuers and banks to move away from dealers who traditionally take a more conservative approach in assessing when a direct bank transaction constitutes a security. As a result, the MSRB will cause the industry to push this business to non-dealer affiliated municipal advisors. Our members believe that this will cause a shift in the business from placement agents to non-dealer affiliated municipal advisors so as not to cause problems with banks who do not want to have a direct bank transaction assigned a CUSIP number. Further, this could be widespread, resulting in an unknown negative market-wide shift, causing other unanticipated problems for issuers, regulators and investors. For instance, at the time an issuer seeks to solicit banks to submit proposals, the issuer will not know how many of those banks will insist on not having a CUSIP number assigned to the direct bank transaction. Accordingly, if two market participants are competing for the task of approaching the banks, and one of them is under the requirement to obtain a CUSIP number and other does not think that it is, issuers will have considerable incentive to work with the latter. We do not believe this sort of situation is what the MSRB intends to result from these Proposed Amendments.

BDA urges the MSRB to change the definition of "underwriter" in the Proposed Rule to exclude private placements.

The BDA proposes that the MSRB adopt the following definition of "underwriter" for purposes of Rule G-34:

"*The term "underwriter" shall mean (a) with respect to any issue of municipal securities that is exempt from Rule 15c2-12 under paragraph (d)(1)(i) and sold to not*

more than five persons, any broker, dealer or municipal securities dealer who purchases a new issue of municipal securities from the issuer, as a principal, with a view to and for the purpose of reselling such new issue; and (b) with respect to any issue of municipal securities other than an issue described in clause (a) of this definition, an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8)."

This revised definition synchronizes the definition of underwriter with the limited offering exception under Rule 15c2-12. This definition of underwriter empowers the investor to decide whether it wants a CUSIP number because the number of purchasers is narrowed to not more than five who are sufficiently sophisticated and thus will have the bargaining power to insist on a CUSIP number if that is helpful. But, if a purchaser who has sufficient bargaining power on its own does not want a CUSIP number attached to the transaction, the MSRB should not dictate to investors the characteristics of securities they should be buying. Accordingly, we believe that the parenthetical that says, "(which includes a placement agent)" contained in (a)(i)(A) of the text of the draft amendments, should be deleted.

We think that this is responsive to Question 4 under the first section of questions of the Regulatory Notice. We do not think that the MSRB should create an exemption but should refashion the definition of "underwriter" to create space within the requirement for investors of any transaction to determine whether they want a CUSIP number on the transaction they are purchasing.

The Draft Amendments create a conflict with other provisions of Rule G-34.

If the Draft Amendments were effective, Rule G-34 would apply the term "underwriter" both to the requirement of obtaining CUSIP numbers and also submitting the application and other information to The Depository Trust Company ("DTC") for the issue. The MSRB's interpretation of the definition of "underwriter" would include instances where a dealer "offered and sold" securities but did not in fact purchase the securities and resell them to the investor. Under DTC operational rules, dealers many not take the steps required of them under Rule G-34 if they merely offer and sell the securities and do not purchase the securities and then resell them. Thus, if the MSRB changes the definition of "underwriter," the MSRB will need to consider revisions to other parts of the rule to ensure that dealers are not under a requirement that is impossible for them to satisfy.

BDA urges the MSRB to apply the Proposed Rule only prospectively.

The BDA is very concerned with the lack of clarity concerning the effectiveness of the Draft Amendments. While the MSRB may view the Draft Amendments as clarification, the industry believes that the very existence of the Draft Amendments

shows that the current Rule G-34 does not impose the requirements set forth in the Draft Amendments. Accordingly, we urge the MSRB to make the Draft Amendments, in whatever final form, prospectively effective only. Failure to do this will create chaos and confusion in the market, which will not further any goal of the MSRB. The idea that the MSRB could create any sort of rule, even a clarification, and dealers need to live with uncertainty that past deals will be evaluated in light of that future development is untenable and a dangerous precedent to set.

* * *

Accordingly, the BDA urges to the MSRB to take a different course with the Draft Amendments. We urge the MSRB to create some space in the rule for issuers and investors who do not want privately placed municipal securities to be assigned a CUSIP number.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

CUSIP Global Services
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Scott J. Preiss
Managing Director
Global Head
CUSIP Global Services

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VIA ELECTRONIC MAIL

March 30, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-05, Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

CUSIP Global Services (CGS), operated on behalf of the American Bankers Association (ABA) by S&P Global Market Intelligence, welcomes the opportunity to comment on the above proposal issued by the Municipal Securities Rulemaking Board (MSRB).

CUSIP Global Services is dedicated to driving efficient trading, clearing and settlement in capital markets on a global basis by providing a unique common language for identifying financial instruments, their issuers, and obligors across institutions, exchanges and nations. With nearly 50 years of experience in the standards and identification businesses, CGS works closely with global market participants to develop innovative solutions to reference data challenges. A Board of Trustees comprised of representatives from leading financial institutions has oversight of CGS expansion and activities, and has been instrumental in ensuring that CGS is proactive in meeting emerging industry requirements.

In recent years, CGS has collaborated with market leaders to provide solutions to critical challenges, and is the identification engine behind an array of expanded asset classes beyond traditional financial instruments, including credit derivative entity IDs, listed equity options, and hedge funds. CGS partners with industry experts like the National Association of Insurance Commissioners (NAIC) and Loan Syndication and Trading Association (LSTA) to provide difficult-to-obtain private placement and syndicated loan identifiers at the issuer/borrower level, enhancing CUSIP's reach in identifying instruments and their associated issuers / obligors of interest to the market.

Moreover, CGS is a longtime participant and supporter of global standards bodies, including ISO (International Organization for Standardization) and ANSI-accredited (American National Standards Institute) X9. CGS is also a founding member of the Association of National Numbering Agencies (ANNA), a consortium of more than 120 global stock exchanges and depositories, dedicated to the unique identification of global financial instruments and their issuers on a cross-border basis via the ISO 6166 standard (ISIN), and continues to be a leader in the further development of global standards, including the Legal Entity Identification standard (ISO 17442).

As the operators of the CUSIP system for the ABA since 1968, CGS supports the efforts of the MSRB to clarify the requirement for appropriate market participants to obtain CUSIP numbers for new issue securities sold in private placement transactions, and further, to remind brokers and dealers of their existing obligation under Rule G-34(b) to obtain CUSIP identifiers for certain secondary market securities.

At the direction of the CGS Board of Trustees, and the financial industry at large, CUSIP Global Services takes seriously its commitment to provide the certainty, reliability and efficiency of the CUSIP system to the broadest set of financial instruments, issuers and markets. We see this amendment and clarification to MSRB Rule G-34 as a positive step for market participants along that continuum.

CUSIP Global Services looks forward to discussing this matter in further detail at your convenience.

Sincerely,

Scott J. Preiss
Managing Director, Global Head
CUSIP Global Services

Comment on Notice 2017-05

from Dennis Dix Jr, DIXWORKS LLC

on Wednesday, March 29, 2017

Comment:

COMMENT ON NOTICE 2017-05

DIXWORKS LLC is a single member firm established in March of 2001 serving small and medium-sized issuers in the State of Connecticut, many which might not otherwise have access to the capital markets on account of their small size, no previous credit, or small or infrequent borrowing needs. The most readily available credit source for these small issuers is the bank loan. These are plain vanilla credits that are booked as commercial loans and placed in the bank's loan portfolio never to see the light of day until maturity. The loan documents specifically state that the loan may not be marketed in any form that might constitute a municipal security. Placing a CUSIP on these loans might lead to the misinterpretation that they are a municipal security, to the benefit of no one.

The MSRB and other market players have made it abundantly clear that bank loans need to be disclosed in order to determine a complete credit picture of a particular issuer. I have no quarrel with that position. The EMMA portal has been updated to facilitate same. No CUSIP is needed to find and identify a properly disclosed bank loan.

I am bewildered by the new imposition on Municipal Advisors to provide CUSIP numbers for competitively bid new issues. This function has been effectively and reliably executed by the broker/dealer community for decades. A vague new concept of "regulatory imbalance" to justify this change escapes my understanding despite having read and re-read Notice 2017-05. A broker/dealer may bury its CUSIP cost in the spread, but an MA has no such option. We must either absorb this new cost or invoice our clients in addition to whatever fee we are charging. How do we recover the time-cost of this additional processing? Increase our fees? To what end? If this new burden on MA's somehow represents a correction of "regulatory imbalance", it certainly is not in favor of the MA industry.

I have profound respect for the MSRB's outreach efforts over the years to try and determine what exactly an MA does. Unlike the broker/dealer community where everyone does essentially the same thing, the regulation of that industry may be fairly uniform for all players. The MA business is extremely diverse as to the services it provides and the type of clients it serves. I urge that the MSRB not attempt to pound regulatory round pegs into square holes and to try to accommodate the amazing diversity of the MA universe. If I recall correctly, the Dodd-Frank Act included language stating that regulation of small market participants not be unduly burdensome. In my opinion, the shifting of the CUSIP burden from underwriters to MA's serves no useful purpose and does pose an undue burden on the small shops such as mine.

Thank you for your attention.

Dennis Dix, Jr., Principal
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46 Years of Service: 1971 – 2017

Comment on Notice 2017-05

from Shelley Aronson, First River Advisory L.L.C.

on Wednesday, March 22, 2017

Comment:

This comment relates to the section entitled, "Clarification of Rule G-34(a) Application to Private Placements."

With respect to Question #4 thereunder, the MSRB should provide an exception from the requirements of Rule G-34(a) for dealers and/or municipal advisors in private placements of municipal securities to a single purchaser. I understand that it is not at all difficult to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales, provided that "view to" is limited to the purchaser's present intention and does not absolutely prohibit secondary market resales.

In this instance, and even more generally, there is no reason to require that CUSIP numbers be assigned to private placements. After all, private placements are supposed to be private. Assigning CUSIP numbers would cause issuers to incur unnecessary costs for no value-added. The principal reasons for assigning CUSIP numbers are to facilitate 1) trading and the posting of trade data on EMMA, and 2) the dissemination of continuing disclosure information on EMMA. Because private placements are not expected to trade, reason #1 does not apply (conversely, assigning CUSIP numbers to private placements might promote something that's not supposed to happen). Reason #2 applies only when the issuer has public-offered bonds outstanding, a critical distinction. The National Federation of Municipal Analysts and investors in municipal bonds have insisted, validly in my opinion, that having access to information on an issuer's private placements is essential to the proper and complete analysis of an issuer's credit quality. In those cases, private placement information can be posted on EMMA under the CUSIP numbers for the issuer's outstanding publicly-offered bonds. Because the publicly-offered bonds are affected by the private placement, it would seem logical to access information on private placements using CUSIP numbers for the affected publicly-offered bonds. Investors' information systems are keyed to the CUSIP numbers of their holdings. Forcing investors to cross-reference CUSIP numbers for private placements which may be important because of their relationship to their holdings would represent an unnecessary burden.

Assigning CUSIP numbers to private placements in other situations is totally unnecessary. If an issuer has even multiple private placements outstanding, but no publicly-offered bonds, CUSIP numbers are unnecessary because continuing disclosure information with respect to each of the private placements will ordinarily be conveyed directly to the purchasers thereof without relying on EMMA. There is no need to achieve market transparency or consistency because the only market participants who care about private placements (without the issuer also having publicly-offered bonds outstanding) are the purchasers thereof. Lastly, if an issuer who has private placements outstanding and subsequently were to proceed with the issuance of publicly-offered bonds, then information on those private placements will, of course, have to be disclosed in the Official Statement for the publicly-offered bonds. Post-sale, material and relevant information associated with those prior private placements can be disclosed through EMMA using the CUSIP numbers assigned to the new publicly-offered bonds.

George K. Baum & Company

INVESTMENT BANKERS SINCE 1928

March 31, 2017

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: MSRB Regulatory Notice 2017-05, Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of George K. Baum & Company ("GKB" or the "Firm"), we are pleased to submit this letter in response to the MSRB's Regulatory Notice 2017-05 (the "Notice") requesting comments on proposed amendments (the "Draft Amendments") to Rule G-34 on obtaining CUSIP numbers. To help put our response in context, GKB is a broker dealer whose principal business is municipal finance. Our Firm provides a multitude of services to our clients, both municipal entities and obligated persons, including underwriting and private placement services and municipal advisory services. When serving in an underwriting capacity, our principal bond distribution network is to institutional investors. We also have a relatively small retail distribution capacity. When serving in a private placement capacity, we facilitate the private sale of municipal securities by our municipal entity and obligated person clients directly to institutional investors, including banks, who expressly agree in writing that they are purchasing the securities with the intention of holding them and with no view to distribution.

Please also note that our Firm is a member of the Bond Dealers of America ("BDA") and the Securities Industry and Financial Markets Association ("SIFMA"). Both the BDA and SIFMA are submitting separate comment letters in response to the request for comment Draft Amendments. GKB approves, endorses and supports all of the comments and suggestions being provided by the BDA and by SIFMA in their respective comment letters. In particular, GKB urges that the following provisions in the Draft Amendments be revised.

Incorporate a Private Placement Exemption Similar to that Set Forth in SEC Rule 15c2-12(d)(1)(i)

GKB urges the MSRB to provide an express exemption from the requirements of Rule G-34(a) for any private placement of municipal securities to a limited number of purchasers, including but not limited to banks, whom the underwriter or placement agent reasonably believes (a) have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective purchase, and (b) they are not purchasing for more than one account or with a view to distributing the securities. Including an exemption for private placements to limited number of such sophisticated purchasers would be consistent with the salient features of the limited offering exemption under SEC Rule 15c2-12(d)(1)(i). As noted by the BDA in its comment letter, in such limited offerings, issuers, dealers and purchasers need to ensure that the municipal securities are not being purchased for

the purpose of distribution. That goal and objective would be furthered by not requiring that a CUSIP number be obtained for the municipal securities in a limited offering. Indeed, as noted by SIFMA in its comment letter, requiring placement agents to obtain CUSIP numbers for private placements meeting those criteria will merely add additional costs to the issuer, with questionable benefit, if any, to the purchaser.

GKB supports the BDA's proposed approach for accomplishing the limited private placement exemption through a revised definition of the term "underwriter" for purposes of Rule G-34, and urges the MSRB to adopt that proposed definition, as follows:

> *"The term "underwriter" shall mean (a) with respect to any issue of municipal securities that is exempt from Rule 15c2-12 under paragraph (d)(1)(i) and sold to not more than five persons, any broker, dealer or municipal securities dealer who purchases a new issue of municipal securities from the issuer, as a principal, with a view to and for the purpose of reselling such new issue; and (b) with respect to any issue of municipal securities other than an issue described in clause (a) of this definition, an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8)."*

Correspondingly, we also recommend that the clause contained in the parenthetical in (a)(i)(A) of the Draft Amendments, stating "(which includes a placement agent)", should be deleted.

Prospective Application Only

GKB urges the MSRB to state clearly and unequivocally that the changes to Rule G-34 set forth in the Draft Amendments, in whatever final revised form, shall be applied only prospectively. We agree with the MSRB's statements in the Notice that the current version of Rule G-34(a) has led to questions in the industry – quite appropriately, we believe – regarding whether the Rule as currently worded applies to direct purchase transactions in which a dealer acts as a placement agent. The current language in Rule G-34(a)(i)(A) expressly refers, in part, to "each broker, dealer or municipal securities 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." (emphasis added) In a direct, private placement transaction, dealers do not purchase or "acquire" municipal securities "from the issuer;" the issuer sells the securities directly to the purchaser, who agrees in writing that it intends to hold the debt and not for the purpose of distribution. We respectfully submit that the plain meaning of the words used in the current version of Rule G-34(a)(i)(A), as highlighted above, leads to a reasonable interpretation that the Rule does not apply to or cover private placement transactions. The MSRB's views to the contrary, as set forth in the Notice, demonstrates and underscores the ambiguity inherent in the current Rule.

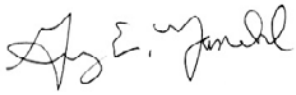
The MSRB's Draft Amendments incorporating private placements within Rule G-34(a)(i)(A), in whatever final form, whether or not characterized as only a clarification of existing language, certainly will expand the scope of the Rule. While clarity in any regulation is laudable and beneficial, a retroactive application of any such clarification would be fundamentally unfair. A revised Rule G-34 should not affect outstanding transactions completed under the current version of the Rule. GKB respectfully urges that the Draft Amendments be applied only prospectively.

Competitive Sales of New Issues

GKB supports the proposed Draft Amendment to G-34(a)(i)(A)(3), that would effectively level the playing field between dealer municipal advisors and non-dealer municipal advisors by requiring that *any* municipal advisor in a competitive sale must apply for a CUSIP number.

Thank you for the opportunity to submit these comments on the Draft Amendments.

Sincerely,



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March 31, 2017

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W.
Washington, D.C. 20005

Re: MSRB Regulatory Notice 2017-05

Dear Mr. Smith:

The Government Finance Officers Associations ("GFOA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to amend Rule G-34. The GFOA represents over 18,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector. Members of GFOA's Committee on Governmental Debt Management (the "Committee"), a geographically and organizationally diverse group of 25 municipal securities issuers, were consulted in preparing this comment letter. Below are the Committee's comments.

A major and overriding concern of the GFOA is that the proposed rulemaking could dampen the bank loan and direct purchase markets, putting issuers in the unfavorable position of either not using a financing structure that is in their best interest, or having to pay more for those financings. This stems from the MSRB's proposed definition of "underwriter" to include placement agents. The GFOA opposes this change in definition for the reasons noted below.

Direct purchases by banks are an important component of the debt profiles of many issuers, particularly small governments who are not able to readily or economically access the public debt markets, compared to their larger counterparts. The GFOA is very concerned that this amendment would significantly reduce the number of banks that are willing to purchase municipal securities directly from issuers. Direct purchases by banks also present cost savings to issuers compared to public offerings, because they do not require official statements or ratings and can typically be executed in a timelier fashion that better meets the needs of the issuer and investors. Yet, if this proposal were to be implemented, many banks would likely object to: (i)

having CUSIPs for instruments that they plan to treat as loans on their financial statements and (ii) holding those instruments in book-entry form. In applying the U.S. Supreme Court's "family resemblance" test in *Reves v. Ernst & Young*, many banks think that CUSIPs and book-entry form are indicative of a plan of distribution and, therefore, of a security. Furthermore, due to remaining confusion as to the definition of a "bank loan," this proposed rulemaking could cause banks not only to curtail their interest in purchasing private placements of municipal securities, but could also deter interest in executing bank loans with state and local governments. Such actions by banks would result in state and local governments having to pay more for entering into these transactions, costs that will ultimately be paid by taxpayers.

Additionally, the MSRB's proposal is likely to reduce the use of placement agents by issuers, so that CUSIP numbers and book-entry form would not be required. Also, municipal advisors may not serve as placement agents. Issuers may, therefore, be forced to interact with banks on their own, without a placement agent to solicit the banks and assist the issuer with negotiating the most favorable terms for direct purchases. This is averse to the MSRB's mission to protect issuers. This go-between role of the placement agent is a valuable service that, under the proposed change the Rule, is at risk of being lost for the issuers that need it most.

The proposed definition of "underwriter" would have the effect for the first time of requiring placement agents to (i) obtain CUSIPs for municipal securities they place and (ii) applying to DTC to make such securities DTC-eligible. The MSRB asserts that the proposed definition of "underwriter" merely codifies its existing interpretation of the term. However, that interpretation is contradicted by the language of the existing rule, which applies only when a dealer "acquires" a new issue of municipal securities. When a placement agent merely acts as a go-between between the issuer and the investor (e.g., a bank), and never takes title to the securities, even for an instant, the existing rule by its very terms does not apply.

The MSRB states that Rule G-34's CUSIP requirement was originally adopted to improve efficiencies in the processing and clearance activities of the municipal securities industry. However, the lack of CUSIP numbers for direct purchases of securities by banks has not proved to be an impediment to the willingness of banks to make such direct purchases.[1] In terms of investor awareness of such direct purchases, placement agents already are required to notify the MSRB of such placements by filing Form G-32, thus the CUSIP proposal does not appear to add value or provide additional information to investors. We suggest that instead of seeking these changes to Rule G-34, the MSRB spend effort and resources enhancing the EMMA system with regard to bank loan information, and continue to work with the GFOA and other market participants to identify EMMA improvements that would accommodate the transactions being listed on an issuer's home page when Form G-32 is filed. This approach would focus efforts on the pressing matter at hand and allow investors to more easily access bank loan information, without creating collateral damage to issuers and the broader bank loan market.

[1] In 2016, the private placement market topped $20 billion, a number that is 8 times the amount that was issued in 2010; http://www.bondbuyer.com/news/markets-news/private-placements-surge-amid-transparency-value-concerns-1124546-1.html

Furthermore, the application of the new definition of "underwriter" to the DTC process could also prove problematic as it is not clear that DTC would even be willing to interact with a placement agent that is not the owner of the securities, even for a limited period of time. It is the general practice for such securities not to be in book-entry form, but instead simply to be evidenced by a note. By applying the new definition of "underwriter" to the DTC provisions of Rule G-34, the MSRB will be creating unnecessary confusion.

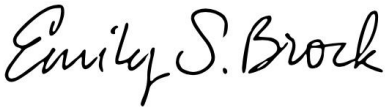
The MSRB asks for comment on whether it should provide an exception from the requirements of Rule G-34(a) for dealers in private placements of municipal securities to a single purchaser. Should the MSRB move forward with the proposed amendment to Rule G-34(a), the GFOA would support such an exception. However, the GFOA believes that such an exception should apply to the entire Rule G-34, not just Rule G-34(a) in light of the DTC concerns discussed above.

The MSRB also asks how difficult it would be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market sales. The GFOA notes that such direct purchases are already structured to take advantage of the Rule 15c2-12 exemption for limited offerings to no more than 35 persons, which already requires the purchaser to state that they are not purchasing the securities "with a view to distributing" them.

Finally, we do not object to the proposal to require non-dealer municipal advisors to obtain CUSIP numbers for competitive issues, as is currently required for dealer municipal advisors.

Thank you again for the opportunity to comment. Please feel free to contact me at ebrock@gfoa.org or (202) 393-8467 if you have any questions on or would like to discuss any of the information provided in this letter.

Sincerely,



Emily Brock
Director, Federal Liaison Center

March 31, 2017

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street Northwest
Washington, DC 20005

Re: MSRB regulatory notice 2017 – 05

Dear Mr. Smith:

The National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA" or "the Association") appreciates the opportunity to comment on the proposal to amend Rule G – 34. NAHEFFA has 41 members representing 34 states. Our authorities issue tax exempt bonds for nonprofit health, education and other charitable purposes. We support the essential mission of the MSRB, its importance in the marketplace and the vital, positive role that EMMA plays.

The Association, however, has concerns about the need for and efficacy of this CUSIP-related proposal. We do not believe the proposed changes to Rule G-34 are necessary and are concerned that the proposed changes will impose additional costs, and burdens on our borrowers and provide little benefit to the market. Furthermore, CUSIP numbers and the posting of market-related information for securities which are not traded could confuse and mislead investors, especially retail investors.

In a period when there is concern about excessive regulation, it behooves even an entity of a special nature, such as the MSRB, to carefully weigh whether additional burdens and restraints are necessary. Even though not within the direct ambit of the President's executive orders on regulatory reform, MSRB would be prudent to consider and apply the spirit of these communications.

Our concerns stem from the impact of this proposal on bank loans or private placements. These financings are critical and most appropriate for literally thousands of smaller nonprofit educational, healthcare and other charitable institutions across the country. Many of these small charities, as a practical matter, have little or no other way to access reasonably priced capital. Placing additional burdens on them and disincentives on the purchasing banks would create additional barriers to infrastructure. Instead, we need

incentives to facilitate infrastructure in all sectors, including the nonprofit sector. Our banking purchasers are telling us that they have serious problems with this proposal and that it may cause them to lessen their engagement with our small borrowers because of, among other things, the possible implications on their books of this borrowing being considered a security.

Many of our borrowers are small nonprofits with limited staffing resources. They rely on assistance from placement agents and/or municipal advisors to put together these private placements and bank loans. Under this proposal they may be forced to forego such assistance. What tangible benefit this proposal creates is unexplained other than vague references to level playing fields. We would rather see continued improvement of EMMA rather than additional requirements on the market place which may be traps for the unwary.

The economic analysis draft is inadequate. It is a series of generalities and hypotheticals almost literally without one data point. No attention is paid to smaller borrowers and businesses. Please model a very small borrowing, perhaps $1 million for a local YMCA. The professionals take a haircut on their fees or the deal does not get done. Is this additional cost/burden the tipping point against the borrowing? There are undoubtedly countless interesting ideas for new requirements. Where do additional requirements end? Before making this proposal MSRB should have attempted at least a cursory quantification of needs, benefits and burdens.

Perhaps if the Board feels bound to purse this initiative, single bank purchase transactions, unlikely to be traded, can be exempted. In most cases, direct loan transactions are made with banking institutions that are making a long term commitment to the transaction. Generally, the documentation limits transfers of the loan to transfers within the corporate structure of the purchasing bank.

In cases where securities are sold to a single investor, the authorizing documents, including the purchase agreement, generally provide for the purchaser to give an investment letter with respect to the securities. Such investor letters acknowledge that the purchaser has done its own due diligence and that they have no present intent to transfer the security. Such letters also acknowledge that any subsequent purchaser must also be a sophisticated investor willing to sign a similar investor letter.

By changing the definition of "underwriter" to include dealers acting as placement agents in private placement transactions, including direct purchases of municipal securities, the MSRB is imposing additional administrative burdens on transactions that are not traded in the public markets. Because the securities are not traded in the open market, the current direct disclosure between the issue and investor is more than adequate.

We support disclosure initiatives which truly benefit investors and minimize burdens on borrowers. This proposal does not do that.

Thank you again for the opportunity to submit these comments and we would be glad to discuss our views with MSRB.

Respectfully submitted,

Donna Murr, President
Martin Walke, Advocacy Committee Chair
National Association of Health and Educational Facilities Finance Authorities
P.O. Box 906
Oakhurst, NJ 07755
(360) 586-4370

cc: Robert Fippinger, Chief Legal Officer, MSRB – rfippinger@msrb.org
Charles Samuels, Mintz Levin, NAHEFFA General Counsel (202) 434-7311 – casamuels@mintz.com

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

March 31, 2017

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

RE: MSRB Notice 2017-05

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on the MSRB's Proposed Amendments to Rule G-34, on Obtaining CUSIP Numbers. NAMA represents independent municipal advisory firms and municipal advisors (MA) from across the country. NAMA, among other objectives, serves to promote and provide educational efforts and assist its members navigate through the federal regulatory and municipal market landscapes.

Our comments are focused on two elements of the proposal: the proposed mandate for MAs to obtain CUSIPs in competitive sales, and requirement to have brokers obtain CUSIPs on private placements.

Municipal Advisors Applying for CUSIPs in Competitive Sales

The MSRB proposes to have all municipal advisors apply for CUSIP numbers when they work for a client on a competitive sale. Such provisions for broker/dealer MAs have been in place since 1986, and this proposal seeks to impose the same responsibilities on all municipal advisors. The Notice, however, did not indicate why in 1986 the MSRB acted to have broker/dealer MAs be responsible for this activity and whether the rationale applies today.

Turning our clocks to 2017, it is unclear what problem this proposal is trying to fix. For instance, is there really a need to apply for CUSIPs on competitive deals at the time the Notice of Sale goes out when there may be no bid awarded or when the structure of the financings may be changed as part of the bidding process, creating either unnecessary CUSIPs or requiring new CUSIPs to be obtained after the formal award? It is our experience that maturity structures are not always set in the Notice of Sale – and therefore the practice promoted in this proposal might result in the need to cancel and re-subscribe the CUSIPs. Instead couldn't the underwriter be responsible for obtaining CUSIPs after the bid is awarded as is the current practice? This would allow the underwriter to maintain control of its obligations rather than having to rely on a municipal advisor to complete one step of what is a multi-step regulatory process for underwriters.

In addition, the regulatory regime for broker/dealers and municipal advisors has changed significantly since 1986. In this current landscape, requiring municipal advisors to apply for CUSIPs raises concerns for MAs that are not registered broker/dealers. This is especially true because CUSIPs are primarily used to facilitate the clearance and settlement process for securities. The proposed amendments would therefore impose a responsibility on MAs that extends beyond their traditional and transactional roles in the issuance process and further blurs the line between MA activity and broker/dealer activity. As the MSRB is aware, Section 3(a)(4)(A) of the *Exchange Act* defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." As we have learned over the past few years, MAs must be very cautious to not engage in activities that would require them to register as brokers. Therefore, we believe that MAs should not be responsible for obtaining CUSIPs in a competitive sale.

In response to the regulatory imbalance question asked on page 10, the point of regulatory balance is not to impose broker responsibilities on municipal advisors or municipal advisor responsibilities on brokers. Thus, the MSRB's claims of regulatory imbalance are inapplicable here. If that were the case, Congress could have chosen to create a single class of regulated entities for the municipal market.

If the MSRB determines to move forward with the amendments, then a revised proposal should address additional concerns, including the following:

- The MSRB should clarify what the process will be for the MA to apply for CUSIPs when no award is made or when the structure of the financing changes as part of the bidding process.
- The MSRB should clarify what the process will be under the proposal for applying for CUSIPs when an issuer engages in a competitive transaction, without using an MA.
- The MSRB should clarify what the process will be under the proposal for an MA to apply for CUSIPs, when an issuer uses multiple MAs on a transaction (e.g., defined in scope of work documentation).
- The MSRB should clarify what the process will be when an MA does not obtain CUSIPs despite being required to do so.

Additionally, in the Proposal's cost benefit analysis, there seems to be an apples to oranges comparison. Again, we have never heard of an instance where there was a lack of demand for any municipal bonds, whether sold in a competitive or negotiated sale, because CUSIP numbers were not assigned before the bonds were actually available. This purported cost-benefit analysis did not analyze this specific provision of the proposal which imposes a cost on municipal advisors without any offsetting benefit. The supposed benefit comes from another provision of the proposal – not this particular provision. This is not an adequate cost benefit analysis and does not comply with the MSRB's own policies for economic analysis. The MSRB should undertake a new cost benefit analysis that looks at the costs and benefits of the amendments to Section (a)(1)(A)(3) which is separate and distinct from other costs and benefits imposed by the amendment. Additionally, as is our position on all MSRB rulemaking, we would ask that the MSRB look not only at the costs associated with complying with this specific rulemaking but the cumulative regulatory burden of this rulemaking in combination with the entire MSRB MA rulebook, paying special attention to small MA firms.

<u>CUSIPs for Private Placement Transaction</u>

The proposal to require dealers to apply for CUSIPs in private placements could adversely impact issuers. The most striking outcome could be negative economic consequences for state and local governments and other tax-exempt borrowers, by dampening interest and engagement by banks or

other investors. Many issuers use private placements to avoid costs associated with going to the open market with a bond issuance. Since the use of CUSIPs could require the bank/investor to have to account for the transaction as a security, the financing institution may not believe that the transaction is attractive for their portfolio. This would reduce demand for the transaction and raise issuer's costs or force issuers to find alternative and more costly ways of placing the debt.

The proposal could also have negative consequences by redefining "underwriter" to include "placement agents" which could prevent the use of a placement agent by an issuer, since the use of a placement agent would trigger the need to obtain a CUSIP. It is also important to point out that including placement agents within the "underwriter" definition may not work well. A placement agent does not acquire the security, like the underwriter, thus the proposed revision of the definition may be confusing and unwarranted, including for proposed use in the DTC system, which again is indicative of a traded security.

Eliminating the CUSIP requirement on private placements altogether may be advisable for the reasons noted in this letter and those submitted by other marketplace participants. If the MSRB proceeds with the proposal, it should allow for an exemption from the proposed requirements when the private placement is executed with a single purchaser (per question on page 7 of the Notice). Additional clarification would also be warranted to have the Amendment require CUSIPs only on "clearly identifiable securities." This would avoid general confusion that exists in the marketplace related to the definitions of bank loans, private placements, direct placements, etc. It may also be prudent for the MSRB to wait and see what, if any, action the SEC takes in this area related to its recent release on amending Rule 15c2-12 (SEC File No. S7-01-17).

Finally, the MSRB should be acutely aware that in a private placement, an issuer could engage in this transaction without using a municipal advisor or a placement agent, and thus would be negotiating directly with the bank on the specifics of the transaction. The proposal could then have an end result, especially in the cases of smaller governments and entities and those that do not have specific debt management staff, that is contrary to the MSRB's mission to protect issuers.

We would welcome the opportunity to further discuss our comments with the MSRB. Please do not hesitate to reach out if that would be useful.

Sincerely,

Susan Gaffney
Executive Director

NATIONAL FEDERATION *of* MUNICIPAL ANALYSTS

March 31, 2017

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

Re: MSRB Regulatory Notice 2017-05

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's (MSRB or Board) *Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers*.

The NFMA is a not-for-profit association with nearly 1,400 members in the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our *Recommended Best Practices in Disclosure* and *White Papers* are available on our website, www.nfma.org.

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

The NFMA fully supports disclosure of all the financial obligations of a municipal issuer **with publicly outstanding debt** including bank loans, direct placements, private placements, swaps and other instruments that create indebtedness. These instruments can have a material impact on outstanding publicly issued debt and impact an investor's decision of whether to purchase, hold or sell a security. For example, these borrowings and/or contracts can: a) increase the amount of debt outstanding and reduce financial flexibility; b) allow a new lender or counterparty to exercise remedies ahead of existing bondholders; c) divert specific resources (originally part of general resources) to secure the new obligation; d) add covenants that, when triggered, could result in cross-defaults; and, e)

compromise an issuer's liquidity if the principal payment is structured as a balloon payment, has extraordinary call provisions or requires the posting of collateral.

The NFMA believes that dealers and municipal advisors should bear the same disclosure responsibilities when acting as a placement agent for non-public debt incurred by a municipal issuer, but we do not take a position on when CUSIPs should or should not be obtained. However, if the proposed amendments and clarifications result in more bank loans, direct placements and private placements obtaining CUSIP numbers, we are concerned about the potential disclosure consequences in the EMMA system.

At present, issuers with publicly outstanding bonds (and their financing teams) have been encouraged by the MSRB and various industry groups, including the NFMA, to alert their existing bondholders when they incur new debt that is not a public transaction. When done, this is commonly accomplished by filing information in the EMMA system under an issuer's CUSIPs for publicly outstanding debt that are monitored by an issuer's existing investors. If new CUSIPs are obtained for each private debt transaction, it may result in fewer notices being posted or linked to the CUSIPs for affected publicly outstanding debt, reducing the information flow to investors. This would undermine progress made by the market in the disclosure of these instruments.

Additionally, the SEC's Proposed Amendments to Exchange Act Rule 15c2-12 would expand the list of reportable material events to include the notification of the incurrence of financial obligations and the triggering of events under such obligations that reflect financial difficulties. Both the MSRB's proposals and the SEC's proposals will affect disclosure of these instruments, and care should be taken to be sure that each proposal can be implemented without creating reporting and system complexities that result in unintentional disclosure lapses.

We encourage the MSRB to thoroughly explore the technical issues related to the proposed regulatory proposals (and the ease of compliance with such) in its EMMA system to ensure that there is no inadvertent loss of transparency to holders of publicly issued debt of an issuer's private debt obligations.

Thank you for your consideration of our comments. We appreciate the MSRB's ongoing commitment to improving the transparency, fairness and efficiency of the municipal market. We would be happy to discuss our concerns further at your convenience.

Sincerely,

/s/

Julie Egan
NFMA Chair 2017

/s/

Lisa Washburn
NFMA Industry Practices & Procedures Chair

PO BOX 14893 • PITTSBURGH, PA 15234

WWW.NFMA.ORG

Comment on Notice 2017-05

from Dmitry Semenov, Opus Bank

on Wednesday, March 15, 2017

Comment:

As a commercial bank involved in direct lending to public agencies, Opus Bank would like to submit a comment regarding the proposed CUSIP requirement for private placements of municipal debt.

A large volume of our public finance business comes through the private placement channels of various placement agents. The placement agents play a role of connecting public agencies with commercial banks. Most of the time the placement agents send us a brief request for proposal (RFP) on behalf of the agency seeking financing. It is very unusual for such RFPs to include any meaningful credit analysis that would satisfy our internal due diligence requirements. When the RFP is received, our bank performs all necessary due diligence, including obtaining financial statements and performing an in-depth internal credit analysis. We do not rely on any information prepared by credit rating agencies or the placement agents, but go to the source data and communicate directly with the public agency during the process.

Every credit facility that we extend to a public agency is treated and booked by us as a loan, with a loan number assigned. We make these loans with the intent of keeping them in our loan portfolio for the entire term. While most of the time the documents allow us to sell the entire credit facility or a portion of it to an institutional buyer, we have never done that. We do not use offering statements, CUSIPs, or DTC. From our standpoint, these credit facilities are no different than any other commercial loans that we make.

In our view, treating such transactions as anything other than regular commercial loans is incorrect and the CUSIP requirement is unnecessary.

Please, do not hesitate to reach out if you need any additional information or have any questions.

Thank you very much.

Sincerely,

Dmitry Semenov
Senior Managing Director, Public Finance
Opus Bank
915 Highland Pointe Drive, Suite 250
Roseville, CA 95678
916-724-5470

March 31, 2017

VIA ELECTRONIC DELIVERY
Municipal Securities Rulemaking Board
Attention: Ronald Smith, Corporate Secretary
1300 I Street NW, Suite 1000
Washington, DC 20005

pfm

1735 Market Street
43rd Floor
Philadelphia, PA 19103
215.567.6100

pfm.com

RE: MSRB 2017-05 Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of Public Financial Management, Inc., and PFM Financial Advisors LLC (collectively, referred to as "PFM"), PFM would like to thank the Municipal Securities Rulemaking Board (the "MSRB") for the opportunity to comment on the MSRB's draft amendments to and clarifications of MSRB Rule G-34 on obtaining CUSIP numbers ("Rule G-34"). PFM, which has been in existence for over 40 years, is the nation's largest independent municipal advisor and is the top-ranked municipal advisor in the nation in terms of both number of transactions and total dollar amount according to Thomson Reuters as of December 2016. We hope that you agree that our municipal market presence gives us a broad, national perspective on the proposed amendments and clarifications and their potential effects on the municipal market.

PFM recognizes the MSRB's stated intent in drafting the amendments to Rule G-34 to clarify its existing view with respect to when CUSIP numbers are required to be obtained and who is responsible, alleviate regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors, and create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned.[1] We cannot support the MSRB in its endeavors with respect to the proposed amendments to Rule G-34, and instead PFM would like the Board to reconsider the draft amendments for municipal advisors, with focus on the following missing elements:

1) Expansion of the list of event notices pursuant to the Municipal Disclosure Rule 15c2-12[2] ("Rule 15c2-12") under the Securities and

[1] *See generally*, MSRB Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, Obtaining CUSIP Numbers, Regulatory Notice 2017-05 (March 1, 2017).
[2] 17 CFR 240.15c2-12.

Exchange Act of 1934 (the "Exchange Act") to include private placement transactions, which rule the Securities and Exchange Commission (the "SEC" or "Commission") is currently seeking comment to proposed amendments for such an expansion pursuant to SEC Release No. 34-08130[3]; Pending the outcome, we believe MSRB should withdraw the proposed changes to Rule G-34 until any changes to Rule 15c2-12 can be contemplated and implemented;

2) Further explicit refinement of the definition of a municipal security such that it is clearly differentiated from a non-securitized bank loan or a municipal financial product not requiring a CUSIP to give guidance to all market participants, including municipal entity issuers and obligated persons, beyond the test provided by the U.S. Supreme Court in *Reves v. Ernst & Young, Inc.*[4]; We believe the consequences of the proposed Rule amendments could be in conflict with the marketplace use and may inadvertently lead to mischaracterization or confusion regarding the motivation of the parties or incorrectly appear to indicate plans for further distribution to investors/lenders;

3) Establishment of a process for a municipal entity to obtain a CUSIP where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter is involved in a new issue private placement transaction;

4) Clarification of the process of obtaining a CUSIP where there are multiple municipal advisors involved in a new issue private placement transaction; and

5) Consideration of adverse effects on municipal issuers, including dampened interest by private investors and the infliction of overly burdensome administrative costs for municipal entities given the unknown materiality of the additional benefit gained for investors.

Harmonizing Rule G-34 with Municipal Disclosure Rule 15c2-12 of the Exchange Act

PFM notes that the Commission published a regulatory release on March 15, 2017, requesting comments to proposed amendments to municipal securities disclosure, with comments expected to be submitted on or before May 15, 2017.[5] In its release, the Commission remarked that the "proposed amendments would amend the list of events for which notice is required to be provided to the MSRB" and that such "proposed amendments would facilitate investors'

[3] *See* Exchange Act SEC Rel. No. 34-80130 (March 15, 2017).

[4] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).

[5] *Id.*

and other market participants' access to important information in a timely manner and help enhance transparency in the municipal securities market".[6] Accordingly, PFM submits that the Commission's proposed amendments to Rule 15c2-12 address the same concerns as the MSRB's stated intent of amendments to Rule G-34. To realize regulatory efficiencies and avoid undue regulatory burden, we believe that the MSRB should postpone any action on Rule G-34 until the Commission has had an opportunity to review any comments the Commission may receive on proposed amendments to Rule 15c2-12 and makes a determination whether or not to adopt the amendments, with or without modification addressing any applicable comments. Providing clarity and guidance to define the attributable financial obligations with the corresponding materiality factors supporting additional disclosure should be a key driver of the ongoing concept of achieving greater transparency for all market participants by making the disclosure a necessary element of investor communications and considerations for existing publicly held debt. As this will be a shift from the current environment of somewhat cloudy materiality standards and voluntary disclosures surrounding this subject matter, PFM believes that only after the Commission has completed its regulatory rulemaking process with respect to Rule 15c2-12 will the MSRB be positioned to determine whether Rule 15c2-12 sufficiently addresses the MSRB's intent of the amendments to Rule G-34 or if further rulemaking is in order. Thereafter, the rules can be appropriately synchronized to the extent further refinement is required.

Guidance Regarding the Definition of a "Security"

With respect to more refinement of the definition of "municipal security," PFM believes the MSRB should work with the SEC to provide practical guidance to all market participants, including municipal entity issuers and obligated persons, beyond the list provided in Section 3(a)(10) of the Exchange Act[7] as tested in *Reves*[8] such that determination of whether an instrument is a security is clear. Such clarity would obviate the need for any of the proposed amendments to Rule G-34 aimed at addressing questions in the industry regarding the application of Rule G-34 to private placements of municipal securities. Lack of clear guidance regarding the definition of a "security" may also lead to market inefficiencies caused by market participants incurring costs and expending time unnecessarily to obtain CUSIPs for all transactions, including those involving instruments not deemed to be securities, out of an abundance of caution of running afoul of regulatory requirements. To that end, a listing of instruments which clearly either are or are not considered to be a "security" would provide the necessary regulatory clarity to market participants.

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[6] *Id* at 13928 - 13929.

[7] 15 U.S.C. 78a et seq.

[8] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).

In our experience, banks may find it useful to obtain a CUSIP or another form of identifier for an instrument in a private transaction for the bank's own tracking and reporting purposes. However, as attainment of a CUSIP is voluntary for instruments that are not "securities," to avoid the unintentional tail wagging the dog, obtaining a CUSIP should not *per se* mischaracterize a nonsecurity as a security subject to all attendant regulatory requirements.

Application of Rule G-34 to Municipal Advisors

PFM agrees that the disclosure of information materially affecting existing bond holders under Rule 15c2-12 is reasonable and appropriate and that increased market transparency is a valuable benefit. However, placing the obligation, administration, and economic burden on municipal advisors does not and will not sufficiently accomplish the stated transparency objectives in order to outweigh the associated costs in terms of digression from a municipal advisor's regulatory mission to the benefit of issuers; nor can it ultimately move the needle to fully satisfy the outlined objective of providing investors with an ability to truly understand any and all related risks. Rather than creating new regulation and compelling municipal advisors to perform certain disclosure distribution functions for documentation and information otherwise not generally available, municipal entities disclosures for pre-existing debt holders and potential investors could be supported by the long-anticipated clarification of "materiality" and application of current continuing disclosure requirements under Rule 15c2-12 as discussed above.

Additionally, application of Rule G-34 to municipal advisors as proposed by the draft amendments will not be the hoped for panacea to resolve the state of imperfect information for investors, since municipal issuers are not required to use municipal advisors in any transaction, including private placement transactions. Thus, in transactions where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter or placement agent is involved in a private placement transaction or direct bank loan, investors in existing issuances would be in the same position as they are in today. Very often a municipal advisor may not be included in these borrower-provider transactions, may only be hired to perform certain administrative functions, or often only learns of a prior transaction when assisting with the issuance of a municipal entity's next public offering of municipal securities. In any such instances, in order to achieve the transparency sought by the MSRB in its draft amendments to Rule G-34, the MSRB will also need to clarify the process of a municipal entity obtaining a CUSIP where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter is involved in a private transaction; PFM is not supportive of further indirect regulation of our municipal entity clients given the corresponding cost/benefit analysis. PFM would implore the MSRB to resist

creation of a regulatory scheme that results in a well-intended, but ill-fated attempt at compromise between the inability to directly require issuers to file disclosures and the objective to protect the interests of the municipal marketplace.

Further, the MSRB should provide guidance regarding the responsible market participant and process of obtaining a CUSIP in instances where the municipal entity borrower may have multiple municipal advisors involved in a new private placement transaction or direct bank loan, including where one of the municipal advisors involved in the transaction is designated as the municipal entity's independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities for purposes of Rule 15Ba1-1(d)(3)(vi)[9] of the Exchange Act or, alternatively, where no municipal advisor involved in the transaction is designated as the municipal entity's IRMA.

The expressed legislative and regulatory purpose with respect to a municipal advisor focuses upon the fiduciary duty owed to municipal entities and obligated persons.[10] The shift underlying the draft amendments to Rule G-34 will inappropriately place municipal advisors in the tenuous position of serving dual interests, that of the municipal issuer and that of investors, which undermines the very core principles of the regulatory regime. Municipal advisors owe a duty of care and loyalty to their clients and cannot be put in a position to choose between the statutory fiduciary duty to the issuer[11] and the requirements underlying the proposed draft amendments to Rule G-34 of newfound investor-driven regulatory disclosure requirements for non-publicly sold bond activities. While harmonization of certain MSRB regulation between broker-dealers and municipal advisors is an ongoing objective for the MSRB and market participants alike, one cannot lose sight of important distinctions separating the interests of all involved with the corresponding checks and balances.

Unintended Adverse Economic Consequences and Market Inefficiencies for Issuers

From the issuer's perspective the potential benefits and considerations of private transactions may include some, or any combination of, the following: lower true interest and transaction costs; greater flexibility with respect to the structuring and terms of the financing; and typically, a simpler execution process, because the issuer interacts directly with the providers/lenders, rather

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[9] 17 CFR 240.15Ba1-1(d)(3)(vi)(A); See also, *Registration of Municipal Advisors*, SEC Rel. No. 34-70462 (Sep. 20, 2013), 78 FR 67468, 67472 (Nov. 12, 2013) ("Adopting Release").

[10] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

[11] *See*, 15 U.S.C. 780-4(c)(1).

than with multiple bondholders through intermediaries. From the purchaser's perspective, providing financing by means of a direct purchase or bank loan also has advantages, including: direct interaction with the issuer; direct communication with the issuer regarding the transaction structure; and confidence that the transaction will become part of the provider's investment portfolio. These benefits, nevertheless, are diminished and at some point along the spectrum may reflect net costs to the issuer directly or indirectly by dampening interest of potential providers and administrative, economic, and timing costs. Moreover, the current process of applying for a CUSIP requires provision of an offering document, which in a private transaction may not otherwise have been prepared, adding both legal and administrative costs to create a legal document just to comply with the regulatory requirement of obtaining a CUSIP. Assuming, arguendo, the CUSIP application process is revised to accommodate this new regulatory requirement, and an offering document is no longer required for application for a CUSIP on certain transactions, obtaining the CUSIP nevertheless adds another step and undue economic burden to the transaction closing process. Any additional burden is more keenly inequitable for municipal issuers that only use privately placed transactions and have no publicly issued debt.

Final Considerations

While we continue to be supportive of the consistent objectives of the MSRB in seeking to facilitate market transparency and efficiency, PFM also remains fundamentally against the extension of the obligations set forth in Rule G-34 to a municipal advisor as proposed in the draft amendments, thereby creating a direct duty with respect to the discrete interests of investors. Previous occasions have afforded Congress and the SEC multiple opportunities to enact provisions intended to have the municipal advisor also directly serve interests of investors and neither institution has done so to date. By way of refrain, Congress and the SEC have declined to bridge natural and necessary differences between brokers, dealers and underwriters on the one hand and municipal advisors on the other hand leaving intact what the MSRB perceives as "regulatory imbalance" in the draft proposed Rule G-34. If changes are to be made to these core precepts, we respectfully point to the need for Congressional and/or SEC action rather than action by the MSRB in making such a change in the fabric of the municipal advisory regulatory regime.

Rather, PFM respectfully requests that the MSRB reflect and reconsider the proposed draft amendments to MSRB Rule G-34 and withdraw the proposed amendments to Rule G-34 or otherwise postpone any action on the proposed draft amendments until the Commission has received comments to the proposed amendments to Rule 15c2-12, has had an opportunity to carefully consider any comments it may receive thereto and has determined to adopt the amendments as proposed or modified as the Commission may deem appropriate in response to any such comments.

Respectfully submitted,

Cheryl Maddox
General Counsel

Leo Karweina
Chief Compliance Officer

PHOENIX ADVISORS, LLC

March 21, 2017

VIA ELECTRONIC MAIL

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: MSRB Regulatory Notice 2017-05: Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

Phoenix Advisors, LLC is a multistate, non-dealer municipal advisory firm that numbers among its clients hundreds of municipal governmental entities whose typical borrowing size does not exceed $10 million. These are communities whose smaller profile in the municipal marketplace could subject them to higher costs than those of larger issuers, were it not for their access to capital through bank loans. Competitive sales of larger new issue municipal securities garner more attention in the marketplace than do smaller new issues. This is not irregular in and of itself, but it is an economic reality.

It is with particular attention to these typically smaller entities that we submit our comments relating to the above-captioned draft amendments to MSRB Rule G-34. Bank loans level the playing field for smaller issues, limiting the potentially punitive effects of both higher interest rates and higher relative costs of issuance in bringing smaller issues to market.

Phoenix Advisors, LLC believes that bank loans of up to $10 million should be carved out from the requirements of G-34 and not generally be obliged to have CUSIP numbering. Our experience is that lenders treat municipal loan obligations as commercial loans, intend to hold them to their final maturities, and do not offer or distribute such loans to others. Importantly, municipal advisors, irrespective of whether they are dealer or non-dealer advisors, should be able to advise and assist a municipal entity through the process of securing bank financing without the redundancy of having a broker-dealer serve as placement agent.

Sincerely,

David B. Thompson, CEO

4 West Park Street, Bordentown, NJ 08505
Voice: 609.291.0130 www.muniadvisors.com

PiperJaffray.

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P 612-303-6657 F612-303-1032]
Piper Jaffray & Co. Since 1895. Member SIPC and NYSE.

March 31, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Comments to Notice 2017-05, Request for Comments
on Amendments to and Clarifications of MSRB Rule G-34

Dear Mr. Smith:

Piper Jaffray & Co. ("Piper") is pleased to respond to the notice issued by the Municipal Securities Rulemaking Board (the "MSRB") on March 1, 2017, entitled, Notice 2017-05, Request for Comments on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers (the "Notice"). Piper Jaffray has extensive experience serving as a placement agent on various types of municipal transactions that have been placed with banks or other investors. In fact, according to Thompson, over the past three years we have completed more transactions as a placement agent than any other firm with over 500 transactions completed during that period. As such we have a lot of practical experience with the issues involved with and the potential consequences of the amendments that the MSRB is proposing to G-34.

You have asked for comments on three separate topics that are each part of the amendments to G-34: (1) the amendments which specify that a CUSIP would be required for private placements which are considered securities, (2) changes to the language on when a new CUSIP would be required on a secondary market transaction and (3) the requirement for non-dealer municipal advisors to obtain CUSIP numbers on a competitive sale. Our comments will be focused primarily on the first topic.

Summary of Comments and Concerns

We believe that the changes that the MSRB is recommending that would require a CUSIP to be obtained on all placement transactions is not a good idea because it will hurt issuers' access to an efficient and low cost capital source, have negative market impacts and are unnecessary regulation that does not result in any quantifiable benefits. We believe that any concerns in the marketplace around transparency of placement transactions are better addressed in other ways including some form of the SEC's

proposed amendments to its Rule 15c2-12 that would require obligors to disclose the incurrence of placement issues. If the MSRB does determine to proceed with the proposed changes, we have suggestions on changes to the current proposal that would minimize the negative consequences of the current proposal.

Complexity in the Legal Analysis of Placement Transactions Creates Uncertainty as to What Regulations Apply to these Transactions

A starting point relative to our concerns on this proposed rule change to G-34 is the complicated and uncertain legal analysis related to these transactions. An initial question on each of these transactions is whether the transaction is a "security" or a "loan" and what regulatory rules apply depending on this determination. While the MSRB's release notes that "regulated entities should have reasonably designed policies and procedures in place to make a determination as to whether the transaction involves a municipal security", there are still many different views as to how particular transactions should be treated. The *Reves* case does not provide any clear answers and we have found that different parties in transactions are often getting conflicting advice as to whether a transaction is a loan or a security and exactly what terms of documentation are the keys to making this analysis.

The uncertainty in the legal analysis described above is then combined with the reality that many of these transactions are placed with banks that are purchasing under the condition that they can treat the issue as a loan on their books and that, as such, they will not have to use mark to market accounting treatment. The analysis of what constitutes a loan and therefor would not require mark to market accounting treatment for a bank is governed by different regulators and different rules than the narrower securities law analysis based solely on *Reves* that we are required to apply as a broker-dealer. In the middle of all of this is the question as to whether a CUSIP number is required and what this means to the analysis as to whether we are placing a loan or a security to a bank purchaser who is categorizing the issue as a loan on their books. While banks seek out a loan characterization as it produces more favorable accounting treatment, broker-dealers are advised to treat the instrument narrowly, as a security, so that they do not risk violating the myriad MSRB and SEC rules applicable to placement agent activity, such as G-32, G-37, A-13 and the municipal advisor rules, to name a few.

Given this complex background, we believe that the MSRB must think carefully about the practical impact of its proposed rule changes.

Key Concerns about the Consequences of the Proposed Rule Changes

1. We Have Concerns that Requiring CUSIP Numbers on All New Issue Placements Would Eliminate Investors and Reduce Competition in the Placement Market which would Negatively Impact Issuers

The reality is that most bank purchasers of "placement" transactions or "direct placements" do not want a CUSIP number assigned and, in many cases, will not purchase the transaction if a CUSIP number is assigned. It is important to these bank purchasers that they are able to classify the transaction on their books as a "loan" with the corresponding accounting treatment. If they must classify the transaction as a security, it would be subject to mark to market accounting treatment. It has been made very clear to us on many occasions that a purchaser would back away from the transaction if a CUSIP number was assigned.

As a result, we are concerned that the amendments that you are proposing to require placements be covered under G-34 and require a CUSIP number to be assigned will damage investor interest in the placement market, reduce the number of banks willing to purchase these transactions and ultimately eliminate a cost-effective borrowing option for issuers. These issuers will either be required to pay a higher rate to attract those placement and bank purchasers who are willing to accept a CUSIP or will have to access the public market instead. These issuers have chosen to proceed with a placement for one or more of a variety of reasons that provide tangible benefits including lower interest rates, not having to spend the time and expense to create a full offering document, not having to attain a rating and/or the ability to lock an interest rate and complete a transaction more quickly among others.

2. Requiring CUSIP Numbers on Placements Done with a Placement Agent Would Create an Incentive for Issuers to Complete Placement Transactions without a Placement Agent in Order to Avoid Getting a CUSIP

One of the challenges that broker dealers serving as a placement agent face is that there is still uncertainty and confusion in the market as to the range of activities that municipal advisors are able to conduct related to placement transactions. Many placement transactions are completed in the municipal market that include a municipal advisor but do not include the use of a placement agent. This is acceptable if the municipal advisor is careful not to perform functions that would deem the advisor a placement agent. Piper has served as a municipal advisor on some of these transactions and when we do so are careful to limit the scope of our activities so that we would not be considered a placement agent. However, in many cases, we believe that municipal advisors are violating their duties and actually acting as placement agents on these transactions. When pursuing placement agent business we are frequently in competition with these municipal advisors who are suggesting to clients that they are able to complete placement business and conduct investor solicitations without hiring a placement agent.

This issue has improved somewhat as regulators, including the MSRB, have sent out alerts warning advisors that they must be careful and understand the rules that distinguish when an entity is considered a placement agent in order not to act in this

capacity when serving as a municipal advisor. The rules and legal analysis around when an entity is deemed to be serving as a placement agent rather than an advisor are still somewhat uncertain. We continue to see a number of municipal advisors who we believe are clearly crossing this line or who have not done any in depth analysis of these issues.

If the MSRB proceeds with its proposal to require dealers serving as placement agents to attain a CUSIP, you will be putting in place a regulatory framework that encourages issuers to avoid working with placement agents so that transactions will not require a CUSIP number which effectively limits the potential investor base. Not only will issuers lose the benefits that placement agents bring to transactions, including the ability to solicit multiple investors to find the best proposal for the issuer, but issuers will be encouraged to hire municipal advisors who are or may be crossing the line into placement agent activities to complete these transactions because they have no requirement to obtain a CUSIP. You will also be encouraging issuers to work directly with bank purchasers, again without a placement agent involved, so that no CUSIP is required. In either case, whatever benefits you believe are created by your proposed rule would be circumvented because the same transactions will be completed but without a CUSIP number assigned.

In addition, you will be creating an un-level playing field where placement agents will be viewed as an impediment to a transaction because they bring the requirement of a CUSIP number which most of the purchasers want to avoid. Those advisors who are willing to push the envelope or cross the line into placement activity will have an advantage. Those placement agents who are willing to accept a more aggressive legal analysis around which transactions are considered "loans" will also have an advantage. You will be creating an environment where those who are willing to be most aggressive in circumventing rules or taking aggressive legal stances will be advantaged and those who are trying as carefully as possible to comply with the appropriate laws and regulations will be disadvantaged. We are confident that is not the result that the MSRB is intending in proposing this rule change.

The potential for incentivizing these types of behaviors are very real. We have been involved in multiple instances in the past where we have had bank purchasers (who were solicited and brought to the transaction by Piper in our capacity as a placement agent), municipal advisors, bond attorneys and issuers state to us that if Piper insisted on obtaining a CUSIP for the transaction that they would simply proceed to close the transaction without our participation since we were the only party who was concerned that this was a potential issue or had a regulatory obligation to comply with this requirement. That is an awkward position to be in and is clearly both an unintended result and an un-level playing field. We are confident that our presence as a placement agent on transactions brings significant value to issuers by assuring that the our clients have the opportunity to source capital from as many potential investors as possible and by working with our issuer clients to select and negotiate the best possible placement option relative

to their needs and goals. All of these benefits would be undermined by a rule that only applies to placement agents and encourages issuers and transaction participants to circumvent the CUSIP requirement by simply avoiding having a placement agent involved.

3. This Proposed Rule Change Does Not Create Tangible Benefits for the Market

The section of your release that describes the costs and benefits of the proposed rule changes suggests that benefits will be provided to investors through "increased transparency with respect to market information associated with private placements". We believe that the benefit to municipal market investors of requiring CUSIP numbers on placement transactions would be extremely limited and potentially non-existent.

The MSRB's own release describes the history and original reason for the adoption of G-34 and the reason for assigning CUSIP numbers on new issues as being needed "to improve efficiencies in the processing and clearance activities of the municipal securities industry" and allowing dealers to rely on CUSIP numbers "in receiving, delivering and safekeeping" these securities. On the almost all placement transactions that Piper is involved in, our firm is not involved in any of these activities. The settlement of these transactions is almost always completed directly between the issuer and the purchaser. A CUSIP identifier is not needed for this purpose.

The core issue that has been discussed and noted by many participants in the market related to placement transactions is that there is no requirement for issuers or other participants to report the existence of or key terms of these transactions to the market. This is clearly a problem and information gap for those who own or are considering purchasing other public securities of these issuers. The SEC is proposing to address this key gap by amending 15c2-12 to require issuers to include disclosure of placement terms in their continuing disclosure agreements. While we have various comments on the SEC's proposal, we support the idea that requiring disclosure of the existence and terms of loans and placement transactions through the continuing disclosure process is the right way to make these transactions visible to the market and that this transparency would provide important benefits to municipal market investors. The MSRB's proposed rule change requiring CUSIP numbers on placement transactions, as noted above, creates many other problems and negative consequences but the assignment of a CUSIP itself does not achieve any meaningful improvements to market transparency.

Our Suggested Changes to the Proposed Amendments Related to Private Placements

For all of the reasons that we have noted above, we believe that the MSRB should not proceed with the amendments that require CUSIP numbers on private placements. If the MSRB does decide to proceed, we believe that the proposed amendments to G-34 should be altered to include the following items.

The Amendments Should Also Require Municipal Advisors to Apply for a CUSIP Number for Placement Transactions that Do Not Include a Placement Agent

It is important that this addition be made to the change to G-34(a) for two reasons. First, it would make sure that CUSIP numbers are obtained on the numerous placement transactions where a placement agent is not involved but a municipal advisor (which might be a dealer or non-dealer advisor) is involved. Unfortunately, this would still not address transactions where a purchaser is working directly with an issuer but no placement agent or municipal advisor is involved. It would make sense to require CUSIP numbers on these transactions as well for consistency in the marketplace, but unfortunately I am not sure the MSRB has the authority to regulate these transactions. Second, this change is also important to level the regulatory playing field between dealers and municipal advisors and to assure that placement agents are not discarded as a means of circumventing the CUSIP requirement.

The Amendments Should Provide an Exception for Placement Transactions that Have a Single Purchaser or Limited Number of Purchasers

An exception to the rules to not require a CUSIP number to be obtained for transactions with a single purchaser would be highly beneficial and would eliminate all of the associated problems that we have noted for the majority of placement transactions completed in the market. This matter is discussed in more detail in our responses to the MSRB's questions below. If the MSRB is considering this approach, we would suggest that the MSRB expand this exemption to exempt transactions from the CUSIP requirement that have 5 or less purchasers and meet the provisions required of a limited offering under SEC Rule 15c2-12 (d). This would expand the number of transactions that would meet the exception and would include the vast majority of the placement transactions that we see being completed in the municipal market.

Responses to Questions Asked in MSRB's Release

In your release, some of the questions that you ask that we would like to respond to include the following.

2. *If a dealer is involved in a private placement of municipal securities and does not apply for a CUSIP number because it does not believe it is an underwriter, is it customary for the dealer to obtain assurances from the purchaser that it will not be reselling the municipal security? Do dealers obtain assurances when a transaction is booked by the purchaser as a loan?*

   At Piper Jaffray, we require that on placements of securities we obtain an investor letter in which we get a representation from the purchaser that among other things, the purchaser is not purchasing for more than one account or with a view to distributing the securities. This statement forms the reasonable basis for our belief that the investor intends to hold the securities under the exemption for private placements available under SEC Rule 15c2-12 (d). Because loan transactions under the *Reves* test are customarily constructed to avoid provisions that suggest a "plan of distribution" we don't see explicit representations as necessary or we see them in lender representations in the loan agreements themselves.

3. *The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Do the draft amendments alleviate this issue?*

   As we described above, banks frequently make it a condition of their purchase that no CUSIP number is obtained for the transaction. The amendments do not alleviate this issue because banks generally disagree with our analysis and are not subject directly to G-34. We believe that many of these banks will simply not purchase these transactions if a CUSIP is required which will limit options for issuers. We also believe that there will be pressure for the market to evolve to eliminate the use of placement agents so that these transactions can be completed by municipal advisors or directly between banks and issuers so that CUSIP numbers are not required. This will be detrimental to issuers who only receive one proposal directly from a bank purchaser. Engaging a placement agent typically results in the issuer getting the benefit of soliciting multiple investors and receiving multiple proposals on the issuer's behalf. As such, we do not believe that the amendments will meet the goals that the MSRB expects to achieve.

4. *Should the MSRB provide an exception from the requirements of Rule G-34(a) for dealers and/or municipal advisors in private placements of municipal securities to a single purchaser? How difficult would it be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales?*

   Our recommendation is that the MSRB not proceed with the changes that require CUSIP numbers on placement transactions. But if the MSRB does proceed with these amendments, we believe that an exception to the rule for private placements with a single purchaser (or even a limited number of purchasers) should be provided and would help eliminate the concerns that we have expressed for most placement transactions. The majority of the placement transactions have a single purchaser and almost all have five or less purchasers. Exempting these issues from the proposed rule would eliminate the concerns that we have expressed on most of the placement transactions done in the market.

   As we noted above, we have been able to attain assurances in investor letters that investors are purchasing with an intent to hold and not with a view to resell in the market. From a practical matter, we have seen almost no reselling of any of these transactions in the market. We can only recall one or two instances of the hundreds of transactions that we have been involved in where to date a placement investor has attempted to sell some or all of the transaction in the secondary market. We cannot recall a single instance where a secondary sale was made or attempted on a transaction that had a single bank purchaser.

We would be happy to discuss further our views and experience on these issues with the MSRB staff. Feel free to contact us with any questions that you might have.

Sincerely,

Frank Fairman
Managing Director
Head of Public Finance Services

Rebecca Lawrence
Managing Director
Associate General Counsel
Public Finance & Fixed Income

Comment on Notice 2017-05

from Rudy Salo,

on Friday, March 31, 2017

Comment:

I am commenting solely with respect to your inquiry as to whether there should be an exception to the proposed rule requiring CUSIP numbers in private placements of obligations to a single purchaser. Creating such an exception is the simplest way to alleviate the current market confusion. If CUSIPs are required without exception, then the rule should provide that such CUSIP numbers may either be obtained as CUSIPs for securities or CUSIPs for loans because the vast majority of banks book these obligations as loans. Alienating banks from purchasing these obligations will ultimately result in higher borrowing costs for issuers in transactions that are better suited for direct placement with a commercial bank. Regarding the feasibility of obtaining assurances from purchasers, such as commercial banks, that they are purchasing without a view to secondary market resales, this is currently a common practice in private placements/direct purchases.

sifma
Invested in America

March 31, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-05: Draft Amendments Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2017-05 [2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is seeking comment on draft amendments to MSRB Rule G-34 ("Rule G-34"), relating to obtaining CUSIP numbers for municipal securities, new issue and market information requirements, clarifying existing application of Rule G-34 for certain additional industry participants, and making definitional and technical changes. SIFMA and its members do not agree with some of the proposed changes, including requiring placement agents of municipal securities to obtain CUSIP numbers in all instances.

Specifically, SIFMA and its members feel that there should be an exemption from the requirement to obtain a CUSIP number under Rule G-34 for private

[1] 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 $18.5 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.

[2] MSRB Notice 2017-05 (Mar. 1, 2017).

placements, including direct purchases, of municipal securities made to a bank, its subsidiaries or affiliates, or consortium thereof. Additionally, we feel the MSRB should clarify that CUSIP numbers are not required for a loan that is privately placed. SIFMA supports the proposed amendment to level the regulatory playing field between dealer municipal advisors and non-dealer municipal advisors by making all municipal advisors obtain CUSIP numbers for competitive sales of new issue municipal securities. We also have concerns about the potential effect of the regulatory incentives and disincentives in connection with the amendments.

Finally, we feel strongly that the clarifications proposed are akin to new rulemaking, and should be enforced only prospectively.

I. Any Clarification or Rule Change Should Be Prospective Only

As a fairness matter, we strongly urge the MSRB to clearly state that the changes to Rule G-34 related to this Notice shall only be applied prospectively. Specifically, as the MSRB recognizes and understands, the application of Rule G-34(a) to private placements, including direct purchase transactions has been uneven.[3] SIFMA and its members believe that Rule G-34, under a fair reading of the current language, exempts transactions that are not distributed.[4]

While we understand that the focus of the MSRB in the Notice is to provide transparency in the municipal securities market generally, we do not believe that retroactive applicability of the changes to Rule G-34 are necessary or appropriate given the private nature of the transactions and the current wording of Rule G-34. Also, while not dispositive, we would note that the Securities and Exchange Commission ("Commission") proposed changes to Rule 15c2-12 ("Rule 15c2-12") of the Securities Exchange Act of 1934, as amended, would also only be applied prospectively after the effective date of any such amendments.[5]

Furthermore, many private placement transactions, including direct purchases, were placed with a bank or affiliated entity where the purchaser specifically requested the placement agent not to obtain a CUSIP number. Whether or not such transactions were viewed as purchases of municipal securities or loans

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[3] *See* the Notice, at FN 12.

[4] 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 by the bank or other purchaser.

[5] Proposed Amendments to Municipal Securities Disclosure, 82 Fed. Reg. 13928 (Mar. 15, 2017).

by the related purchaser for U.S. accounting or U.S. securities law purposes, the facilitation of a direct placement to a bank or related purchaser who, among other things, has represented in writing that they presently intended to hold the debt and/or had significant transfer restrictions was fairly viewed as not constituting a distribution under the customary U.S. securities law understanding of the term. Therefore, we believe those transactions were reasonably viewed as exempt from the CUSIP requirement under current Rule G-34.

As such, we believe that prospective application is appropriate in connection with any changes to Rule G-34. Any changes to Rule G-34 should not affect outstanding transactions completed under the current language of Rule G-34.

II. Application of Proposed Rule G-34(a) to Private Placements

a. Definition of Underwriter

The MSRB has proposed to amend the definition of "underwriter" in Rule G-34 to cross-reference the definition set forth in Rule 15c2-12(f)(8) promulgated under the Securities Exchange Act of 1934, as amended. SIFMA and its members feel that the proposed amendments largely clarify that CUSIP numbers are needed in public offerings and private placements, including direct purchases, of municipal securities. However, SIFMA and its members do not agree that this is an appropriate amendment to Rule G-34.

It is worthy to note that if the change in the definition of underwriter, as proposed in the Notice, has implications for any other MSRB rule, SIFMA and its members believe that a separate guidance and rulemaking process is appropriate and should be conducted separately.

b. DTCC Eligibility and NIIDS Submission

The proposed clarification impacts the existing obligations on the broadened group of underwriters under Rule G-34(a)(ii) regarding application for depository eligibility and dissemination of new issue information. If an issuance of municipal securities is expected to be deposited into the Depository Trust and Clearing Corporation ("DTCC") and is believed to meet DTCC eligibility, placement agents will be required to apply for depository eligibility and submit information to the DTCC's New Issue Information Dissemination Service ("NIIDS") for such municipal securities. The genesis of DTCC eligibility is to facilitate a security being held in DTCC's nominee name Cede & Co., and for the purpose of facilitating the trading and the safekeeping of securities, the payment of principal and interest through DTCC, and corporate actions.

If a placement agent does not take title to the municipal securities in connection with a private placement, no position in the municipal securities is intended to be held in the name of the placement agent, and the municipal securities are not expected to be credited to the placement agent's account at DTCC, then it is not appropriate for DTCC to make these securities DTCC-eligible. Additionally, it is not clear such municipal securities are DTCC-eligible if transfer restrictions exist.[6] If the municipal securities are not DTCC-eligible, then the municipal securities are exempt from Rule G-34(a)(ii). DTCC currently has no means to facilitate a NIIDS submission for a security that is not DTCC-eligible.

It should be noted that there are special situations which lend themselves to different treatment under the rule, as there are a number of obligations that do not meet DTCC eligibility guidelines,[7] and there exist certain small notes issuances for which CUSIP numbers cannot be pre-applied for ahead of a competitive sale.[8] We feel that Rule G-34 should continue to make clear that any obligations that do not meet DTCC eligibility guidelines, or for which CUSIP numbers cannot or are not required to be obtained, should be exempt from Rule G-34(a)(ii).

Draft Rule G-34 (a)(i)(A), inserts the language "which includes a placement agent" in a parenthetical after the term "underwriter." SIFMA and its members feel this language is confusing given the change to the definition of "underwriter" and should therefore be removed.

At any rate, SIFMA notes that although "underwriter" is defined in Rule G-34(e), there is no definition of "placement agent" in that section. SIFMA queries whether the term "placement agent" in this context is meant to be equivalent to a dealer in the context of Rule 144A promulgated under the Securities Act of 1933, as amended ("Securities Act"), where the placement agent/dealer acquires the bonds then transfers them to the purchaser. In this instance, the placement agent would have the information and ability to apply for DTCC eligibility and provide the required information to the NIIDS platform. This scenario is most similar to a limited offering of municipal securities.

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6 *See* Depository Trust Company Operational Arrangements available at: www.dtcc.com/~/media/Files/Downloads/Settlement.../operational-arrangements.pdf.

7 For instance, instruments with transfer restrictions, as mentioned above, and statutory installment bonds issued pursuant to Chapter 33-a of the Consolidated Laws of the New York (also referred to as the "Local Finance Law").

8 It may be necessary to petition the CUSIP Bureau to permit dealers and municipal advisors to request CUSIP numbers for certain small issues of notes ahead of a competitive sale.

Alternatively, if "placement agent" means placement agent akin to how that term is used in transactions under Section 4(a)(2) of the Securities Act, whereby the placement agent typically would not run the transaction through their books or otherwise take title to the instrument, then it is likely impossible for the placement agent to apply for DTCC eligibility or submit the necessary information to the NIIDS platform.

III. Exemption Necessary for Certain Private Placements of Municipal Securities

SIFMA and its members strongly urge the MSRB to provide a clear exemption from the requirements of Rule G-34 for dealers and municipal advisors in private placements, including direct purchases, of municipal securities to a bank, its affiliates or subsidiaries, or any consortium thereof. Although such an exception would not alleviate all of our concerns, it would address a discrete group of transactions for which SIFMA feels there is a clear rationale for an exemption and eliminate the need to determine for Rule G-34 purposes whether the transaction involves a security.

The MSRB states it "adopted Rule G-34 to improve efficiencies in the processing and clearance activities of the municipal securities industry, being of the view that 'if all eligible municipal securities have CUSIP numbers assigned to and printed on them, dealers will be able to place greater reliance on the CUSIP identification of these securities in receiving, delivering, and safekeeping' them".

While we believe that market transparency is an important goal, it is not clear that CUSIP numbers are an appropriate solution in the private placement context. Indeed, as noted above, the Commission has proposed rules on changes to Rule 15c2-12 that would support the MSRB's transparency goals with respect to these private placement transactions without the necessity of a CUSIP. This is especially true in the context of a private placement without a CUSIP number, which by its nature, is generally meant to be held physically and not traded.

Private placements are intended to be private transactions. Requiring placement agents to obtain CUSIP numbers for these obligations merely adds costs to the issuer with no clear benefit to the purchaser. SIFMA and its members recognize that there are benefits to obtaining CUSIP numbers for municipal securities generally, including facilitation of trading and settlement, as well as regulatory oversight and market transparency. In a private placement, it is not clear the rationale holds.

IV. Clarify Private Placements of Loans Are Exempt from CUSIP Requirement

SIFMA and its members request that the MSRB clarify that CUSIP numbers would not be required in connection with the private placement of an issuance that are loans to a municipal entity – whether or not the exemption described in Section III above was satisfied.[9] Specifically, SIFMA and, more particularly, many of its members view obtaining a CUSIP number as inapposite to the appropriate approach when making a loan.[10] Some members believe a CUSIP number is a proxy for seeking flexibility in whether or not to re-sell or at least to facilitate sale of the instrument. Thus, although the assigning of a CUSIP number to an instrument is not determinative as to whether or not an instrument is a loan or a security, the lack of a CUSIP number is seen by many market participants as bolstering loan treatment because distribution would only be possible through physical transfer of the relevant instrument.[11]

Each dealer conducts due diligence and analysis to determine whether an obligation is a loan or a security. Dealers do not always arrive at consistent results across the industry with respect to their analysis of an obligation. The lack of specificity in the Reves[12] test, in addition to the regulatory incentives discussed below in Section VI(b), continues to lead to a lack of consistency in the categorization of obligations as loans or securities. An exemption in Rule G-34 for private placements of securities of the kind noted above avoids any issues regarding categorization of these obligations in this context.

There are a number of reasons that purchasers do not want CUSIP numbers assigned, particularly to ensure consistent accounting treatment of their loan portfolios. Purchasers apply accounting standards when determining the

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[9] E.g., in connection with a placement of a loan to a bank, its affiliates or subsidiaries, or a consortium thereof.

[10] Indeed, as described below, banks and other purchasers directly purchasing an obligation from an issuer often specifically request that dealers not obtain a CUSIP number for the transaction, or cancel CUSIP numbers that are obtained for the transaction.

[11] We would note that it is customary for the issuer and dealer to obtain assurances from the purchaser that the purchaser has no present intent to resell the purchased instrument.

[12] Reves v. Ernst & Young, Inc., 494 U.S. 56 (1990).

appropriate treatment of debt on their books and the standards they apply, and, though generally consistent with, are not strictly based on, the Reves test.[13]

As such, SIFMA feels that the MSRB should clarify that CUSIPs are not required for private placement transactions that are loans.[14]

V. Requirement to Obtain New CUSIP Numbers for Secondary Market Municipal Securities

SIFMA feels that Rule G-34(b) clearly indicates when dealers must obtain a new CUSIP number with respect to secondary market municipal securities, and that further clarification is not needed. We feel that it is clearly understood in the market that mode changes in a remarketing do not require a new CUSIP number as long as the entire maturity of a particular CUSIP number changes in the same way.

SIFMA and its members do not believe further clarification is necessary of those instances when a new CUSIP number would not be required under Rule G-34(b). The eight specific information items listed in Rule G-34(a)(i)(A)(4)(a)-(h) are the appropriate items to evaluate for fungibility. Instruments in public finance have not changed such that the items to be considered should be different than those set out in Rule G-34(a)(i)(A)(4)(a)-(h).

VI. Leveling the Regulatory Playing Field for Municipal Advisors in Competitive Sales of New Issue Municipal Securities

a. Obtaining CUSIP Numbers in a Competitive Sale

Rule G-34(a) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities, but non-dealer municipal advisors are not subject to the requirement. As described below, SIFMA and its members see no reason for this distinction to continue. The Notice sets forth some of the efficiencies that served as the rationale for the 1986 amendments requiring

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[13] We would further note that clarification in revised Rule G-34 guidance that a transaction reasonably viewed as a loan need not obtain a CUSIP number does not specifically aid dealers or the market generally on the loan versus security analysis under Reves, but at least generally clarifies the point versus the Rule G-34 CUSIP requirement. *See also*, letter from Cristeena Naser, Vice President and Senior Counsel, American Bankers Association, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 24, 2017, available at: http://www.msrb.org/RFC/2017-05/naser1.pdf.

[14] We believe the Commission changes to Rule 15c2-12 will provide the transparency for such transactions and that a CUSIP number is therefore unnecessary to achieve such transparency in the context of a private placement.

financial advisors in a competitive sale of a new issue of municipal securities to obtain CUSIPS for the issue, primarily related to time deadlines.

Cost and efficiency are also significant factors that must be considered. Currently, if there is a dealer municipal advisor/financial advisor, then one set of CUSIP numbers are applied for, and the bidding dealers do not need to apply for their own CUSIP numbers for the issue. However, if there is a non-dealer municipal advisor assisting the issuer who is currently not required to obtain CUSIP numbers, then each bidding dealer must obtain a set of CUSIP numbers for the transaction, in case they are the winning bidder.[15] Under the draft amendments, the municipal advisor for a competitive transaction, regardless of whether they are a dealer or non-dealer municipal advisor, would apply for CUSIP numbers for the issue; in this case, one set of CUSIP numbers would have been obtained for the issue. It is clear that there is a regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors because non-dealer municipal advisors are not currently subject to Rule G-34(a). We do not believe there is another way to achieve the desired requirements of the draft amendments without including non-dealer municipal advisors.[16]

b. Regulatory Incentives

Outside of the competitive sale context, the proposed amendments implicate a combination of potential undesirable regulatory incentives and disincentives. Dealer placement agents may have a regulatory incentive to categorize obligations as municipal securities, including obtaining a CUSIP number in connection with a relevant transaction. This conservative posture would seek to avoid the regulatory risk that FINRA may view an obligation that is understood as a loan by the placement agent as a security for which the placement agent failed to comply with relevant MSRB rules.

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[15] A dealer who wins a competitive bid must send all of the required information to NIIDS within 2 hours of the award of the municipal securities. There is insufficient time in between the announcement of the winning bidder and the requirement to input new issue information into the DTCC's NIIDS platform to obtain CUSIP numbers for the issue. Therefore, bidding dealers need to apply for and obtain a CUSIP number or numbers prior to bidding on the transaction. There may be one bidder in a competitive transaction, or more than a dozen. The current process only increases fees for dealers with no benefit to the municipal securities market. For information on CUSIP fees, see: https://www.cusip.com/pdf/2017FeesforCUSIPAssignment.pdf.

[16] We do note, however, that another place in the MSRB rules that distinction also exists is with respect to Rule G-32(c), which addresses the preparation and distribution of the official statement by a financial advisor. This provision should be amended to also include non-dealer advisors.

Conversely, there may be a regulatory and business incentive for non-dealer municipal advisors to view transactions as loans to avoid the risk that they may be seen as having conducted unregistered activity as a broker dealer.[17]

Issuers or purchasers desiring to avoid obtaining CUSIP numbers for a private placement currently might forgo working with a conscientious dealer placement agent and instead work with a non-dealer municipal advisor. This combination of incentives and disincentives may, in effect, steer private placements to non-dealer municipal advisors to avoid having to obtain a CUSIP. We feel this has an unfair effect on competition for an arbitrary and capricious reason.

VII. Conclusion

Again, SIFMA and its members agree that the clarifications and amendments clarify Rule G-34, but question the rationale for requiring placement agents to obtain CUSIP numbers. SIFMA and its members feel that there should be an exemption to Rule G-34 for private placements of municipal securities sold to a bank, its affiliates or subsidiaries, or a consortium thereof. SIFMA and its members also seek clarification from the MSRB that private placements, including direct purchases, of loans are not required to obtain CUSIP numbers.

Additionally, SIFMA supports the proposed amendment that would level the regulatory playing field between dealer municipal advisors and non-dealer municipal advisors, by making all municipal advisors obtain CUSIP numbers for competitive sales of new issue municipal securities. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that

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[17] *See* Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mary Jo White, Chair, SEC, dated March 12, 2015 (regarding the placement agent activities of municipal advisors (the "SIFMA Placement Agent Letter")), available at: http://www.sifma.org/issues/item.aspx?id=8589953647.

would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Robert Fippinger, Chief Legal Officer
Michael L. Post, General Counsel-Regulatory Affairs
Margaret R. Blake, Associate General Counsel

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

Comment on Notice 2017-05

from Michael Cawley, SMA

on Tuesday, March 21, 2017

Comment:

See no reason for involving municipal advisors in the CUSIP application process. Underwriters, whether in a competitive or negotiated sale, have in my experience historically performed this function and are best equipped to continue to do so. Do not understand why the MSRB is expanding the role of a municipal advisor.
As to expanding the necessity of CUSIPs respecting a private placement, that too seems unnecessary. Most, if not all private placements, are held by the purchasing bank and are not re-marketed. If the MSRB insists upon private placements obtaining CUSIPs then that responsibility should be imposed upon the bank, not the municipal advisor.
I urge the MSRB to seriously reconsider imposing additional
responsibilities upon municipal advisors, many of whom are small businesses. We are all not large banks or organizations with resources available to performing the functions MSRB seeks to impose.

STATE OF FLORIDA

DIVISION OF BOND FINANCE

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COMMISSIONER OF AGRICULTURE

April 7, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Comment on Draft Amendments to MSRB Rule G-34

Dear Mr. Smith:

This letter is in response to the request for comments on Draft Amendments to MSRB Rule G-34. As a frequent issuer and market participant, we believe that a rule of this nature imposed on placement agents is inappropriate.

Banks are an important source of credit for the muni market. The Division of Bond Finance believes that the proposed rule will reduce access of issuers to the bank loan and direct purchase markets, reducing an important source of credit for issuers and potentially increasing costs of financing, i.e. interest rates. Direct loans by banks offer issuers an important alternative to publically offered bonds and a potentially cheaper source of financing. If the amendments are adopted, however, many banks would likely not make loans that require CUSIP numbers or must be held in book-entry form, based on the U.S. Supreme Court's "family resemblance test" set forth in *Reves v. Ernst & Young*.

The *Reves* case set out a complicated analysis for determining whether a bank loan should be characterized as a loan or a security for federal securities law purposes. One of those factors is the plan of distribution, that is, whether there is a plan to distribute the loan to others rather than hold the loan to maturity. CUSIP numbers and book-entry form are factors that appear to be establishing a plan to distribute the loan to others and could cause the loan to be a security under federal securities law. Treating the direct placement of a note or bond as a security rather than a loan impacts the banks accounting treatment, capital charges, cost of carry, ratios, etc., adversely affecting banks' willingness to make loans and/or requiring a higher interest rate. Rules imposing regulatory requirements for identification of bank loans that determine the accounting treatment and adversely affect the muni market should not be adopted.

A better approach to increasing disclosure of bank loans is to focus on improving the EMMA system to encourage more voluntary disclosure of direct purchases and bank loans and a standard naming convention for issuers which might assist in identifying bank loan information as

material to other debt of an issuer. Also, the SEC's proposed amendments to Rule 15c2-12 requiring material events notices for bank loans will meet this objective without adversely affecting the marketplace for bank loans and/or direct placements.

Thank you for your consideration.

Sincerely,

J. Ben Watkins III, Director
Division of Bond Finance

EXHIBT 2d

MSRB Municipal Securities Rulemaking Board

Regulatory Notice

2017-11

Publication Date
June 1, 2017

Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers

Notice Type
Request for Comment

Comment Deadline
June 30, 2017

Category
Market Transparency

Affected Rules
Rule G-34

Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Overview

On March 1, 2017, the Municipal Securities Rulemaking Board (MSRB) published a request for comment seeking industry input on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements ("first request for comment").[1] The first request for comment sought to clarify the existing application of the CUSIP number requirements under Rule G-34(a) to certain new issue municipal securities and expand the application of the rule to certain additional industry participants.[2] In light of comments received and after further review and consideration of the issues presented, the MSRB is publishing this second request for comment on draft rule amendments to Rule G-34 that would provide a limited exception to the requirement to obtain CUSIP numbers, and to apply for depository eligibility, in the case of a direct purchase of municipal securities by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in the direct purchase (herein "bank" or "banks").

Comments should be submitted no later than June 30, 2017, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities

[1] MSRB Notice 2017-05 (Mar. 1, 2017).

[2] The first request for comment also reminded market participants of the requirements under Rule G-34(b) regarding secondary market securities and proposed to make definitional and technical changes to the existing rule.

Receive emails about MSRB regulatory notices.

Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[3]

Questions about this notice should be directed to Margaret R. Blake, Associate General Counsel, at 202-838-1500.

Background

In the first request for comment, the MSRB sought input on amendments to Rule G-34(a) that would have clarified the requirement for brokers, dealers and municipal securities dealers ("dealers") to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer acts as a placement agent. The MSRB noted its long-standing interpretation that the CUSIP number requirement in Rule G-34(a) applies to a dealer acting as a placement agent,[4] and explained that by amending the definition of "underwriter" to cross reference to the definition of that term in Rule 15c2-12(f)(8) of the Securities Exchange Act of 1934 ("Exchange Act"), any ambiguity surrounding this requirement would be alleviated.[5]

In addition, in the first request for comment, the draft rule amendments would have required municipal advisors that are not dealers also to be subject to the CUSIP number requirement for new issue securities when

[3] Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

[4] *See, e.g.,* CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992). In this notice, the MSRB defined "private placement" to mean "any new issue of municipal securities that is 'placed' by a dealer, on an agency basis, with one or more investors." *See* Exchange Act Release No. 50773 (Dec. 1, 2004), 69 FR 70731-02 (Dec. 7, 2004) (SR-MSRB-2004-08). *See also* MSRB Notice 2008-28 (Jun. 27, 2008) ("Rule G-34 defines 'underwriter' very broadly to include a dealer acting as a placement agent . . .").

[5] 17 CFR 240.15c2-12(f)(8). This rule defines an underwriter as

> any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

acting as a municipal advisor in new issue municipal securities sold in a competitive offering. The MSRB explained that in its current form, the requirement in Rule G-34(a) applies only to dealer municipal advisors, creating a potential regulatory imbalance.[6]

The MSRB, in this second request for comment, proposes to proceed largely in the same manner as set forth in the first request for comment, that is, to amend the definition of "underwriter" in Rule G-34(a) to cross reference to the definition of "underwriter" set forth in Exchange Act Rule 15c2-12(f)(8) and to require all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities. However, as explained in more detail below, the MSRB seeks comment on draft proposed exceptions from each of these requirements in certain limited circumstances. Finally, as requested by commenters, the MSRB proposes to make the application of the draft rule amendments set forth in this second request for comment prospective.

Summary of Draft Amendments to Rule G-34

Clarification of Rule G-34(a) Application to Private Placements

As set forth in the first request for comment, the MSRB adopted the CUSIP number requirements in 1983 as a method of improving efficiencies in the processing and clearance activities of the municipal securities industry.[7] CUSIP numbers are relied on in the municipal securities market to identify securities for a number of purposes, including trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping. These factors are relevant even when the municipal securities are sold in a private placement. As a result, the MSRB continues to believe that Rule G-34(a)(i) should be amended to express more clearly in the text of the rule the MSRB's longstanding interpretation that the requirement to obtain CUSIP numbers applies to dealers acting as placement agents in private placements, including direct purchases. The MSRB believes that amending the definition

[6] As noted in the first request for comment, this application of the CUSIP number requirement only to dealers acting as municipal advisors is the result of Rule G-34 pre-dating the municipal advisor regulatory regime that resulted from the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. 111–203, H.R. 4173 (2010). The MSRB amended Rule G-34(a) in 1986 to apply the CUSIP requirements to dealers acting as financial advisors in competitive sales of a new issue. Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

[7] *See* Exchange Act Release No. 18959 (Aug. 13, 1982), 47 FR 36737-03 (Aug. 23, 1982) (SR-MSRB-82-11); and Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).

of "underwriter" to map to the definition of "underwriter" in Exchange Act Rule 15c2-12(f)(8) is the best approach to clarifying this requirement and ensures that the purposes of the CUSIP number requirement are upheld as intended.

Though the MSRB is again proposing to express more clearly its view that dealers acting as placement agents in the private placement of municipal securities are subject to the CUSIP number requirements under Rule G-34(a), a number of commenters, in response to the first request for comment, opposed a strict application of this requirement and urged the MSRB to consider a prospective exception for certain scenarios. Specifically, the MSRB understands that questions regarding the need for a CUSIP number often arise for dealers in direct purchase transactions with banks. While a dealer may determine that a transaction involves a municipal security for securities law purposes, the MSRB understands that the purchasing bank may consider the transaction to be a loan for banking law purposes and thus treat it as such.[8] Banks may be less likely to engage in a financing where the new issue has a CUSIP number and may consequently be viewed as something other than a loan for banking law purposes. As a result, dealers, on behalf of their municipal issuer clients, may be hindered in their ability to directly place municipal securities with banks.

In July 1992, the MSRB sought comment on possible exemptions from Rule G-34, including in sales of smaller issues, short-term issues and issues sold to a limited number of customers (*i.e.*, private placements).[9] The MSRB noted that in many of these instances, CUSIP numbers are not obtained because the dealer or financial advisor believes the securities will not trade in the secondary market. While the MSRB sought comment on a possible exemption, it noted that, at the time, it "strongly believe[d] that whenever municipal securities are offered for sale in the market or must be processed through financial intermediaries, CUSIP numbers should be available to identify the securities accurately."[10]

While the MSRB continues to believe that obtaining CUSIP numbers is a necessary aspect of, for example, tracking the trading, recordkeeping,

[8] This second request for comment does not attempt to address banking law requirements that may apply to banks in direct purchase transactions.

[9] CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992).

[10] *Id*.

clearance and settlement, customer account transfers and safekeeping of municipal securities, the MSRB also is of the view that the increase in the number of direct purchase transactions between municipal issuers and banks as an alternative to letters of credit and other similar types of financings may support an exception from the blanket requirement to obtain CUSIP numbers in all private placements. Where municipal securities are purchased directly by a bank, and the dealer reasonably believes that the bank is purchasing the new issue of municipal securities with the intention of holding them to maturity, and will limit any resale of the issue to another bank, the MSRB believes the need for a CUSIP number may be less critical for purposes of, among other things, identifying the securities and tracking the trading, recordkeeping and clearance and settlement of the issue.

As a result, the MSRB is seeking comment on a principles-based exception from the CUSIP number requirement. This exception would allow a dealer acting as an underwriter (including as a placement agent) in the sale of new issue municipal securities being offered in a direct purchase transaction with a bank to elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit resale of the municipal securities to another bank.[11]

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[11] Pursuant to MSRB Rule D-1, for purposes of this Rule G-34, the term "bank" would be defined as it is under Section 3(a)(6) of the Exchange Act. MSRB Rule D-1 states that,

> Unless the context otherwise specifically requires, the terms used in the rules of the Municipal Securities Rulemaking Board shall have the respective meanings set forth in the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq*.) and the rules and regulations of the Securities and Exchange Commission thereunder.

Exchange Act Section 3(a)(6) defines ''bank'' to mean

> (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

A dealer would be expected to have policies and procedures in place reasonably designed to assist in formulating its belief and would be expected to apply those policies and procedures consistently across all CUSIP number evaluations pursuant to Rule G-34(a)(i). In addition, a dealer would be expected to document its findings regarding its ultimate determinations with respect to each particular offering. The proposed amendment would not set forth prescriptive steps to comply with the exception and would not further specify those instances where the exception would apply, nor would the amendment define parameters for how a dealer should craft applicable policies and procedures to arrive at a reasonable belief with respect to a transaction. Dealers would have the ability to establish reasonable policies and procedures for applying a principles-based evaluation. Finally, as noted in the first request for comment, nothing in the proposed amendment would obviate a dealer's initial obligation to determine whether the transaction in question involves a municipal security as opposed to a loan or other instrument.[12] This is true regardless of how the bank in a direct purchase transaction determines to book the transaction for its own purposes.

If a dealer is permitted to apply the proposed exception from the CUSIP number requirement to applicable transactions involving direct purchases by banks, the MSRB's longstanding interpretation of the CUSIP number requirement under Rule G-34(a)(i) remains intact without impinging on a dealer's ability to access banks as a potential source of financing for their issuer clients.

The MSRB seeks comment on all aspects of the proposed amendment, including the clarification of the "underwriter" definition and the proposed exception from the CUSIP number requirement for dealers acting as underwriters in a direct purchase transaction with a bank.

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[12] As set forth in the first request for comment, when a dealer or municipal advisor works with a municipal securities issuer on a financing transaction to raise capital for the issuer, the dealer or municipal advisor should have reasonably designed policies and procedures to assist in making a determination as to whether the transaction involves a municipal security that results in the application of MSRB rules and other federal securities laws. If the transaction is not an issuance of a municipal security (*e.g.*, a commercial loan), there is no Rule G-34 requirement to apply for a CUSIP number. Note that the draft amendments do not affect the necessity for this determination. The Supreme Court set forth the relevant guidance in *Reves v. Ernst & Young, Inc.,* 494 U.S. 56 (1990), and the MSRB has reminded the industry of the requirement to conduct the appropriate analysis in an offering prior to applying for a CUSIP number. *See* MSRB Notice 2011-52 (Sept. 12, 2011) and MSRB Notice 2016-12 (Apr. 4, 2016) (noting that the placement of what might be referred to as a "bank loan" may, as a legal matter, involve a municipal security and therefore trigger the application of various federal securities laws, including MSRB rules such as Rule G-34).

The MSRB is aware that certain other requirements under Rule G-34 may be impacted by the clarification of the definition of "underwriter" to include placement agents in a private placement of municipal securities. In particular, commenters on the first request for comment noted that certain obligations under Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information would be implicated by the proposed amendment, but from a practical standpoint, these requirements may not appropriately apply to a direct purchase of municipal securities by a bank. As a result, the MSRB seeks comment on a similar exception from the depository eligibility and new issue information dissemination requirements of Rule G-34(a)(ii) for dealers acting as underwriters.

The proposed amendment would except from the requirements of Rule G-34(a)(ii) those municipal securities purchased directly by a bank where the underwriter reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank such that immobilization in a depository would be unnecessary. This exception would allow the underwriter to make a principles-based assessment as to whether depository eligibility, and thus, dissemination of new issue information, would be necessary for the particular new issue. As with the proposed exception under Rule G-34(a)(i), a dealer relying on the exception under Rule G-34(a)(ii) would be expected to have in place policies and procedures reasonably designed to assist in arriving at a reasonable belief regarding the likelihood that the purchasing bank would hold the securities until maturity or limit resale to another bank. The dealer would be expected to apply its policies and procedures consistently and document its determinations. Again, the MSRB does not intend to set forth prescriptive steps to be taken by dealers in evaluating various scenarios. Where the dealer acts as a placement agent in other private placement transactions outside of the proposed draft exception, the requirements of Rule G-34(a)(ii) would continue to apply.[13]

[13] Note that in MSRB Notice 2008-23 (May 9, 2008), the MSRB filed a proposed rule change to amend Rule G-34 to require underwriter registration and testing with DTCC's New Issue Information Dissemination System (NIIDS). The proposed amendment required all dealers underwriting municipal securities with nine months or greater effective maturity to register to participate in NIIDS and required the dealers to successfully test NIIDS prior to acting as underwriter on a new issue of municipal securities. The MSRB noted that "underwriter" in this context was defined "very broadly to include a dealer acting as a placement agent . . . ."

As with the first request for comment, the MSRB believes that amending the definition of "underwriter" to cross reference to the definition set forth in Exchange Act Rule 15c2-12(f)(8) would codify existing guidance and provide more clearly in the rule text that dealers acting as placement agents in private placement transactions, including direct purchases of municipal securities, are subject to the requirements set forth in Rule G-34(a)(i) and (ii). However, based on comments received, the MSRB further believes that the CUSIP number requirements and depository eligibility and new issue information dissemination requirements may not be necessary in all circumstances. Thus, the MSRB believes an exception from those requirements should be made available to dealers in direct purchase transactions with banks where the dealer reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale to another bank such that CUSIP numbers or immobilization in a depository would be unnecessary. The MSRB seeks public comment on the proposed amendments and exceptions.

Questions

1. Does the proposed exception from the CUSIP number requirement provide the appropriate level of flexibility for dealers to determine when CUSIP numbers are required under the rule?

2. Does the proposed exception resolve commenters' concerns regarding loss of access to bank financings where CUSIP numbers might previously have been required?

3. Is the proposed exception broad enough or are there other instances when a dealer acts as an underwriter that should be included in this exception?

4. Should the proposed exception be principles-based as proposed or more prescriptive in its application?

5. Are there specific, minimum parameters that should be met before allowing an underwriter to rely on either exception, or is the requirement to have a reasonable belief as to the likelihood that the municipal securities will be held to maturity by the bank purchaser and, if not, limited in resale to another bank adequate?

6. Does the exception from Rule G-34(a)(ii) resolve existing discrepancies with the application of the requirements under that subsection of the rule? Should other private placement transactions

be excepted from the requirements of Rule G-34(a)(ii)?

7. The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP number for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Would the proposed exception alleviate this issue?

Application of Rule G-34 CUSIP Number Requirements to Certain Municipal Advisors

As noted in the first request for comment, Rule G-34(a)(i) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities. Financial advisory activities are now generally defined also as municipal advisory activities. Nevertheless, non-dealer municipal advisors are not subject to the CUSIP application requirements under the current rule, thus creating the potential for a regulatory imbalance between dealer and non-dealer municipal advisors. In order to resolve this potential imbalance and generally to promote early application for CUSIP numbers, in the first request for comment, the MSRB proposed requiring all municipal advisors – dealer and non-dealer alike – to be subject to the CUSIP number requirements under Rule G-34(a)(i). Commenters were split on the proposed amendment with some supporting the idea of requiring all municipal advisors to be subject to the requirements of Rule G-34(a), and others indicating that requiring non-dealer municipal advisors to obtain CUSIP numbers in competitive transactions harmed small municipal advisors and served no purpose.

In 1986, the MSRB amended Rule G-34(a) to require a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities to obtain CUSIP numbers "in sufficient time to allow for assignment of a number prior to the date of award."[14] Reference to "competitive sale" was largely understood to refer to competitive offerings in a typical public distribution of municipal securities. The MSRB understands, however, that the competitive process has evolved, and that currently, in some direct purchase scenarios, a municipal advisor might arrange competitive bids from, for example, three banks competing for a direct purchase. In circumstances such as this, the MSRB believes there may be less of a need to obtain a CUSIP number where the municipal advisor reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the securities to another bank.

[14] Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

As in the first request for comment, the draft amendments would apply the requirements of Rule G-34(a)(i) to all municipal advisors (whether dealer or non-dealer) when advising the issuer in a competitive sale of a new issue of municipal securities. However, in this second request for comment, the draft amendments would provide an exception from the CUSIP number requirement in those instances where, in a competitive sale of municipal securities purchased directly by a bank, the municipal advisor reasonably believes it is likely that the bank will hold the securities to maturity or limit any resale of the securities to another bank such that a CUSIP number would not be necessary. As with the proposed exception under Rule G-34(a)(i) for dealers, a municipal advisor would be expected to have 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 municipal advisor would be expected to apply its policies and procedures consistently and to document its determinations with respect to the CUSIP number requirements.

The draft amendment would further clarify that the municipal advisor advising the issuer in a competitive sale of new issue municipal securities must make application for the CUSIP number by no later than one business day after dissemination of a notice of sale or other such request for bids. The addition of "or other such request for bids" would ensure the timing of the application for a CUSIP number in those instances where a municipal advisor seeks bids in a competitive sale of municipal securities using documentation other than a traditional notice of sale.

Questions

1. Does the proposed exception for municipal advisors advising the issuer in a direct purchase competitive sale to a bank resolve commenters' concerns regarding a potentially unnecessary burden on municipal advisors with respect to the CUSIP number requirement? Are there other scenarios where a municipal advisor should not be required to obtain a CUSIP number when advising an issuer in a competitive sale of new issue securities?

2. Are there other parameters to the exception that should apply to municipal advisors relying thereon?

Other Draft Amendments

As in the first request for comment, the draft amendments would include a definition section to clarify certain terms as used in Rule G-34. For example, the current definitional language for the term "underwriter" would be

replaced with new language mapping to the term as defined in Exchange Act Rule 15c2-12(f)(8), with the reiteration that this definition includes a dealer acting as a placement agent. In addition, definitions currently in the body of the rule that continue to apply, such as that for "remarketing agent," would be moved to the proposed definition section, as appropriate. The draft amendment would not include definitions of "municipal advisor" or "bank", thus resulting in those terms being defined as they are under the Exchange Act.[15]

The draft amendments would make technical and conforming changes throughout the rule as needed to ensure clarity and consistency in the application of the rule.

Questions

1. Does mapping the definition of "underwriter" to Exchange Act Rule 15c2-12(f)(8) sufficiently clarify that a dealer, when acting as a placement agent, is an underwriter for purposes of Rule G-34(a)?

2. Are there definitions in the rule that need further clarification or definitions that should be included?

Economic Analysis

1. The need for the draft amendments to Rule G-34 and how the draft amendments to Rule G-34 would meet that need.

The need for the draft amendments to Rule G-34(a) arises from instances where underwriters are not consistently obtaining CUSIP numbers in sales of new issue municipal securities sold in private placements and the desire to address a potential regulatory imbalance between CUSIP number requirements as applied to dealer and non-dealer municipal advisors.

The MSRB believes that the draft amendments would clarify the requirement that a dealer acting as a placement agent in a private placement, including a direct purchase, should be required to obtain CUSIP numbers for all new issue municipal securities. Further, in addition to clarifying its longstanding interpretation, the MSRB believes that the draft amendments would create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned by

[15] *See supra* note 11.

underwriters in private placements. In addition, the draft amendment to Rule G-34(a) to require all municipal advisors advising an issuer in a competitive sale of new issue municipal securities is necessary to alleviate any existing regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors.

After reviewing the comment letters received in response to the first request for comment, the MSRB is proposing new principles-based exceptions to obtaining CUSIP numbers for dealers acting as placement agents in the sale of new issue municipal securities and all municipal advisors advising an issuer with respect to a competitive sale of new issue municipal securities. The exception for dealers would apply in direct purchase transactions with a bank, where the underwriter reasonably believes that the purchasing bank is likely to hold the municipal securities until maturity or will limit resale of the municipal securities to another bank. The exception for municipal advisors would apply to all municipal advisors advising an issuer with respect to a competitive sale of new issue municipal securities where the purchaser is a bank and the municipal advisor reasonably believes the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-34 can be considered.

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference in comparison to the expected state with the draft amendments in effect. The economic impact of the draft amendments is generally viewed to be the difference between the baseline and the expected states.

The relevant baseline for purposes of the proposed amendment to Rule G-34(a) regarding the clarification of the requirement to obtain CUSIP numbers in private placements including a direct purchase where the dealer acts as a placement agent is existing Rule G-34(a) which, as noted above, requires that:

> each broker, dealer or municipal securities 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 ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue . . . .

Rule G-34(a) also serves as a baseline for the requirement that all municipal advisors advising an issuer in a competitive sale of new issue municipal securities be required to obtain CUSIP numbers for such new issues. Under the current rule, only dealer municipal advisors are required to obtain CUSIP numbers in competitive sales of new issue municipal securities. Non-dealer municipal advisors are not currently subject to the requirements of the rule.

The intent of the first and second request for comments is to clarify the MSRB's interpretation that dealers acting as placement agents in private placements of municipal securities, including direct purchases, must obtain CUSIP numbers for the new issues and to propose an amendment that would require non-dealer municipal advisors to obtain CUSIP numbers when advising an issuer on competitive sales of new issue securities. In addition, in the second request for comment, the MSRB is proposing principles-based exceptions from these requirements. It is possible that, in practice, a sizable portion of these municipal securities currently with no CUSIP numbers have never or rarely been resold in the market; therefore, dealers and municipal advisors would be able to exercise the newly proposed principles-based exceptions by the MSRB to avoid obtaining CUSIP numbers. If this is the case, the expected state may not be significantly different from the current state.

3. Identifying and evaluating reasonable alternative regulatory approaches.

Rule G-34(a) requires underwriters to obtain CUSIP numbers when conducting a private placement of new issue municipal securities. The draft amendment only serves to remind the underwriters of this requirement, while allowing a principles-based exception in certain scenarios. An alternative would be to leave Rule G-34(a) as it is without amending the definition of "underwriter" to clarify the requirement. However, this may lead to non-compliance.

The draft amendments would require, under Rule G-34(a), non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities, with a certain principles-based exception. This requirement is new. The MSRB could leave Rule G-34(a) as is, and only require dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue municipal securities. However, by not including non-dealer municipal advisors, this may cause a regulatory imbalance between dealer and non-dealer municipal advisors advising issuers in competitive sales of municipal securities.

4. Assessing the benefits and costs of the draft amendments to Rule G-34 and the main alternative regulatory approaches.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the draft amendments with the draft amendments fully implemented against the context of the economic baseline. As elaborated above, only the requirement for non-dealer municipal advisors to obtain a CUSIP number when advising an issuer in a competitive sale of new issue municipal securities is a new requirement, while the requirements for dealers to obtain CUSIP numbers for a private placement of new issue securities, including direct purchases where the dealer is a placement agent, is not new. Furthermore, the second request for comment established principles-based exceptions for obtaining CUSIP numbers in both instances.

In the first request for comment, the MSRB asked for additional data or studies relevant to the draft amendments, specifically the frequency of private placements and secondary market securities without CUSIP numbers and the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances. In addition, the MSRB was seeking data or studies relevant to the draft amendment to require non-dealer municipal advisors advising an issuer in a competitive sale of municipal securities to obtain CUSIP numbers. Finally, the MSRB sought estimates of the cost of obtaining and maintaining a CUSIP number in each of these instances.[16]

Some commenters in response to the first request for comment expressed the view that the economic analysis conducted by the MSRB was inadequate, particularly with regard to costs borne by small municipal advisory firms, as well as the cumulative regulatory burden of this rulemaking in combination with existing municipal advisor obligations. Those commenters, however, did not provide any quantitative and qualitative information sought by the MSRB.

With the proposed principles-based exceptions in the current request for comment, it is possible that the ultimate number of new transactions that require a CUSIP number may not be significant, and therefore the economic impact, from both the costs and benefits point of view, may not be material. The MSRB does not have the data to estimate the accretive number of new

[16] The MSRB is aware of the current fee charged by CUSIP Global Services for CUSIP numbers.

CUSIP numbers as a result of these draft amendments. The MSRB again is soliciting estimates on the number of transactions that would require CUSIP numbers under the draft amendments, and the proportion of those transactions that would qualify under the newly proposed principles-based exemptions.

Benefits

The MSRB believes that clarifying the intent of Rule G-34(a) for underwriters in a private placement of new issue securities would benefit investors and other market participants by enhancing compliance with the CUSIP number requirement, and therefore would provide increased transparency with respect to relevant market information associated with private placements. CUSIP numbers are an important tool for reducing asymmetric information between retail and institutional investors on one side, and other market participants, such as issuers, municipal advisors, and dealers on the other side. In economics, information asymmetry refers to transactions where one party has more or better information than the other. Asymmetric information may cause market price distortion and/or transaction volume depression, which therefore has an undesirable impact on the municipal securities market, including the market for the private placement of municipal securities.

Specifically, the MSRB believes that all market participants would benefit from increased transparency and reduced information asymmetry in the private placement of municipal securities, including sophisticated institutional investors.[17] Since issues that lack CUSIP numbers circumvent the MSRB's (and other regulatory agencies') market transparency initiatives, clarifying the CUSIP number requirement would improve the information available to investors.

The draft amendment to require non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities benefits dealer municipal advisors in that they would be subject to less regulatory imbalance in relation to non-dealer municipal advisors engaged in the same activity.

[17] For example, even if there is no intent to distribute municipal securities publicly following a private placement, when CUSIP numbers are not obtained in a private placement, including a direct purchase, investors may have difficulty understanding an issuer's total indebtedness. This could cause investors to improperly evaluate the credit risk of potential investments in an issuer's municipal securities.

Costs

The analysis of the potential costs does not consider the aggregate costs associated with the draft amendments, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the draft amendments to isolate the costs attributable to the incremental requirements of the draft amendments.

Since the baseline already includes a requirement for underwriters to obtain CUSIP numbers in private placements of municipal securities, and the interpretation of Rule G-34(a) does not change the requirement, except for a newly-proposed principles-based exception in this second request for comment, there should be no incremental costs above the baseline associated with the draft amendments as they relate to these types of securities, except for certain underwriters who are not in compliance presently and who would not be able to take advantage of the new exception.

The draft amendments would create a new burden on non-dealer municipal advisors by requiring them to secure a CUSIP number when advising an issuer in a competitive sale of new issue municipal securities, except for some instances where a municipal advisor reasonably believes that a CUSIP number would not be necessary. Should municipal advisors desire to exercise this exception, there would be costs associated with justifying the non-necessity of obtaining a CUSIP number in accordance with established policies and procedures. However, municipal advisors are unlikely to exercise this exception unless the associated costs are lower than the costs of obtaining a CUSIP number.

The MSRB believes that the costs are perhaps disproportionally higher in certain transactions where the size of lending transactions is small, but without additional data inputs from the industry and issuers, the MSRB is unable to quantify the relative cost burden based on the size of transactions.

Although non-dealer municipal advisors are likely to incur up-front costs associated with securing a CUSIP number, greater benefits should accrue to investors over time as a result of improved transparency, reduced information asymmetry and price dislocation, and therefore potentially improved investor appetite for the relevant issues. In the long term, transparency also may lead to surging interest from investors, which would benefit issuers, dealers, and municipal advisors, and the long-term benefits could offset or exceed the aforementioned up-front costs.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the draft amendments may improve the operational efficiency of the municipal securities market by promoting consistency and transparency. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation, but believes that the benefits outweigh the costs. Additionally, the MSRB believes that the draft amendments would encourage fair competition by ensuring compliance with existing CUSIP number requirements by underwriters in a private placement of new issue securities. It should also encourage fair competition between dealer municipal advisors and non-dealer municipal advisors advising an issuer in competitive sales of municipal securities by eliminating any regulatory imbalance. The MSRB believes that the draft amendments could also reduce confusion and risk to investors and allow them to make more informed investment decisions. Competition, however, may be adversely affected if, to reduce costs and regulatory burden, issuers refrain from using dealers and municipal advisors and instead engage directly with financial institutions for direct purchase private placements.

Conclusion

The MSRB believes that these draft amendments would provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices. The MSRB is soliciting estimates of these costs in this second request for comment, but assumes that they would be significantly less than the benefits that would accrue over time to investors as well as the market as a whole.

With the proposed principles-based exceptions in the current request for comment, it is possible that the ultimate number of new scenarios that require a CUSIP number is not significant, and therefore the impact, from both the costs and benefits point of view, may not be material either. The MSRB does not have the data to estimate the accretive number of new CUSIP numbers as a result of the draft amendments. The MSRB again is soliciting estimates on the number of instances where a CUSIP number should have been obtained by dealers who were not previously in compliance, the number of instances where a CUSIP number would be obtained by municipal advisors who were not previously required to do so, as well as the percentage of those instances that could fall under the newly-proposed principles-based exceptions.

In addition, the MSRB is in the process of considering a framework for performing an impact analysis on the municipal advisory industry as a result of recent implementation of a range of rules for municipal advisors since the

enactment of the Dodd-Frank Act in 2010. The MSRB believes it would be prudent to consider all recent rulemaking for municipal advisors collectively once all of them are effective (expected to be sometime in 2018) in order to measure the cumulative impact.

Questions

1. Are there other relevant baselines the MSRB should consider when evaluating the economic impact of the proposal?

2. If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?

3. Is the principles-based exception likely to be utilized? How frequently do participants expect to exercise the exception?

4. Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?

    a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments?

    b. What is the frequency of private placements without municipal CUSIP numbers?

    c. What is the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances?

    d. What is the frequency of dealer municipal advisors advising an issuer in a competitive sale of municipal securities without obtaining CUSIP numbers?

    e. Is there an estimate of the total cost of obtaining and maintaining a CUSIP number in each of these instances?

5. What specific changes would dealers and municipal advisors need to make to their systems to implement the draft amendments (only if there are system changes that might be required)?

June 1, 2017

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Text of Draft Amendments*

Rule G-34: CUSIP Numbers, New Issue, and Market Information Requirements

(a) *New Issue Securities*.

(i) *Assignment and Affixture of CUSIP Numbers.*

(A) Except as otherwise provided in this section (a) and section (d), ~~each~~a broker, dealer or municipal securities dealer acting as an underwriter in ~~who acquires, whether as principal or agent,~~ a new issue of municipal securities, and a municipal advisor advising the issuer with respect to ~~from the issuer of such securities for the purpose of distributing such new issue ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in~~ a competitive sale of a new issue of municipal securities, ~~("financial advisor")~~ shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

(1) - (2) No change.

(3) A ~~financial~~ municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities shall make an application by no later than one business day after dissemination of a notice of sale or other such request for bids. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) No change.

(5) Any changes to information identified in ~~this~~ subparagraph (a)(i)(A)(4) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the ~~T~~time of ~~F~~first ~~E~~execution required under paragraph (a)(ii)(C) of this Rule G-34.

(B) The information required by subparagraph (i)(A)(4) of this section (a) shall be provided in accordance with the provisions of this subparagraph. The application shall include a copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A)(4) of this section (a). Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A)(4) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form,

* Underlining indicates new language; strikethrough denotes deletions.

is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) – (E) No change.

(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, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary.

(ii) Application for Depository Eligibility and Dissemination of New Issue Information. Each underwriter shall carry out the following functions:

(A) Except as otherwise provided in this subparagraph (ii)(A) and section (d), the underwriter shall apply to a securities depository registered with the Securities and Exchange Commission, in accordance with the rules and procedures of such depository, to make such new issue depository-eligible. The application required by this subparagraph (ii)(A) shall be made as promptly as possible, but in no event later than one business day after award from the issuer (in the case of a competitive sale) or one business day after the execution of the contract to purchase the securities from the issuer (in the case of a negotiated sale). In the event that the full documentation and information required to establish depository eligibility is not available at the time the initial application is submitted to the depository, the underwriter shall forward such documentation as soon as it is available; provided, however, this subparagraph (ii)(A) of this rule shall not apply to:

(1) No change.

(2) any new issue maturing in 60 days or less~~.~~; or

(3) a new issue of municipal securities purchased directly by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, from an issuer in which an underwriter reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore applying for depository eligibility is unnecessary.

(B) No change.

(C) The underwriter of a new issue of municipal securities, which has been made depository eligible pursuant to subparagraph (ii)(A) above, shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers

and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue; provided, however, that this paragraph (a)(ii)(C) shall not apply to commercial paper.

(1) The underwriter shall ensure that the following information is submitted to NIIDS in the manner described in the written procedures for system users and that changes or corrections to submitted information are made as soon as possible:

(a) the ~~T~~time of ~~F~~formal ~~A~~award.

(i) For purposes of this paragraph (a)(ii)(C), the "~~T~~time of ~~F~~formal ~~A~~award " means:

(A) – (B) No change.

(ii) If the underwriter and issuer have agreed in advance on a ~~T~~time of ~~F~~formal ~~A~~award, that time may be submitted to NIIDS in advance of the actual ~~T~~time of ~~F~~formal ~~A~~award.

(b) the ~~T~~time of ~~F~~first ~~E~~execution.

(i) For purposes of this paragraph (a)(ii)(C), the "~~T~~time of ~~F~~first ~~E~~execution " means the time the underwriter plans to execute its first transactions in the new issue.

(ii) The underwriter shall designate a ~~T~~time of ~~F~~first ~~E~~execution that is:

(A) No change.

(B) for all other new issues, no less than two ~~B~~business ~~H~~hours after all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS; provided that the ~~T~~time of ~~F~~first ~~E~~execution may be designated as 9:00 A.M. Eastern Time or later on the RTRS ~~B~~business ~~D~~day following the day on which all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS without regard to whether two ~~B~~business ~~H~~hours have elapsed.

(c) No change.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is transmitted to NIIDS no later than two ~~B~~business ~~H~~hours after the ~~T~~time of ~~F~~formal ~~A~~award. For purposes of this paragraph (a)(ii)(C):

(a) “Business ~~H~~hours” shall include only the hours from 9:00 A.M. to 5:00 P.M. Eastern Time on an RTRS ~~B~~business ~~D~~day.

(b) “RTRS ~~B~~business ~~D~~day” shall have the meaning set forth in Rule G-14 RTRS Procedures section (d)(ii).

(3) No change.

(a) – (b) No change.

(D) The underwriter of any new issue of municipal securities consisting of commercial paper shall, as promptly as possible, announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.

(1) No change.

(2) the ~~T~~time of ~~F~~formal ~~A~~award as defined in subparagraph (a)(ii)(C)(1)(a).

(E) No change.

(1) - (2) No change.

(iii) No change.

(iv) *Limited Use of NRO Designation*. From and after the time of initial award of a new issue of municipal securities, a broker, dealer or municipal securities dealer may not use the term "not reoffered" or other comparable term or designation without also including the applicable price or yield information about the securities in any of its written communications, electronic or otherwise, sent by it or on its behalf. For purposes of this subsection (iv), the "time of initial award" means the earlier of (A) the ~~T~~time of ~~F~~formal ~~A~~award as defined in subparagraph (a)(ii)(C)(1)(a), or (B) if applicable, the time at which the issuer initially accepts the terms of a new issue of municipal securities subject to subsequent formal award.

(b) *Secondary Market Securities*.

(i) No change.

(ii) Each broker, dealer or municipal securities dealer, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities which is assigned a CUSIP number that no longer designates securities identical with respect to all features of the issue listed in items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4) of this rule, shall apply in writing to the Board or its designee for a new CUSIP number or numbers to designate the part or parts of the maturity which are identical with respect to items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4).

(iii) The broker, dealer or municipal securities dealer shall make the application required under this section (b) as promptly as possible, and shall provide to the Board or its designee:

(A) No change.

(B) all information on the features of the maturity of the issue listed in items (~~1~~a) through (~~8~~h) of subparagraph (a)(i)(A)(4) of this rule and documentation of the features of such maturity sufficient to evidence the basis for CUSIP number assignment; and,

(C) No change.

(c) *Variable Rate Security Market Information*. ~~The Board operates a facility for the collection and public dissemination of information and documents about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System).~~

(i) Auction Rate Securities. ~~Auction Rate Securities are municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an agent responsible for conducting the auction process on behalf of the issuer or other obligated person with respect to such Auction Rate Securities ("Auction Agent") that receives orders from brokers, dealers and municipal securities dealers.~~

(A) Auction Rate Securities Data.

(1) Each ~~broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process ("P~~program ~~D~~dealer~~")~~ shall report, or ensure the reporting of, the following information about the ~~A~~auction ~~R~~rate ~~S~~security and concerning the results of the auction to the Board:

(a) - (b) No change.

(c) Identity of all ~~P~~program ~~D~~dealers that submitted orders, including but not limited to hold orders;

(d) - (g) No change.

(h) Date and time the interest rate determined as a result of the auction process was communicated to ~~P~~program ~~D~~dealers;

(i) - (k) No change.

(l) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for a ~~P~~program ~~D~~dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and

(m) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for an issuer or conduit borrower for such ~~A~~auction ~~R~~rate ~~S~~security.

(2) Information identified in subparagraph (c)(i)(A) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an auction occurs if such date is an RTRS ~~B~~business ~~D~~day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any

item of information identified in subparagraph (c)(i)(A)(1) is not available by the deadline in this subparagraph (c)(i)(A)(2), such item shall be provided to the Board as soon as it is available. In the event that an auction occurs on a non-RTRS ~~B~~business ~~D~~day, the information identified in subparagraph (c)(i)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS ~~B~~business ~~D~~day.

(3) A ~~P~~program ~~D~~dealer may designate an agent to report the information identified in subparagraph (c)(i)(A)(1) to the Board, provided that an ~~A~~auction ~~A~~agent may submit information on behalf of a ~~P~~program ~~D~~dealer absent such designation by the ~~P~~program ~~D~~dealer. The failure of a designated agent to comply with any requirement of this paragraph (c)(i) shall be considered a failure by such ~~P~~program ~~D~~dealer to so comply; provided that if an ~~A~~auction ~~A~~agent has, within the time periods required under subparagraph (c)(i)(A)(2), reported the information required under subparagraph (c)(i)(A)(1), the ~~P~~program ~~D~~dealer may rely on the accuracy of such information if the ~~P~~program ~~D~~dealer makes a good faith and reasonable effort to cause the ~~A~~auction ~~A~~agent to correct any inaccuracies known to the ~~P~~program ~~D~~dealer.

(4) For Auction Rate Securities in which there are multiple ~~P~~program ~~D~~dealers, each ~~P~~program ~~D~~dealer must only report for items (i) through (m) of the items of information identified in subparagraph (c)(i)(A)(1) information reflective of the ~~P~~program ~~D~~dealer's involvement in the auction. A designated agent as described in subparagraph (c)(i)(A)(3) reporting results of an auction on behalf of multiple ~~P~~program ~~D~~dealers must report for items (i) through (m) of the items information identified in subparagraph (c)(i)(A)(1) information reflective of the aggregate of all such ~~P~~program ~~D~~dealers' involvement in the auction for which the designated agent is making a report. A ~~P~~program ~~D~~dealer may rely on the reporting of information by an ~~A~~auction ~~A~~agent as provided in subparagraph (c)(i)(A)(3) if the ~~A~~auction ~~A~~agent has undertaken to report, and the ~~P~~program ~~D~~dealer does not have reason to believe that the ~~A~~auction ~~A~~agent is not accurately reporting, all items of information identified in subparagraph (c)(i)(A)(1), to the extent applicable, for an auction that is reflective of all ~~P~~program ~~D~~dealers that were involved in the auction.

(5) Information reported to the Board pursuant to this section (c)(i) shall be submitted in the manner described in the written procedures for SHORT ~~S~~system users and changes to submitted information must be made as soon as possible.

(6) Every broker, dealer or municipal securities dealer that submits an order to a ~~P~~program ~~D~~dealer on behalf of an issuer or conduit borrower for such ~~A~~auction ~~R~~rate ~~S~~securities shall disclose at the time of the submission of such order that the order is on behalf of an issuer or conduit borrower for such ~~A~~auction ~~R~~rate ~~S~~securities.

(B) Auction Rate Securities Documents.

(1) Each ~~P~~program ~~D~~dealer shall submit to the Board current documents setting forth auction procedures and interest rate setting mechanisms associated with an outstanding ~~A~~auction ~~R~~rate ~~S~~security for which it acts as a ~~P~~program ~~D~~dealer by no later than September 22,

2011 and shall submit to the Board any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the ~~P~~program ~~D~~dealer.

(2) All submissions of documents required under subparagraph (c)(i)(B)(1) shall be made by electronic submissions to the SHORT ~~S~~system in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(ii) Variable Rate Demand Obligations. ~~Variable Rate Demand Obligations are securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically with specified advance notice ("Notification Period"), and a broker, dealer or municipal security dealer acts as a remarketing agent ("Remarketing Agent") responsible for reselling to new investors securities that have been tendered for purchase by a holder.~~

(A) Variable Rate Demand Obligations Data.

(1) Each ~~R~~remarketing ~~A~~agent for a ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation shall report the following information to the Board about the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation applicable at the time of and concerning the results of an interest rate reset:

(a) – (b) No change.

(c) Identity of the ~~R~~remarketing ~~A~~agent;

(d) – (h) No change.

(i) Identity of liquidity provider, type and expiration date of each liquidity facility applicable to the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation;

(j) Identity of the agent of the issuer to which bondholders may tender their security ("~~T~~tender ~~A~~agent"); and

(k) Aggregate par amount, if any, of the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation held by a liquidity provider(s) (par amount held as "~~B~~bank ~~B~~bonds"), and aggregate par amount, if any, of the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation held by parties other than a liquidity provider(s), including the par amounts held by the ~~R~~remarketing ~~A~~agent and by investors.

(2) Information identified in subparagraph (c)(ii)(A)(1) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an interest rate reset occurs if such date is an RTRS ~~B~~business ~~D~~day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(ii)(A)(1) is not available by the deadline in this subparagraph (c)(ii)(A)(2), such item shall be provided to the Board as soon as it is available provided that items (i) through (k) of the information identified in subparagraph (c)(ii)(A)(1) shall reflect the information available to the ~~R~~remarketing ~~A~~agent as of the date and

time of the interest rate reset. In the event that an interest rate reset occurs on a non-RTRS ~~B~~business ~~D~~day, the information identified in subparagraph (c)(ii)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS ~~B~~business ~~D~~day.

(3) A ~~R~~remarketing ~~A~~agent may designate an agent to report the information identified in subparagraph (c)(ii)(A)(1) to the Board. The failure of a designated agent to comply with any requirement of this paragraph (c)(ii) shall be considered a failure by such ~~R~~remarketing ~~A~~agent to so comply.

(4) Information reported to the Board pursuant to this section (c)(ii) shall be submitted in the manner described in the written procedures for SHORT ~~S~~system users and changes to submitted information must be made as soon as possible.

(B) Variable Rate Demand Obligations Documents.

(1) Each ~~R~~remarketing ~~A~~agent shall use best efforts to obtain and shall submit to the SHORT ~~S~~system the current versions of the following documents detailing provisions of liquidity facilities associated with the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation for which it acts as a ~~R~~remarketing ~~A~~agent by no later than September 22, 2011 and shall submit to the SHORT ~~S~~system any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the ~~R~~remarketing ~~A~~agent:

(a) Stand-~~B~~by ~~B~~bond ~~P~~purchase ~~A~~agreement;

(b) Letter of ~~C~~credit ~~A~~agreement; and

(c) No change.

(2) All submissions of documents required under this rule shall be made by electronic submissions to the SHORT ~~S~~system in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(3) In the event that a document described in subparagraph (c)(ii)(B)(1) is not able to be obtained through the best efforts of the ~~R~~remarketing ~~A~~agent, the ~~R~~remarketing ~~A~~agent shall submit notice to the SHORT ~~S~~system that such document will not be provided at such times as specified herein and in the SHORT System Users Manual.

(d) No change.

(e) *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i) The term "auction agent" shall mean the agent responsible for conducting the auction process for auction rate securities on behalf of the issuer or other obligated person with respect to such securities and that receives orders from brokers, dealers and municipal securities dealers.

(ii) The term "auction rate security" shall mean municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an auction agent.

(iii) The term "notification period" shall mean the specified advance notice period during which an investor in a variable rate demand obligation has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person.

(iv) The term "program dealer" shall mean each broker, dealer or municipal securities dealer that submits an order directly to an auction agent for its own account or on behalf of another account to buy, hold or sell an auction rate security through the auction process.

(v) The term "remarketing agent" shall mean, with respect to variable rate demand obligations, the broker, dealer or municipal securities dealer responsible for reselling to new investors securities that have been tendered for purchase by a holder.

(vi) The term "SHORT system" shall mean the Short-term Obligation Rate Transparency System, a facility operated by the Board for the collection and public dissemination of information and documents about securities bearing interest at short-term rates.

(vii) The term "underwriter" shall mean an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8) and includes a dealer acting as a placement agent.

(viii) The term "variable rate demand obligation" shall mean securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, where an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically within a notification period, and a broker, dealer or municipal securities dealer acts as a remarketing agent responsible for reselling to new investors securities that have been tendered for purchase by a holder.

EXHIBIT 2e

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2017-11 (June 1, 2017)

1. Acacia Financial Group, Inc.: Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, dated June 29, 2017

2. American Bankers Association: Letter from Cristeena G. Naser, Vice President and Senior Counsel, Center for Securities, Trust and Investment, dated June 30, 2017

3. Bloomberg L.P.: Letter from Peter Warms, Senior Manager of Fixed Income, Entity, Regulatory Content and Symbology

4. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated June 29, 2017

5. Center for Municipal Finance: Letter from Marc D. Joffe, President, dated June 28, 2017

6. Eastern Bank: Letter

7. Fieldman Rolapp & Associates: Letter from Adam S. Bauer, Chief Executive Officer and President, dated June 30, 2017

8. Government Capital Securities Corp: Email from Ted Christensen dated June 1, 2017

9. Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated June 30, 2017

10. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated June 30, 2017

11. New Jersey State League of Municipalities: Letter from Michael F. Cerra, Assistant Executive Director, dated June 27, 2017

12. PFM: Letter from Leo Karwejna, Chief Compliance Officer, Cheryl Maddox, General Counsel, and Catherine Humphrey-Bennett, Municipal Advisory Compliance Officer, dated July 3, 2017

13. Piper Jaffray & Co.: Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Managing Director, Associate General Counsel, Public Finance and Fixed Income, dated June 29, 2017

14. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 30, 2017

15. Southern Municipal Advisors, Inc.: Letter from Michael C. Cawley, Senior Consultant, dated June 29, 2017

16. Township of East Brunswick: Email from L. Mason Neely dated June 2, 2017

EXHIBIT 2f

ACACIA
FINANCIAL GROUP, INC.

6000 Midlantic Drive
Suite 410 North
Mount Laurel, NJ 08054

(856) 234-2266 Phone
(856) 234-6697 Fax

June 29, 2017

VIA ELECTRONIC MAIL
Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-11, Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

Acacia Financial Group, Inc. ("Acacia") is a national financial advisory firm that serves a wide range of 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 submitted comments previously on this proposal and believe many of the comments made in our letter dated March 30th are still applicable and would respectfully request for the Board to review that letter in conjunction with our additional comments provided herein on both the need for non-dealer municipal advisors to obtain CUSIP numbers for competitive transactions and on the exception proposed for CUSIP numbers for direct purchases, bank loans or private placements.

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. 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.
- Payment of CUSIP numbers. Issuers would still look to have the cost of CUSIP numbers paid for by the winning underwriter. As this cost will be borne by the underwriter, it would make billing simpler and eliminate any possible confusion, if the winning underwriter simply applied for the CUSIP, eliminating an intermediary in the process.
- Change of structure or postponement or cancellation of sale. 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.
- 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.

- Market efficiencies and market transparency. 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 several commenters in the first round of comment, 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 do competitive transactions. ***And 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.***

We echo the comments made by the National Association of Municipal Advisors who stated that it is unclear what problem the MSRB is trying to correct in 2017. We urge the Board to re-examine this issue of CUSIP numbers in light of the current market environment. As stated in our prior comment letter, 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 must 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.

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. 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 MSRB to withdraw this aspect of the proposed rule change.

Conclusion

Acacia urges the MSRB 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 an additional cost. 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 the purchaser to the placement agent and MA should not be implemented at this time because of the impractical nature of the task and costs associated with such a determination.

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 has instead increased burdens on municipal market participants without any rationale to the value it will bring to the marketplace. We respectfully request the MSRB 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

American Bankers Association

Cristeena Naser
Vice President
Center for Securities, Trust & Investments
202-663-5332
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VIA ELECTRONIC MAIL

June 30, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-11, Second Request for Comments on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the above second request for comments on the above proposal issued by the Municipal Securities Rulemaking Board (MSRB). ABA members regularly purchase municipal obligations directly from the 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.[2] 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. In ABA's March 17, 2017 response, we offered strong support for such an exception.

[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.

[2] The proposal would amend the text of Rule G-34(a)(i)(A) to delete the existing phrase "for the purpose of distributing such new issue," to make clear that the CUSIP requirement applies to placement agents.

The MSRB in this re-proposal seeks comments on a limited exception to both the requirement to obtain CUSIP numbers and to apply for depository eligibility in the case of a "direct purchase of municipal securities by a bank, affiliated bank or a consortium of banks formed for the purpose of participating in the direct purchase." ABA understands that the MSRB in doing so has recognized our concerns and the potential impact on the direct purchase market.

Support for Exception

ABA supports an exception from the requirement to obtain CUSIP numbers and depository eligibility requirements of Rule G-34(a) for dealers and municipal advisors in private placements of municipal obligations to a single bank or bank affiliate purchaser or a consortium of banks. 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 securities laws[3] as well as address the concerns of our member banks raised in our comment letter.

As the MSRB has recognized, the need for an identifier such as a CUSIP number may be less critical for purposes of identifying and tracking the trading of municipal securities where the municipal dealer has a reasonable belief that securities will not enter the public municipal securities market. Accordingly, the proposal includes new subsection (F) 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, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary.

While ABA supports the proposed exception, we have significant concerns about this formulation, particularly with the term "affiliated banks." Commercial banks often use direct or indirect subsidiaries of the bank itself to provide funding to municipalities and conduit borrowers. However, the majority of funding subsidiaries are non-bank subsidiaries. We are also aware that some banks use bank holding company affiliates to provide this type of funding. In addition, unlike the MSRB's draft language, the funding entity may transfer the obligation to an *existing* consortium, rather than creating a new consortium for every transaction.

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

Accordingly, ABA believes the following language would address these concerns and bring into the scope of the exception the types of entities currently involved in the direct purchase market:

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or municipal advisor advising the issuer with respect to a competitive sale of a new issue may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchaser(s) of the municipal securities is:

(1) a bank;

(2) any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker-dealer registered under the Securities Exchange Act of 1934; or

(3) a consortium of the institutions described in (1) or (2) above used for the purpose of participating in a direct purchase of a new issue of municipal securities (collectively "purchasers"), and

(4) such purchasers:

(a) represent that the municipal securities are being purchased for their own account, with no present intent to sell or distribute the municipal securities, and

(b) represent that they will limit resale of the municipal securities to institutions described in (1) through (3) above or a "qualified institutional buyer" as defined under SEC Rule 144A, or an "accredited investor" as defined in Rule 501, Regulation D of the Securities Act of 1933.

Paragraph (F)(2) would include non-bank subsidiaries or affiliates of commercial banks and thus address our concerns about the originating funding entities. This language is commonly found in federal securities laws, including Section 15 of the Securities and Exchange Act of 1934.

As we indicated in our March comment letter, direct purchase transactions are not expected to make their way into the hands of investors in the public municipal securities market. Paragraph (F)(4) would address the existing common bank funding model and the existing limitations on transferability of direct purchase transactions. Banks fund themselves with, among other things, short-term deposits; and while they may intend to hold securities to maturity, given the long-term tenor of municipal securities the documents must allow for the possibility of transfer. Indeed, most banks currently include in their transaction documents language limiting transfers in support of their determination to treat the instrument as a loan, and the terms used in subparagraph (4) reflect common language in direct purchase transaction documents. Potential

future transfers are limited to institutional participants in the direct purchase market and are not transferred into the public municipal securities markets where retail investors might be expected to rely on an identifier such as a CUSIP number to access information about the obligation.

ABA believes that the language described in subparagraph (4) is sufficient for municipal dealers and municipal advisors to satisfy the requisite reasonable belief standard for limitations on transfer. Because such language is already commonly found in direct purchase transaction documents, there should be little burden on MSRB-regulated entities to document their reliance on such representations.

With reference to depository eligibility, we believe the proposed language of subsection (ii)(A)(3) could be changed simply to refer to the institutions referenced above, as follows:

> **(3) a new issue of municipal securities purchased directly by a purchaser described in section (i)(F)(1) through (i)(F)(3).**

Conclusion

ABA appreciates the MSRB's acknowledgment of the banking industry's concerns about impact of the CUSIP requirement on the direct purchase market. We believe the exception language proffered above will address our concerns while recognizing the existing participants in the direct purchase market. Further, we believe that MSRB-regulated entities will readily be able to rely on representations by commercial banks and their related entities.

We look forward to continuing to work with the MSRB staff on this proposal.

Sincerely,

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

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Submitted Electronically

Re: MSRB – Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Bloomberg, L.P.'s Open Symbology Group ("Bloomberg") thanks the Municipal Securities Rulemaking Board ("MSRB") for the opportunity to comment on the Draft Amendments to and Clarifications of MSRB Rule G-34 (the "First Request for Comment") published on March 1, 2017 and the subsequent Second Request for Comment (the "Second Request for Comment") published on June 1, 2017.

Bloomberg, the global business and financial information and news leader, gives influential decision makers a critical edge by connecting them to a dynamic network of information, people and ideas. The company's strength – delivering data, news and analytics through innovative technology, quickly and accurately – is at the core of the Bloomberg Professional service, which provides real time financial information to more than 325,000 subscribers globally. Bloomberg has deep experience with product identification based on our development of the Financial Instrument Global Identifier ("FIGI") open symbology, and our decades of experience with managing data pursuant to other symbologies used by our customers. The comments set forth herein are based on BLP's significant expertise in transaction reporting, data management, and analytics.

While we understand the MSRB's desire to amend the definition of 'underwriter' in regards to Rule G-34(a), specifically in cross reference to that set forth in Rule 15c2-12(f)(8) of the Securities Exchange Act of 1934, we believe that the MSRB should, based on the overwhelming feedback, take this unique opportunity to shift the focus of the Second Request for Comment.

Eighteen of the twenty responses sent to the MSRB in regards to the First Request for Comment carried a uniform and consistent message – specifically that there was significant concern about expansion of the CUSIP mandate.

It should be noted that the two responses in favor of expansion of the CUSIP mandate were made by the American Bankers Association (ABA) and CUSIP Global Services; both firms that profit from the government-imposed monopoly granted to CUSIP. ABA owns the CUSIP, and CUSIP Global Services is managed by Standard and Poor's and has the exclusive right to issue and license the CUSIP and related data.

As stated in our original response,

> *[O]n a broader level, the MSRB is extending the mandate to use CUSIP numbers under MSRB*

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rules. Given global efforts to promote the use of open standard identifiers for financial transactions and products, and the existence of such identifiers for municipal securities, Bloomberg recommends that as the MSRB considers these changes, it also consider allowing FIGI numbers or other appropriate open-standard identifiers to be used in place of CUSIP numbers as a regulatory alternative to mandating that only CUSIP numbers can be used.

Bloomberg appreciates the value CUSIP has provided the industry since the requirement was put in place in 1983. However, we would like to note that the industry, especially technology and the approach to data, has changed significantly since that time. Reinforcing old mandates, without properly evaluating them in the context of the current state, would result in a missed opportunity to take advantage of new technology and can instead stifle innovation that would lead to greater efficiency, transparency and cost savings to the industry as a whole.

The MSRB may do a better service to the industry as a whole by examining the forced requirement imposed on the industry regarding the mandated use of a proprietary, for-profit identifier like CUSIP. This is especially relevant in light of recent public acknowledgement by regulatory bodies in the United States and globally that have begun to endorse 'voluntary consensus standards' that conform to 'open data principles.' Notably, officials from the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and U.S. Treasury Department have all indicated a pull-back from mandates that endorse proprietary monopolies in data for identification of both entities and financial instruments.

CUSIP fee mandates have been previously criticized by the SEC. SEC Commissioner Gallagher noted, "I would be remiss if I didn't point out that the Commission needs to do something about the de facto monopoly forcing the use of CUSIPs in the fixed income markets, starting with removing references to CUSIPs from our rules."[1] We believe it goes against SEC policy to continue to endorse a specific for-profit commercial entity's product, and we agree with Commissioner Gallagher's comments that CUSIP references in the SEC's rules should be removed, or at least be amended to add "or other standard identifier." At least on a going-forward basis, it appears that the SEC has taken steps in promulgating rules, such as the swaps rules, to ensure not to further entrench monopoly providers of identifiers. This should likewise be applied to the MSRB's rules.

Utilization of CUSIPs in the municipal market has other implications as well. For example, at the Financial Services Roundtable's Global Financial Summit in 2014, Commissioner Piwowar generally noted that there was fragmentation and complexity in the municipal market, there was a high number of CUSIPs relative to issuances, and investors and issuers could benefit from more standardization. We completely agree. Use of open data (license free) and enabling the use of alternative, voluntary consensus standards would actually ease complexity in the municipal market; from the elimination of "dummy CUSIP" creation, CUSIP re-use, and the resulting operational errors, re-bookings, and other impacts these both have; to enabling a deal-to-issuance data lineage consistent throughout the marketplace, regardless of firm, syndicate, deal type, or issuing process.

In reading the responses of the seventeen organizations that, in addition to Bloomberg, recommended against expansion of the CUSIP mandate, two primary themes are clear.

[1] "Remarks to the Georgetown University Center for Financial Markets and Policy Conference on Financial Markets Quality," Commissioner Daniel M. Gallagher (Sept. 16, 2014).

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1. Mandated use of CUSIP imposes a significant and restrictive cost on the industry as a whole. In more liquid markets with large institutional firms, this cost is embedded in current processes and pricing. But it still represents a significant burden that, given today's technological environment, continues to have diminishing value in comparison to the original mission from 1983, over thirty-four years ago.

2. The process of obtaining a CUSIP, and the restrictive licensing imposed on its use imposes unnecessary burdens on firms by interrupting transactional flow and timing. This is evidenced by the assertion that competition would be reduced, liquidity would be negatively affected, and parties would actively seek ways to avoid processes that would require use of a CUSIP.

As we stated in our previous comment letter;

> *The current state of market data technology and identification standards readily allows for the consideration of regulatory alternatives to requiring the usage of closed, proprietary numbering systems like CUSIP.*
>
> *Since the 2008 financial crisis, financial regulators, under the auspices of the Financial Stability Board (FSB)[2] and Committee on Payments and Market Infrastructures - International Organization of Securities Commissions (CPMI-IOSCO),[3] have been working to develop uniform, open standards for identifying financial entities and transactions to enhance their ability to monitor and address financial and market risks. At the heart of this effort is the need to classify and aggregate financial transactions and positions across markets, jurisdictions, and asset classes. Being able to group financial positions appropriately and value them is critical to regulators' efforts to understand financial markets. The FSB has recognized the importance of identifiers based on open standards and free of license or redistribution restrictions to this effort.[4] The MSRB's consideration of allowing open standard alternatives to CUSIP would allow the MSRB to leverage this work to reduce costs and promote efficiencies for regulators and market participants alike.*
>
> *Bloomberg notes that the MSRB already allows the use of Legal Entity Identifiers ("LEI")[5] on its Form A-12 for identification of legal entities.[6] The LEI is a global, open, uniform standard for identifying legal entities not just for the financial sector, but for any use where legal entity identification is required. While there can be a fee for getting and maintaining an LEI number, there are no fees or license restrictions for referencing an*

[2] http://www.fsb.org/

[3] http://www.bis.org/cpmi/index.htm?m=3%7C16.

[4] *See*, Financial Stability Board, Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier (LEI) System (5 November 2012) at pg. 2, available at http://www.fsb.org/wp-content/uploads/r_121105c.pdf; Feasibility study on approaches to aggregate OTC derivatives data (19 September 2014) at pg. 37, available at http://www.fsb.org/wp-content/uploads/r_140919.pdf; and Proposed governance arrangements for the unique transaction identifier (UTI) (13 March 2017) at pg. 5-6, available at http://www.fsb.org/wp-content/uploads/Proposed-governance-arrangements-for-the-unique-transaction-identifier-UTI.pdf.

[5] Bloomberg is a Local Operating Unit (LOU) for the Global LEI System (GLEIS). LOUs are responsible for issuing LEIs.

[6] *See*, http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf.

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LEI, republishing an LEI, or using an LEI for derivative works. Bloomberg recommends that the MSRB similarly consider allowing open-standard alternative identifiers that can fulfill the same function as CUSIP numbers.

Given their existence and growing usage, FIGI and other appropriate open-standard identifiers should be permissible regulatory alternatives to CUSIP numbers in Section 3 of the economic analysis of the Second Request for Comment. If the MSRB would prefer not to entirely remove the CUSIP reference, the MSRB should simply add the following language to enable the industry to use alternative identifiers: "or other standard identifier."[7] Financial market participants would benefit significantly from the reduced costs flowing from the MSRB's allowing the use of FIGI numbers or other appropriate open-standard identifiers as acceptable alternatives to using CUSIP numbers for municipal securities.[8] The MSRB's decision to allow the use of open-standard identifiers as alternatives to closed, proprietary standards such as CUSIP could have wider benefits for regulators and market participants than those related just to the municipal securities covered by the Proposed Amendments. Such a decision could help facilitate the use of open-standard identifiers across multiple asset classes as it would broaden the classes of assets that allow the use of open-standard identifiers for identification.

Since the MSRB is aware of the fees required in order to obtain a CUSIP, the MSRB should consider these fees in conducting its quantitative analysis to determine both the incremental costs of the Proposed Amendments, as well as the aggregate costs associated with the CUSIP mandate generally. Consideration should be given to the cost of obtaining a CUSIP, the costs associated with redistribution licensing, as well as the fact that every party in the chain must individually pay a license fee for using the same CUSIP.

One of the reasons firms may not be able to provide the MSRB actual cost numbers related to CUSIP fees for a quantitative analysis is because the CUSIP fees can be inconsistent, arbitrary and constantly on the rise -- making it difficult to give the MSRB a specific number to analyze.

Therefore, given the existence of open-standard alternatives to CUSIP numbers and the growing interest globally in promoting the use of open-standard identifiers, Bloomberg respectfully suggests the MSRB consider the availability of such open-standard identifiers in making decisions regarding whether to further mandate the use of CUSIP numbers.

Thank you, once again, for the opportunity to provide comments on the Proposed Amendments. If Bloomberg can answer any further questions or be of further assistance, please feel free to contact us.

Best regards,

Peter Warms
Senior Manager of Fixed Income, Entity,Regulatory Content and Symbology

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[7] Bloomberg assigned all rights and interests in FIGI to the Object Management Group (OMG) who now administers FIGI as an open data standard. The OMG is an international, open membership, not-for-profit technology standards consortium, founded in 1989.

[8] FIGI serves as a framework that enables linking existing identifiers into a standardized relationship structure based on the relevant metadata associated with different identification approaches and symbologies. Access to a centrally available symbology that ties different symbologies together underneath it eliminates firms' need to perform their own mapping exercises, streamlines the trade workflow, reduces operational risk and enables greater data quality.

BDA Bond Dealers of America

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June 29, 2017

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's second request for comment on proposed draft amendments ("Draft Amendments") to MSRB Rule G-34 on obtaining CUSIP numbers. As we describe in more detail in this letter, the BDA strongly supports the changes to the Draft Amendments and suggests a few modifications.

The BDA supports the changes in the second request for comment

The BDA appreciates the changes that the MSRB has made to the Draft Amendments and the MSRB's receptivity to the comments that we and other market participants submitted. In particular, the BDA very much supports the new exemptions when a bank is directly purchasing municipal securities, the assignment of the responsibility to obtain CUSIP numbers to the municipal advisor in competitive sales[1], and the discussion that the Draft Amendments will only be prospective in effect. The BDA believes that these changes are crucial to retaining the placement role in direct purchases, ensuring a level playing field between placement agents and municipal advisors, and ensuring that dealers do not need to retroactively evaluate transactions based on the Draft Amendments.

BDA would like some clarification of the bank exemption

The BDA believes that two clarifications are needed in the new provisions in the Draft Amendments exempting direct purchases by banks from the CUSIP and depository eligibility requirements. First, our read of the Draft Amendments is that these exemptions would apply to transactions where there is more than one bank, but we believe a clarification to that effect would help. We believe that the MSRB intended the words "consortium of banks" to mean that a new issue that is purchased by multiple banks would still fall within the exemption. Frequently, direct purchases are

[1] While we support a level playing field between placement agents and municipal advisors, we reiterate our concern that non-dealer municipal advisors should not engage in the broker-dealer activity of placement agent.

purchased by more than one bank and the BDA believes that the Draft Amendments should clarify that the exemption for direct purchases still apply when more than one bank participates.

In addition, several direct purchase transactions are not technically purchased by banks but instead by their non-bank affiliates. Several banks negotiate direct purchase transactions but then place the bonds into one of its non-bank affiliates. As long as a bank is negotiating the direct purchase transaction, the BDA believes that this exemption should be broad enough to cover transactions in which one of the affiliates of the bank purchases the bonds and we would encourage the MSRB to consider this scenario as one that would be included in the exemption.

The BDA believes that the MSRB should not refer directly to CUSIP but to any identification number widely accepted in the municipal securities market.

The BDA supports the comments by other commentators that Rule G-34 should not directly require the assignment of a CUSIP number but instead should incorporate a broader concept. Based on input we have received from our members and others in the municipal securities market, other providers of securities identification numbers may be willing to compete with the CUSIP if they were equally accepted under legal regulations. Thus, by specifically requiring CUSIP numbers, the MSRB may have the unintended effect of preventing competition in this area. We encourage the MSRB to incorporate broader language in this and all of its rules (and associated guidance), which would embrace the potential for future securities identification numbers to emerge in the municipal securities market.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

CENTER FOR MUNICIPAL FINANCE

1655 N. California Blvd. Suite 223 Walnut Creek, CA 94596 • http://www.munifinance.org

June 28, 2017

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Comments on Rule G-34

Dear Sir or Madam:

Thank you for giving me and other members of the public finance community an opportunity to comment on proposed changes to MSRB Rule G-34.

MSRB's mission statement includes a reference to the public interest. Thus, the rulemaking process should consider both the interests of municipal market participants and of the general public.

It is my belief that the general public is disadvantaged by the proliferation of municipal private placements and bank loans, because these debt facilities are less transparent than traditional municipal bonds. As a result, it is harder for municipal finance researchers to measure local government debt burdens – at least until the undocumented loans and private placements are reported on the entity's CAFR. The overall effect is to reduce government accountability and subject a wide variety of stakeholders (including taxpayers, public employees and service recipients) to greater insolvency risk.

Thus, I agree with MSRB's effort to tighten Rule G-34 in hopes of getting more public information on municipal private placements and bank loans. By requiring arrangers to obtain security identifiers for such alternative debt instruments, MSRB is promoting public awareness that issuers are taking on additional obligations. Allowing carve outs for instruments not expected to trade in the secondary market, as envisaged in the modified proposal, is inconsistent with this transparency objective.

That said, I agree with other commenters that the cost of obtaining CUSIPs for instruments unlikely to trade in the secondary market represents an undue burden. According to the CUSIP Service Bureau, the fee for obtaining CUSIPs is $173 for the first maturity plus $22 for each additional maturity. A long-term obligation with semi-annual maturities could have aggregate CUSIP fees of over $1000. In my published research, I have explained that the value of CUSIP services does not justify such onerous costs.

I recognize that the question of whether CUSIPs should be generally required is beyond the scope of this request for comments. However, as you consider whether and how to broaden the requirement to obtain instrument identifiers, MSRB should entertain the possibility of allowing those newly affected by the numbering requirement to use alternatives to CUSIPs.

The most viable alternative of which I am aware is OpenFIGI which assigns 12-position symbols at no cost to the issuer and with no material impediments on use. I recommend that the proposed language

be altered to require brokers, dealers and advisors to obtain an OpenFIGI symbol if and when they determine that a CUSIP is unnecessary.

Specifically, I suggest adding the following text at the end of the new paragraph (a)(i)F: If the broker, dealer, municipal securities dealer or municipal advisor elects not to obtain a CUSIP number that entity must obtain an OpenFIGI symbol for the issue.

Sincerely,

Marc D. Joffe
President

Eastern Bank comment on requirements for obtaining CUSIP Numbers for all short term borrowing

The 351 cities and towns in the Commonwealth of Massachusetts have the option of borrowing short term utilizing the "state house loan note program" (Please see the links below for a description of the program). This borrowing mechanism offers the cities and towns a low cost alternative for short term borrowing that avoids the transaction costs of applying and paying for a CUSIP number for their notes (approximate cost per note - $600.). The lower transactional cost for the notes permits the issuers to borrow smaller amounts and issue shorter maturities in an economical fashion that would be prohibitively costly under the new rules. The majority of the notes are also exempt from SEC Rule 15c2-12 requiring an official statement or continuing disclosure because the notes do not mature in more than nine months and are in denominations of $100,000 or more. The cities and towns therefore, avoid the expense of issuing an official statement or entering into a continuing disclosure agreement. The new rules would therefore eliminate the currently available flexibility that cities and towns have in their short term borrowing, a program that has been in place since 1910 and is administered by the Commonwealth of Massachusetts' Department of Revenue. The proposed requirements also state the only exceptions are for notes that are held by the bank or sold to other banks. Eastern currently sells state house loan notes to retail bank customers which allow Eastern to be a more aggressive bidder for notes, lowering the cost for the cities and towns. Eastern would like to expand the list of eligible buyers to include its current practice of selling to bank customers with Eastern performing the safekeeping functions since the notes do not have a CUSIP number. Therefore, Eastern Bank would recommend no changes to the existing law because the requirement for CUSIP numbers for all Massachusetts short term notes would result in additional costs, lowered flexibility and less market access for smaller issuers and issues.

Keeping the current exemption for the Massachusetts State House Loan Note program benefits the investors, the smaller communities and the taxpayers, as overly burdensome short term borrowing is averted in this very successful program.

From the Public Finance Section for the Commonwealth of Massachusetts

The State House Note Program is a low cost alternative for the issuance of debt for cities, towns, counties, and districts whereby notes are certified by the Director of Accounts. Established in 1910, this program provides a useful service to municipal issuers, especially the smaller towns and districts. Counties in Massachusetts are required to have all of their short-term notes certified by the Director of Accounts. It is an option for cities, towns, and districts. The State House Note Program also assists cities, towns, and districts Massachusetts with their financing needs through the certification of long term note issues known as serial notes.

http://www.mass.gov/dor/local-officials/dls-newsroom/ct/state-house-notes-turns-100-and-becomes-free.html

http://mcta.virtualtownhall.net/pages/MCTA_Presentations/2017-04/ShortTermBorrowingUpdate.pdf

http://www.mass.gov/dor/docs/dls/boa/pubfinancesec/statehousenotes/instructionsbycategory.pdf

FIELDMAN | ROLAPP & ASSOCIATES

There is no substitute for experience.

June 30, 2017

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW - Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-11/Rule G-34

Dear Mr. Smith:

Fieldman Rolapp & Associates appreciates the opportunity to provide a comment on the MSRB's Second Request for Comment on Draft Amendment to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers. Fieldman Rolapp & Associates, Inc. ("Fieldman") is a California based municipal advisory firm, registered with the MSRB and SEC, and was founded in 1966.

Generally, Fieldman agrees with comments on this matter already provided by the National Association Of Municipal Advisors and the Acacia Financial Group. There are several areas however, that we want to reiterate and provide additional or supplemental comment.

- We are concerned that the requirement that the MA in a competitive sale apply for CUSIPs "no later than one business day after dissemination of the Notice of Sale or other such requests for bid." This requirement could lead to CUSIP assignment for a security never issued causing confusion and then creating logistical challenges to resolve.
- In order to apply for CUSIPs in the timeframe proposed, the Municipal Advisor must either make assumptions about the final bond structure or know the intent or preferred structure of the eventual purchaser. In both instances there is a high possibility of inconsistency which again would cause confusion and create unnecessary and costly challenges to the MA.
- Payment to the CUSIP Service Bureau will remain to be paid by the winning underwriter. Inserting the Municipal Advisor into the process needlessly adds another party to the process and again, potentially could cause confusion.

In our view a means to level the playing field between dealer and non-dealer MA's, in a simplified manner generally consistent with current and successful long time practices, is to require the winning underwriter to order the CUSIP's immediately upon bid award. We do not believe that it is part of the MA's fiduciary duty to its clients to make a determination of the investor's own use of purchased securities.

We appreciate the opportunity to respond to the proposed rule changes for G-34.

Sincerely,

Adam S. Bauer
Chief Executive Officer and President

Comment on Notice 2017-11

from Ted Christensen, Government Capital Securities Corp

on Thursday, June 1, 2017

Comment:

The proposed exceptions are very smart. We do many private placements and the banks that purchase these deals almost always place them in their loan portfolio with no intention of selling the paper. The few times the paper has been sold has been to another bank.

Please move forward with approving the proposed exceptions. The exceptions will help keep the issuance costs for small issuers low.

Government Finance Officers Association
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Washington, D.C. 20001
202.393.8467 *fax*: 202.393.0780

June 30, 2017

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W.
Washington, D.C. 20005

Re: MSRB Regulatory Notice 2017-11

Dear Mr. Smith:

The Government Finance Officers Associations ("GFOA") again appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) revised proposal to amend Rule G-34 on obtaining CUSIPs. The GFOA represents over 19,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the MSRB's work.

As stated in our response to the Prior Notice[1], governments rely on the ability to engage in direct purchases for a variety of reasons, including better terms and lower borrowing costs than would occur when issuing bonds in the open market. This is especially true for smaller governments. Thus, GFOA opposes any regulatory action that would dissuade banks and investors from being interested in and making these direct placement purchases.

As a result of solicited comments of the Prior Notice, the MSRB proposes an exception for obtaining CUSIPs when it can be determined that the investor will likely not publicly trade the securities. This is a helpful step forward as we commented earlier this year that any impression of placing a CUSIP on a bank loan or direct placement could deter investors, and raise costs for state and local governments. However, our first concern still remains from the Prior Notice: Without clear language on how this exception can be easily met, the proposed amendment will dampen demand for bank loan and direct purchase financings entered into by state and local governments and authorities and therefore raise borrowing costs.

In order to alleviate this first concern, and to provide needed clarity in the rulemaking, we ask that the MSRB consider a recommendation provided by the American Bankers Association and other organizations regarding the updated proposal. The ABA suggests additional language be

[1] MSRB Notice number 2017-05, GFOA response: http://www.msrb.org/RFC/2017-05/GFOA.pdf

added to the rulemaking that **the investor will provide representation** of its intent to hold the securities to maturity or limit the resale of the bonds. This language would allow for all participants to rely on the investor's representation and will add certainty that CUSIPs are not assigned to these securities.

A second fundamental concern is that the exception does not include situations where local governments privately purchase government-issued notes. Also state revolving fund issuers make loans to local governments, which in turn issue bonds to evidence that debt. Governments should not be required to obtain CUSIP numbers for these types of investments which never enter the secondary market. Therefore, the exception should also include state and local government bonds purchased by other state and local governments with no intention to resell. The MSRB should review other comments submitted to this Notice on this point about other types of investors that should be covered by the exception.

A third practical concern with the exception regards the process of obtaining CUSIPs. We suggest that the MSRB review the CUSIP application and assignment process to ensure that CUSIPs would not be assigned to those securities where the exception is met. This exception will not provide any benefit in the case of competitive sales where CUSIPs are obtained in order to ensure compliance and in so doing could deter the potential bid of a private placement.

While the revised proposal aims to address key concerns that were raised by GFOA and other groups from the original proposal, we are still concerned that without the three changes outlined in this letter, the new rulemaking could continue to dampen demand for bank loan and direct purchase financings entered into by state and local governments and authorities and otherwise raise costs for state and local governments and authorities. If the concerns outlined in this letter are not comprehensively addressed, we would suggest that instead of seeking these changes to Rule G-34, the MSRB spend effort and resources enhancing the EMMA system with regard to bank loan information, and continue to work with the GFOA and other market participants to identify EMMA improvements that would accommodate the transactions being listed on an issuer's home page when Form G-32 is filed.

Thank you again for the opportunity to comment. Please feel free to contact me at ebrock@gfoa.org or (202) 393-8467 if you have any questions on or would like to discuss any of the information provided in this letter.

Sincerely,

Emily S. Brock

Emily Brock
Director, Federal Liaison Center

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

June 30, 2017

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW - Suite 1000
Washington, DC 20005

RE: MSRB Notice 2017-11/Rule G-34

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on the MSRB's *Second Request for Comment on Draft Amendment to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers*. NAMA represents independent Municipal Advisory Firms and Municipal Advisors (MA) from across the country, who in turn provide advice to municipal securities issuers and obligated persons. NAMA, among other objectives, serves to promote and provide educational efforts and assist its members navigate through the federal regulatory and municipal market landscapes.

Many of our comments are similar to the ones we made earlier this year in response to the MSRB's first proposal regarding CUSIP numbers (CUSIPs), as a key area of the proposal - mandating that municipal advisors obtain CUSIPs in all competitive sales - remains intact in the MSRB's updated draft. This letter also addresses the MSRB's new proposal to allow for an exception to obtain CUSIPs in private placements when certain standards are met. Finally, we discuss some of the costs associated with complying with the proposed rulemaking.

Municipal Advisors Applying for CUSIPs in Competitive Sales

The MSRB continues to propose having all municipal advisors apply for CUSIPs when they serve as a municipal advisor to their client on a competitive sale. NAMA opposes this section of the proposed rulemaking. As we noted previously, this requirement has been in place for broker/dealer MAs since 1986, although it is still unclear why that decision was made at that time and the MSRB has offered no rationale as to why a requirement implemented over 30 years ago should be followed now when the processes for obtaining CUSIPs and implementing a competitive sale have dramatically changed. Further, municipal advisors in 1986 did not have the statutory and regulatory frameworks that are now in place, which set a fiduciary duty and other standards for these professionals. These standards and the professional activities of municipal advisors are designed to enable MAs to serve their clients, and are not a fit for undertaking the responsibilities of obtaining CUSIP numbers, which is an activity to assist investors and the trading of bonds.

195The current Notice makes that point as it states that "CUSIP numbers are relied on in the municipal securities market to identify securities for a number of purposes, including trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping" (page 3). The MSRB's own description of the use of CUSIP numbers does not align with the roles and responsibilities of MAs.

Further, the revised proposal continues to ignore the unnecessarily cumbersome process and regulatory dichotomy that it would create by:

- Having the MA be responsible for one part of the underwriter's multi-step process for selling bonds.
- Having different parties be responsible for obtaining CUSIPs in competitive sales, because the Notice does not address instances where an issuer may not use an MA on a competitive sale transaction.
- Having to obtain CUSIPs prior to determining the maturity structures of the bonds and other final details of the offering or when no award is made. This would lead in some circumstances to having MAs resubscribe for CUSIPs. A far better approach would be to have the underwriter be responsible for obtaining CUSIPs after the bid is awarded.
- Further exacerbating the confusion of MA activity versus broker/dealer activity. Both the process for obtaining CUSIPs as well as the process by which the MA would have to determine whether an exception is available (by reasonably determining the intent of the investor) require an MA to stray into activities that are generally regarded as broker/dealer activity. Courts and the SEC have found such activities as (i) helping an issuer to identify potential purchasers of securities, (ii) negotiating between the issuer and the investor and (iii) facilitating the execution of a securities transaction to be evidence of "effecting transactions in securities for the account of others" in a manner that would contribute to requiring persons engaged in such activities to register as a broker.
- Not addressing when a client may have multiple MAs, which MA would be responsible for obtaining the CUSIP. It is unlikely that the issuer will incorporate this task within the scope of municipal advisory services.

The revised Notice also does not approach the issue we raised in our March 31, 2017 letter, of what problem needs to be fixed that warrants this rule change. We are not aware of any deals that have not been completed or that have been hampered by the underwriter obtaining CUSIPs in a competitive sale, and having the CUSIPs obtained before the bonds are available. There seems to be no benefit to MA clients to have the MA obtain the CUSIPs, nor is there a benefit to MAs since they themselves do not benefit from the selling and trading of bonds to and by investors. Although the MSRB has broadly discussed the value of CUSIPs, there is nothing about municipal advisors applying for CUSIPs in competitive sales that enhances that value. Securities sold in competitive sales already have CUSIPs assigned to them. The MSRB should point to the specific benefit of this proposed rule versus the present system.

Instead of expanding the current responsibility of MAs to obtain CUSIPs in competitive sales, the MSRB should altogether eliminate the responsibility of having any MA (independent or broker/dealer MAs) obtain CUSIP numbers. This is an activity best suited for underwriters who use the identifiers to sell the bonds. Further, since not every competitive sale has a MA, yet every bond sale has an underwriter (or placement agent), the most appropriate and simple solution is to have the underwriter obtain CUSIPs in all bond sales.

Exception for Obtaining CUSIPs

While again, NAMA's position is to withdraw the proposed rulemaking that would mandate MAs to obtain CUSIPs in competitive sales, we will comment on the current proposal's approach to avoid having CUSIPs assigned in private placements if certain standards are met. Having an exception in place is an important change that the MSRB has made. However, concerns remain with how to execute the CUSIP exception proposed by the MSRB.

MAs Role in Determining Intent of Investor

Being able to ascertain the intent of investors is absolutely not the role or responsibility of MAs. Per Section (a)(i)(A)(3) of the proposal, the MA must obtain CUSIPs on competitive sales no later than one business day after dissemination of the Notice of Sale. However, to determine if a CUSIP is needed on a competitive sale direct placement, the MA must *reasonably believe* the *likely* intent of the investor. Since an MA is not allowed to interface with investors prior to the completion of the competitive sale process (and at the direction of their client/within the scope of services) without crossing the line into broker/dealer activity, it is unclear how an MA will be able to meet that standard, and know the intent of the investor. The intent of the investor has nothing to do with the MA's role to serve a fiduciary duty to their clients, and provide advice on the sale of bonds and other financings.

CUSIP Procedures

The proposal mandates that the MA in a competitive sale shall make an application for CUSIPs by "no later than one business day after dissemination of the Notice of Sale or other such requests for bid." It is unclear, per the proposal how the MA will be able to satisfy that CUSIP requirement, in (a)(i)(3), with the exception, noted in (a)(i)(F), even with the language changes to the rule suggested by the ABA (discussed below). This would lead to the MA (and UW) having to obtain CUSIPs for a security which ultimately may not require the CUSIP, and during the bidding process have a CUSIP assigned to the security. Such action could deter investor interest and cause confusion about whether the security is a direct placement or a traded security. The MSRB should discuss with the CUSIP Global Services, the procedures for obtaining and withdrawing CUSIPs, as well as how CUSIP information is disseminated to the public.

Rule Language

The language in the proposal and the responsibilities it would place on MAs in competitive sales and underwriters in negotiated sales, sets a blurred standard that would be difficult to adequately comply with and invites multiple interpretations from MA and underwriter firms as well as SEC and FINRA examiners. Specifically, item (a)(i)(F) states that the exception applies *if the underwriter or municipal advisor reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit the resale of the municipal securities to another bank affiliated banks or a consortium of banks, and therefore affixing CUSIP identifiers is unnecessary.* Further the Notice states that *the proposed amendment would not set forth prescriptive steps to comply with the exception and would not further specify those instances where the exception would apply, nor would the amendment define parameters for how a dealer should craft applicable policies and procedures to arrive at a reasonable belief with respect to a transaction* (page 6). We believe that the proclamation that the MSRB will not provide further details on how to meet the standards of the exception would also apply to municipal advisors since the rule language is the same for MAs and UWs.

Without further explanation, there are multiple words in the rule language that are vague and should be clarified, and are not included in the definitions section of the proposed rule. This is especially true for the statement that the MA (and UW) must "reasonably believe" that the purchasing bank "is likely" to hold the municipal securities…. The terms "reasonably believe" and "is likely" are very open to different interpretations and should be further clarified within the rule to allow for MAs and UWs to use the same standard in all transactions. We encourage the MSRB to incorporate into the rule the suggestion from the American Bankers Association that the investor will "represent" its intention for the exception to apply. By having such language in the rule itself, all parties will have a better understanding and ability to ensure that the intent of the investor is known based on fact (see the June 30, 2017 letter to MSRB from the American Bankers Association).

In allowing for circumstances when this exception is met to include holding the municipal securities to maturity or limit the resale of the municipal securities to "*another bank, affiliated banks or a consortium of banks"….*, the proposed rule language should be further clarified in section (e) Definitions. We again suggest that the MSRB consider suggested language from the ABA to better clarify when the exception will apply in resale situations.

Finally, we suggest that the MSRB look at applying the exception to other types of sales where the purchaser may hold onto the securities until maturity. These would include instances when a government purchases another government's debt and when a financing is derived from a program such as a State Revolving Fund.

Costs

While we do not support having MAs play a role in determining the intent of investors, it is important for the MSRB to take into consideration the costs that MAs would incur to comply with the proposed rule. In the proposed rulemaking, the MSRB did not quantify these costs as part of its economic analysis. In particular, the Notice does not recognize the costs associated with developing policies and procedures to determine the intent of an investor. We estimate that the time to develop the policies and procedures are 3-5 hours per firm.

Further, the time needed to implement policies and procedures on a case by case basis that the bank/investor will "likely" hold the securities or meet other criteria also must be considered. The time to do so depends on whether the rule is further changed to accept a 'representation' from the bank regarding its intention with the bonds and whether the MSRB will actually require MAs to seek out such certification from every possible potential bidder. Even with helpful and streamlined "representation" offered by the ABA, the MA will likely need to make further inquiries with the investor before believing that their firm's internal policies and procedures have been met, as required in the proposed rulemaking, and documenting such actions, especially with the understanding that such information will likely be asked for during an examination. Also, ABA's suggestion for the bank to make a representation of its intent, does not address the problems of: identifying which banks are likely to bid in order to seek a representation; dealing with a bank that will not make such a statement prior to the award of the bid; and the additional work that will need to be done by the MA (and UW) to meet the exception standard in the rule. We estimate that MAs will spend approximately 2-3 hours per transaction to meet the CUSIP exception standard as currently drafted, and that estimate will decrease to one hour if the MSRB includes the suggestion from the ABA about investor representation directly in the rulemaking.

The costs for obtaining CUSIPs would also place a burden on MAs. Since it is standard to have the underwriter pay for the CUSIPs, it is unclear how the MA who paid for and received the CUSIPs, would be able to be reimbursed for those fees from the underwriter. There is also a concern that the MA will obtain CUSIPs due to the requirement in section (a)(i)(d) of the proposed rule, but then it may be determined that the CUSIPs are not needed because the exception has been met. This would place an unnecessary and unrecoverable cost onto MAs, for a product that has nothing to do with MA activities and responsibilities. CUSIP costs are $173 for the first maturity in a bond sale, and $22 for all other maturities within that sale, under regular circumstances. Priority service for assignment increases those costs by 50%.

On page 6 of the Notice, the MSRB states that *nothing in the proposed amendment would obviate a dealer's initial obligation to determine whether the transaction in question involves a municipal security as opposed to a loan or other instrument*. Further in footnote 12, the MSRB states that *the dealer [or municipal advisor] should have reasonably designed policies and procedures to assist in making a determination as to whether the transaction involves a municipal security that results in the application of MSRB rules and other federal securities laws.* While the question of what is a security versus another financial product is one that will not be definitively answered in the language of this rulemaking, it will have to be answered within the context of whether a CUSIP number must be obtained. This will demand additional time and consideration, both internally within the MA firm and perhaps with outside counsel. Because this is not a simple legal determination, the costs of developing a workable policy will vary significantly for individual firms depending on the types of financings for which they

advise. For most independent MAs, this will be a new policy and will require a minimum of 5-10 hours to create and up to an hour per transaction to implement.

Additionally, as is our position on all MSRB rulemaking, we would ask that the MSRB look not only at the costs associated with complying with this specific rulemaking but the cumulative regulatory burden of this rulemaking in combination with the entire MSRB MA rulebook, paying special attention to small MA firms.

Conclusion

NAMA continues to oppose having municipal advisors obtain CUSIPs in competitive sales. As discussed in this letter, the need and use for CUSIPs are related to underwriting activities and investors, and have nothing to do with the activities of the municipal advisor and their fiduciary duty to clients. Further, we do not believe there is sufficient need in the marketplace to mandate this change, and believe it will both place a costly burden on MAs and create market inefficiencies.

We appreciate the MSRB's action to provide an exception to having CUSIPs obtained for direct placements where certain situations apply. However, the proposed rule would be vastly improved by accepting the suggested language from the ABA that would allow for the MA and UW to know the intent of the investor due to representations made by the investor. This would also help issuers maintain demand for their securities since requiring a CUSIP would not be warranted. Without such additional language in the rule, it will be even more difficult and very costly for MAs to develop and implement proper procedures to meet the exception, and could be harmful to state and local governments.

However, the exception proposal creates an untenable situation for MAs, since the exception in its current form would have MAs determine the intent of the investor in order to know whether CUSIPs are needed, but knowing the intent of investors is not the responsibility of MAs. Further, the proposed rule creates friction by allowing for an exception for CUSIPs yet mandating that CUSIPs be obtained no more than one business day after dissemination of the Notice of Sale. This would create situations where CUSIPs are applied to securities where they are not needed and could interfere with the selling process, especially to banks seeking to use the exception. This unnecessarily adds confusion, costs and administrative burdens for MAs.

These outstanding items related to the exception for obtaining CUSIPs, and the proposal as a whole lead us to reiterate our position that no MAs – independent or broker/dealer - should have the responsibility for obtaining CUSIPs.

We welcome the opportunity to discuss our comments with MSRB legal staff at their convenience.

Sincerely,

Susan Gaffney
Executive Director

LEGISLATIVE VIEWPOINT

NJLM New Jersey State League of Municipalities

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June 27, 2017

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 2005

Re: Comment on Notice # 2017-11

To Whom It May Concern,

Operating since 1915, the New Jersey State League of Municipalities is a voluntary non-profit association created to assist New Jersey's local governments by acting as a repository for knowledge and brain power. In addition, the League acts as the collective voice for local governments and, when necessary, advocates on their behalf at both the state and federal levels of government. All 565 New Jersey municipalities are members of the League.

I am writing to you today on behalf of the League's members to provide comments on the proposed MSRB rule change of Rule G-34, concerning requirements for obtaining CUSIP numbers. As a result of the decrease in investment yields on public funds, many local governments have purchased as investments short term bond anticipation notes of other local governments throughout the state. There currently exists a lack of certainty as to whether or not local governments which purchased these notes would need to obtain CUSIP numbers for them.

The draft amendments of Rule G-34 provides an exception to the CUSIP number requirements when under certain circumstances municipal securities are purchased directly by a bank. We propose that a similar exception to the CUSIP number requirements also be made for direct purchases by local governments for their own fund accounts. The reasoning for allowing this exception for municipalities is similar to the reasoning for the bank exception. Quite simply, when a municipal government purchases notes issued by another municipality those notes are being held onto through maturity and never reenter the marketplace. Thus, the CUSIP number's tracking purpose is undermined by the fact that the notes will never enter into the marketplace and therefore unnecessary.

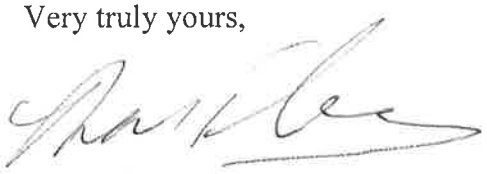
-over-

In addition, requiring municipalities who purchase short term anticipation notes to acquire a CUSIP number could have a chilling effect on the market. This would occur because as municipalities are seeking out investments they may be dissuaded from obtaining these notes due to added complications and costs of acquiring CUSIP numbers.

With infrastructure badly in need of repair and Federal and State funding for such projects becoming more and more scarce, local governments are beginning to rely more heavily on short term bond anticipation notes in order to begin much needed infrastructure projects. An exemption to the CUSIP requirement for municipal governments would remove a roadblock allowing municipalities to more easily invest within their neighboring communities.

Thank you for your consideration of our concerns. Please do not hesitate to contact me should you wish to discuss these comments further.

Very truly yours,



Michael F. Cerra
Assistant Executive Director

MFC/sc

July 3, 2017

VIA ELECTRONIC DELIVERY
Municipal Securities Rulemaking Board
Attention: Ronald Smith, Corporate Secretary
1300 I Street NW, Suite 1000
Washington, DC 20005

pfm

1735 Market Street
43rd Floor
Philadelphia, PA 19103
215.567.6100

pfm.com

RE: MSRB 2017-11 Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of Public Financial Management, Inc., and PFM Financial Advisors LLC (collectively, referred to as "PFM"), PFM would like to thank the Municipal Securities Rulemaking Board (the "MSRB") for the opportunity to comment on the MSRB's revised draft amendments to and clarifications of MSRB Rule G-34 on obtaining CUSIP numbers ("Rule G-34"), pursuant to MSRB 2017-11 Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers (the "Second Request for Comment"). As the nation's largest independent municipal advisor and the top-ranked municipal advisor in the nation in terms of both number of transactions and total dollar amount according to Thomson Reuters as of December 2016, we hope that our broad, national perspective on the proposed further revisions to Rule G-34 and their potential effects on the municipal market will provide valuable feedback for the MSRB's careful consideration.

PFM submitted comments to the MSRB's initial draft amendments to and clarifications of MSRB Rule G-34 on obtaining CUSIP numbers (the "Initial Comment Letter"), pursuant to MSRB 2017-05 Request for Comment (the "Initial Request for Comment"). PFM continues to recognize that the MSRB's stated intent in drafting the further amendments to Rule G-34 is to: 1) clarify its existing view with respect to when CUSIP numbers are required to be obtained and who is responsible; 2) alleviate regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors; and 3) create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned.[1] While we appreciate the MSRB's efforts to address the intents of the rule in light of comments received in response to the Initial Request

[1] *See generally*, MSRB Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, Obtaining CUSIP Numbers, Regulatory Notice 2017-05 (March 1, 2017); *See also*, MSRB Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, Obtaining CUSIP Numbers, Regulatory Notice 2017-11 (June 1, 2017).

for Comment, we do not believe that the proposed further amendments to Rule G-34 in the Second Request for Comment go far enough in providing much of the guidance sought and resolving many of the issues raised in the responses to the Initial Request for Comment. Accordingly, PFM reiterates that we cannot support the revisions in the Second Request for Comment, given the absence of regulatory guidance outlined in items 1-5 below, which we are more fully detailed in PFM's Initial Comment Letter attached hereto, and submits an additional element and commentary expanding on item 2 below, in light of the additional changes proposed by the MSRB in the Second Request for Comment:

1) Expansion of the list of event notices pursuant to the Municipal Disclosure Rule 15c2-12[2] ("Rule 15c2-12") under the Securities and Exchange Act of 1934 (the "Exchange Act") to include private placement transactions, which rule the Securities and Exchange Commission (the "SEC" or "Commission") is currently seeking comment to proposed amendments for such an expansion pursuant to SEC Release No. 34-08130[3]; Pending the outcome, we believe MSRB should withdraw the proposed changes to Rule G-34 until any changes to Rule 15c2-12 can be contemplated and implemented;

2) Further explicit refinement of the definition of a municipal security such that it is clearly differentiated from a non-securitized bank loan or a municipal financial product not requiring a CUSIP to give guidance to all market participants, including municipal entity issuers and obligated persons, beyond the test provided by the U.S. Supreme Court in *Reves v. Ernst & Young, Inc.*[4]; We believe the consequences of the proposed Rule amendments could be in conflict with the marketplace use and may inadvertently lead to mischaracterization or confusion regarding the motivation of the parties or incorrectly appear to indicate plans for further distribution to investors/lenders;

3) Establishment of a process for a municipal entity to obtain a CUSIP where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter is involved in a new issue private placement transaction;

4) Clarification of the process of obtaining a CUSIP where there are multiple municipal advisors involved in a new issue private placement transaction;

5) Consideration of adverse effects on municipal issuers, including dampened interest by private investors and the infliction of overly burdensome administrative costs for municipal entities given the unknown materiality of the additional benefit gained for investors; and

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[2] 17 CFR 240.15c2-12.

[3] *See* Exchange Act SEC Rel. No. 34-80130 (March 15, 2017).

[4] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).

6) Explicit regulatory guidance regarding indicia of "reasonable belief" for purposes of relying on the proposed exception proposed in Section (a)(i)(F) of MSRB Rule G-34.

Guidance Regarding the Definition of a "Security" and Indicia of "Reasonable Belief" for Purposes of the Bank Direct Purchase Exception

We appreciate the MSRB's attempt to address commenters' request to exclude direct placements from the requirements to obtain a CUSIP. However, the proposed solution advances another long-standing quandary and introduces additional uncertainty in the industry. In PFM's Initial Comment Letter, PFM proposed that perhaps the MSRB could work with the SEC to provide practical guidance to all market participants, including municipal entity issuers and obligated persons, beyond the list provided in Section 3(a)(10) of the Exchange Act[5] as tested in *Reves*[6] such that determination of whether an instrument is a security is clear. With respect to more refinement of the definition of "municipal security," PFM believes that not only would such clarity obviate the need for any of the proposed amendments to Rule G-34 aimed at addressing questions among market participants regarding the application of Rule G-34 to private placements of municipal securities, but it would also provide much needed clarity to the MSRB's newly proposed exception from the proposed CUSIP requirements. In the absence of regulatory clarity with respect to both matters, municipal advisors seeking to rely on the exception would be required to first make a determination that the financial instrument is a municipal security and then form a reasonable belief that the purchasing bank, affiliated banks or consortium of banks formed for the purpose of participating in a direct purchase of a new issue of the instrument(s) is likely to hold it to maturity or limit resale. We again submit that lack of clear guidance regarding the definition of a "security" may lead to market inefficiencies caused by market participants incurring costs and expending time unnecessarily to obtain CUSIPs for all transactions, including those involving instruments not deemed to be securities, out of an abundance of caution of running afoul of regulatory requirements. Alternatively, in order to avail itself of the exception proposed in Section (a)(i)(F) of MSRB Rule G-34, the municipal advisor would be placed in the inexorable position of establishing and implementing policies and procedures reasonably designed to assist the municipal advisor in arriving at a reasonable belief regarding the likelihood of the purchasing bank to hold the instrument(s) to maturity or limit resale of same. To that end, a listing of instruments which clearly either are or are not considered to be a "security" would provide the necessary regulatory clarity to market participants and eliminate unnecessary, market inefficient activities performed for want of harmonized direction. Moreover, guidance regarding the indicia of the required "reasonable belief" would need to include the substance, form, and medium of certification, representation, documentation or other evidence necessary to withstand regulatory scrutiny for the market participant seeking to rely on the exception.

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[5] 15 U.S.C. 78a et seq.

[6] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).

While PFM continues to be supportive of the consistent objectives of the MSRB in seeking to facilitate market transparency and efficiency, we remain fundamentally opposed to the extension of the obligations set forth in Rule G-34 for a non-dealer municipal advisor as proposed in the initial and second draft amendments, thereby creating a direct duty with respect to the discrete interests of investors. Insofar as obtaining CUSIPS facilitates the clearance and settlement of securities, under the proposed amendments to Rule G-34 non-dealer municipal advisors would be inappropriately burdened with the responsibility of engaging in activity that falls outside the purview of their scope of service and epitomizes traditional broker-dealer type activity. Previous occasions have afforded Congress and the SEC multiple opportunities to enact provisions intended to have the municipal advisor also directly serve interests of investors and neither institution has done so to date. By way of refrain, Congress and the SEC have declined to bridge natural and necessary differences between brokers, dealers and underwriters on the one hand and municipal advisors on the other hand leaving intact what the MSRB perceives as "regulatory imbalance" in the draft proposed Rule G-34. If changes are to be made to these core precepts, we respectfully point to the need for Congressional and/or SEC action rather than action by the MSRB in making such a change in the fabric of the municipal advisory regulatory regime.

We continue to believe that the Commission's opportunity to carefully consider and respond (including with rule modifications) to any comments submitted to its proposed amendments to Rule 15c2-12 would provide an essential foundation to any action on the proposed changes to MSRB Rule G-34.

PFM welcomes the opportunity to further discuss our comments with the MSRB, accordingly please feel free to contact us if our feedback would be useful.

Respectfully submitted,

Leo Karwejna
Chief Compliance Officer

Cheryl Maddox
General Counsel

Catherine Humphrey-Bennett
Municipal Advisory Compliance Officer

Attachment

March 31, 2017

VIA ELECTRONIC DELIVERY
Municipal Securities Rulemaking Board
Attention: Ronald Smith, Corporate Secretary
1300 I Street NW, Suite 1000
Washington, DC 20005

pfm

1735 Market Street
43rd Floor
Philadelphia, PA 19103
215.567.6100

pfm.com

RE: MSRB 2017-05 Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

On behalf of Public Financial Management, Inc., and PFM Financial Advisors LLC (collectively, referred to as "PFM"), PFM would like to thank the Municipal Securities Rulemaking Board (the "MSRB") for the opportunity to comment on the MSRB's draft amendments to and clarifications of MSRB Rule G-34 on obtaining CUSIP numbers ("Rule G-34"). PFM, which has been in existence for over 40 years, is the nation's largest independent municipal advisor and is the top-ranked municipal advisor in the nation in terms of both number of transactions and total dollar amount according to Thomson Reuters as of December 2016. We hope that you agree that our municipal market presence gives us a broad, national perspective on the proposed amendments and clarifications and their potential effects on the municipal market.

PFM recognizes the MSRB's stated intent in drafting the amendments to Rule G-34 to clarify its existing view with respect to when CUSIP numbers are required to be obtained and who is responsible, alleviate regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors, and create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned.[1] We cannot support the MSRB in its endeavors with respect to the proposed amendments to Rule G-34, and instead PFM would like the Board to reconsider the draft amendments for municipal advisors, with focus on the following missing elements:

1) Expansion of the list of event notices pursuant to the Municipal Disclosure Rule 15c2-12[2] ("Rule 15c2-12") under the Securities and

[1] *See generally*, MSRB Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, Obtaining CUSIP Numbers, Regulatory Notice 2017-05 (March 1, 2017).
[2] 17 CFR 240.15c2-12.

Exchange Act of 1934 (the "Exchange Act") to include private placement transactions, which rule the Securities and Exchange Commission (the "SEC" or "Commission") is currently seeking comment to proposed amendments for such an expansion pursuant to SEC Release No. 34-08130[3]; Pending the outcome, we believe MSRB should withdraw the proposed changes to Rule G-34 until any changes to Rule 15c2-12 can be contemplated and implemented;

2) Further explicit refinement of the definition of a municipal security such that it is clearly differentiated from a non-securitized bank loan or a municipal financial product not requiring a CUSIP to give guidance to all market participants, including municipal entity issuers and obligated persons, beyond the test provided by the U.S. Supreme Court in *Reves v. Ernst & Young, Inc.*[4]; We believe the consequences of the proposed Rule amendments could be in conflict with the marketplace use and may inadvertently lead to mischaracterization or confusion regarding the motivation of the parties or incorrectly appear to indicate plans for further distribution to investors/lenders;

3) Establishment of a process for a municipal entity to obtain a CUSIP where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter is involved in a new issue private placement transaction;

4) Clarification of the process of obtaining a CUSIP where there are multiple municipal advisors involved in a new issue private placement transaction; and

5) Consideration of adverse effects on municipal issuers, including dampened interest by private investors and the infliction of overly burdensome administrative costs for municipal entities given the unknown materiality of the additional benefit gained for investors.

Harmonizing Rule G-34 with Municipal Disclosure Rule 15c2-12 of the Exchange Act

PFM notes that the Commission published a regulatory release on March 15, 2017, requesting comments to proposed amendments to municipal securities disclosure, with comments expected to be submitted on or before May 15, 2017.[5] In its release, the Commission remarked that the "proposed amendments would amend the list of events for which notice is required to be provided to the MSRB" and that such "proposed amendments would facilitate investors'

[3] *See* Exchange Act SEC Rel. No. 34-80130 (March 15, 2017).
[4] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).
[5] *Id.*

and other market participants' access to important information in a timely manner and help enhance transparency in the municipal securities market".[6] Accordingly, PFM submits that the Commission's proposed amendments to Rule 15c2-12 address the same concerns as the MSRB's stated intent of amendments to Rule G-34. To realize regulatory efficiencies and avoid undue regulatory burden, we believe that the MSRB should postpone any action on Rule G-34 until the Commission has had an opportunity to review any comments the Commission may receive on proposed amendments to Rule 15c2-12 and makes a determination whether or not to adopt the amendments, with or without modification addressing any applicable comments. Providing clarity and guidance to define the attributable financial obligations with the corresponding materiality factors supporting additional disclosure should be a key driver of the ongoing concept of achieving greater transparency for all market participants by making the disclosure a necessary element of investor communications and considerations for existing publicly held debt. As this will be a shift from the current environment of somewhat cloudy materiality standards and voluntary disclosures surrounding this subject matter, PFM believes that only after the Commission has completed its regulatory rulemaking process with respect to Rule 15c2-12 will the MSRB be positioned to determine whether Rule 15c2-12 sufficiently addresses the MSRB's intent of the amendments to Rule G-34 or if further rulemaking is in order. Thereafter, the rules can be appropriately synchronized to the extent further refinement is required.

Guidance Regarding the Definition of a "Security"

With respect to more refinement of the definition of "municipal security," PFM believes the MSRB should work with the SEC to provide practical guidance to all market participants, including municipal entity issuers and obligated persons, beyond the list provided in Section 3(a)(10) of the Exchange Act[7] as tested in *Reves*[8] such that determination of whether an instrument is a security is clear. Such clarity would obviate the need for any of the proposed amendments to Rule G-34 aimed at addressing questions in the industry regarding the application of Rule G-34 to private placements of municipal securities. Lack of clear guidance regarding the definition of a "security" may also lead to market inefficiencies caused by market participants incurring costs and expending time unnecessarily to obtain CUSIPs for all transactions, including those involving instruments not deemed to be securities, out of an abundance of caution of running afoul of regulatory requirements. To that end, a listing of instruments which clearly either are or are not considered to be a "security" would provide the necessary regulatory clarity to market participants.

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[6] *Id* at 13928 - 13929.

[7] 15 U.S.C. 78a et seq.

[8] *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990).

In our experience, banks may find it useful to obtain a CUSIP or another form of identifier for an instrument in a private transaction for the bank's own tracking and reporting purposes. However, as attainment of a CUSIP is voluntary for instruments that are not "securities," to avoid the unintentional tail wagging the dog, obtaining a CUSIP should not *per se* mischaracterize a nonsecurity as a security subject to all attendant regulatory requirements.

Application of Rule G-34 to Municipal Advisors

PFM agrees that the disclosure of information materially affecting existing bond holders under Rule 15c2-12 is reasonable and appropriate and that increased market transparency is a valuable benefit. However, placing the obligation, administration, and economic burden on municipal advisors does not and will not sufficiently accomplish the stated transparency objectives in order to outweigh the associated costs in terms of digression from a municipal advisor's regulatory mission to the benefit of issuers; nor can it ultimately move the needle to fully satisfy the outlined objective of providing investors with an ability to truly understand any and all related risks. Rather than creating new regulation and compelling municipal advisors to perform certain disclosure distribution functions for documentation and information otherwise not generally available, municipal entities disclosures for pre-existing debt holders and potential investors could be supported by the long-anticipated clarification of "materiality" and application of current continuing disclosure requirements under Rule 15c2-12 as discussed above.

Additionally, application of Rule G-34 to municipal advisors as proposed by the draft amendments will not be the hoped for panacea to resolve the state of imperfect information for investors, since municipal issuers are not required to use municipal advisors in any transaction, including private placement transactions. Thus, in transactions where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter or placement agent is involved in a private placement transaction or direct bank loan, investors in existing issuances would be in the same position as they are in today. Very often a municipal advisor may not be included in these borrower-provider transactions, may only be hired to perform certain administrative functions, or often only learns of a prior transaction when assisting with the issuance of a municipal entity's next public offering of municipal securities. In any such instances, in order to achieve the transparency sought by the MSRB in its draft amendments to Rule G-34, the MSRB will also need to clarify the process of a municipal entity obtaining a CUSIP where neither a municipal advisor nor a broker, dealer or municipal securities dealer acting as an underwriter is involved in a private transaction; PFM is not supportive of further indirect regulation of our municipal entity clients given the corresponding cost/benefit analysis. PFM would implore the MSRB to resist

creation of a regulatory scheme that results in a well-intended, but ill-fated attempt at compromise between the inability to directly require issuers to file disclosures and the objective to protect the interests of the municipal marketplace.

Further, the MSRB should provide guidance regarding the responsible market participant and process of obtaining a CUSIP in instances where the municipal entity borrower may have multiple municipal advisors involved in a new private placement transaction or direct bank loan, including where one of the municipal advisors involved in the transaction is designated as the municipal entity's independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities for purposes of Rule 15Ba1-1(d)(3)(vi)[9] of the Exchange Act or, alternatively, where no municipal advisor involved in the transaction is designated as the municipal entity's IRMA.

The expressed legislative and regulatory purpose with respect to a municipal advisor focuses upon the fiduciary duty owed to municipal entities and obligated persons.[10] The shift underlying the draft amendments to Rule G-34 will inappropriately place municipal advisors in the tenuous position of serving dual interests, that of the municipal issuer and that of investors, which undermines the very core principles of the regulatory regime. Municipal advisors owe a duty of care and loyalty to their clients and cannot be put in a position to choose between the statutory fiduciary duty to the issuer[11] and the requirements underlying the proposed draft amendments to Rule G-34 of newfound investor-driven regulatory disclosure requirements for non-publicly sold bond activities. While harmonization of certain MSRB regulation between broker-dealers and municipal advisors is an ongoing objective for the MSRB and market participants alike, one cannot lose sight of important distinctions separating the interests of all involved with the corresponding checks and balances.

Unintended Adverse Economic Consequences and Market Inefficiencies for Issuers

From the issuer's perspective the potential benefits and considerations of private transactions may include some, or any combination of, the following: lower true interest and transaction costs; greater flexibility with respect to the structuring and terms of the financing; and typically, a simpler execution process, because the issuer interacts directly with the providers/lenders, rather

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[9] 17 CFR 240.15Ba1-1(d)(3)(vi)(A); See also, *Registration of Municipal Advisors*, SEC Rel. No. 34-70462 (Sep. 20, 2013), 78 FR 67468, 67472 (Nov. 12, 2013) ("Adopting Release").

[10] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

[11] *See*, 15 U.S.C. 780-4(c)(1).

than with multiple bondholders through intermediaries. From the purchaser's perspective, providing financing by means of a direct purchase or bank loan also has advantages, including: direct interaction with the issuer; direct communication with the issuer regarding the transaction structure; and confidence that the transaction will become part of the provider's investment portfolio. These benefits, nevertheless, are diminished and at some point along the spectrum may reflect net costs to the issuer directly or indirectly by dampening interest of potential providers and administrative, economic, and timing costs. Moreover, the current process of applying for a CUSIP requires provision of an offering document, which in a private transaction may not otherwise have been prepared, adding both legal and administrative costs to create a legal document just to comply with the regulatory requirement of obtaining a CUSIP. Assuming, arguendo, the CUSIP application process is revised to accommodate this new regulatory requirement, and an offering document is no longer required for application for a CUSIP on certain transactions, obtaining the CUSIP nevertheless adds another step and undue economic burden to the transaction closing process. Any additional burden is more keenly inequitable for municipal issuers that only use privately placed transactions and have no publicly issued debt.

Final Considerations

While we continue to be supportive of the consistent objectives of the MSRB in seeking to facilitate market transparency and efficiency, PFM also remains fundamentally against the extension of the obligations set forth in Rule G-34 to a municipal advisor as proposed in the draft amendments, thereby creating a direct duty with respect to the discrete interests of investors. Previous occasions have afforded Congress and the SEC multiple opportunities to enact provisions intended to have the municipal advisor also directly serve interests of investors and neither institution has done so to date. By way of refrain, Congress and the SEC have declined to bridge natural and necessary differences between brokers, dealers and underwriters on the one hand and municipal advisors on the other hand leaving intact what the MSRB perceives as "regulatory imbalance" in the draft proposed Rule G-34. If changes are to be made to these core precepts, we respectfully point to the need for Congressional and/or SEC action rather than action by the MSRB in making such a change in the fabric of the municipal advisory regulatory regime.

While PFM continues to be supportive of the consistent objectives of the MSRB in seeking to facilitate market transparency and efficiency, we remain fundamentally opposed to the extension of the obligations set forth in Rule G-34 for a non-dealer municipal advisor as proposed in the initial and second draft amendments, thereby creating a direct duty with respect to the discrete interests of investors. Insofar as obtaining CUSIPS facilitates the clearance and settlement of securities, under the proposed amendments to Rule G-34 non-dealer municipal advisors would be inappropriately burdened with the responsibility of engaging in activity that falls outside the purview of their scope of service and epitomizes traditional broker-dealer type activity. Previous occasions have afforded Congress and the SEC multiple opportunities to enact provisions intended to have the municipal advisor also directly serve interests of investors and neither institution has done so to date. By way of refrain, Congress and the SEC have declined to bridge natural and necessary differences between brokers, dealers and underwriters on the one hand and municipal advisors on the other hand leaving intact what the MSRB perceives as "regulatory imbalance" in the draft proposed Rule G-34. If changes are to be made to these core precepts, we respectfully point to the need for Congressional and/or SEC action rather than action by the MSRB in making such a change in the fabric of the municipal advisory regulatory regime.

We continue to believe that the Commission's opportunity to carefully consider and respond (including with rule modifications) to any comments submitted to its proposed amendments to Rule 15c2-12 would provide an essential foundation to any action on the proposed changes to MSRB Rule G-34.

PFM welcomes the opportunity to further discuss our comments with the MSRB, accordingly please feel free to contact us if our feedback would be useful.

Respectfully submitted,

Leo Karwejna
Chief Compliance Officer

Cheryl Maddox
General Counsel

Catherine Humphrey-Bennett
Municipal Advisory Compliance Officer

Attachment

PiperJaffray

800 Nicollet Mall , J12NPF, Minneapolis, MN 55402
P 612-303-6657 F612-303-1032]
Piper Jaffray & Co. Since 1895. Member SIPC and NYSE.

June 29, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Comments to Notice 2017-11, Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34 on Obtaining Cusip Numbers

Dear Mr. Smith:

Piper Jaffray & Co. ("Piper") is pleased to respond to the notice issued by the Municipal Securities Rulemaking Board (the "MSRB") on June 1, 2017, entitled, Notice 2017-11, Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers (the "Notice"). As you are aware, Piper had submitted a comment letter to your initial request for comments on this proposed rule change.

We want to thank the MSRB for listening to our concerns and the concerns of many others in the industry and making several changes to the initial proposed amendments to MSRB Rule G-34 that we believe significantly improve the rule and make it more workable.

In particular, providing an exception to the requirement that an underwriter obtain a CUSIP number or seek depository eligibility for a direct purchase of a new issue by a bank or consortium of banks is a significant improvement and alleviates many of the concerns that we discussed in our prior comments. In addition, we appreciate your changes that "level the regulatory playing field" by requiring all municipal advisors (not just broker-dealer advisors) to obtain CUSIP numbers on competitive sales.

Our primary concern and comment relative to the revised version of G-34 is related to the wording of the exception for CUSIPs and DTC eligibility for direct placements to banks. Our concern is that there are a number of banks who are very active in purchasing direct placements who actually purchase the transaction into a non-bank subsidiary. We believe that the language of G-34 (a)(i)(F) and G-34 (a)(ii)(A)(3) that provides for the CUSIP and DTC eligibility exception should be expanded to allow purchasers who are "non-dealer subsidiaries of banks or bank holding companies" to qualify for this exception.

We have talked to some larger bank purchasers about this exception and from those discussions we believe that it is important to allow for this addition to the CUSIP exception. We do not see any particular reason to differentiate between between the bank and other non-dealer subsidiaries of the bank or the bank's holding company. We believe that a broker-dealer subsidiary of a bank should not qualify for this exception.

It is our understanding that a group of bank purchasers has discussed this issue directly with the MSRB and has proposed specific language changes. We would support their proposed changes or other changes you deem appropriate that would have the effect of expanding the exception in the manner that we have suggested above.

Thank you for your work on this matter and for listening to our initial concerns on the proposed amendments. We would appreciate your willingness to consider the comments that we have expressed above to your revised rule proposal. As always, we would be happy to discuss further our views and experience on these issues with the MSRB staff. Feel free to contact us with any questions that you might have.

Sincerely,

Frank Fairman
Managing Director
Head of Public Finance Services

Rebecca Lawrence
Managing Director
Associate General Counsel
Public Finance & Fixed Income

sifma
Invested in America

June 30, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-11: Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] greatly appreciates this opportunity to respond to Notice 2017-11 [2] (the "Second Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is seeking comment on revised draft amendments to and clarifications of MSRB Rule G-34 ("Rule G-34"), relating to obtaining CUSIP numbers for municipal securities. SIFMA and its members applaud the MSRB for thoughtfully considering the comments it received with respect to its first request of comment on this issue, Notice 2017-05 (March 1, 2017) (the "First Notice"), and have some additional comments on the Second Notice as described below.

[1] 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 $18.5 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.

[2] MSRB Notice 2017-11 (June 11, 2017).

I. Agree Clarification or Rule Change Should Be Prospective Only

As a fairness matter, 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 the application of Rule G-34(a) to private placements, including direct purchase transactions has been uneven.[3] SIFMA and its members believed that Rule G-34, under a fair reading of the current language, exempts transactions that are not distributed.[4] As such, we agree that prospective application is the appropriate and correct solution in connection with any changes to Rule G-34, and any changes to Rule G-34 should not affect outstanding transactions completed under the current language of Rule G-34.

II. Clarification of Eligible Purchasers for the New Exemption for Certain Private Placements of Municipal Securities Would Be Beneficial

SIFMA and its members welcome the MSRB's creation of an exemption from the requirements of Rule G-34 for dealers and municipal advisors in private placements, including direct purchases, of municipal securities to a bank, its affiliated banks or a consortium of banks. This exception largely addresses the discrete group of transactions for which SIFMA feels there is a clear rationale for an exemption and eliminates the need to determine for Rule G-34 purposes whether the transaction involves a security.

However, SIFMA believes that the exception should be clarified to clearly accommodate similar non-bank purchasers. The language below would address the concerns that SIFMA members have about the current structure of the exception, and would clearly bring into the scope of the exception a more accurate description of the types of entities currently involved in the direct purchase market:

> (F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue[5] of municipal securities, or municipal

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3 *See* the First Notice, at FN 12.

4 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 by the bank or other purchaser.

5 We suggest the MSRB consider changing the term "new issue" to "primary offering", which would include certain remarketings.

advisor advising the issuer with respect to a competitive sale of a new issue thereof may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that:

(1) the purchaser of the municipal securities is:
   a. a bank;
   b. any entity directly or indirectly controlled by the bank or under common control with the bank other than a broker-dealer registered under the Securities Exchange Act of 1934; or
   c. a consortium of the institutions described in a. or b. hereof participating in a purchase of a new issue of municipal securities (collectively "purchasers"); and

(2) either:

   a. the municipal securities are being purchased with no present intent to sell or distribute, or
   b. resales thereof will be limited to (x) institutions described in (1) above or (y) one or more persons that is (i) a "qualified institutional buyer" as defined under SEC Rule 144A, or (ii) an "accredited investor" as defined in Rule 501, Regulation D of the '33 Act.

Our proposed changes to G-34(a)(i)(F)(1) above would (x) clarify that non-bank subsidiaries or affiliates of commercial banks may purchase under the exception, thus addressing our concerns about unnecessarily narrow language in the MSRB's current proposal, and (y) provide more certainty to determinations under the MSRB's current proposal.

III. Clarify Documentation Sufficient to Satisfy Exemption

In the event the MSRB does not make the amendments suggested above, SIFMA and its members would request clarity as to the documentation underwriters and municipal advisors may be required to produce during an examination by FINRA or the SEC. Investors are not reliably willing to sign a letter setting forth their present intention regarding their purchase. SIFMA and its members would appreciate 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 MSRB would be extraordinarily helpful to avoid any misunderstandings or misinterpretation of the requirements of the exception to Rule G-34 during future examinations.

IV. Clarify Private Placements of Loans Are Exempt from CUSIP Requirement

SIFMA and its members reiterate our request made in our response to the First Notice[6] that the MSRB clarify that CUSIP numbers would not be required in connection with the private placement of an issuance that are loans to a municipal entity – whether or not the exemption described above was satisfied.

Specifically, SIFMA and, more particularly, many of its members view obtaining a CUSIP number as inapposite to the appropriate approach when making a loan.[7] Some members believe a CUSIP number is a proxy for seeking flexibility in whether or not to re-sell or at least to facilitate sale of the instrument. Thus, although the assigning of a CUSIP number to an instrument is not determinative as to whether or not an instrument is a loan or a security, the lack of a CUSIP number is seen by many market participants as bolstering loan treatment because distribution would only be possible through physical transfer of the relevant instrument. An acknowledgement by the SEC in the adopting release, noting that having a CUSIP number is not determinative as to whether or not an obligation is a security would be appreciated.

V. Unnecessary Language Should Be Removed

Even if the MSRB does not incorporate our suggested changes to Rule G-34(a)(i)(F) as described above in Section II, the following language should nonetheless be removed: "and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary." We feel this language is unnecessary,

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6 *See* letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 31, 2017 (regarding the First Notice).

7 Indeed, as described below, banks and other purchasers directly purchasing an obligation from an issuer often specifically request that dealers not obtain a CUSIP number for the transaction, or cancel CUSIP numbers that are obtained for the transaction.

conclusory, and potentially confusing. Similar language in Rule G-34 (a)(ii)(A)(3), "and, therefore applying for depository eligibility is unnecessary", should be removed as well.

VI. Costs and Benefits of the Draft Amendments

a. Obtaining CUSIP Numbers in a Competitive Sale

Rule G-34(a) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities, but non-dealer municipal advisors are not subject to the requirement. SIFMA and its members applaud the MSRB for eliminating this distinction in the draft amendments to G-34(a)(i)(A). The First Notice set forth some of the efficiencies that served as the rationale for the 1986 amendments requiring financial advisors in a competitive sale of a new issue of municipal securities to obtain CUSIPS for the issue, primarily related to time deadlines.

Cost and efficiency are significant factors that must be considered. Currently, if there is a dealer municipal advisor/financial advisor, then one set of CUSIP numbers are applied for, and the bidding dealers do not need to apply for their own CUSIP numbers for the issue. However, if there is a non-dealer municipal advisor assisting the issuer who is currently not required to obtain CUSIP numbers, then each bidding dealer must obtain a set of CUSIP numbers for the transaction, in case they are the winning bidder.[8] Under the draft amendments, the municipal advisor for a competitive transaction, regardless of whether they are a dealer or non-dealer municipal advisor, would apply for CUSIP numbers for the issue; in this case, one set of CUSIP numbers would have been obtained for the issue. It is clear that there is currently a regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors because non-dealer municipal advisors are not currently subject to Rule G-34(a). These amendments would remedy that imbalance. To drive this efficiency point home, if ALL municipal advisors (non-dealer and dealer alike) were required to apply for CUSIP numbers for competitive transactions, then the total CUSIP costs would be $173 for the

[8] A dealer who wins a competitive bid must send all of the required information to NIIDS within 2 hours of the award of the municipal securities. There is insufficient time in between the announcement of the winning bidder and the requirement to input new issue information into the DTCC's NIIDS platform to obtain CUSIP numbers for the issue. Therefore, bidding dealers need to apply for and obtain a CUSIP number or numbers prior to bidding on the transaction. There may be one bidder in a competitive transaction, or more than a dozen. The current process only increases fees for dealers with no benefit to the municipal securities market. For information on CUSIP fees, see: https://www.cusip.com/pdf/2017FeesforCUSIPAssignment.pdf.

first CUSIP and $22 for every CUSIP thereafter. However, if the draft amendments are not adopted, then when a competitive transaction has a non-dealer municipal advisor, then EACH bidding dealer would need to apply for CUSIPS for the same transaction, again, at $173 for the first CUSIP and $22 for every CUSIP thereafter. We feel strongly that this is an opportunity to level the regulatory playing field and require all municipal advisors, dealer and non-dealer alike, to obtain CUSIP numbers for competitive transactions. The costs and benefits of such a rule change all heavily weigh in favor its adoption.

We understand there is a concern about municipal advisors not knowing whether or not a maturity will need a CUSIP number, depending on whether it will be a direct placement subject to the exemption. However, the timing of CUSIP number application, by dealers and municipal advisors alike in a competitive sale, is such that CUSIPs need to be applied for before the issue is sold. The efficiency argument in favor of the amendments continues to hold in this instance. Even assuming a CUSIP number needs to be cancelled, at the very least it will have only been applied for once by the municipal advisor, not by every bidder.

Also, we understand there is a concern by some that the application for CUSIP numbers by a non-dealer municipal advisor on behalf of its issuer client might be perceived to be acting as an unlicensed broker dealer. It would be helpful if the SEC could confirm in the adopting release that the submission of an application for CUSIP numbers, in this context, is not broker dealer activity.

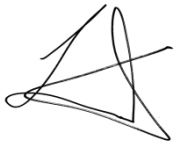
b. Regulatory Implementation Costs

Outside of the competitive sale context, the proposed amendments would impose some costs upon the dealer and municipal advisor in terms of the development of additional policies and procedures, training, and additional legal costs. SIFMA estimates these implementation costs to be at least 10 hours per firm, with some member estimates extending to multiples of that number, not including ongoing compliance costs. Implementation of the proposed amendments would involve the legal, compliance and public finance personnel at the regulated dealer firms, and similar staff at non-dealer municipal advisors. That being said, if the suggested amendments above are adopted to clarify Rule G-34, then SIFMA believes that these costs are largely outweighed by the benefits of the proposed amendments.

VII. Conclusion

Again, SIFMA and its members applaud the MSRB for the changes in the Second Notice of draft amendments to clarify Rule G-34, but wanted to make additional comments and requests for clarification as described above. 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 (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Robert Fippinger, Chief Legal Officer
Michael L. Post, General Counsel-Regulatory Affairs
Margaret R. Blake, Associate General Counsel

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

SMA
Southern Municipal Advisors, Inc.

June 29, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rule Making Board
1300 Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Rule G-34

Dear Mr. Smith,

The MSRB argues the need to amend Rule G-34 to cause it to, among other regulations, require non-dealer municipal advisors obtain CUSIP when advising issuers in a competitive new municipal securities issue (with one exception) arises from "[(1)] instances where underwriters are not consistently obtaining CUSIP numbers in sales of new issue municipal securities sold in private placements and [2] the desire to address the potential regulatory imbalance between CUSIP number requirements as applied to dealer and non-dealer municipal advisors." See Page 11 of the Regulatory Notice, Economic Analysis, Section 1.

As to the first justification, if the failure to obtain CUSIPs (assuming there is a need which is arguable in the case of a private placement) is the fault of the underwriter why impose an obligation on the municipal advisor, rather than insisting through regulation that the underwriter must obtain the CUSIPs in a private placement transaction? Obtaining CUSIPs is typically an underwriter responsibility in competitive and negotiated sales of new issue municipal securities. It simply makes sense, if the MSRB sees some need to apply CUSIPs to private placements, that the responsibility to obtain the CUSIPs rest with the entity which has traditionally assumed that role. It makes no sense to involve the municipal advisor. The municipal advisors role is to assist the issuer in the sale of the securities, not to market the securities, register them or in any way interact with the investing public. It seems the MSRB is expanding the role of the municipal advisor in inappropriate ways by involving the municipal advisor in the CUSIP process.

As to the second rationale – it too makes no sense. The MSRB defines a Dealer as "[a] person or firm engaged in the business of effecting securities transactions for that person's or firm's own account. Dealer is defined in the Securities Exchange Act of 1934. See: BROKER-DEALER; MUNICIPAL SECURITIES DEALER. Compare: BROKER." In contrast, the MSRB defines a Municipal Advisor as "[a} person or entity (with certain exceptions) that (a) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (b) solicits a municipal entity, for compensation, on behalf of an unaffiliated municipal securities dealer, municipal advisor, or investment adviser to engage such party in connection with municipal financial products, the issuance of municipal securities, or investment advisory services. See: FINANCIAL ADVISOR; PRICING ADVISOR; SWAP ADVISOR." Nowhere in this definition is there any reference to "effecting securities transactions" because municipal advisors do not deal in municipal securities. Consequently there is a significant difference between dealers and non-dealer municipal advisors. Whatever potential regulatory imbalance the MSRB perceives between the treatment of dealers and non-dealer municipal advisors is perfectly justified by the differing role they play in the municipal marketplace.

If the MSRB insists upon imposing the burden of obtaining CUSIPs upon the municipal advisor, it does not need to require municipal advisors have in place "policies and procedures reasonably designed to assist in

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arriving at a reasonable belief regarding the likelihood that the purchasing bank would hold the securities until maturity or limit resale to another bank." Closing documents in private placements include an investment letter signed by the purchasing bank clearly stating its intent to hold the securities to security or if sold, sold only to another bank or affiliated entity. Reliance upon the investment letter ought to be sufficient.

Finally, there are only two approaches to municipal securities transactions. In the case of a public sale (either competitive or negotiated) CUSIPs are obtained by the underwriter and are necessary to track the securities in the municipal market. In the case of the alternative private placement, since the securities will not find their way into the municipal marketplace CUSIPs serve no purpose.

Thank you for the opportunity to provide comment.

Sincerely,

Michael C. Cawley

Senior Consultant

Comment on Notice 2017-11

from L Mason Neely, Township of East Brunswick.

on Friday, June 2, 2017

Comment:

The Township Of East Brunswick along with other municipalities in N J have as part of their Cash Management Plan the purchase of Notes issued by other N J Municipalities, Authority, School Districts and Counties as an investment of fund balance. The direct purchase from the issuer results in the Note being held to maturity. The Township does not obtain a CUSIP as it is held as a private investment. The wording of Rule G-34 exceptions should be for Banks and Local Governments that do private purchase of Notes to be held to maturity. This has not been an issue, but I wish to make it clear as part of the comment report.