

SECURITIES AND EXCHANGE COMMISSION
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July 3, 2012

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to Amend Rule G-34, on CUSIP Numbers, New Issue, and Market Information Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“the Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2012, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G-34 on CUSIP numbers, new issue, and market information requirements (the “proposed rule change”). The proposed rule change would govern the use by brokers, dealers or municipal securities dealers of the term “not reoffered” or the designation “NRO” in any of its written communications about new issues of municipal securities.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary of Proposed Rule Change. The proposed rule change would amend MSRB Rule G-34 to prohibit any broker, dealer or municipal securities dealer (a "dealer") from using the term "not reoffered" or other comparable term or designation, such as the commonly used designation of "NRO," without also including the applicable price or yield information about the securities in any of its written communications, electronic or otherwise, sent by or on behalf of the dealer. Such prohibition would apply to any such communication occurring from and after the time of initial award of a new issue of municipal securities. The time of initial award would be the earlier of (A) the Time of Formal Award, 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, sometimes referred to as the "verbal award." "Time of Formal Award" currently is defined in MSRB Rule G-34(a)(ii)(C)(1)(a) as, "for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution." The prohibition would

not apply to communications occurring prior to the time of initial award of a new issue of municipal securities.

The proposed rule change would improve the availability of current information about initial offering prices or yields of new issues of municipal securities to market participants. Dealers, whether acting as underwriters or in the secondary market, sometimes designate certain maturities of a new issue of municipal securities as not reoffered, or NRO, in communications about such securities, and omit the corresponding initial offering price or yield information. While an underwriter is required to report complete information about initial offering prices or yields (including for maturities designated as NRO) pursuant to MSRB Rules G-32 and G-34 as described below, such information may not be readily available until as late as the end of the “date of first execution” of the new issue.³ The proposed rule change would require underwriters to include such information about initial offering prices or yields in any communication it sends to any party from and after the time of initial award, which occurs prior to the submission deadlines of Rules G-32 and G-34.

More timely information about initial offering prices or yields would improve new issue price discovery for issuers pricing their own same-day transactions as well as for investors and other market participants seeking more contemporaneous price information. Further, the availability of more contemporaneous price information to a larger universe of market participants would significantly reduce pricing inefficiencies in the marketplace. Currently, not all market participants have access to the same universe of price or yield information about new issues of municipal securities as they come to market and, as a result, differences in prices for

³ The date of first execution under Rule G-32 generally is the date on which the underwriter executes its first transactions with a customer or another dealer in any security offered in a primary offering.

similar securities may reflect in part the lack of broad access to such data useful in more accurately assessing current market values, rather than differences in intrinsic credit, structural or other features of the securities or the respective issuers. Thus, improving timely access to a larger universe of pricing data by more market participants would reduce pricing inefficiency that results from incomplete data.

The proposed rule change also would delete existing subsection (e)(iii) of MSRB Rule G-34, which includes provisions for compliance by dealers with certain registration and testing requirements previously applicable with respect to the start-up phase in 2008 of the New Issue Information Dissemination System (“NIIDS”) operated by the Depository Trust and Clearing Corporation (“DTCC”). This amendment will streamline Rule G-34 by eliminating language from the rule that no longer has any effect.

Currently Applicable MSRB Rules. With certain exceptions, underwriters are required, pursuant to MSRB Rule G-34(a)(ii)(C), to report to NIIDS certain information about most new issues of municipal securities within two hours following the Time of Formal Award, including the initial price or yield at which each maturity of the new issue of municipal securities was sold. Underwriters are also required, pursuant to MSRB Rule G-32(b)(vi)(C)(1)(a), to submit to the MSRB’s Electronic Municipal Market Access (EMMA[®]) system certain information about the new issue, including the initial offering price or yield of all maturities, on or prior to the end of the date of first execution. Under both rules, the initial offering price or yield must be provided for all maturities, including those that are not reoffered, and underwriters cannot use the designation of NRO in their submissions. Initial offering price or yield information submitted to NIIDS is disseminated by DTCC to its subscribers, including market participants and information vendors, upon submission by underwriters for dissemination, typically within two

hours following the Time of Formal Award, while such information submitted to the EMMA system becomes available to the public on the EMMA website and through subscription services to information vendors and other market participants immediately upon submission and typically by the end of the date of first execution.⁴

Availability of Information About Initial Offering Prices or Yields From Third-Party Vendors. Although, as noted above, information vendors may receive subscriptions from the MSRB or DTCC of data that includes the complete initial offering price or yield information for all maturities, including maturities that are not reoffered, such third-party vendors may also receive information regarding the new issue directly from underwriters or other parties on the underwriters' behalf that may sometimes substitute the designation of NRO for the initial offering price or yield for applicable maturities. Third-party vendors may then post such separately submitted information in a manner designed to highlight new issues coming to market and may otherwise repackage and distribute such information to their subscribers, including a combination of dealers, other information vendors and other market participants. This information disseminated by third party vendors, often including the NRO designation without accompanying initial offering price or yield, is available to their subscribers shortly after submission to such vendor and frequently before the the complete initial offering price or yield information becomes available through NIIDS and the EMMA system. The proposed rule

⁴ In addition, with limited exceptions, MSRB Rule G-14 requires dealers to report the actual prices at which municipal securities are sold to the MSRB's Real-time Transaction Reporting System. Although most prices are required to be reported within 15 minutes of the time of trade, in many cases initial trades by syndicate or selling group members executed on the first day of trading at the published list offering price may be reported by the end of the day. Thus, while these prices are disseminated shortly after receipt to the public on a real-time basis by the MSRB on the EMMA website and through subscription services to information vendors and other market participants, transactions reflecting initial offering prices or yields may not be available for dissemination until the end of the first day of trading.

change would result in information about the initial offering prices or yields for NRO maturities to be included in any such separately submitted and disseminated information from and after the initial award.

Effective Date of Proposed Rule Change. The MSRB proposes that the proposed rule change be made effective on the first calendar day of the next succeeding month beginning at least twenty-eight (28) calendar days after the date on which the proposed rule change is approved by the Commission.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which provides that the MSRB’s rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would remove impediments to and perfect the mechanism of a free and open market in municipal securities by prohibiting certain communications that hinder price and market transparency, and by facilitating new issue price discovery. The proposed rule change would require that communications occurring from and after the time of initial award of a new issue that use the designation not reoffered or NRO also include the applicable initial offering price or yield. The proposed rule change would contribute to more effective price

discovery for issuers pricing their own same-day transactions resulting from the availability of more complete and contemporaneous pricing of other new issues, as well as for investors and other market participants seeking more contemporaneous price information. These changes would also contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply to all dealers that send written or electronic communications about new issues of municipal securities. Since dealers are already required to provide the initial offering prices or yields under other MSRB rules, dealers would bear no additional burden in obtaining such information to fulfill the requirements of the proposed rule change. In addition, the burden of adding such price or yield information to communications in which dealers designate a municipal security as not reoffered should be negligible, particularly in light of the fact that dealers already provide price or yield information in comparable communications occurring during the same timeframe in which they do not designate municipal securities as not reoffered. The MSRB believes that any such negligible burden would be greatly outweighed by the benefits accruing to issuers and the marketplace in general from the increased transparency available to issuers as they price their new issues of municipal securities, since such information will assist them in assuring that the pricing of such issue is informed by current market prices.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On March 13, 2012, the MSRB requested comment on a draft of the proposed rule change (the “draft proposal”).⁵ Comment letters were received from: Bond Dealers of America (“BDA”); Full Life Financial LLC (“Full Life”); Government Finance Officers Association (“GFOA”); Kious and Co. (“Kious”); M. E. Allison & Co., Inc. (“Allison”); McGuirk, Hugh (“McGuirk”); National Association of Independent Public Finance Advisors (“NAIPFA”); Oppenheimer & Co. Inc. (“Oppenheimer”); and UMB Bank, N.A. (“UMB”). Summaries of those comments and the MSRB’s responses follow.

Draft proposal would create a more efficient and transparent market. Various commenters⁶ supported the draft proposal, saying it would enhance market transparency. BDA said that it would “allow other comparable transactions to have a better sense of market movement on the day of pricing.” GFOA said that the intent of the draft proposal rectifies the “opaque practice” of designating maturities of new issues without accompanying price and yield information. Allison said it would improve the availability of real-time information about initial offering prices or yields. NAIPFA said that the draft proposal would help ensure that issuers better understand the pricing terms of their securities. Full Life said it can help level the playing field between large and small issuers, and foster fairness between dealers and investors.

Both price and yield data should be reported. GFOA and Full Life said that both price and yield data should be reported. GFOA said that the reporting of just the maturity’s price data requires issuers and investors to calculate the corresponding yield, and this added step makes the information less useful to issuers and investors. Full Life said reporting both price and yield data would improve transparency and accuracy of information processing by investors and issuers.

⁵ See MSRB Notice 2012-14 (March 13, 2012).

⁶ See BDA, Full Life, Kious and NAIPFA.

While the MSRB recognizes the value of having both price and yield information available to investors, the MSRB notes that in some circumstances, such as an unknown settlement date, yield cannot be calculated and only price will be available. As a result, the proposed rule change retains the requirement that either price or yield be provided. Further, the various other existing MSRB rules relating to initial offering prices or yields, as described above, generally do not require that both be provided, and changing the requirement in the draft proposal to provide either price or yield to a requirement to provide both price and yield without addressing the existing ability of dealers to use either price or yield under such other MSRB rule provisions, and without making the necessary changes to MSRB information systems, would result in a significant inconsistency across MSRB rules and information systems. The MSRB notes that it has recently published its Long-Range Plan for Market Transparency Products, dated January 27, 2012, in which it lays out a vision for the next stages of its market transparency products that includes, among other things, significant enhancements to the scope and timing of information available through the EMMA system and other related transparency products. The MSRB will keep this comment under advisement and will consider potential changes consistent with the comment as it reviews its market transparency systems and related rules in connection with the changes described in the Long-Range Plan.

Information about new issue pricing. Oppenheimer said that in sealed bid situations, members are not allowed to bid a yield and concession. It suggested, therefore, that the proposal be revised to permit a syndicate member to disclose the reoffering price or yield after a sealed bid has been awarded. Oppenheimer also said that because most notes are issued NRO, the reoffering price should be the reoffering price used to complete IRS Form 8038. Oppenheimer

also questioned how to report offering prices or yields for bonds or notes purchased for inventory.⁷

The draft proposal did not limit the time period during which dealers would be prohibited from using the NRO designation without accompanying initial offering price or yield information, and therefore the draft proposal could apply during the time that sealed bids are being provided to issuers prior to the award of a new issue. In response to Oppenheimer's comment concerning sealed bid situations, the MSRB has determined to modify the proposal to limit the applicability of the proposed rule change to communications occurring from and after the time of initial award. Sealed bid submissions occur prior to the time of initial award and are submitted in the context of a competitive sale where the expectation is that bids remain confidential until the issuer reviews all bids at the time of initial award. With respect to Oppenheimer's comments on the use of information from IRS Form 8038 and the reporting of prices or yields for bonds in inventory, the MSRB has no opinion regarding the proper calculation of information for inclusion on an issuer's tax forms but notes that, to the extent a dealer views a new issue municipal security as not being reoffered, the initial offering price or yield that should be reported for purposes of MSRB rules is the price or yield at which such securities were purchased, whether by a dealer for its own inventory or by a customer of the dealer based on a pre-arranged purchase price.

⁷ Other comments concerning new issue pricing unrelated to the proposed rule change included comments from GFOA and BDA. GFOA said that new issue pricing information should be submitted as promptly as possible, rather than at the end of the day. BDA said that it supported the MSRB's initiative of incorporating NIIDS data into the EMMA system, saying that it would address the problems that gave rise to the need to eliminate the NRO designation. The MSRB agrees with the suggestion that new issue pricing be available sooner than the end of the day and recently published a request for comment on draft amendments to MSRB Rules G-32 and G-34 that would cause information about new issue pricing to be available on EMMA within two hours of the Time of Formal Award. See MSRB Notice 2012-19 (April 10, 2012).

Release of scales prior to official award may lead to inaccurate information in the marketplace and in an underwriter's loss of competitiveness. UMB said that dealers should not be required to release scales prior to an official award because this may lead to inaccurate scales being circulated in the marketplace. UMB also said that releasing scales to the market prior to official award would cause dealers also bidding on same day comparable issues to lose their competitiveness.

UMB's concern is addressed in part by the limitation of the applicability of the proposed rule change to communications occurring from and after the time of initial award. In addition, the proposed rule change would not prohibit a dealer, concerned about a change in pricing between the initial and final awards, from indicating in any communication that prices or yields disseminated prior to the final award may be subject to change. Furthermore, the proposed rule change would not compel an underwriter to disseminate a new issue scale before the formal award; rather, it simply would prohibit the underwriter from stating that some or all of the securities were not reoffered in such communication without also including the initial offering prices or yields. The MSRB also believes that adjusting the time frame during which the rule is applicable would address the concern about competitiveness because underwriters would have been awarded their bid by the time the requirements of the proposed rule change become applicable. By prohibiting the use of the term not reoffered or NRO without accompanying initial price or yield information from and after the time of initial award, the MSRB believes the proposed rule change would be applicable during the period when the information about pricing would be most useful to market participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2012-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2012-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2012-06, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).