MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2017-19

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Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers, Investors

Notice Type
Concept Proposal

Comment Deadline
November 13, 2017

Category
Fair Practice; Uniform Practice; Market Transparency

Affected Rules
Rule G-11, Rule G-32

Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on a concept proposal regarding possible amendments to existing rules related to primary offerings of municipal securities by brokers, dealers and municipal securities dealers (collectively, "dealers"). As part of its regulatory mission, the MSRB periodically revisits its rules over time to help ensure that they continue to achieve their purposes and reflect the current state of the municipal market. After engaging in informal discussions with market participants regarding the MSRB's rules pertaining to primary offering practices, the MSRB now formally seeks comment from all interested parties on the benefits and burdens, including the costs and possible alternatives, of potential changes to MSRB rules related to the primary offering practices of dealers in the municipal securities market. The comments will assist the MSRB in determining whether to propose amendments to MSRB rules pertaining to primary offerings in the municipal securities market or to not make changes, or proceed with an alternative approach.

Comments should be submitted no later than November 13, 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, MSRB, 1300 I Street NW, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.[1]

[1] Comments generally are posted on the MSRB 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.

Questions about this concept proposal should be directed to John Bagley, Chief Market Structure Officer, Margaret Blake, Associate General Counsel, or Saliha Olgun, Assistant General Counsel, at 202-838-1500.

Background

In an effort to ensure that MSRB rules continue to accurately reflect how the municipal securities market is evolving and to comply with the MSRB's mission to protect investors, state and local governments and other municipal entities, obligated persons and the public interest by promoting a fair and efficient municipal securities market, the MSRB is undertaking a multi-year review of municipal securities primary offering practices and the rules that govern that process. As part of this review, the MSRB engaged in informal discussions with a diverse range of market participants, including dealers, municipal advisors, issuers and regulators. During these discussions, the MSRB sought to better understand evolving and current practices in primary offerings in order to identify whether any guidance or revisions to existing rules to support protections for municipal securities investors and issuers may be warranted. The MSRB greatly values the input from all who participated in those informal discussions and now seeks comment from all interested parties on the questions raised in this concept proposal. In addition, the MSRB seeks comment more generally on MSRB rules pertaining to primary offering practices. Based on its initial discussions with market participants, the MSRB has preliminarily determined to focus on two MSRB rules, which are the primary subject of this concept proposal: Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings.[2]

CONCEPT PROPOSAL

I. Rule G-11 – Primary Offering Practices

Rule G-11 establishes terms and conditions for sales by dealers of new issues of municipal securities in primary offerings, including provisions on priority of customer orders. The rule was first adopted by the MSRB in 1978, and was designed to

[2] The MSRB separately is considering issues related to Rule G-34, on CUSIP numbers, new issue, and market information requirements. *See, e.g.,* Release No. 34-81595 (Sept. 13, 2017); SR-MSRB-2017-06 (Aug. 30, 2017).

> increase the scope of information available to syndicate managers and members, other municipal securities professionals and the investing public, in connection with the distribution of new issues of municipal securities without impinging upon the right of syndicates to establish their own procedures for the allocation of securities and other matters.[3]

The MSRB noted that in adopting Rule G-11, the Board chose to require the disclosure of practices of syndicates rather than dictate what those practices must be.[4] Because of the evolving nature of the municipal securities market, Rule G-11 has been the subject of a number of amendments over the years. Now, the MSRB seeks comment on whether to: (A) require underwriters to make a bona fide public offering; (B) standardize the process for issuing a free-to-trade wire; (C) require senior syndicate managers to provide more information to issuers; (D) align the payment of group net sales credits with the payment of net designated sales credits; and (E) require retail (or institutional, as applicable) priority orders in negotiated sales to be allocated in full before allocating to lower priority orders, unless the syndicate manager has received permission from the issuer to allocate to lower priority orders.

A. Bona Fide Public Offering

Syndicate members sometimes agree in the Agreement Among Underwriters ("AAU"), Bond Purchase Agreement ("BPA") or other contractual document that they will make a "bona fide public offering" of the bonds allocated to them at the public offering price. The MSRB understands from market participants, however, that it can be difficult to enforce a syndicate member's contractual obligation to make a bona fide public offering, and often there are few, if any, actions taken by issuers or other market participants that result in repercussions to a syndicate member that does not uphold its contractual obligation to make a bona fide public offering.

Separately, the MSRB is aware of regulatory enforcement actions against syndicate members pursuant to Rule G-17 for allegedly failing to make a "bona fide public offering" of municipal securities despite agreeing to do so in a contractual arrangement. In originally developing Rule G-11, the MSRB considered whether to require syndicates to sell securities at a bona fide

[3] MSRB Reports, Vol. 5, No. 6 (Nov. 1985).

[4] *See, e.g.,* MSRB Reports, Vol. 2, No. 5 (Jul. 1982).

offering price during a mandatory bona fide offering period during which the new issue securities would be sold to the public.[5] However, after carefully considering comments received in response to the MSRB's proposal, the Board ultimately decided against such an approach. As market practices have evolved in the approximately four decades since the initial adoption of Rule G-11 and as recent enforcement actions have again raised the concept of bona fide public offerings, the MSRB seeks comment on the concept of explicitly requiring syndicate members to make a bona fide public offering at the initial offering price.

1. Should there be an MSRB rule that requires syndicate members to make a "bona fide public offering" of municipal securities at the public offering price?

2. If the MSRB were to consider such a requirement, what definition of "bona fide public offering" should apply? Should there be a standardized definition or should syndicate members and/or issuers decide among themselves how to define what would be required?

3. If the MSRB had such a requirement, what documentation or other available means would effectively show that an underwriter met the requirement for compliance purposes (*e.g.*, regulatory examinations)?

4. Should syndicate members be required to notify other members and/or the issuer only if they are not going to make a bona fide public offering?

5. Is the concept of "bona fide public offering" better left as a voluntary contractual arrangement (*i.e.*, not mandated by MSRB rule)?

6. In the alternative, should the MSRB provide guidance or consider implementing a rule that supports inclusion of a contractual provision in the AAU requiring a bona fide public offering without itself implementing a requirement for a bona ride public offering?

7. What are the harms, if any, to other syndicate members, the issuer, investors and the general public when a syndicate member fails to make a "bona fide public offering"?

[5] MSRB Exposure Drafts (Apr. 20, 1976, Sept. 8, 1976 and Nov. 17, 1976).

B. Free-to-Trade Wire

In a primary offering of municipal securities, pursuant to the AAU, typically the senior syndicate manager informs other syndicate members when the BPA has been executed, thus indicating the date of sale or time of formal award of the issue. Shortly thereafter, the senior syndicate manager may send a communication to the syndicate in the form of a "free-to-trade wire." This communication removes the various syndicate restrictions set forth in the AAU or otherwise communicated to the syndicate and indicates to syndicate members that they may trade the bonds at prices other than the initial offering price.

Some market participants noted that the free-to-trade wire is not always disseminated to all syndicate members at once, leading to delays in trading for some syndicate members and their clients. These market participants believe there may be a benefit to having a standardized process for issuing the free-to-trade wire to the syndicate, such that all parties receive the information at the same time.

1. Should there be an MSRB rule that requires the senior syndicate manager to issue the free-to-trade wire to all syndicate members at the same time?

2. If the MSRB were to propose a rule for issuing the free-to-trade wire, what should the rule include? Should there be a specific timeframe within which the wire should be sent?

3. If the MSRB were to propose a rule, should it apply in negotiated sales only?

4. What are the pros/cons to such a requirement? What are the reasonable alternatives?

C. Additional Information for the Issuer

Rule G-11(g) requires the senior syndicate manager to provide extensive information to the syndicate regarding the designations and allocations of securities in an offering. However, the senior syndicate manager is not required to provide this level of information to issuers. While issuers sometimes may be involved in reviewing and approving allocations or may be able to obtain information regarding designations and allocations from various sources, including the senior syndicate manager and certain third-party information resources, some market participants have suggested that the senior syndicate manager nonetheless should be required to provide this

information to the issuer.

1. Do all issuers, regardless of the size of the particular offering, have access to detailed information about the underwriting of their securities, such as information about the allocations, designations paid and take downs directed to each member in the syndicate?

2. If not, should Rule G-11 require the senior syndicate manager to provide this information to the issuer?

    a. Should the senior syndicate manager always be required to provide this information, or should the senior syndicate manager be required to provide it only upon request?

    b. Should any proposed requirement specifically allow for issuers to "opt out" of receiving the information?

3. Is there a preferred method for distributing this information to issuers?

4. Is there other information that senior syndicate managers provide to the syndicate, but do not currently provide to issuers, that issuers would find beneficial to receive?

5. What are the reasonable alternatives to, and benefits and burdens associated with, requiring the senior syndicate manager to provide this information to the issuer?

6. Should the senior syndicate manager in a negotiated sale be required to obtain the issuer's approval of designations and/or allocations unless otherwise agreed to between the parties?

D. Alignment of the Payment of Sales Credits for Group Net Orders with the Payment of Sales Credits for Net Designated Orders and Shortened Timeframe

Rule G-11(i) states that the final settlement of a syndicate or similar account shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate. Group net sales credits (*i.e.*, those sales credits for orders in which all syndicate members benefit according to their

participation in the account)[6] are paid out of the syndicate account when it settles pursuant to Rule G-11(i). As a result, syndicate members must wait 30 calendar days following receipt of the securities by the syndicate before they receive their sales credits on group net orders. Alternatively, Rule G-11(j) states that sales credits due to a syndicate member as designated by a customer in connection with the purchase of securities ("net designated orders") "shall be distributed" within 10 calendar days following the date the issuer delivers the securities to the syndicate. The MSRB seeks comment as to whether the timing of payment of sales credits on group net orders should be aligned with the timing of payment of sales credits on net designated orders, and seeks information on the benefits, burdens and alternatives to such a change. In addition, the MSRB seeks comment as to whether the overall period of time for distribution of sales credits for both group net and net designated orders should be shortened to a period of less than 10 days.

E. Priority of Orders and Allocation of Bonds

Rule G-11(e) requires that in the case of a primary offering, the syndicate must establish priority provisions. Unless otherwise agreed to with the issuer, the priority provisions must give priority to customer orders over orders by members of the syndicate for their own accounts (*i.e.*, stock orders) or for their related accounts. The rule has a provision that addresses the syndicate's ability to allocate municipal securities in a manner that is different from the priority provisions if it is found to be in the best interest of the syndicate. Rule G-11(f) requires the senior syndicate manager to provide syndicate members in writing a statement of, among other things, the issuer's retail order period requirements, if any, and the priority provisions.[7]

The MSRB has issued guidance regarding priority orders stating that,

> an underwriter may violate the duty of fair dealing by making such commitments [regarding the distribution of an issuer's securities] to the issuer and then failing to honor them. This could happen, for example, if an underwriter fails to accept, give priority to, or allocate

[6] *See* MSRB Glossary of Terms.

[7] Rule G-8(a)(viii) requires records to be maintained reflecting, among other things, the retail order period requirements, if applicable.

to retail orders in conformance with the provisions agreed to in an undertaking to provide a retail order period.[8]

However, market participants have indicated that, despite an issuer's instruction, in some primary offerings, syndicate managers partially allocate to retail orders that should have priority, and then proceed to allocate to lower priority orders even though the higher priority orders have not been fully allocated. The MSRB understands that this practice also occurs with regard to institutional priority orders. The MSRB understands that some syndicate managers have taken the position that such a practice is permissible because no rule states explicitly that allocation of retail (or institutional) priority orders must be made, in full, before a syndicate manager may allocate to lower priority orders. The MSRB seeks comment on whether Rule G-11 should be amended to explicitly state the process by which orders must be given priority. As an alternative, the MSRB also seeks comment as to whether interpretive guidance would better serve to clarify this point.

1. Should Rule G-11 be amended to explicitly state that, in negotiated sales, retail priority orders (or institutional priority orders, as applicable) must be allocated up to the amount of priority set by the issuer before allocating to lower priority orders, unless the senior syndicate manager obtains permission from the issuer to allocate otherwise?

2. Is Rule G-11 in its current form clear with respect to the obligations of a senior syndicate manager surrounding the priority of orders? If not, in what provisions or aspects is it unclear?

3. Does the requirement for the syndicate to set priority provisions in a primary offering result in a more transparent and efficient market for municipal securities?

4. Does the discretion syndicate members currently exercise in the allotment of bonds result in a fair and efficient allocation process?

[8] MSRB Interpretation on Priority of Orders for Securities in a Primary Offering under Rule G-17 (Oct. 12, 2010).

II. Rule G-32 – Disclosures in Connection with Primary Offerings

Rule G-32 sets forth the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Among other things, Rule G-32 requires underwriters in primary offerings to submit electronically to EMMA official statements, advance refunding documents and related primary market documents and new issue information, such as that collected on Form G-32. The rule is designed to ensure that a customer that purchases new issue municipal securities is provided with timely access to information relevant to his or her investment decision. Rule G-32 was originally approved in 1978[9] and has been amended periodically since then to help ensure that, as market practices evolved and other regulatory developments occurred, Rule G-32 would remain current and achieve its goal of providing timely access to relevant information about primary offerings.

In connection with the MSRB's current primary offering practices review, and its review of Rule G-32 in particular, the MSRB seeks comment on whether to: (A) require underwriters in a refunding to disclose, within a shorter timeframe, to all market participants at the same time, the CUSIPs refunded and the percentages thereof; (B) require the underwriter or municipal advisor to submit the preliminary official statement ("POS") to EMMA, if one is available; (C) require non-dealer municipal advisors that prepare certain official statements to make the official statement available to the underwriter after the issuer approves it for distribution; (D) auto-populate into Form G-32 certain information that is submitted to DTCC's New Issue Information Dissemination Service (NIIDS) but is not currently required to be provided on Form G-32; and (E) request additional information on Form G-32 that is not currently provided to NIIDS.

A. Disclosure of the CUSIPs Refunded and the Percentages Thereof

Currently, under Rule G-32(b)(ii), if a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, the underwriter is required to submit the advance refunding document to EMMA, as well as the information related to the advance refunding document on Form G-32, no later than five business days after the closing date. Accordingly, the market is sometimes unaware of the particular CUSIPs refunded until after the five-day period, and market participants may have unequal access to this information during the five-day period. In order

[9] *See* Release No. 34-15247 (Oct. 19, 1978), 43 FR 50525 (1978).

to increase market transparency, the MSRB seeks comment as to whether underwriters should be required to disclose, within a shorter timeframe and to all market participants at the same time, the CUSIPs refunded and the percentages thereof.

1. Do underwriters always have access to refunding information earlier than five business days from the closing of the refunding? If so, should they be required to disclose, within this shorter timeframe, the CUSIPs refunded and the percentages thereof to ensure that all market participants have access to the information at the same time?

2. Should the information be submitted to EMMA within a certain period of time from the closing of the refunding or the pricing of the refunding?

3. If the timeframe for providing the refunding information cannot be shortened, should Rule G-32 be amended, in any event, to require that all market participants receive the refunding information at the same time?

4. What are the advantages and disadvantages to such a requirement?

5. Are there other less costly or burdensome or more effective alternatives to promote transparency and equal access to this information?

B. Submission of Preliminary Official Statements to EMMA

Currently, Rule G-32 generally does not require submission of the POS to EMMA, even if one is available. In its effort to improve the scope of information about issuers in the primary market, the MSRB made enhancements to EMMA to permit issuers, on a voluntary basis, to submit POSs and other presale information to the MSRB for display on EMMA. In 2012, the MSRB sought comment on a concept proposal that would have, among other things, made the submission of a POS mandatory by an underwriter of a new issue, if the POS was available.[10] After considering various comment letters received, the MSRB determined not to pursue a rulemaking at that time.

[10] MSRB Notice 2012-61 (Dec. 12, 2012).

Accordingly, market participants continue to have disparate access to timely and important information contained in the POS (to the extent one is prepared). To the extent market participants have difficulty accessing, or lack convenient access to the POS, or are unable to access the POS through some other means, they may be at a competitive disadvantage as compared to other market participants who had earlier access to the POS. To address these concerns, the MSRB seeks comment as to whether the underwriter or municipal advisor should be required to submit the POS to EMMA, if one is available.

1. Should the underwriter or municipal advisor be required to submit the POS to EMMA, if one is available? If so, within what time frame should the POS be required to be submitted?

2. Should the underwriter or municipal advisor be required to seek confirmation from the issuer that they may post the POS on EMMA?

3. Would a requirement that the POS be submitted to EMMA assist in ensuring that all market participants have access to the POS at the same time?

4. What are the advantages or disadvantages of such a requirement for dealers, municipal advisors, issuers and market participants?

5. Is there a valid reason to provide a POS to some market participants but not others?

6. Are there alternative methods that the MSRB should consider for providing the information in the POS that would be more effective and efficient for investors and/or less costly or burdensome to underwriters and municipal advisors?

7. Should the requirement to submit a POS to EMMA apply in negotiated and competitive sales? If so, should there be different rules for each type of offering?

8. Should the rule require the underwriter or municipal advisor to post an updated POS if information changes? Should the rule allow an underwriter or municipal advisor to withdraw the POS if the information becomes stale?

C. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution

Rule G-32(c) requires a dealer who acts as a financial advisor ("dealer municipal advisor") and prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities to make the official statement available to the managing underwriter or sole underwriter in a designated electronic format, after the issuer approves its distribution. Currently, this requirement does not extend to municipal advisors that are not also dealers ("non-dealer municipal advisors"). In order to promote consistency in the delivery of the official statement, the MSRB seeks comment as to whether the current requirement in Rule G-32(c) should be extended to non-dealer municipal advisors as well. In addition, the MSRB seeks comment on whether there is any reason not to make this change.

D. Whether the MSRB Should Auto-Populate into Form G-32 Certain Information that is Submitted to NIIDS but is Not Currently Required to be Provided on Form G-32

MSRB Rule G-34(a)(ii)(C) requires an underwriter of a new issue of municipal securities to submit certain information about the new issue to NIIDS. That provision is designed to facilitate timely and accurate trade reporting and confirmation, among other things, by addressing difficulties dealers have in obtaining descriptive information about new issues of municipal securities.[11] While underwriters submit a great deal of information about a new issue to NIIDS, much of this information is not populated into Form G-32 because not all of the fields required to be submitted to NIIDS are required fields on Form G-32. Including some or all of the information provided to NIIDS on Form G-32 has the potential to enhance transparency in the market. The MSRB seeks comment as to whether any of the fields currently submitted to NIIDS, but that are not required to be submitted on Form G-32, should be required fields on Form G-32, and if so, whether the MSRB should auto-populate this information based on the information submitted to NIIDS. The MSRB also seeks comment on what the potential impact, if any, would be on dealers/underwriters if the MSRB were to require additional data points on Form G-32 where such data is already collected and available in NIIDS.

[11] The requirement to provide this information and the process for doing so arise in Rule G-34 and Rule G-32, respectively. While NIIDS provides the system for submitting the information, its use in no way obviates the requirement that information submitted pursuant to Rule G-34 be timely, comprehensive and accurate. *See* MSRB Notice 2007-36 (Nov. 27, 2007).

E. Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?

Market participants have indicated during informal outreach that including certain additional information on Form G-32 would be valuable and effective in enhancing transparency. Additional information, not currently submitted to NIIDS, but related to a new issue, might benefit the market if required to be provided on Form G-32. The MSRB seeks comment as to whether additional data points, such as those below, should be required on Form G-32:

- Additional Syndicate Manager(s)
- All Premium Call Dates and Prices and Par Call Date
- Corporate Obligor
- Event Triggers that Change Minimum Denomination
- Legal Entity Identifier (LEI) (for each credit enhancer or obligor, if applicable)
- Management Fee
- Municipal Advisor Fee
- Name of Municipal Advisor
- Retail Order Period by CUSIP (rather than by primary offering)
- Selling Group Member(s)
- True Interest Cost
- Yield to Maturity (in addition to Yield to Worst) on Premium Bonds

Questions Specific to the Above Suggested Data Points

1. Should the current Rule G-32 requirement to disclose whether there was a retail order period as part of a primary offering be replaced with a requirement to disclose retail order periods by CUSIP number?

2. Do market participants, such as issuers and obligors, typically have LEIs? If so, should LEI fields be added on Form G-32 and included in Rule G-34 to permit or require underwriters to submit (if available) the LEI of the relevant obligated person, and/or the issuer if they have one?

3. What are the advantages and disadvantages of requiring dealers to disclose any of the above information?

4. Are there any fixed fees in an underwriting (*e.g.*, municipal advisor fee, underwriting fee, etc.) that would be useful if disclosed on Form G-32? To whom would such fees be useful (*e.g.*, other issuers for comparison purposes)? Should this fee information be disclosed to the issuer in connection with an offering earlier in the process, for example, pursuant to a requirement under Rule G-11 (see I.C. above)?

5. Would any of the above information be useful to market participants?

General Questions

1. Is there additional information not listed in this concept release that the MSRB should consider collecting on Form G-32?

2. What is the impact on dealers if this information cannot be retrieved from NIIDS, and therefore must be input directly into Form G-32 (in addition to the information a dealer must input into NIIDS)?

III. Other Questions

1. Has the IRS's issue price rule impacted any primary offering practices in the municipal securities market, and in what ways? If any MSRB rules are affected, what, if any, amendments should be considered?

2. Are there any other primary offering practices that the MSRB should consider in its review?

3. What are the reasonable alternatives to each of the above proposals? For example, are any of the proposals that would require a rule change better addressed through other means, such as interpretive guidance, compliance resources, additional outreach/education, new MSRB resources, or voluntary industry initiatives? Are there less burdensome or more beneficial alternatives?

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2017-19 (SEPTEMBER 14, 2017)

1. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated November 16, 2017

2. City of San Diego: Letter [undated]

3. Robert W. Doty: Letter dated November 2, 2017

4. Global Legal Entity Identifier Foundation: Email from Stephan Wolf dated November 6, 2017

5. Government Finance Officers Association: Letter from Emily Brock, Director, Federal Liaison Center, dated November 27, 2017

6. National Association of Bond Lawyers: Letter from Alexandra M. MacLennan, President, dated November 17, 2017

7. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated November 13, 2017

8. National Federation of Municipal Analysts: Letter from Julie Egan, Chair, and Lisa Washburn, Industry Practices and Procedures Chair, dated November 9, 2017

9. Michael Paganini: Email dated September 15, 2017

10. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated November 15, 2017

11. TMC Bonds: Letter from John S. Craft, Managing Director, dated November 13, 2017

12. Wells Capital Management Incorporated: Letter from Gilbert L. Southwell III, Vice President, dated November 1, 2017

EXHIBIT 2c

BDA Bond Dealers of America

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November 16, 2017

Submitted Electronically

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

RE: Request for Comment on a Concept Proposal (the "Proposal") Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers

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 the Proposal. While we provide our specific responses below, in general, we believe that the existing MSRB rules adequately protect primary offering practices and we do not see the need for a wide array of new rules to govern primary offering practices. In recent SEC actions relating to primary offering practices, the existing regulatory and enforcement framework provided sufficient regulation to prohibit the actions that the SEC concluded were taken.

We have organized our responses in order of the categories set forth in the proposal.

Rule G-11 Primary Offering Practices

- *Bona Fide Public Offering*

The BDA recommends that the MSRB not adopt a specific rule requiring a *bona fide* public offering in all municipal securities offerings. The BDA believes that the existing provisions of BPAs and AAUs, together with the application of MSRB Rule G-17, sufficiently protect issuers and borrowers in the municipal securities market (like they did in recent SEC actions concerning primary offering practices). Further, we believe that this should remain the subject of a voluntary contractual arrangement which the parties can tailor to their specific transaction. We do think that, if the MSRB does adopt a rule, it needs to define the term *bona fide* public offering for purposes of that

Rule. Currently, the requirement of *bona fide* public offering is understood in light of the duty of fair dealing under Rule G-17. If any rule were to prescribe something more specific than that, it would be important for the rule to define the term.

- *Free-to-Trade Wire*

The BDA believes that the MSRB should require all senior syndicate managers to send a free-to-trade wire to all syndicate members. Our members have experienced instances where the senior syndicate manager either does not send a free-to-trade wire or sends a wire to some but not all syndicate members. Thus, for fairness and consistency in the market, we think that the MSRB should require the senior syndicate manager to send the wire. As far as the content of such a rule, we suggest that the rule provide that, once formal award has been assigned, the senior syndicate manager be required send out a notification to all syndicate members at the same time. Any rule would need to permit the senior syndicate manager to use Ipreo or other customarily used platform as the means by which the senior syndicate manager transmits the free-to-trade wire. Further, any rule would need to contemplate that the senior syndicate manager could send the free-to-trade wire maturity by maturity as the issuance is sold. In addition, any rule should serve the purpose of removing restrictions on syndicate members and thus any rule should exclude any issuance of municipal securities that is a sole managed transaction, and any rule should not require the senior syndicate manager to send any notification to market participants beyond the syndicate members.

- *Additional Information for the Issuer*

In our members' experience, not all issuers have access to detailed information about their securities, and the BDA recommends that the MSRB require syndicate managers to send this information to issuers upon request. In addition to the information the MSRB describes, the BDA also recommends that the syndicate manager should be required to send the underwriting spread breakdown to the issuer, upon request. As to the MSRB's question concerning whether the issuer should be required to approve designations or allocations, the BDA recommends that the MSRB not require this approval because it would likely create timing problems where the senior syndicate manager would be forced to violate the rule in circumstances (which could be frequent) where the issuer is not available to provide that approval.

While the MSRB's request for comment addresses whether information should be sent to issuers, the BDA would like to observe that, in practice, much of the information that the MSRB discusses is frequently not sent to syndicate members. The BDA observes that there are privacy concerns that complicate the information being sent to syndicate members. But our members' experience is that frequently much of this information is not sent to syndicate members.

- *Alignment of the Payment of Sales Credits for Group Net Orders with the Payment of Sales Credits for Net Designated Orders and Shortened Timeframe*

The BDA recommends that the MSRB align the overall time period for both Rule G-11(i) and (j) at 10 business days.

- *Priority of Orders and Allocation of Bonds*

The BDA recommends that, in negotiated sales, the MSRB should require senior syndicate managers to allocate retail priority orders up to the amount of priority set by the issuer before allocating to a lower priority orders (unless the issuer provides its approval). Our members had previously thought that Rule G-11 was sufficiently clear on this point but have found instances where this has not occurred and thus a rule is appropriate. In addition, the experience of our members is that the discretion of syndicate members is exercised in a manner that orders submitted by senior managers are afforded more weight than orders by co-managers. Thus, at times, our members believe that the discretion results in an unfair allotment of bonds. The BDA also believes that it is important that MSRB rules continue to contemplate that any retail priorities are established by the issuer of the municipal securities.

Rule G-32 – Disclosures in Connection with Primary Offerings

- *Disclosure of the CUSIPs Refunded and the Percentages Thereof*

The BDA recommends that the MSRB require the senior syndicate manager or sole manager to disclose the CUSIPs refunded and the percentages thereof within a short period following the pricing of the refunding bonds, if available. In our experience, this information almost always needs to be available at the pricing of the refunding bonds or the savings of a refunding would be uncertain. The current requirement can allow for several weeks to elapse before the market learns of this information. Our members have experienced circumstances where bonds trade with some participants knowing that some of the CUSIPs are subject to a refunding and other participants not knowing. We do think it is important for the MSRB's rule to contemplate scenarios where the CUSIP numbers are not available at pricing – which could at least in theory be the case in refundings where the objective is not merely cost savings.

- *Submission of Preliminary Official Statements to EMMA*

The BDA recommends that the MSRB not adopt a rule requiring the posting of preliminary official statements to EMMA. There would be numerous problems with such a rule, including an unnecessary proscription of a time requirement between posting and pricing, and managing supplements to preliminary official statements. In particular, now,

issuers use printers to distribute preliminary official statements and follow a process to ensure that anyone who downloads the preliminary official statement has access to supplements so that deal participants know that supplements are properly disseminated. If preliminary official statements were posted to EMMA, the MSRB would also need to develop a mechanism to ensure that everyone who views the POS on EMMA receives supplements. In addition, the BDA encourages the MSRB to ensure that any preliminary official statements prepared in connection with limited offerings not be required to be posted to EMMA as one of the objectives of a limited offering is to not generally market the bonds.

While the BDA is opposed to a rule requiring underwriters or municipal advisors to post preliminary official statements, our members have had experiences in competitive bid offerings where the municipal advisor does not send preliminary official statements to all potential bidding dealers at the same time. Sometimes, the delay in the receipt of the preliminary official statement increases the challenges to the dealers in performing all of the necessary due diligence.

- *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution*

The BDA recommends that the MSRB amend Rule G-32(c) to extend the requirement to make the official statement available to the senior managing underwriter or sole underwriter to non-dealer municipal advisors.

- *Whether the MSRB Should Auto-Populate into Form G-32 Certain Information that is Submitted into NIIDS but is Not Currently Required to be Provided on Form G-32*

The BDA does recommend that the MSRB auto-populate information from NIIDS into Form G-32.

- *Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?*

Other than items we mention below, the BDA recommends that the MSRB not include all of the suggested items in the Proposal. The two items of information that the BDA does recommend that the MSRB include on the Form G-32 are (1) call information (including extraordinary call information) and (2) minimum denominations (including events that change the minimum denominations). We recommend that the MSRB not include the other items discussed in the Proposal.

In addition, in the experience of our members, not all market participants have an LEI number.

Other Questions

The experience of our members, the recent issue price regulations have not changed primary offering practices.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

City of San Diego Response to

Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers (Notice 2017-19)

Rule G-11 - Primary Offering Practices:

Section I.C. – Additional Information for the Issuer

While the City of San Diego actively requests and receives information from senior syndicate managers underwriting its offerings about designations, allocations, and take-downs directed to syndicate members, it is uncertain whether all issuers have access to such information. The City believes this information provides transparency for the issuer, better ensures issuer approved syndicate policies are followed, and assists with future decisions on syndicate formation and marketing and structuring of subsequent offerings. *If this information is currently not provided to all issuers, then rule G-11 should be amended to require the senior syndicate manager to provide it, unless the issuer actively "opts out" of receiving the information.* The information should be provided electronically to ensure it is received by issuers in a timely manner. Additionally, *senior syndicate managers in negotiated sales should be required to obtain the issuer's approval of designations and/or allocations unless otherwise agreed to between the parties*. This gives issuers who may not be in the market often, or who may not have a Municipal Advisor, an understanding that they can govern key components of the offering, should they choose to.

Section I.E. – Priority of Orders and Allocation of Bonds

While Rule G-11 seems clear with respect to the obligations of a senior syndicate manager on the priority of orders, since market participants have reported less than full compliance by senior syndicate managers, the rule should be amended to explicitly state that, in negotiated sales, retail priority orders must be allocated up to the amount of priority set by the issuer before allocating to lower priority orders, unless the senior syndicate manager obtains permission from the issuer to allocate otherwise.

Rule G-32 - Disclosures in Connection with Primary Offerings:

Section II.A. – Disclosure of the CUSIPs Refunded and the Percentages Thereof

Based on the City's experience, the senior managing underwriter will readily have access to the CUSIPs for the refunding bonds and the percentages thereof immediately upon pricing of the refunding well ahead of closing. As such, *the disclosure of this information should be required prior to closing and all market participants should have access to it at the same time.*

Section II.B. – Submission of Preliminary Official Statements (POS) to EMMA

Requiring that the POS be submitted to EMMA would positively aid in the effort to ensure that all market participants have access to the POS at roughly the same time. *There is no valid reason for*

certain market participants to have access to the POS, while others do not. In addition, this would offer greater transparency and notice for the upcoming sale, potentially increasing the investor base among other benefits. The underwriter (for negotiated sales) or municipal advisor (for competitive sales) should be required to submit the POS to EMMA concurrently, or within one business day, of receiving confirmation from the issuer that the POS has been electronically printed/posted. A logical location for posting the POS would be together with related transaction information on EMMA's New Issue Calendar (https://emma.msrb.org/ToolsAndResources/NewIssueCalendar).

If information in the POS changes requiring a supplement to the POS, the underwriter or municipal advisor should be required to post the supplement. Additionally, the rule should allow an underwriter or municipal advisor to withdraw the POS once the information becomes stale (i.e., if the sale does not occur, or after the sale once the Official Statement has been posted on EMMA).

Section II.E. – Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?

Generally speaking, the additional information proposed to be added to Form G-32 seems useful and appropriate, with the exception of the Management Fee and the Municipal Advisor Fee. The Management Fee, which is typically paid to the senior managing underwriters, can vary significantly due to the complexity of a given transaction, making comparisons among different transactions difficult without the necessary background. While it is recommended that it be excluded, if the Management Fee data point is added to Form G-32, it should be properly defined such that it is clear that it should exclude other components of the underwriter's compensation, including the underwriter's take down for syndicate members. The Municipal Advisor fee should be excluded since this is an issuer matter with fees based on a separate contractual arrangement between the issuer and its Municipal Advisor; it is not clear why the underwriter would be required to report this information.

ROBERT W. DOTY

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November 2, 2017

Municipal Securities Rulemaking Board
1300 I Street, N.W.
Washington, DC 2005

Re: Rule G-32

Ladies and Gentlemen:

This letter responds to the MSRB's Notice 2017-19, Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers dated September 14, 2017.

In specific terms, this letter responds to the Board's question "*Are there any other primary offering practices that the MSRB should consider in its review?*" Thank you for this opportunity to submit this comment.

I suggest that the Board consider amending its Rule G-32(iii)(A) to reflect content along the lines of the changes marked below:

> (iii) Any broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer with respect to which the delivery obligation under subsection (a)(i) of this rule is deemed satisfied pursuant to subsection (a)(ii) of this rule shall provide or send to the customer, by no later than the settlement of such transaction, either:
>
> (A) a copy of the official statement (or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any), and, in connection with offered municipal securities sold by the issuer on a negotiated basis to the extent not included in the official statement, (1) the underwriting spread, if any, (2) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; (3) the amount of any compensation received by the broker, dealer or municipal securities dealer at any stage of the offering from an obligated person or any other party, in addition to the governmental issuer, in connection with completion of one or more stages of the offering or completion of the entire offering, or both; and (~~3~~4) the initial offering price for each maturity in the offering, including maturities that are not reoffered; or

A broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer should disclose all of its compensation in a negotiated offering that is dependent upon the completion of either specific stages in an offering or the entire offering. This is a key subject now involved in an SEC enforcement action in which the Commission alleges, in general, that compensation was paid to a private placement agent by a conduit borrower upon achieving specific stages of the financing (such as meeting with the governmental issuer or receiving the issuer's approval to proceed, in addition to compensation upon the closing the transaction). The Commission alleges that such compensation was not disclosed to investors, although the compensation paid by the governmental issuer was disclosed in the offering document.

Without the disclosure, investors would believe that the underwriter/placement agent received only the compensation paid by the governmental issuer, without knowledge of the underwriter's/placement agent's full compensatory motivation to complete the transaction.

Further, municipal advisors should disclose all of their compensation in both negotiated and competitive offerings and whether their compensation was contingent upon the closing of the transaction or achievement of any other factor, such as the size of the transaction.

In that connection, the 1991 version of the GFOA Disclosure Guidelines for State and Local Government Securities states at 63, as follows:

> If financial advisors are named in the official statement, describe their role and contractual arrangements between the issuer and the financial advisors. [Footnote omitted.]

NFMA's White Paper on the Disclosure of Potential Conflicts Interest in Municipal Finance Transactions (2015) states at 6, as follows:

> Transaction participants may enter into contingent compensation arrangements with payments conditioned on the successful closing or funding of, or the size of, municipal finance transactions; the delivery of work products; or the sale, purchase, leasing, or licensing of property. …
>
> Contingent compensation is especially undesirable for experts, or for municipal advisors or other professionals who are expected to be independent in the provision of advice or services to issuers or in the structuring of municipal securities. In addition, underwriters and placement agents should disclose all of their anticipated compensation arrangements, contingent or otherwise, with issuers or other interested parties in conjunction with municipal securities offerings or the uses of proceeds.
>
> Payment arrangements that are contingent on the "success" of a financial transaction clearly pose credit and other risks because these arrangements often entangle the opinion or advice required to complete municipal finance transactions, removing its independence. Historically, compensation arrangements in municipal finance transactions that hinged on transactional completion have been associated with poorly structured bond issues and overly optimistic appraisals, unrealistic fiscal and economic projections, too-confident feasibility

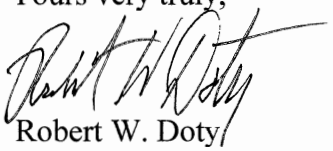
> studies, overly optimistic construction budgets and timetables, and the like, to the detriment of municipal investors, as well as issuers and obligors. [Footnotes omitted.]

Disclosure of this information would be important and relevant to investors in municipal securities. Rule G-32 provides mechanisms for disclosure by underwriters and placement agents, including disclosure directly to investors if the information is not contained in an offering document.

Municipal advisors do not have the same direct access to investors. Nevertheless, a number of mechanisms may be available to effectuate disclosure by advisors. For example, if the information is not contained in an offering document, the advisors may file the information with the Board in a manner similar to underwriter reporting of bond ballot contributions. Advisors also may choose to contract with issuers to make the disclosure in the offering document.

Thank you for this opportunity to submit these comments.

Yours very truly,



Robert W. Doty

Cc:
Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W.
Washington, DC 2005

Comment on Notice 2017-19

from Stephan Wolf, GLEIF

on Monday, November 6, 2017

Comment:

The Global Legal Entity Identifier Foundation (GLEIF) would like to thank the SEC for the opportunity to comment on the Municipal Securities Rulemaking Board (MSRB) Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers Concept Proposal published in September 2017.

In the Concept Proposal, the MSRB seeks comment as to whether additional data points should be required on Form G-32 including the Legal Entity Identifier (LEI) (for each credit enhancer or obligor, if applicable).

GLEIF supports the proposal to identify each credit enhancer or obligor, which could include issuers of municipal bond securities, with an LEI. Although US municipal securities are not traded in the EU, covering this asset class also by requiring issuers to register for LEIs would be a step in global harmonization for US issuers consistently to be able to be identified by LEIs, complementing the European Union Prospectus regulation which will require LEIs for all issuers of financial instruments being traded in the EU by January 2019.

GLEIF also would like to propose that there is the opportunity for the SEC and MSRB to consider broader use of the LEI in its regulatory data collection frameworks to identify parties and market players in a standard way. Particularly for Rules G-11 and G-32 currently under review, there is the opportunity to leverage the LEI to identify all parties covered in these rules, namely brokers, dealers and municipal securities dealers in their roles as syndicate managers, underwriters, members of a syndicate, advisors and others.

As the MSRB’s mission is to protect investors, state and local governments and other municipal entities, obligated persons and the public interest by promoting a fair and efficient municipal securities market, the Global Legal Entity Identifier System (GLEIS), as a public good, could allow investors, state and local governments and other municipal entities, obligated persons and the general public to benefit from using the GLEIS as a trusted open source for identity and identification management of these parties involved in the municipal securities issuance and sales processes. The GLEIS makes important, validated, reliable information about legal entities accessible.

In conclusion, we would like to reiterate that the Global LEI System in place would support the identification needs of the SEC and MSRB for these municipal securities rules. We therefore, encourage the SEC and MSRB to progress the considerations regarding the use of LEI in the context of this concept proposal.

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D.C. 20001
202.393.8467 *fax*: 202.393.0780

November 27, 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 address primary offering practices in the municipal bond market. The GFOA represents over 19,000 state and local government finance professionals across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector.

The GFOA supports frequent and effective communication between market participants, especially with regard to syndicate underwriting teams of municipal bonds. There should be no sensitivities on the part of the Underwriter to provide this communication to the entire syndicate and to the issuer.

1. Issuers should be made aware of information distributed to the syndicate and the lead manager should distribute information to the entire syndicate at the same time so that no member of the syndicate would have an advantage over another.
2. It is best practice to have discussions about the issuer's approval of designations and/or allocations. Issuers discuss with the underwriter the priority of order designations and this information is stated on the pricing wire. In this discussion, if the issuer has indicated its preference for priority (state retail, national retail, etc.) by which the senior syndicate manager should abide. It is sufficient for the priority of orders to be set on the pricing wire.
3. The MSRB should be aware that issuers and the general market community are in the process of implementing new IRS issue price federal regulations and account for these new federal rules and market practices if it proposes changes to its own rules or guidance. The National Association of Bond Lawyers comments regarding the potential impacts of its rules on tax-exempt municipal bond rules does a particularly good job explaining potential conflicts that may arise in the continued compliance with the IRS issue price regulations.

The GFOA supports the voluntary posting of issuer's preliminary official statements ("POS") on EMMA. In these Best Practices, GFOA encourages issuers to have the POS completed one week before the sale, and to post it on their website. GFOA also supports having the issuer post the POS on EMMA, and recommend our members adopt this practice. All of these efforts helps facilitate broad distribution of the POS, which in turn assists investor awareness of the issue and the selling of the bonds, especially to retail investors. However, GFOA does not believe that the MSRB should mandate the submission of the POS on EMMA, for a number of reasons, including:

1. Caution needs to be exercised if this concept moves forward into formal rulemaking to ensure that a proposal does not directly or indirectly regulate the issuer community. Regarding the need for the industry to develop a best practice on the matter, we encourage efforts that benefit all market participants and do not place mandatory burdens on certain participants.
2. There also should be no mandatory submission of the POS to EMMA through a Municipal Advisor, an Underwriter or otherwise unless noted as part of the Municipal Advisor or Underwriter's scope of service with the issuer. Many other organizations (including the National Association of Municipal Advisors) have noted, and the GFOA agrees – the MSRB does not have the authority to mandate the submission of the POS to EMMA by any party.
3. Further, neither an Underwriter nor Municipal Advisor should post the POS on EMMA unless they ask and receive confirmation from the issuer that they can post the POS. Underwriters should disclose with issuers their plan to distribute the POS to other dealers and potential investors prior to the pricing. Again, the GFOA is supportive of having the POS on EMMA, however, the authority to do so should remain with the issuer.

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 Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

November 17, 2017

VIA Electronic Mail

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

Re: MSRB NOTICE 2017-19, Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers, and Municipal Securities Dealers

Dear Mr. Smith:

In response to MSRB Notice 2017-19 (the "Concept Proposal"), the National Association of Bond Lawyers (NABL) provides the following comments on various aspects of the Concept Proposal. Our comments are limited to areas where we believe there is a risk of unintended consequences in the application of the proposed rule changes related to primary offering practices of brokers, dealers, and municipal securities dealers.

A Rule Requiring all Municipal Securities Transactions to be Bona Fide Public Offerings Limits an Issuer's Flexibility

The MSRB requested comments in the Concept Proposal concerning whether it should adopt a rule requiring a bona fide public offering in all municipal securities transactions. To the extent the issuer and the underwriter have contracted that the municipal securities be subject to a bona fide public offering, NABL agrees that such an offering should take place. NABL believes, however, that the MSRB should not inject itself into the negotiation of bond purchase contracts between municipal issuers and municipal underwriters. Thus, if the MSRB were to adopt such a rule, it should apply only when the issuer has determined that there should be a bona fide public offering.

In addition, NABL believes the MSRB should revise its interpretative guidance of Rule G-17 such that if, in any offering of municipal securities, the underwriter is not obligated to conduct a bona fide public offering, the underwriter should specifically identify in its Rule G-17 disclosures that the underwriter is not obligated to conduct a bona fide public offering and the material risks to the issuer of conducting an offering that is not subject to that requirement.

Any requirement to post CUSIP numbers for advance refundings should not serve as an indirect regulation of the issuer.

In the Concept Proposal, the MSRB seeks comments as to whether underwriters, in advance refundings, should be required to disclose the CUSIPs refunded and the percentages thereof before underwriters are required to post the advance refunding documents. NABL does not express a view on whether such a requirement should be adopted, but we do believe that it is important that any requirement not serve to indirectly regulate issuers by creating a *de facto* requirement that refunded CUSIPS be identified by the issuer at pricing or any time before the issuer is otherwise obligated to provide such information. Any requirement for underwriters to disclose the CUSIPs proposed to be refunded should only be with respect to information that is then available.

The MSRB should not adopt a rule requiring underwriters or municipal advisors to post preliminary official statements.

NABL opposes a requirement to post preliminary official statements to EMMA. Any such requirement would have the effect of prescribing actions before the sale of municipal securities, which would represent an indirect regulation of issuers – something that is prohibited under the Tower Amendment. In addition, we are concerned about logistical issues related to such a requirement. Currently, many issuers use the official statement printers to track who downloads preliminary official statements so that, if there is a supplement to the preliminary official statement, the issuer can ensure that anyone who downloaded the preliminary official statement receives the supplement. We do not believe that the MSRB is currently in a position to provide such tracking services. Additionally, this type of requirement would be particularly problematic in limited offerings because issuers and placement agents do not market limited offerings to the general public.

The MSRB should carefully consider the potential impact of its rules on tax-exempt municipal bond rules.

The Internal Revenue Service recently issued new rules regarding the establishment of the "issue price" of tax-exempt bonds. In some circumstances, the actions of the managing underwriter, co-managers, selling group members and retail distribution networks are involved. No rule of the MSRB should be adopted if such rule would undermine, conflict with or make impractical the continued compliance with the IRS issue price regulations. For example, a free-to-trade wire may be required to lift syndicate sales restrictions, but if the issuer of the bonds elects to establish its issue price using the "hold-the-offering-price" rule in the new issue price regulations, then the free-to-trade wire rule could not be issued until after expiration of the holding period specified in those regulations. Similarly, any MSRB rule establishing a requirement for a bona fide public

offering should match its definition of "public" to that used in the issue price regulations. NABL believes that any new MSRB rule should be reviewed from a federal tax perspective. We hope that the MSRB considers NABL a resource in this respect, and we invite the MSRB to consult with us concerning how new rules may affect or be affected by the application of IRS regulations.

Sincerely,

Alexandra M. MacLennan

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

November 13, 2017

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

RE: MSRB Notice 2017-19

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") welcomes the opportunity to submit comments to the Municipal Securities Rulemaking Board ("MSRB") on Regulatory Notice 2017-19. NAMA represents independent municipal advisory firms and individual municipal advisors from around the country. Our organization works to ensure our members achieve a high standard of professionalism, education, and understanding of the regulatory and market environments related to their work.

NAMA supports MSRB's efforts to critically review and modernize their existing rules. We appreciate prior conversations with the MSRB on primary offering issues and their outreach to solicit public comment on the many components in this Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers ("Concept Proposal"). Capitalized terms used but not defined in this letter shall have the meanings ascribed to them in the Concept Proposal.

Our most significant concern is that elements of the Concept Proposal suggest MSRB rule changes that exceed the MSRB's statutory authority. We are also concerned that these elements do not correctly reflect the statutorily defined roles and duties of Municipal Advisors, whether independent or broker/dealer Municipal Advisors, as demarcated in the *Exchange Act* and further clarified in subsequent SEC rulemaking. Our comments include discussion of these general concerns as well as the key areas of the Concept Proposal that directly impact Municipal Advisors.

Rule G-32 - Disclosures in Connection with Primary Offerings

Submission of Preliminary Official Statements (POS) to EMMA
MSRB Lacks Authority for this Proposal

In the Concept Proposal, the MSRB notes that Rule G-32 currently does not require submission of the POS to EMMA, even if one is available and is seeking comment about whether the MSRB should require the Municipal Advisor or the underwriter to submit the POS to EMMA. We believe that the MSRB lacks the statutory authority to create such a rule for either Municipal Advisors or Broker/Dealers and that such a requirement would violate the *Exchange Act*. Section 15B(d) of the *Exchange Act* specifically states that *the Board is not authorized … to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or prospective purchaser of such securities any application, report, document or information with respect to such issuer*.

The issuer is the source of the POS and the SEC has repeatedly stated that issuers are primarily responsible for disclosure documents.[1] Municipal Advisors have no legal obligation to obtain a POS or "deemed final" Official Statement (OS) from the issuer and generally would not be able to obtain one except from the issuer in order to comply with this proposed rule. Therefore, requiring a Municipal Advisor to post the issuer's POS to EMMA would constitute an indirect yet clear requirement on issuers to furnish such document to the MSRB. For the MSRB to impose such a requirement, they would have to obtain new authority from Congress.

An additional concern with the requirement to have Municipal Advisors provide the POS to EMMA is that it imposes a Broker/Dealer obligation on Municipal Advisors and potentially involves Municipal Advisors in the solicitation of transactions in municipal securities. As noted above, while SEC Rule 15c2-12 currently requires an underwriter to obtain a "deemed final" Official Statement from the issuer, it does not require a Municipal Advisor to do the same. Presumably, SEC Rule 15c2-12 imposes that requirement on underwriters for them to have sufficient information to discharge their obligations under the anti-fraud provisions of the federal securities laws to form a "reasonable basis[2]" for offering municipal securities to investors.[3] This reasonable basis is also known as an implied representation by underwriters with respect to the securities they are offering. Municipal Advisors make no such similar implied representation to investors nor does their statutorily defined role contemplate such a role for Municipal Advisors.

We are concerned that this and other MSRB proposals[4] put Municipal Advisors in roles that are outside the historical practice and regulatory bounds of municipal advisor activity.

Specific Questions

1. Should the underwriter or Municipal Advisor be required to submit the POS to EMMA, if one is available?

No. There should be no requirement to submit the POS to EMMA. The MSRB does not have authority to mandate POS submissions. Rather the decision about the proper scope of POS dissemination should be made by the issuer in consultation with its financing team.

Also of note, there is no discussion in the present proposal clarifying in what instances the Broker/Dealer or Municipal Advisor would be required to submit the POS to EMMA or discussion about what is to be done when there is no Municipal Advisor engaged on the transaction if the requirement is to be imposed on Municipal Advisors and not underwriters.

2. Should the Underwriter or Municipal Advisor be required to seek confirmation from the issuer that they may post the POS on EMMA.

Unless (1) an issuer voluntarily decides to post their POS on EMMA and (2) posting the POS on EMMA is part of a Municipal Advisor's scope of services as determined by the issuer, a Municipal Advisor should have no responsibility to post the issuer document on EMMA. The POS should be disseminated and posted on EMMA as the issuer determines. Neither underwriters nor Municipal Advisors should make submissions of a POS to EMMA unless directed to do so by an issuer.

3. Would a requirement that the POS be submitted to EMMA assist in ensuring all market participants have access to the POS at the same time?

As noted above, the MSRB does not have authority to mandate POS submissions. As additionally noted above, our issuer clients are in the best position to determine how to distribute the document to market participants.

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[1] See, e.g., Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 ("1989 Release") at n. 84.
[2] See, Securities Exchange Act Release No. 26100 (Sept. 22, 1988), 53 FR 37778 ("1988 Release");
[3] See, e.g., Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) ("1994 Interpretive Release")
[4] See, http://www.msrb.org/RFC/2017-11/NationalAssn.pdf

Furthermore, while requiring submission of a POS to EMMA may simplify access for some, the lack of uniform naming conventions for issuers and use of a CUSIP based search function, limits the value of EMMA postings for this purpose.

4. What are the advantages or disadvantages of such a requirement for dealers, Municipal Advisors, issuers and market participants?

The MSRB does not have the authority to mandate the submission of a POS to EMMA by any party. For Municipal Advisors, requiring them to submit a POS to EMMA, which may be counter to the issuer's wishes or benefit, could potentially force the Municipal Advisor to violate their fiduciary duty responsibilities to their client. *Exchange Act* Section 15B(c)(1) states that: "A Municipal Advisor and any person associated with such Municipal Advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such Municipal Advisor acts as a Municipal Advisor, and no Municipal Advisor may engage in any act, practice, or course of business which is not consistent with a Municipal Advisor's fiduciary duty." Stated another way, a Municipal Advisor's fiduciary duty requires them to put the interests of their municipal entity client ahead of their own. In the context of the idea of requiring POS submission by Municipal Advisors, the Municipal Advisor potentially could have to put the interests of their client not to post the POS to EMMA ahead of their interest in complying with the rule if adopted.

Requiring Municipal Advisors to submit a POS to EMMA with the intended purpose of providing investor access also arguably inserts the Municipal Advisor into the process of solicitation of investors, which is clearly the role of the broker/dealer. This potentially creates a regulatory risk for Municipal Advisors.

5. Is there a valid reason to provide a POS to some market participants but not others?

This is not an area for MSRB rulemaking; such discussion should be addressed by the SEC in their Rule 15c2-12. Additionally, not all transactions need broad, national distribution.

6. Are there alternative methods that the MSRB should consider for providing the information in the POS that would be more effective and efficient for investors and/or less costly or burdensome to Underwriters and Municipal Advisors?

The POS and information from the POS should be distributed according to the issuer's wishes based on input from its team and its own experience and preferences. GFOA's Best Practices currently encourage governments to distribute a POS, including posting on the issuer's website (GFOA Best Practice, Primary Disclosure Responsibilities, 2017). The MSRB should emphasize working with issuer and other groups to ease the process for submitting a POS to EMMA through voluntary means.

7. Should the requirement to submit a POS to EMMA apply in negotiated and competitive sales? If so, should there be different rules for each type of offering?

There should be no requirement. Underwriters are currently required to obtain and review a "deemed final" Official Statement in both competitive and negotiated sales to fulfill their obligations as broker/dealers. The Municipal Advisor has no such responsibility and does not play a role in the distribution of securities. The POS is an issuer's document and should be distributed according to the issuer's wishes based on input from its team and its own experience and preferences.

8. Should the rule require the underwriter or Municipal Advisor to post an updated POS if information changes? Should the rule allow an underwriter or Municipal Advisor to withdraw the POS if the information becomes stale?

Aside from the jurisdictional objections NAMA has regarding whether the MSRB could mandate POS submissions in general or by Municipal Advisors, this question raises a key concern with the practical realities of implementing such a provision. It is unclear how the revised information would be 1) flagged as being revised, 2)

whether the EMMA system has the capacity to allow for an override for an updated document, and 3) how to reach investors who may have received a previous POS that now contains stale or incorrect information. The complexities involved in administering such a rule from both an antifraud and MSRB rule compliance perspective would be very burdensome.

Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution

SEC Rule 15c2-12 Already Covers This Proposal. Municipal Advisors Should Not Have the Responsibility to Make the OS Available to the Underwriter Unless Tasked to do so by the Issuer.

Instead of looking to have newly regulated non broker/dealer Municipal Advisors conform to former broker/dealer Municipal Advisor rules, as part of its "modernization" of its Rulebook, the MSRB should be looking to delete rules applicable to broker/dealer Municipal Advisors that are no longer appropriate or necessary, and that best reflect legislation and rulemaking that define municipal advisory duties. Rule G-32(c) is no longer appropriate or necessary because the process by which an underwriter obtains an Official Statement is covered in SEC Rule 15c2-12. Rule 15c2-12 already allows the issuer the flexibility to provide an Official Statement to the underwriter or have their designated agent do so – we see no value in requiring an issuer to utilize one specific designated agent to perform that task particularly when they may have valid reasons not to want a Municipal Advisor to perform the task or may already have an agent to perform the task.

The MSRB is seeking to apply rulemaking developed at least two decades ago in a manner that does not account for the statutory definition of the term "Municipal Advisor" that is now part of the *Exchange Act*, per the *Dodd-Frank Act*, as further clarified by the SEC in their adopting release ("Final Municipal Advisor Rule").[5] The MSRB wrote the G-32 language for broker/dealer Municipal Advisors at a time when the role of Municipal Advisor was not statutorily defined and when underwriters and Municipal Advisors often practiced in ways that are no longer permitted. At the time of the development of broker/dealer Municipal Advisor responsibilities in G-32, a broker/dealer could act as both Municipal Advisor and underwriter on the same transaction (former Rule G-23). Similar to comments we made regarding the MSRB's recently proposed Rule G-34, we would be interested in understanding the regulatory history as to why broker/dealer Municipal Advisors were handed various responsibilities at that time, and whether that had more to do with technological hurdles related to the distribution of official statements to their broker/dealer activities rather than their municipal advisor activities. Rule G-32(c) was developed when physical distribution of Official Statements was the market norm, and that is no longer the case.

SEC Rule 15c2-12(b)(1) and (3) requires an underwriter to obtain and review the Official Statement and contract with the issuer to receive a final Official Statement. That contractual provision is a standard part of any bond purchase agreement. We are unaware of situations where underwriters are not receiving such Official Statements as part of what is now a routine contractual provision. We do not see the value of a mandate to interpose a Municipal Advisor into that routine contractual process particularly when we are not aware of any issues with issuers and underwriters complying with this routine SEC requirement. Additionally, if a Municipal Advisor is to have this responsibility, then Rule 15c2-12 (b)(3) would need to be amended, and the definition of Municipal Advisor in the *Exchange Ac*t and in the Final Municipal Advisor Rule, might also need to be revised.

For these reasons, we do not believe that any Municipal Advisor, including broker/dealer Municipal Advisors should bear any responsibility to interject themselves in the distribution of the Official Statement from issuers to underwriters. We suggest that if the MSRB seeks to make changes to Rule G-32, section (c) of the Rule should be deleted altogether. *[(c) Preparation of Official Statements By Financial Advisors. A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities shall make the official statement available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution.]*

[5] See, Registration of Municipal Advisors, Release No. 34-70462 (September 20, 2013), 78 FR 67467 (November 12, 2013), available at http://www.sec.gov/rules/final/2013/34-70462.pdf. ("Final Municipal Advisor Rule").

Section (b)(1)(B) of Rule G-32 already contains sufficient language related to the underwriter's responsibilities regarding OS submission. Further, as discussed previously, deleting section (c) of Rule G-32 is also appropriate to best reflect the statutorily defined duties of a Municipal Advisor.

Whether the MSRB Should Auto-Populate into Form G-32 Certain Information that is Submitted to NIIDS but is Not Currently Required to be Provided on Form G-32

Although this proposal does not impact Municipal Advisors, we note that this is exactly the type of review and modernization that the MSRB should be undertaking. The MSRB should be seeking to auto-populate many of its forms based on information that regulated entities are already required to provide or have previously provided, such as with respect to Rule G-37. The MSRB has existing resources that could be committed to reducing the compliance burden on regulated entities by reducing the need for time to be spent duplicating entries in standard forms.

Whether the MSRB Should Request Additional Information on Form G-32 that is Not Provided in NIIDS, and If So, What Data

No opposition to additional fields in Form G-32

The MSRB suggests numerous new data points be included on Form G-32. We do not object to these additional fields, and believe that additional information for the benefit of issuers and the marketplace (especially TIC, yield to maturity, etc.) are useful. We would comment, however, that this useful information and Form G-32 should be more easily and readily available within the EMMA system.

The reporting of Municipal Advisor fees may be more problematic because of the variety of ways in which Municipal Advisors are paid. Unlike underwriter fees which are all quoted on a per bond basis, Municipal Advisor fees are determined in a variety of ways, which would make uniform field entry difficult. Some fees are calculated per transaction but others are part of ongoing contracts that may have no specific cost component for individual transactions. Additionally, some fees may not be decided upon or charged until after the deal has closed and the defined scope of work from transaction to transaction can vary significantly.

We are concerned if the MSRB seeks to identify Municipal Advisor fees in a dollar per bond manner, as it would not be representative of the fees assessed, would be inconsistently reported, and it would not take into consideration the different work the Municipal Advisors do in each transaction. Reporting Municipal Advisor fees in such a manner would not provide issuers and the market with valid information and may, in certain circumstances, make it appear as if the Municipal Advisor is receiving transaction-based or excessive compensation. Reporting Municipal Advisor fees in such a manner may also be inconsistent with some state statutes that prohibit Municipal Advisors from using a fee based on percentage or dollar per bond.

Again, this appears to be an area where the MSRB is conflating the roles of underwriters and Municipal Advisors. Underwriters and their fees are defined by their relationship to a particular transaction[6] but the work of a Municipal Advisor may not be so narrowly defined. While we support fee transparency, we are unclear how Form G-32 and ultimately the EMMA system would be able to correctly reflect the numerous variables that are part of Municipal Advisor fee structures, and whether the needed infrastructure investment into EMMA to allow for this would be beneficial, as many states already require fee disclosure and investors and issuer clients have access to that disclosure.

If there is interest to look further into Municipal Advisor fee disclosures, we ask that the MSRB work with the Municipal Advisor community to ensure that this data field is reflective of actual market practices and not a simple form field derived from the role and pricing practices of an underwriter. The MSRB should also be mindful of whether this fee disclosure is duplicative of state laws, and thus may carry an unnecessary administrative burden.

[6] See, Final Municipal Advisor Rule at n. 591 and accompanying text.

Other Primary Offering Practices That the MSRB Should Consider In Its Review

As we discussed in our letter, the Concept Proposal does not account for the statutory definition of Municipal Advisor in its questions about whether non-dealer Municipal Advisors should have the same responsibilities as current dealer Municipal Advisors. We believe that the MSRB should look to ensure that all Dealer-Municipal Advisor, Municipal Advisor and financial advisor references in the Rulebook correctly reflect the actual duties and responsibilities of Municipal Advisors that are stated in the *Exchange Act* and the Final Municipal Advisor Rule.

Small Municipal Advisory Firms
MSRB should address impact of rulemaking on small municipal advisory firms

To date, including in this Concept Proposal, the MSRB has not demonstrated that they are complying with Section (b)(2)(L)(iv) of the *Exchange Act.*

Conclusion

NAMA appreciates the opportunity to comment on the important issues raised in the Concept Proposal, and MSRB's efforts to critically review and modernize its rules for the benefit of investors and issuers in a way that does not impose unnecessary compliance burdens.

With respect to the portions of the Concept Proposal on which we have commented, we caution the MSRB against moving forward with proposals that exceed the MSRB's authority related to disclosure matters, as well as placing responsibilities on Municipal Advisors that are outside the bounds of their statutory duty to serve at the will of their issuer clients and within the scope of services for which the client has engaged municipal advisory services.

The MSRB should be looking to address primary offering practices and other areas of its rules to ensure they reflect the current state of the *Exchange Act*, since the passage of the *Dodd-Frank Act*, which most importantly includes a statutory definition of Municipal Advisors. The Final Municipal Advisor Rule took great pains to differentiate the roles of underwriters and Municipal Advisors and this proposal appears to blur those roles.

The MSRB should also consider if significant market benefits can be derived from these proposals, through further market participant input and quantitative analysis.

NAMA supports regulation of Municipal Advisors and believes in the MSRB's mission to act within the scope of authority granted to it under the *Exchange Act* to develop appropriate rules for broker/dealers and Municipal Advisors that protect issuers and investors. We appreciate the opportunity to comment on this and other MSRB rulemaking efforts.

Sincerely,

Susan Gaffney
Executive Director

NATIONAL FEDERATION *of* MUNICIPAL ANALYSTS

November 9, 2017

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

Re: MSRB Regulatory Notice 2017-19

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 a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers*.

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.

Thank you for giving the NFMA an opportunity to comment on Regulatory Notice 2017-19. Our comments pertain primarily to the discussion in *Part II, Rule G-32 – Disclosures in Connection with Primary Offerings*, specifically regarding Refunded CUSIPS and Preliminary Official Statement (POS) Disclosure.

The NFMA supports the full disclosure of all credit and security information to all market participants at the same time to ensure a level playing field. The most widespread and problematic violation of this principle occurs when issuers selectively disclose material information only to the Rating Agencies. This is unfair to investors because rating actions taken based on early and exclusive access to information often,

if not always, impact the pricing and liquidity of municipal securities.

We also support the submission of a POS to EMMA prior to pricing to ensure that all market participants, including holders of parity bonds, have equal access to the latest disclosure document of an issuer.

Regarding *Part A, Disclosure of the CUSIPs Refunded and the Percentages Thereof*, the following are responses to the specific questions posed in the release:

1. We support the disclosure to EMMA of all CUSIPS being refunded to all market participants at the same time, immediately following pricing of the refunding bonds and the execution of the escrow agreement.

2. See answer to Question 1, above.

3. We believe that if the timeframe for providing information cannot be shortened, then there should be a requirement to provide all information to market participants at the same time.

4. We feel that there are only advantages to providing equal access to information to investors at the same time, so that all market participants can fairly analyze and evaluate these securities in the secondary market.

5. We believe the most effective and least costly solution to ensure that all investors have equal access to refunded CUSIP information is the disclosure of all credit and security information to EMMA at the same time, as soon as practicable.

Regarding *Part B, Submission of Preliminary Official Statements to EMMA*, the following are our responses:

1. The NFMA supports the filing of a POS to EMMA by the underwriter or municipal advisor prior to the pricing of the bond issue. The delivery of the POS to the market for competitive issues may inadvertently exclude other investors that may also be interested in bidding on the transaction, to the detriment of both the issuer and the potential investor.

Additionally, the information contained in the document is likely to be the most current disclosure for the issuer. If there are outstanding bondholders, this information is of critical importance to them as well. Providing timely access to the POS will help ensure that investors have equal access to information in both the primary and secondary market.

2. We believe that the underwriter or municipal advisor should inform the issuer that the information is being posted to EMMA and ensure that the filing is posted to all existing CUSIPS of parity bonds.

3. We believe that submitting a POS to EMMA would ensure that all market participants would have equal access to the POS at the same time.

4. We have cited the advantages under Question 1 of this section. We do not believe that there are any disadvantages to investors.

5. We do not believe that there should be selective distribution of a POS for competitive deals. Regarding negotiated deals, there may be reasons for limiting distribution for Limited Public Offerings or Private Placements that may not be subject to EMMA reporting requirements.

6. We believe that distributing the POS to EMMA prior to pricing is the most efficient way to ensure that all investors have equal access to the information provided in the POS.

7. The rule should apply equally to competitive and negotiated offerings, subject to the caveat referred to in our response to Question 5, above.

8. We recommend that the POS be submitted to EMMA. Any changes or updates to the submitted POS should also be required to be submitted to EMMA prior to pricing. The POS should only be withdrawn after the submission to EMMA of the Final Official Statement. If the bonds are not issued, the POS should be retained by EMMA as it would be the most recent disclosure document.

This Regulatory Notice and the MRSB's recent Market Advisory on Selective Disclosure dated September 13, 2017 indicate that the Board is concerned that all market participants receive equal access to all material information relevant to a bond transaction. We have observed that material information is frequently disclosed to Rating Agencies that is not included in the POS or otherwise made publicly available. It is not uncommon for an issuer to decline to provide this information to investors or to refer them to a Rating Agency report for certain material disclosures. Since this information is not freely available to retail investors, or even some institutional investors, it is clearly a case of selective disclosure.

The NFMA has publicly discussed its concerns about unequal information in the municipal market for years. Selective disclosure of information by an issuer to an investor or group of investors enables one (or some) to have an advantage when making an investment decision. And, when Rating Agencies receive advance information and base rating actions on information not publicly available, all investors are at risk of a surprise loss in value or liquidity of their investment. The NFMA urges the MSRB to address all issues of unequal and unfair disclosure in the municipal market.

Sincerely,

/s/

Julie Egan
NFMA Chair 2017

/s/

Lisa Washburn
NFMA Industry Practices & Procedures Chair

Comment on Notice 2017-19

from Michael Paganini,

on Friday, September 15, 2017

Comment:

The MSRB should mandate that the POS be submitted to EMMA as soon as the document is available. The POS is a timely and excellent primary information source for investors intending to purchase municipal securities. The world of investing is based on timely and credible information, consequently, best industry practices would require that the POS be transmitted to EMMA A.S.A.P.

sifma
Invested in America

November 15, 2017

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

Re: MSRB Notice 2017-19: Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2017-19 (the "Notice")[2] issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on a concept proposal regarding possible amendments to existing rules related to primary offerings of municipal securities by brokers, dealers and municipal securities dealers (collectively, "dealers"). SIFMA is pleased to provide its input on the issues raised as the beginning of a conversation about whether rulemaking or additional guidance is called for in connection with primary offering practices.

SIFMA and its members support the MSRB's commitment to engaging in retrospective review of its rules to assure that they are responsive to changes in the municipal securities market and in the policymaking, economic, stakeholder and

[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 2017-19 (Sept. 14, 2017).

technological environment.[3] SIFMA agrees that the publication of this Notice as a concept release is an appropriate step in undertaking such retrospective review, with the understanding that, as the MSRB has described in connection with its standard rulemaking process,[4] the publication of a concept release is designed to assist the MSRB in assessing whether to undertake rulemaking and does not represent a formal rulemaking proposal. Rather, any rule proposals would be subject to an MSRB exposure draft seeking comment on specific rule language prior to the formal submission of such proposal with the Securities and Exchange Commission (the "SEC").

The MSRB's Retrospective Review Process recognizes that there are many means to retrospective review, and the MSRB specifically notes that its Investor Advisory Group has provided input on potential changes to MSRB rules on primary offering practices. While discussion of potential rule changes in such a venue is perfectly appropriate since investors (as well as issuers) do indeed have a significant interest in a fair, efficient and effective primary offering process, SIFMA requests that the MSRB undertake similar face-to-face discussions with SIFMA members and other participants in the new issue distribution process before proceeding with any rulemaking proposals in this area.

As a general matter, SIFMA and its members believe that current primary offering practices have been effective and that existing rules work well in the vast majority of circumstances. The successful pricing, sale and distribution of a primary offering of municipal securities can be a complicated process entailing the balancing of many interests, and seemingly minor changes in such process may have significant ramifications if not considered in a detailed manner by parties representing those interests. Further, different new issues may call for differing primary offering approaches in particular cases depending on any number of factors, and so changes in process that may be appropriate or non-problematic in many situations can have negative implications in others. SIFMA believes that any decision to seek changes in the primary offering process through regulation must be limited to situations where existing practices result in documented problems of a material nature and those changes must be crafted to avoid impeding the marketing process or creating undue compliance burdens that are not justified by the benefits derived from the changes.

Also complicating any assessment of the need for rulemaking in this area is the recent effectiveness of the new issue price rule of the Internal Revenue Service (the "IRS"),[5] which should address many of the concerns expressed by the MSRB in the

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[3] The MSRB's process for undertaking retrospective reviews is set out at http://www.msrb.org/About-MSRB/Programs/Market-Regulation/Retrospective-Rule-Review (the "Retrospective Review Process").

[4] The MSRB's rulemaking process is described at http://www.msrb.org/About-MSRB/Programs/Market-Regulation.

[5] Treasury Regulation Section 1.148-1(f).

Notice relating to the offering process. SIFMA is hesitant to support changes in MSRB requirements in the primary offering process before having an opportunity to assess the positive effects of the IRS issue price rule and any unintended negative consequences that may need to be addressed. For those practices that are directly or indirectly affected by the issue price rule, SIFMA believes that it is the appropriate time to begin monitoring the operation of the rule but too early to take regulatory action.

Finally, SIFMA is currently in the process of reviewing its Master Agreement Among Underwriters ("Master AAU") and related documentation in light of recent regulatory changes and current market practices. SIFMA intends to consider the questions raised by the Notice during the course of its Master AAU review. As noted below, SIFMA believes that certain issues raised by the Notice may potentially be best addressed through agreement with the relevant parties for a particular offering, whether in the bond purchase agreement between the issuer and the underwriters or in the agreement among underwriters, as applicable. As part of this Master AAU review process, SIFMA and its members may consider revisions as they may determine are appropriate that could address some of the issues identified in the Notice without requiring rulemaking.

SIFMA agrees that there may be opportunities to have information regarding the advance refunding of outstanding bonds made available more quickly than currently required, as well as to take initial steps toward incorporating legal entity identifiers into the information dissemination process in the municipal securities market, although the specific manner for doing so should be subject to discussion between the MSRB and industry participants and municipal advisors should be required to undertake certain aspects of this process.

SIFMA believes that the MSRB must be extremely cautious with regard to potentially requiring the posting of preliminary official statements on EMMA and that the significant barriers to effectively doing so without creating undue risks must be clearly addressed before proceeding on such an initiative.

SIFMA addresses below each of the areas covered by the Notice.

I. Rule G-11 – Primary Offering

A. Bona Fide Public Offering

SIFMA believes that, where a sole underwriter or syndicate manager has entered into an agreement with the issuer to make a bona fide public offering, the underwriter syndicate must abide by that requirement. Similarly, if such agreement establishes restrictions as to the prices at which securities may be sold, the underwriter or syndicate members must abide by those restrictions. SIFMA strongly believes that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public

offering or by some other means. In addition, SIFMA is concerned that creating a regulatory requirement that offerings must be undertaken in a bona fide public offering would ultimately require a much more extensive set of regulatory changes and line-drawing to deal with the many situations where a traditional public offering may appropriately not be sought (*e.g.*, private placements, limited offerings, institutional offerings, offerings of story bonds, among other situations). Any such line-drawing raises the considerable risk of regulations driving market decisions rather than the intentions of the party or free market forces.

SIFMA notes that enforcement agencies have been able to take significant actions against firms that have failed to make a bona fide public offering in spite of their agreement to do so.[6] In that vein, SIFMA believes that the MSRB could reasonably interpret a material failure of a syndicate member to not abide by a bona fide public offering requirement or contractual pricing restriction for which the syndicate member has not obtained a waiver from the syndicate manager to be a violation of the fair practice requirements of Rule G-17. Any such proposed interpretation should be made subject to a separate request for comment by the MSRB prior to filing with the SEC.

SIFMA addresses below each of the questions posed by the MSRB.

1. Should there be an MSRB rule that requires syndicate members to make a "bona fide public offering" of municipal securities at the public offering price?

SIFMA does not believe that the MSRB should require syndicate members to make a bona fide public offering at the public offering price. Rather, as noted above, SIFMA strongly believes that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public offering or by some other means, and such decision may be made on a whole issue or a maturity-by-maturity basis. The MSRB should monitor market behavior as the IRS issue price rules are fully seasoned to determine whether its requirements have left market practices that are causing material harm to market participants that could be addressed through further regulation on the manner of offering or the adherence to pricing restrictions.

2. If the MSRB were to consider such a requirement, what definition of "bona fide public offering" should apply? Should there be a standardized definition or should syndicate members and/or issuers decide among themselves how to define what would be required?

SIFMA does not believe that the MSRB should define the term "bona fide public offering" for the reasons stated above. SIFMA believes that issuers and syndicates should determine the manner in which new issues are to be offered. Issuers and syndicates that

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6 *See, e.g.*, Securities Exchange Act Release No. 75688 (Aug. 13, 2015).

seek to have a bona fide public offering already must comply with the requirements of the IRS issue price rule and there is no evidence at this early juncture to indicate that the guidance in that rule is not sufficient.

3. If the MSRB had such a requirement, what documentation or other available means would effectively show that an underwriter met the requirement for compliance purposes (e.g., regulatory examinations)?

SIFMA does not believe that the MSRB should have such a requirement. If the MSRB were to nonetheless adopt such a requirement, SIFMA believes that retention of syndicate wires as provided for in the AAU would provide sufficient documentation and the MSRB should be cognizant of the documentation already required under the IRS issue price rule.

4. Should syndicate members be required to notify other members and/or the issuer only if they are not going to make a bona fide public offering?

As noted above, SIFMA does not believe rulemaking is necessary in this area. However, SIFMA's review of its Master AAU will consider whether improvements should be made to ensure appropriate intra-syndicate communication of failures to adhere to any offering requirements or to provide for additional communications with the issuer. If the MSRB were to undertake regulatory action in this regard, such action could consist of proposed interpretive guidance to Rule G-17 (through a notice and comment process) relating to material failures of a syndicate member to adhere to the contractual offering requirements that have a material adverse impact on the syndicate or the issuer.

5. Is the concept of "bona fide public offering" better left as a voluntary contractual arrangement (i.e., not mandated by MSRB rule)?

The concept of bona fide public offering, to the extent not already regulated pursuant to the IRS issue price rule, should be left to the contractual arrangements between the issuer and the underwriters.

6. In the alternative, should the MSRB provide guidance or consider implementing a rule that supports inclusion of a contractual provision in the AAU requiring a bona fide public offering without itself implementing a requirement for a bona ride public offering?

As noted above, the MSRB could seek comment on guidance under Rule G-17 regarding syndicate member adherence to the offering requirements set out in the Master AAU.

7. What are the harms, if any, to other syndicate members, the issuer, investors and the general public when a syndicate member fails to make a "bona fide public offering"?

The senior manager undertakes the obligation with the issuer to conduct the public offering in a manner consistent with their contractual agreement and with the IRS issues price rule, and it is the issuer's decision as to whether a new issue is to be marketed as a bona fide public offering. While the failure to make a bona fide public offering once the initial offering price has been set would not normally have an impact on the issuer's sales proceeds or debt service levels, it could adversely affect the issuer if the failure to make a bona fide public offering results in a failure to meet the IRS issue price rule requirements and results in a potential taxability event. Depending on the nature of the syndicate's departure from its agreed-upon obligation to make a bona fide public offering, the fair dealing requirements of Rule G-17 may be implicated. As previously noted, existing statutory and regulatory authority, including but not limited to MSRB Rules G-11, G-17, G-27 and G-30, have provided sufficient bases for the enforcement agencies to take effective action against broker-dealers to address any harms arising in the new issue offering process, including in particular potential harm to investors.[7]

As among syndicate members, their obligations are governed by the contract under the AAU and SIFMA believes that there is no need to establish regulations regarding the relationship among members of the syndicate beyond those that currently exist. That is, so long as the syndicate as a whole honors its obligations to the issuer, failures of individual syndicate members to meet their commitments to the syndicate should be dealt with within the syndicate, through contractual remedies or otherwise. During the course of SIFMA's reexamination of its Master AAU provisions, SIFMA will consider whether modifications should be made to more clearly delineate responsibilities of syndicate members in this regard.

B. Free-to-Trade Wire

SIFMA appreciates that in some limited circumstances, syndicate members and other broker-dealers trading in new issues may not have received immediate notification that the securities are free to trade in circumstances where they do not subscribe to standard commercial services through which such notification is normally provided. In the course of the reexamination of the Master AAU, SIFMA will consider whether to make more explicit the method by which such information is to be communicated to syndicate members and other broker-dealers involved in the distribution of a new issue. However, SIFMA does not believe that specific regulatory requirements are needed or would be advisable to establish a specific process.

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7 *See* note 6 *supra*.

SIFMA addresses below each of the questions posed by the MSRB.

1. Should there be an MSRB rule that requires the senior syndicate manager to issue the free-to-trade wire to all syndicate members at the same time?

SIFMA will reexamine its Master AAU to determine how best to ensure that communications within the syndicate are provided in an effective and timely manner in light of the issues raised by the Notice. SIFMA does not believe that rulemaking in this regard is called for or advisable.

2. If the MSRB were to propose a rule for issuing the free-to-trade wire, what should the rule include? Should there be a specific timeframe within which the wire should be sent?

As noted, SIFMA does not believe that rulemaking in this regard is called for or advisable. If the MSRB were to determine to undertake rulemaking (through a notice and comment process) on this point, SIFMA believes that it should be limited to ensuring that communications occur on a materially simultaneous basis and not to specific timeframes in which such communications must occur or the mechanics or venue used by the syndicate manager. Furthermore, any such rule should recognize that in some issues different maturities may become free to trade at differing times and that the communication requirements generally should not be applicable in a sole underwriting.

3. If the MSRB were to propose a rule, should it apply in negotiated sales only?

As noted, SIFMA does not believe that rulemaking in this regard is called for or advisable. If the MSRB were to determine to undertake rulemaking (through a notice and comment process) on this point, SIFMA believes that it should be limited to those circumstances where the MSRB has documented that such problems have occurred. In that regard, SIFMA believes that such problem would not exist in the context of competitive offerings.

4. What are the pros/cons to such a requirement? What are the reasonable alternatives?

SIFMA addresses this question above.

C. Additional Information for the Issuer

SIFMA believes that syndicate managers generally share the types of syndicate information described in the Notice with the issuer if the issuer wishes to have such information. We are not aware of any circumstances where a syndicate manager has refused to provide such information or where an issuer has complained that such

information has been withheld from it. If the MSRB is concerned that some issuers are not seeking from the underwriter relevant information about the sale of their new issues, the MSRB may wish to undertake outreach to the issuer community in this regard.

In general, there should be no sensitivity on the part of syndicate members with sharing with the issuer information that the syndicate manager shares with all syndicate members. However, it is critical that issuers maintain the confidentiality of any specific customer information that may be shared with them by the syndicate. Furthermore, customer relationships and related information of individual members of the syndicate may be viewed as proprietary to such syndicate member and therefore is information that must be handled with significant sensitivity and confidentiality. If the MSRB is aware of any such information not being made available to issuers but to which the MSRB believes issuers should have access, the MSRB should seek further public input on those precise items of information so that it can be more fully informed of the benefits and risks of undertaking rulemaking in regard to this information. SIFMA is not aware of any such items of information.

SIFMA addresses below each of the questions posed by the MSRB.

1. Do all issuers, regardless of the size of the particular offering, have access to detailed information about the underwriting of their securities, such as information about the allocations, designations paid and take downs directed to each member in the syndicate?

As noted above, SIFMA believes that syndicate managers make this information available to issuers if they wish to have access to it.

2. If not, should Rule G-11 require the senior syndicate manager to provide this information to the issuer? a. Should the senior syndicate manager always be required to provide this information, or should the senior syndicate manager be required to provide it only upon request? b. Should any proposed requirement specifically allow for issuers to "opt out" of receiving the information?

As noted above, SIFMA believes that syndicate managers make this information available to issuers if they wish to have access to it. Thus, no rulemaking in this regard is called for or advisable. If the MSRB were to determine to undertake rulemaking (through a notice and comment process) on this point, the senior syndicate manager should only be required to provide information upon request, rather than to push this information to the issuer in all cases.

3. Is there a preferred method for distributing this information to issuers?

SIFMA is not aware of any concerns regarding the manner in which such information is currently provided to issuers and does not believe that it would be advisable to prescribe a method or format for doing so.

4. Is there other information that senior syndicate managers provide to the syndicate, but do not currently provide to issuers, that issuers would find beneficial to receive?

SIFMA is not aware of any additional items of information provided to syndicate members that are not currently required to be provided to issuers or that issuers normally are able to obtain from the syndicate manager upon request.

5. What are the reasonable alternatives to, and benefits and burdens associated with, requiring the senior syndicate manager to provide this information to the issuer?

SIFMA believes that existing processes operate effectively and that no changes should be made. Even if the MSRB were to undertake rulemaking (through a notice and comment process) on this point, such rulemaking should serve to strengthen existing practices rather than create new processes.

6. Should the senior syndicate manager in a negotiated sale be required to obtain the issuer's approval of designations and/or allocations unless otherwise agreed to between the parties?

SIFMA does not believe that the senior syndicate member should be required to obtain the issuer's approval of designations and/or allocations. Most issuers likely have no interest in approving allocations, and those that do normally reach agreement with the syndicate manager to do so. We are not aware of any circumstances where a syndicate manager that has agreed with the issuer to allow the issuer to approve of designations and/or allocations has failed to do so. Lacking material evidence of such failures, and of any harm resulting from such failure, SIFMA believes that rulemaking to this effect is not called for and would be inadvisable. If in isolated cases a syndicate manager does not comply with its agreement with the issuer, such non-compliance might, depending on the facts and circumstances, be viewed as a violation of the syndicate manager's fair dealing duty under Rule G-17.

D. Alignment of the Payment of Sales Credits for Group Net Orders with the Payment of Sales Credits for Net Designated Orders and Shortened Timeframe

SIFMA appreciates consideration of whether to harmonize the timing for payment of sales credits for group orders and designated orders. However, the determination of amounts due and owing to each syndicate member for group orders and for designated orders is dependent on different inputs. In the case of group orders, such amount is at least in part typically dependent upon final billing by third parties (*e.g.*, underwriter's counsel) of transaction charges that are not always submitted at or immediately after closing. Thus, absent evidence of significant problems with the current timing of payments for group and designated orders, SIFMA believes that no changes to the current rule-based timeframes should be made.

E. Priority of Orders and Allocation of Bonds

SIFMA believes that the current priority provision requirements under Rule G-11 achieve an appropriate balance of competing legitimate interests in the new issue distribution process. Thus, while the rule appropriately mandates a baseline priority to customer orders, to the extent it is feasible and consistent with the orderly distribution of securities in the offering, it also recognizes that such obligation should be limited to the extent that the best interest of the syndicate may require that the syndicate depart from a strict prioritization to customer orders. The dynamic and particularized manner in which the initial distribution of negotiated offerings occurs, which is highly dependent on the state of the market at that precise moment – including, among other things, what other issues are out in the market at that time, what customers and other market participants then express an interest in the offering, and broader economic factors – makes it highly inadvisable to establish inflexible requirements for which particular categories of orders must be given priority. For example, a strict requirement that customer orders always be given priority over other orders could result in one or more maturities not being fully sold at the initial offering because customer demand is not sufficient to take up the entire maturity but the remaining portion of the maturity may be below the amount that other potential purchasers are willing to acquire.

As stated in the Notice, the MSRB already has provided interpretive guidance under Rule G-17 that should be adequate to address situations where the syndicate has materially departed from these priority requirements. SIFMA believes that syndicate members are obligated to follow the directions given by the issuer with regard to the priority for filling orders on that issuer's new issue offering, and that it is critical that MSRB rules not impede this practice. While it may be understandable that investors seeking to acquire a particular security in a new issue offering may feel, from its vantage point, that its order should have been filled rather than another purchaser's, the syndicate owes an obligation to ensure a successful marketing of the entire issue on behalf of the issuer and the syndicate requiring a balancing of orders that may leave some disappointed

investors. SIFMA believes that a requirement that priority orders must be made, in full, before the syndicate may allocate to lower priority orders would be inadvisable and could result, for some offerings, in a less successful marketing of an issuer's new offering. SIFMA believes that the adoption of a more explicit process by which orders must be given priority would distort the primary offering process and the marketplace for new issue securities. Rather, the enforcement agencies should review carefully instances in which any complaints are lodged to determine whether any allocations to a lower priority did not result from an effort to ensure an orderly distribution of securities in the offering or to otherwise further the best interest of the issuer and the syndicate, which could result in a Rule G-11 violation for which adequate enforcement remedies are available.

SIFMA addresses below each of the questions posed by the MSRB.

1. Should Rule G-11 be amended to explicitly state that, in negotiated sales, retail priority orders (or institutional priority orders, as applicable) must be allocated up to the amount of priority set by the issuer before allocating to lower priority orders, unless the senior syndicate manager obtains permission from the issuer to allocate otherwise?

As noted above, SIFMA believes that the MSRB should not change its current requirements with regard to the prioritization of customer orders as flexibility during the distribution process is critical for achieving the best interests of both the issuer and the syndicate.

2. Is Rule G-11 in its current form clear with respect to the obligations of a senior syndicate manager surrounding the priority of orders? If not, in what provisions or aspects is it unclear?

SIFMA believes that Rule G-11, together with related guidance under Rule G-17, make the syndicate requirements regarding priority of orders sufficiently clear while maintaining the critical flexibility necessary to allow the successful marketing of new issues to the benefit of the issuer community.

3. Does the requirement for the syndicate to set priority provisions in a primary offering result in a more transparent and efficient market for municipal securities?

SIFMA believes that the MSRB's requirements to establish priority provisions under Rule G-11 benefit all participants in the municipal securities markets and helps to support a transparent, efficient and non-distorted market for municipal securities. Any proposed changes to the current priority requirements must be scrutinized with great care using all available data in an exacting economic analysis in order to ensure that changes do not create distortions in the marketplace.

4. Does the discretion syndicate members currently exercise in the allotment of bonds result in a fair and efficient allocation process?

SIFMA believes that such discretion is necessary in order to ensure that the marketing of new issues is fair, efficient and free of distortion. SIFMA believes that the MSRB and the enforcement agencies already have the tools necessary to address any instances in which a syndicate might not act in conformity with the requirements of Rule G-11 as interpreted under Rule G-17 and that, in instances where a violation occurs, enforcement actions should be taken.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

A. Disclosure of the CUSIPs Refunded and the Percentages Thereof

SIFMA believes that the availability of advance refunding documents through the MSRB's EMMA system provides a vital service to the marketplace. SIFMA notes that some members still experience difficulty in obtaining a word-searchable version of the executed advance refunding document, with all exhibits and tables completed, in time to submit the document as required to EMMA under Rule G-32.[8]

SIFMA addresses below each of the questions posed by the MSRB.

1. Do underwriters always have access to refunding information earlier than five business days from the closing of the refunding? If so, should they be required to disclose, within this shorter timeframe, the CUSIPs refunded and the percentages thereof to ensure that all market participants have access to the information at the same time?

If the relevant parties to a new issue advance refunding have complied with their roles in such transaction, underwriters generally have access to information regarding issues that have been advance refunded by the time an issue closes. However, as noted above, in some offerings underwriters continue to face delays in receiving the advance refunding documents in the required format in order to meet the existing five business day deadline under Rule G-32.

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[8] On a related matter bearing upon public access to information about advance refunded bonds, SIFMA notes that some bond counsel interpret indenture or bond resolution provisions requiring notice to bondholders whose securities are being refunded as only requiring notification of defeasance a short period of time prior to the actual redemption date, rather than at the time the defeasance occurs. While this might be an accurate interpretation of the indenture or bond resolution, some counsel further limit the timing by which an issuer is required to provide a defeasance notice to EMMA as a continuing disclosure under its continuing disclosure undertakings pursuant to SEC Rule 15c2-12 to be not sooner than the time by which bondholders are required to be provided with notice under the indenture or bond resolution. SIFMA believes that this is a misreading of Rule 15c2-12 and urges that the MSRB or SEC provide guidance to clarify the timing requirement for such defeasance notices.

SIFMA believes that making information regarding advance refunded bonds available at an earlier timeframe would be beneficial to the marketplace, although SIFMA cautions that the MSRB should undertake a thorough analysis of the changes required to be made by the MSRB to Form G-32 and in the EMMA primary market submission system, and should provide sufficient opportunity through a notice and comment process as well as direct industry outreach before establishing specific requirements for undertaking such earlier submission and dissemination of refunding information.[9] In establishing a workable earlier timeframe for submission of information regarding refunded bonds, SIFMA believes that the MSRB should seek comment from a broad cross section of underwriters regarding operational issues that may limit the extent to which the timeframe can be shortened. In addition, while the information regarding advance refunded bonds provided through Form G-32 might have an earlier deadline for submission, SIFMA believes that the deadline for submitting the advance refunding document itself should remain at the current five business days after closing unless the changes recommended below are instituted.

SIFMA believes that advance refunding documents, as well as full and final information regarding securities that have been advance refunded (whether or not incorporating the changes discussed in the preceding paragraph), might become available more quickly and accurately if the MSRB were to require that, in those advance refunding in which a municipal advisor is involved, the municipal advisor, rather than the underwriter, would be required to submit the advance refunding document and associated information to EMMA. In the vast majority of issues in which a municipal advisor participates, it is the municipal advisor that has the most direct involvement with the drafting and finalization of the advance refunding document. Rule G-32 has long required that the underwriter submit the advance refunding document since, until July 2014 with the effectiveness of the SEC's municipal advisor rules, the underwriter was the only party that the MSRB had authority to direct submission of such document. Thus, SIFMA recommends that the MSRB seek comment on a proposal to require municipal advisor submission of the advance refunding document to the MSRB, with the underwriter remaining responsible for those issues in which a municipal advisor does not participate. SIFMA would not recommend considering shortening the timeframe for submission of information regarding advance refunded bonds until after it has completed, or in conjunction with, such municipal advisor rulemaking.

In particular, if the MSRB were to propose (through a notice and comment process) rulemaking to require the submission of the CUSIP numbers and the percentage of such securities advance refunded ahead of the submission of the advance refunding document, such information submission would be considerably more feasible if the MSRB were to impose such requirement, in the first instance, on the municipal advisor

[9] Furthermore, SIFMA believes that the MSRB should refrain from any new initiatives relating to advance refunding documents and related information so long as Congressional proposals to terminate the ability of issuers to advance refund outstanding issues are under consideration.

for advance refundings in which a municipal advisor is used. In any event, SIFMA questions the value of requiring the submission of the percentage of the CUSIP number advance refunded (other than perhaps the more generic designation of whether a maturity is advance refunded in whole or in part), and also notes that it is not customary to reflect partial advance refundings in terms of percentage of a maturity.

2. Should the information be submitted to EMMA within a certain period of time from the closing of the refunding or the pricing of the refunding?

As noted above, SIFMA believes that, under a properly structured process, the information regarding advance refunded bonds could be provided at an earlier stage in the offering, although SIFMA believes that the timeframe for submitting advance refunding documents should not be changed at this time.

3. If the timeframe for providing the refunding information cannot be shortened, should Rule G-32 be amended, in any event, to require that all market participants receive the refunding information at the same time?

By posting the advance refunding document and associated information about the refunded bonds on EMMA, all market participants have simultaneous access to such information. If the MSRB is suggesting prohibiting market participants from disclosing information regarding an advance refunding prior to the submission of the advance refunding document to EMMA, SIFMA believes that such a prohibition would be entirely ineffective, if for no other reason that the MSRB's rules cannot reach issuers and other critical constituents in the municipal securities market who have access to such information.

4. What are the advantages and disadvantages to such a requirement?

SIFMA believes that there would be benefits to ensuring that all market participants have information about the advance refunding of outstanding bonds as early as reasonably possible, and that such information would be available to all on an equal basis. While, as described above, under a properly structured process SIFMA believes that information about advance refunded bonds can be provided more rapidly to all market participants, SIFMA also believes that MSRB rulemaking would not be sufficient to forestall the potential that some market participants may become aware of the advance refunded status of a bond before others under current statutory authority.

5. Are there other less costly or burdensome or more effective alternatives to promote transparency and equal access to this information?

As noted above, SIFMA recommends that the MSRB consider rulemaking to require municipal advisors to submit advance refunding documents and associated data to EMMA for those advance refundings in which a municipal advisor is used. This change

would promote more rapid availability of the key advance refunding information and could serve as a basis for future tightening of the submission timeframe.

B. Submission of Preliminary Official Statements to EMMA

The MSRB observes in the Notice that it has previously considered whether to require the submission of preliminary official statements ("POS") by underwriters to EMMA (the "2012 Concept Proposal"),[10] and the MSRB declined to take action to institute such a requirement. SIFMA believes that very little has changed since then, other than the fact that the MSRB now has authority with respect to municipal advisors. SIFMA continues to be concerned that requiring underwriters to provide POSs involves legal and practical hurdles that, at a minimum, call into question the level of benefit that ultimately would be derived from such a proposal and might, without careful structuring, in fact not be workable or effective.

Furthermore, the MSRB needs to consider carefully the purpose for requiring that the POS be provided to the marketplace – as a disclosure document, it is incomplete, subject to change and quickly replaced by the final official statement; as marketing material, it would seem to have the effect of beginning to transform EMMA from a disclosure and transparency venue to a central marketplace. Putting aside the merits of such a transformation, SIFMA believes that EMMA and the marketplace is not ready for such a transformation, and that significant in-depth analysis and industry-wide discussion would need to precede any concrete steps that could lead to EMMA becoming a central marketplace.

However, if the MSRB believes that it should continue to pursue such an initiative, SIFMA believes that it should consider carefully the points raised by SIFMA and other commenters on the MSRB's 2012 Concept Proposal and must undertake a fulsome round of outreach meetings with the relevant market participants in addition to the normal notice and comment process.[11] In addition, such an initiative would have a greater likelihood of success if it were to take into account the close relationship between the issuer and its municipal advisor, where one has been engaged, to allow for a more efficient and timely transmission of the POS to EMMA.

SIFMA addresses below each of the questions posed by the MSRB.

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[10] MSRB Notice 2012-61 (Dec. 12, 2012). SIFMA's comment letter on the 2012 proposal is attached.

[11] In fact, such an initiative likely would benefit from a separate concept release, prior to the launch of any formal rulemaking process, that includes a more detailed framework that would allow all market participants to address a common set of organizing principles.

1. Should the underwriter or municipal advisor be required to submit the POS to EMMA, if one is available? If so, within what time frame should the POS be required to be submitted?

SIFMA believes that the MSRB would need to work within the constraints imposed by the Tower Amendment.[12] As noted in the 2012 Concept Proposal, any pre-sale posting of the POS would require issuer consent. As a result, if this were the MSRB's goal, SIFMA believes that the MSRB should first seek consensus from the issuer community that it would as a routine matter provide such consents. Otherwise, such an initiative would likely not result in sufficient benefit to justify the burden. Furthermore, pre-sale submission would raise considerable operational concerns in cases where CUSIP numbers have not yet been assigned, as well as where CUSIP numbers may have been obtained but the actual numbers that are used are not determined until the bond sale occurs.

If submission were to be required only post-bond sale, at a minimum the MSRB would need to address concerns regarding the need to handle interim changes in information from the POS to the final official statement (*e.g.*, would POSs need to be stickered, would the requirement to submit stickered POSs be tied to whether such stickered POSs was disseminated to any potential investors). In addition, SIFMA believes that, to avoid confusion, the MSRB should establish a simplified process for ensuring that the final official statement replaces any POS posted on EMMA. Such process, and other operational aspects necessary to safeguard against potential negative impacts of a POS submission process, should be resolved through solutions engineered and developed by the MSRB and incorporated in EMMA rather than leaving broker-dealers and municipal advisors to develop their own varying solutions that would ultimately result in much higher aggregate cost to the industry than if handled systemically within EMMA.[13]

In SIFMA's view, it is unclear whether the value of creating a requirement to provide a POS containing information that is subject to change and that will be replaced in a short period of time by the final official statement outweighs the burden of undertaking such disclosures and the risk that having an evolving disclosure document posted to the public would confuse investors and might cause some investors to rely on stale information if, for example, they view the POS but never return to EMMA to see (and read) the final official statement. It is likely that the most value would exist in the context of marketing the new issue with pre-sale submission of the POS. SIFMA does not support regulatory action to provide POSs more broadly than they are currently made available.

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[12] Securities Exchange Act Section 15B(d).

[13] For example, the MSRB and FINRA chose not to develop centralized solutions for their upcoming mark-up disclosure requirements, as requested by SIFMA, that would have provided for more consistent and cost-effective implementation of such disclosures.

If, however, the MSRB were to propose (through a notice and comment process) rulemaking to require such submission, SIFMA strongly believes that such requirement should apply to municipal advisors as well as underwriters; in particular, municipal advisors would be significantly better positioned to make POS submissions in a competitive offering.

2. Should the underwriter or municipal advisor be required to seek confirmation from the issuer that they may post the POS on EMMA?

As noted above, if the MSRB were to require submission of the POS, the Tower Amendment would require such confirmation if the POS were to be submitted prior to the sale date. For submissions after the bond sale, while as a matter of law it may be that such confirmation would not be required (for example, confirmation is not required for the submission of the final official statement), SIFMA believes that the MSRB should work with the issuer community to achieve a consensus view that issuers would not insist on such a requirement. If such a confirmation requirement were to exist, it would undermine any perceived effectiveness of making POSs available as described above.

3. Would a requirement that the POS be submitted to EMMA assist in ensuring that all market participants have access to the POS at the same time?

Unless there were a general prohibition to provide POSs to any market participant (including prospective investors in a new issue) prior to posting on EMMA, this requirement would not be effective in doing so. SIFMA strongly opposes the MSRB or SEC attempting to impose such a general prohibition. Lacking such prohibition, it would only provide simultaneous access to the POS to market participants that do not have a direct interest in the new issue. While there may be some incremental benefits to having wider knowledge of a new issue (with information subject to change) more broadly available sooner than currently available through EMMA, such incremental benefit needs to be carefully assessed through meaningful outreach to industry participants and a thorough notice and comment process before proceeding on such an initiative.

4. What are the advantages or disadvantages of such a requirement for dealers, municipal advisors, issuers and market participants?

To the extent that the disclosures provided in a posted POS are accurate and changes from the POS to the final official statement do not result in some investors acting on information that has become stale or inaccurate, there would likely be some incremental benefit to having the POS centrally available, although in many offerings such central availability is already provided through private sector services against which the MSRB would set itself up as a competitor. It is possible that in some cases, a pre-sale posting of the POS might increase investor demand for a new issue. While in many cases this would be viewed as a positive development, it could become problematic for offerings intended for a particular audience (*e.g.*, institutional investors) different from

some types of investors (*e.g.*, retail investors) that might make an inquiry as a result of seeing a POS posted on EMMA. It also could make the new issue marketing process more complicated by potentially introducing unsolicited inquiries, absent the development of EMMA-based processes for flowing investor demand from EMMA to the underwriting syndicate.

5. Is there a valid reason to provide a POS to some market participants but not others?

The POS, while clearly a disclosure document, is also a marketing document and therefore only truly relevant to those market participants to whom a new issue is marketed. Unless there were a requirement that all issues must be marketed to the entire public under all circumstances – which would be a radical departure in all segments of the securities market – there is a valid reason to assure access to such targeted market participants over the remainder of the marketplace.

6. Are there alternative methods that the MSRB should consider for providing the information in the POS that would be more effective and efficient for investors and/or less costly or burdensome to underwriters and municipal advisors?

While SIFMA is not aware of an alternative method for providing the information in the POS to the public that would be more effective and efficient than simply posting the POS document itself, the key question is whether that information is of sufficient value to justify the costs, burdens and risks of doing so through EMMA, as discussed above. SIFMA believes that an initiative to pursue posting of POSs on EMMA merits a more targeted inquiry with direct discussions between the MSRB and market participants.

7. Should the requirement to submit a POS to EMMA apply in negotiated and competitive sales? If so, should there be different rules for each type of offering?

Clearly, in the case of a competitive offering, the municipal advisor would be the most appropriate party to make such submission.

8. Should the rule require the underwriter or municipal advisor to post an updated POS if information changes? Should the rule allow an underwriter or municipal advisor to withdraw the POS if the information becomes stale?

As noted above, SIFMA believes that these issues present some of the major complications that call into question the advisability of establishing a POS submission requirement. It would be critical for these concerns to be addressed through a more targeted inquiry involving full engagement with the relevant market participants to develop a workable process for ensuring that market participants are not acting on stale information.

C. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution

SIFMA strongly supports amending Rule G-32(c) to apply to all municipal advisors, not just dealer financial advisors. There is nothing unique to the dealer status of such financial advisor as regards to the preparation and making available of the official statement, and such change would improve the efficiency and timeliness of the official statement submission and public posting requirement under Rule G-32.

D. Whether the MSRB Should Auto-Populate into Form G-32 Certain Information that is Submitted to NIIDS but is Not Currently Required to be Provided on Form G-32

SIFMA believes that initial minimum denomination information would assist the marketplace as a whole in better complying with MSRB Rule G-15(f), with the understanding that dealers will continue to struggle with ensuring compliance with minimum denomination requirements for bonds with changing minimum denominations over the course of their life. Thus, SIFMA believes that it would be beneficial to add to Form G-32 a field for "initial minimum denomination" to be auto-populated by the "minimum denomination" data element in the New Issue Information Dissemination Service (NIIDS) data to be made available to the public through EMMA.[14] However, the underwriter that submitted the initial NIIDS data would have no obligation to update information regarding changes in minimum denominations over the life of the security. Also, while certain of the call-related fields might also be candidates for inclusion from NIIDS through auto-population, SIFMA would first suggest a thorough review of the data to ensure that the structure of the data required to be provided to NIIDS allows for an accurate representation of the various different call features used in the municipal securities market.

If the MSRB were to determine to add any additional items of information available from NIIDS but not currently disseminated through EMMA, the MSRB should undertake a notice and comment process with regard to the specific data elements it proposes to make public through EMMA. SIFMA believes that dealers' obligation with regard to such data must be limited to ensuring its accuracy at the time of its submission to NIIDS under Rule G-34 and that dealers would not be obligated to undertaking an ongoing duty to update such information (for example, with respect to any changes in minimum denomination over the life of the issue) as a result of the information being made public through EMMA.

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[14] As with other data elements currently required under Rule G-32 that are auto-populated with NIIDS data, the underwriter presumably would be required to submit such information directly to EMMA in those cases where the NIIDS data does not auto-populate (*e.g.*, for issues exempt from the NIIDS requirement).

E. Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?

SIFMA is not aware of any information that should be added to Form G-32 that would benefit investors and the marketplace as a whole and for which the underwriter would be the appropriate source, except and to the extent described below in our answers to the questions posed by the MSRB.

1. Should the current Rule G-32 requirement to disclose whether there was a retail order period as part of a primary offering be replaced with a requirement to disclose retail order periods by CUSIP number?

SIFMA fails to see the benefit of requiring the inclusion of CUSIP-level information regarding retail order periods. It is highly questionable whether that information would be of any value to disclose on EMMA. Further, as this Form G-32 information is primarily targeted at notifying the enforcement agencies of those issues in which a retail order period was used, that notification function is already incorporated into Form G-32 and any meaningful use of such information by the enforcement agencies requires deeper analysis, in which case such CUSIP-level information can and is provided. Adding this requirement would increase burden and complexity in the submission process without providing any benefit.

SIFMA wishes to raise an operational concern regarding the manner in which information on the existence and timing of retail order periods, as well as whether a continuing disclosure undertaking exists, is currently required to be submitted to EMMA. For issues subject to the NIIDS requirements of Rule G-34, all information required to be submitted through Form G-32 on or prior to the issue's date of first execution is normally auto-populated with NIIDS data, other than these two categories of information. Were it not for this deadline for these two categories, underwriters would normally be able to submit all items of information not auto-populated by NIIDS data during a single session on EMMA at the same time they submit the official statement. Instead, underwriters are almost always required to undertake at least two EMMA sessions for each new issue to complete the full set of submissions required by Form G-32.

SIFMA requests that the MSRB change the timing for the submission of these two categories of information from the date of first execution to the date of official statement submission. As noted above, the retail order period information is not made public on EMMA but is used in a retrospective manner by the enforcement agencies. Thus, the change in timing for this information would have no impact on the public or the enforcement agencies. With regard to whether a continuing disclosure undertaking exists, underwriters currently are required to submit to EMMA, by the date of official statement submission, information on the timing for annual financial information filings pursuant to

the undertaking. Changing the deadline for indicating whether an undertaking exists would consolidate into a single submission session all information required about the undertaking without adversely affecting investors. Both sets of changes would substantially enhance operational efficiency by significantly reducing the number of sessions underwriters are required to undertake in EMMA under Rule G-32 and likely would reduce inadvertent non-compliance with the submission requirements.

2. Do market participants, such as issuers and obligors, typically have LEIs? If so, should LEI fields be added on Form G-32 and included in Rule G-34 to permit or require underwriters to submit (if available) the LEI of the relevant obligated person, and/or the issuer if they have one?

SIFMA supports the implementation of the legal entity identifier ("LEI") system and believes LEIs would be useful to the MSRB in terms of making parties to securities issuance transparent, as well as to support risk management. In fact, many financial institutions that serve in roles such as underwriter, insurer, guarantor, liquidity provider, remarketing agent, tender agent, or trustee likely already have LEIs. Notwithstanding, many municipal securities issuers and obligors may not currently have LEIs as little of the existing regulation driving LEI adoption has applied to this market (although some issuers and obligors that are parties to swaps have had LEIs assigned under the rules of the Commodity Futures Trading Commission). Further, we are sensitive to the fact that many municipal issuers operate on extraordinarily tight budgets with little funding available to pay for LEIs or the added cost of obtaining and maintaining LEIs to support a regulatory requirement.

As a result, SIFMA believes LEIs should be introduced to this market giving due consideration to these factors. Because of the benefits to the MSRB and the marketplace as a whole from a risk management perspective, the MSRB should strongly promote the value of obtaining LEIs by issuers and obligors as part of the issuance process, as well as through the MSRB's interface with issuers and obligors through the continuing disclosures submission process. For example, the MSRB should incorporate linkages between MSRB Gateway and the LOUs (described below) that would permit issuers and obligors to easily obtain LEIs as they make their continuing disclosure submissions, and the MSRB should leverage LEIs that are assigned to provide such issuers and obligors with a simplified disclosure submission process. In addition, the MSRB should produce written materials describing the benefits of and process for obtaining LEIs that underwriters and municipal advisors could use to assist them in promoting such benefits to their issuer and obligor clients during the issuance process. However, if a given issuer or obligor declines to obtain an LEI, the underwriter or municipal advisor should not be required to obtain one.

Thus, the MSRB should create a field in Form G-32, to be auto-populated from data provided from NIIDS, for the submission of LEIs and should begin to encourage issuers and obligors to obtain LEIs. SIFMA believes that the LEI field should be added to

Form G-32 simultaneously with its addition by DTCC in the NIIDS data required under Rule G-34 in order to permit such data to be auto-populated in Form G-32. However, issuer and obligor LEIs should not be mandatory at this time. For other parties involved or identified in the Form G-32 process, such as underwriters and potentially municipal advisors, LEIs should be required.[15]

LEIs are issued by Local Operating Units ("LOUs") of the Global LEI System. The LOUs operating in the United States include Bloomberg and DTCC's Global Market Entity Identifier (GMEI) utility. The CUSIP Service Bureau acts as a registration agent allowing for LEIs to be obtained through a "straight-through" process for issuers and others as they apply for CUSIP numbers. Issuers and obligors should be encouraged to take advantage of these utilities and processes. Furthermore, SIFMA would be pleased to work with the MSRB to begin industry outreach to deal with potential implementation issues and develop workable solutions for this market. In the interim, SIFMA believes that creating the optional data element and encouraging use of LEIs would provide a useful first step to bringing to the municipal securities market the full use of LEIs, and the benefits such use would provide to risk analysis and market transparency.

3. What are the advantages and disadvantages of requiring dealers to disclose any of the above information currently not provided in NIIDS?

As described above, SIFMA believes that LEIs would assist the MSRB to better organize its data and disclosures on EMMA for more effective and efficient retrieval by the public, and therefore would allow market participants to better assess the full exposure of credits in the municipal marketplace. The only other listed items of information that would convey valuable benefit would be the listing of call dates and prices (as discussed above) and the triggers for changes in minimum denomination. However, making such information available as structured data would entail considerable effort given the lack of full standardization of those items of information.

With respect to minimum denominations, the MSRB might be limited to adding to the NIIDS data an indicator that the underwriter would use to denote that the bond documents provide for circumstances where the minimum denomination might change. By making this indicator available on EMMA along with the initial minimum denomination, market participants would be placed on alert that they may need to take further steps to confirm the current minimum denomination. The MSRB also could consider an open text field that underwriter would use to provide more detailed information about the nature of the triggering events; however, SIFMA believes that the MSRB would need to provide guidance and meaningful examples of language that the

[15] If the MSRB determines to require that its registrants obtain LEIs, such information (as well as LEIs obtained by issuers and obligors) should be stored by the MSRB as part of the information retained in each registrant's MSRB Gateway Account and used to auto-populate LEIs as necessary and appropriate if required to comply with Rule G-32 or to make submissions to EMMA.

MSRB would view as appropriate. Furthermore, before proceeding with such an open-text solution, the MSRB would need to undertake a careful assessment through meaningful outreach to industry participants and a thorough notice and comment process to assess operational constraints and to establish an efficient and cost-effective process that ensures that such information becomes usable through systems that are used in the sales and trading process.

4. Are there any fixed fees in an underwriting (e.g., municipal advisor fee, underwriting fee, etc.) that would be useful if disclosed on Form G-32? To whom would such fees be useful (e.g., other issuers for comparison purposes)? Should this fee information be disclosed to the issuer in connection with an offering earlier in the process, for example, pursuant to a requirement under Rule G-11 (see I.C. above)?

Other than the underwriting spread disclosure already required under Rule G-32 through EMMA that has an impact on pricing of an issue and the prices paid by investors, SIFMA believes that EMMA should not be the venue for providing disclosures of component fees and expenses that ultimately are already incorporated into information provided in the official statement. SIFMA does not believe that the purpose of EMMA should be extended to trying to reduce market participant's fees through public disclosure; rather, market participant's fees should be a matter of negotiation between the relevant parties and, to the extent relating to regulated parties, subject to the fair dealing requirements of Rule G-17.

5. Would any of the above information be useful to market participants?

Except as described above, SIFMA does not believe the listed items of information would be useful to an appreciable segment of market participants.

F. General Questions on Form G-32

The MSRB seeks feedback on the following general questions relating to Form G-32:

1. Is there additional information not listed in this concept release that the MSRB should consider collecting on Form G-32?

SIFMA is not aware of any additional information not listed in the Notice or described above that should be added to Form G-32.

2. What is the impact on dealers if this information cannot be retrieved from NIIDS, and therefore must be input directly into Form G-32 (in addition to the information a dealer must input into NIIDS)?

Each item of information that dealers must input into Form G-32 because it is not auto-filled from existing NIIDS data creates additional burden, potential delay and potential input errors. While SIFMA does not believe that the MSRB should add new data elements to Form G-32 other than those described above, SIFMA believes that, in general, dealers would find it more efficient to have such additional data elements inputted through NIIDS with direct input on EMMA only for issues exempt from the NIIDS requirement.

SIFMA wishes to raise concerns regarding the current process for submitting information on commercial paper issues, which are not generally subject to the NIIDS requirement and consistently raise significant operational and compliance difficulties. SIFMA requests that the MSRB undertake meaningful discussions with SIFMA members that engage in commercial paper transactions to assess these operational difficulties and to develop solutions that would enhance the efficiency and effectiveness of commercial paper submissions.

III. Other Questions on Primary Offering Practices

The MSRB seeks feedback on the following general questions relating to primary offering practices:

1. Has the IRS's issue price rule impacted any primary offering practices in the municipal securities market, and in what ways? If any MSRB rules are affected, what, if any, amendments should be considered?

As discussed above, SIFMA believes that the IRS issue price rules, at this time, should take the lead on matters related to bona fide public offerings and initial offering prices and that the MSRB should refrain from any rulemaking in this regard, at least until the market has become fully accustomed to the new IRS requirements and has had the opportunity to fully assess whether there are any gaps or shortfalls that need addressing. SIFMA does not believe that the IRS issue price rules require any amendments to MSRB rules.

2. Are there any other primary offering practices that the MSRB should consider in its review?

SIFMA is not aware of any other primary offering practices that the MSRB should consider in its review.

3. What are the reasonable alternatives to each of the above proposals? For example, are any of the proposals that would require a rule change better addressed through other means, such as interpretive guidance, compliance resources, additional outreach/education, new MSRB resources, or voluntary industry initiatives? Are there less burdensome or more beneficial alternatives?

SIFMA has provided its views regarding alternative approaches in its answers above.

IV. Economic Analysis

SIFMA appreciates that the Notice is a concept proposal that does not include specific rule language that is amenable to an examination of the proposal's effect on competition, efficiency and capital formation, as well as to a well-reasoned and factually substantiated cost-benefit analysis. SIFMA urges the MSRB to take the responsibility to undertake such analysis seriously in the process of developing any specific rule proposals, which includes making public with particularity the basis for its initial conclusions that are required to be included in such rule proposals under the MSRB's economic analysis policy, and to provide commenters with sufficient time to analyze such initial conclusions and to gather and provide additional information relevant to such analysis. While SIFMA, its members and other market participants appreciated the MSRB's adoption of its economic analysis policy, we believe that the application of such policy has uniformly not met the spirit in which such policy appeared to be adopted. We believe undertaking the fulsome process outlined in the MSRB's Retrospective Review Process will advance the MSRB's goal and the industry's hope that rigorous economic analysis would become a meaningful component of the MSRB rulemaking process.

V. Conclusion

SIFMA and its members appreciate the MSRB's commitment to retrospective review of its primary offering rules but do not see any significant need for revisions at this time, subject to limited items identified above. In particular, with the recent implementation of the IRS issue price rule, SIFMA believes that it is inadvisable to make changes to the MSRB's primary offering rules until the market can fully assess the impact of such IRS rules. As noted above, SIFMA is currently reviewing its Master AAU to ensure that it has kept pace with regulatory and market practice changes. 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***
Lynnette Kelly, Executive Director
Michael Post, General Counsel
John Bagley, Chief Market Structure Officer
Margaret Blake, Associate General Counsel
Saliha Olgun, Assistant General Counsel

November 13, 2017

Ronald W. Smith
Corporate Secretary
MSRB
1300 I Street NW
Washington, D.C. 20005

Dear Mr. Smith:

TMC Bonds ("TMC") is pleased to present its comments, with respect to "bona fide public offerings", to the MSRB's Request for Comment Regarding Amendments to Primary Offering Practices. TMC Bonds is a registered ATS that solicits markets and facilitates trades, on behalf of its users, in municipals and in other markets, on a fully anonymous basis. TMC is a market center in the municipal market, counterparty to roughly a third of the inter-dealer trades reported to the MSRB.

In the request for comment, the Board openly wonders whether it should establish a definition for "bona fide public offering". Regardless of its decision about a definition, the Board is questioning whether the municipal syndicate process, as it has evolved over the years, makes new issue municipals available to the "public", as broadly defined. Many syndicates administer "retail order periods" (ROPs), during which "true" retail (individual investors) and "institutional" retail (e.g., SMA managers) have the opportunity to submit orders ahead of the institutions and dealers. At the same time, non-syndicate dealers have been able to access bonds during ROPs and sell them at higher prices later on, presumably for ultimate retail distribution. This practice suggests that original offering prices might not be those that clear the market; instead, those prices sometimes leave room for further markup. The Board might consider that the closed nature of the traditional syndicate structure has an unintended consequence; instead of assuring that the "public" has access to new issue municipals, it could be that only members of the syndicate or participants in distribution agreements have such access.

The Treasury, with its "new issue price rules", effective in 2017, partially addressed the above point with "hold the price" rules, definitions of "public" and "underwriter", etc., designed to establish new issue prices as the price at which at least some of the "public" has purchased bonds. Treasury's definition of "public" is broad, however, and there is nothing in the rules that suggest that a non-syndicate dealer (who might resell the bonds) is not a member of the public. The goal of the Treasury regulations was the establishment of issue price; as a result, its regulations are not useful to the Board's effort to establish the definition of "public".

The Board could consider that a "bona fide public offering" may be accomplished by posting new issues on a "market center", independent of syndicate structure, allowing investors (via a dealer) with no access to ROPs to enter orders for new issues, with the result that the "public" (more narrowly defined than by the Treasury) have access to new issue municipal product in a more transparent manner than provided in a syndicate ROP. Dealers submitting such orders (on behalf of their customers) would be held to G-11 requirements as to legitimacy of orders, and distribution agreements would not be required. As in ROPs, underwriters would have discretion in filling orders, but honoring such orders could provide a safe harbor to underwriters concerned with any subsequent questions as to whether access to a particular transaction was widespread. Even better, this practice could give underwriters valuable information that they can use when their prices are challenged, either during the offering period or subsequent to it.

If the Board were to take this approach, underwriters would need assurance that the sales are to parties that fit the concept of "public. Retail investors generally access market centers via dealers, not directly. Dealers submitting orders would provide, via G-11 attestations, that orders are from "bona fide" retail investors. Parties submitting orders (the dealer *and* the customer) would not be able to do so anonymously, in contrast to the common ATS practice of not disclosing counter-parties to each other, at least prior to execution. Access to a broader base than that provided by conventional ROPs could provide assurance to the Board that an offering fits a new definition of "bona fide". While itt is not feasible to give complete open access to the new issue process, giving access to retail customers of essentially *all* broker-dealers would support the Board's goals in this respect.

There would be benefits to allowing order submission on market centers. For example, thousands of market participants login and transact on these ATS platforms every day, as the MSRB recently noted on its Fact Sheet that almost 60% of the market's inter-dealer trades occur on ATS's. Given the conventional wisdom that more technology will be brought to the markets over time, using technology to achieve a good regulatory result should appeal to the Board.

Again, TMC appreciates the opportunity to respond to the MSRB's request for comment on primary market practices.

John S. Craft
Managing Director
TMC Bonds LLC
New York, NY

WELLS CAPITAL MANAGEMENT INCORPORATED
100 Heritage Reserve
MAC N9882-010
Menomonee Falls, WI. 53051

November 1, 2017

Municipal Securities Rulemaking Board (MSRB)
1900 Duke St., Suite 600
Alexandria, VA 22314
Attention: Ronald W Smith
Corporate Secretary

RE: Comments On MSRB Rules G-11: Primary Offering Practices and G-32: Disclosures In Connection With Primary Offerings

To The MSRB:

Wells Capital Management, Inc. is a registered investment advisor that manages municipal mutual funds, separate municipal accounts and other third party municipal investment products for both retail and institutional investors (Wells Cap). Wells Cap hereby responds to the MSRB's Request For Comments On MSRB Rules G-11 Primary Offering Practices and G-32: Disclosures In Connection With Primary Offerings (MSRB Proposal).

Wells Cap provides the following comments to the MSRB Proposal regarding MSRB Rule G-11:

1) Wells Cap believes that there may be a practice whereby issuers directly influence or even dictate the allocation of primary market issuance to certain buy-side firms by having final approval on an underwriter's primary market allocations. This practice hurts buy-side investors in several ways. First, it appears to reward buy-side firms that have a "cozy" relationship with the deal municipal advisor. Second, it may distort primary issue pricing by not getting "best execution" on primary market pricing. Third, it may cause fewer buy-side firms to participate in a deal if they sense that the issuer can over-ride a final underwriter deal allocation. Lastly, it prefers certain buy-side firms and may lead them to "soft pedal" any critical public comments regarding a pending deal during an investor conference call/presentation, site visit or roadshow just to get a favorable issuer allocation.

Wells Cap provides the following comments to the MSRB Proposal regarding MSRB Rule G-32:

1) Wells Cap specifically addresses the MSRB questions on section II as follows:

Question A: WellsCap agrees with MSRB proposal that underwriters promptly disclose on EMMA the refunding of CUSIPS to all market participants at the same time. Incomplete refunding disclosures or selective refunding disclosures can create inequitable trading advantages for those obtaining refunding information prior to posting on EMMA, and the beneficiaries of such refunding information is usually the larger institutional broker/dealers and not the general buy-side (and especially not retail municipal investors);

Question B: WellsCap agrees with MSRB proposal that underwriters or municipal advisors promptly submit the initial POS on EMMA so that all potential buyers/investors are aware of the transaction and have the same length of time to review the POS and undertake needed due diligence. Selective disclosure of a POS to interested parties is a common practice, but creates unwarranted favoritism to certain parties and can create problems in undertaking needed credit work and due diligence when a "late" POS is obtained by an investor interested in the transaction. Obviously, there is a different process, market and procedure for so-called "private placements" that are intended to go only to sophisticated institutional investors who can bear the risks of the transaction. These private placement deals should continue to be given special treatment as regards the distribution of this type of POS so as to achieve the desired investor limited distribution qualifications and/or compliance with applicable federal/state securities laws.

On a related matter is the distribution of supplements to a POS before pricing (aka stickering). Wells Cap is familiar with many instances where underwriters notify buy-side firms looking at a deal that amendments, corrections or updates will be made to a POS, but they are not distributed until right before/after pricing. This practice has two adverse consequences. First, buy-side firms that begin to look at the POS late in the offering may be unaware of a pending POS supplement; and second, buy-side analysts are unable to review and digest the POS supplement in time to communicate any changes in their credit view to their portfolio managers. Wells Cap urges MSRB to require underwriters to distribute POS supplements at least one complete business day before the pricing date (and not just a mere 24 hours before pricing) so as to allow all interested buy-side investors an adequate opportunity to evaluate the POS changes.

Although not specifically a topic of requested Comments, Wells Cap also requests the MSRB address in Rule 32 the current practices regarding the "deemed final' POS required under SEC Rule 15c2-12 as regards both the timing of the pricing and the deemed final POS, and the completeness of the "deemed final" POS. Wells Cap undertakes credit reviews on over a thousand municipal transactions a year. While practices do vary from underwriter to underwriter, a relatively consistent problem for Wells Cap and other buy-side investors is that pricing of municipal deals usually is not undertaken based on a "deemed final" POS as required by SEC Rule 15c-12. Wells Cap often is faced with addressing the pricing of a municipal transaction without a POS that

contains all the exhibits, appendices or maturity structure. Wells Cap requests the MSRB to address the "deemed final" requirements in MSRB Rule 32 and reinforce the Sec Rule 15c2-12 requirements by underwriters. Often times prior to pricing, certain municipal investors (usually larger institutional investors) can obtain key missing exhibits, appendices or information referenced in the POS ahead of final pricing. This sets up a selective disclosure problem for the general municipal buy-side. In addition, it appears there is an underwriter practice of refraining from distributing an updated POS containing the needed exhibits and appendices prior to final pricing in the hopes of getting better pricing on a transaction. These practices hurt the buy-side especially less sophisticated buy-side investors.

Although not specifically a topic of the requested Comments, Wells Cap also requests the MSRB to address in Rule 32 the current practices regarding the minimum time needed between the issuance of a "deemed final" POS and pricing. All municipal buy-side investors need adequate time to review each POS and to undertake needed due diligence in order to arrive at an educated credit view on the transaction. This needed time is even more important for municipal deals that are not publicly rated and is especially true for higher risk project finance type deals. Wells Cap urges the MSRB to add a section to MSRB Rule 32 to impose a minimum number of business days between the distribution of a "deemed final" POS and the pricing of that transaction. Often times it appears underwriters attempt to rush final pricing without a "deemed final" POS in the hopes that municipal buy-side will not be able to detect all the 'warts" in a deal or raise questions/issues not adequately addressed in the POS. The MSRB is in the best position to provide some minimum time frame (e.g. three business days) between final pricing and a "deemed final" POS so that all municipal buy-side investors can undertake the proper due diligence and form a complete, informed credit view before committing to pricing.

Although not specifically a topic of the requested Comments, Wells Cap also requests the MSRB to address in the applicable MSRB Rule the current practice by issuers and underwriters of selective disclosure of material information to public rating agencies—and leaving it out of the POS. Here is a real life disclaimer that was "buried" in a POS:

"The Authority furnished S&P with certain information not included in this Official Statement, including the Indenture of Trust, budgets and financial statements. Generally, rating agencies base their ratings on the information and materials so furnished and on investigations, studies, and assumptions by the rating agencies. An explanation of the significance of such ratings may be obtained from S&P. The ratings reflect only the view of S&P and the Authority makes no representation as to the appropriateness of such ratings. The Authority can make no assurance that the S&P ratings will continue for any period of time…"

This selective disclosure to rating agencies is a real problem for buy-side investors on several levels. First, as a matter of principle, issuers and underwriters should not be selectively disclosing material information. Second, as public ratings drive secondary market pricing, buy-side analysts have no way of verifying or countering public ratings/rating changes when these public ratings are driven by non-public material

information. Third, public rating agencies are participating in a flawed offering and disclosure system which may subtly "reward" certain issuers with a better public rating by delivering non-public material information to the rating agencies. Lastly, public rating agencies can "front-run" the municipal market with public rating changes and secondary market pricing changes based on non-public material information from issuers thereby benefiting those buy-side firms that get direct daily internet rating feeds versus the more general retail investor and financial advisor who relies on EMMA postings of public rating changes. Overall, this process of selective public rating agency disclosure has no place in the muni market. Public rating agencies should be able to request additional information from issuers without limits—but that information must be shared promptly on EMMA so that all municipal investors can evaluate it independently from the rating agency filters.

If you need any further information on these Comments, please contact me at 414-359-3776 or gsouthwe@wellscap.com.

Wells Capital Management Incorporated

By: _____
Gilbert L. Southwell III
Vice President

MSRB Municipal Securities Rulemaking Board

MSRB Notice

2018-15

Publication Date
July 19, 2018

Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers

Notice Type
Request for Comment

Comment Deadline
September 17, 2018

Category
Fair Practice; Market Transparency

Affected Rules
Rule G-11, Rule G-32

Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings. This request for comment ("Request for Comment") is intended to elicit views and input from all interested parties regarding the proposed changes, including on the benefits and burdens and possible alternatives, of the proposed changes. The comments will assist the MSRB in determining whether to propose these changes for adoption.

On September 14, 2017, the MSRB published a concept proposal ("Concept Proposal") requesting comment on possible amendments to the current primary offering practices of brokers, dealers and municipal securities dealers (together, "dealers").[1] The MSRB received 12 comment letters providing views and insight of market participants.[2] The comments received,

[1] MSRB Regulatory Notice 2017-19 (September 14, 2017).

[2] Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated Nov. 16, 2017 (the "BDA Letter"); Letter from City of San Diego, undated (the "City of San Diego Letter"); Letter from Robert W. Doty, dated Nov. 2, 2017; Email from Stephan Wolf, Global Legal Entity Identifier Foundation, dated Nov. 6, 2017 (the "GLEIF Letter"); Letter from Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association, dated Nov. 27, 2017 (the "GFOA Letter"); Letter from Alexandra M. MacLennan, President, National Association of Bond Lawyers, dated Nov. 17, 2017 (the "NABL Letter"); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated Nov. 13, 2017 (the "NAMA Letter"); Letter from Julie Egan, NFMA Chair 2017 and Lisa Washburn, NFMA Industry Practices & Procedures Chair, National Federation of Municipal Analysts, dated Nov. 9, 2017 (the "NFMA Letter"); Email from Michael Paganini, dated Sept. 15, 2017; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Nov. 15, 2017 (the "SIFMA Letter"); Letter from John S. Craft, Managing Director, TMC Bonds LLC, dated Nov. 13, 2017; and Letter from Gilbert L. Southwell III, Vice President, Wells Capital Management, Inc., dated Nov. 1, 2017.

in addition to continuing dialogue with industry stakeholders, formed the foundation for this Request for Comment.

Comments should be submitted no later than September 17, 2018, 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, MSRB, 1300 I Street NW, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.[3]

Questions about this concept proposal should be directed to Margaret Blake, Associate General Counsel, or Barbara Vouté, Director – Market Practices, at 202-838-1500.

Proposed Changes[4]

I. Rule G-11 – Primary Offering Practices

Rule G-11 establishes terms and conditions for sales by dealers of new issues of municipal securities in primary offerings, including provisions on communications relating to the syndicate and designations and allocations of securities. The rule was first adopted by the MSRB in 1978, and was designed to

> increase the scope of information available to syndicate managers and members, other municipal securities professionals and the investing public, in connection with the distribution of new issues of municipal securities without impinging upon the right of syndicates to establish their own procedures for the allocation of securities and other matters.[5]

[3] Comments are generally 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 only should submit information that they wish to make publicly available.

[4] The costs and benefits of each of the proposed changes are considered in the economic analysis section, *infra.*

[5] MSRB Reports, Vol. 5, No. 6 (Nov. 1985).

The MSRB noted that, in adopting Rule G-11, the Board generally chose to require the disclosure of practices of syndicates rather than dictate what those practices must be.[6]

Because of the evolving nature of the municipal securities market, Rule G-11 has been amended several times over the years. As noted in the Concept Proposal, the MSRB sought industry input on the application of Rule G-11 in light of current market practices. Based on comments received, the MSRB now seeks comment on whether to: (A) standardize the process for issuing a free-to-trade wire; (B) require senior syndicate managers to provide specified information to issuers; and (C) align the payment of group net sales credits with the payment of net designated sales credits.

A. Free-to-Trade Wire

In a primary offering of municipal securities where a syndicate is formed (*i.e.*, not a sole-managed offering), pursuant to the Agreement Among Underwriters (AAU), typically the senior syndicate manager informs others in the syndicate when the bond purchase agreement (BPA) has been executed, thus indicating the date of sale or time of formal award of the issue. Thereafter, the senior syndicate manager may send a communication to the syndicate in the form of a free-to-trade wire. The free-to-trade wire, as a matter of current market practice, is an electronic message sent through a third-party service provider to the syndicate to communicate when all of the municipal securities in the issue or particular maturity (or maturities) are free to trade. The free-to-trade wire communicates to members of the syndicate that the various syndicate restrictions set forth in the AAU or otherwise communicated to the syndicate have been removed and indicates to syndicate members that they may trade the bonds at prices other than the initial offering price.

In the Concept Proposal, the MSRB sought comment as to whether the sending of the free-to-trade wire should be standardized to ensure all syndicate members receive this information at the same time. BDA indicated that once the formal award has been given, the senior syndicate manager should be required to send a notification, via a customarily used platform, to all syndicate members at the same time indicating the free-to-trade status of each maturity of bonds within the offering.[7] SIFMA noted its belief that

[6] *See, e.g.,* MSRB Reports, Vol. 2, No. 5 (Jul. 1982).

[7] BDA Letter at p 2.

specific regulatory requirements are not needed to address the free-to-trade wire.[8] If any rulemaking were made in this area, SIFMA believed it should be limited to ensuring that communications occur on a materially simultaneous basis and not require specific timeframes within which the communications must occur or the mechanics or venue used by the syndicate manager.[9]

The MSRB believes equal access to information is important to the fair and effective functioning of the market for primary offerings of municipal securities. While the MSRB is not intending to dictate the timing of when the free-to-trade wire should be sent, requiring dissemination of the free-to-trade wire in a manner that ensures all syndicate members receive information simultaneously would level the playing field among syndicate members. The MSRB believes this would prevent some syndicate members from receiving what might be viewed as preferential access to the free-to-trade information while others, who are not aware of the information, are delayed in their ability to transact at prices other than the initial offering price.

As set forth in the text of draft amendments attached hereto, the MSRB is proposing to amend Rule G-11 to require the senior syndicate manager to notify all members of the syndicate, simultaneously, via a free-to-trade wire, that trading restrictions have been lifted.

Questions

1. The draft rule amendments would require the senior syndicate manager to notify the syndicate via a free-to-trade wire when the syndicate restrictions are lifted. Should the proposed dissemination requirement apply only where the underwriter has generated a free-to-trade wire or should the dissemination of a free-to-trade wire be required?

2. Is a standardized process for issuing the free-to-trade wire consistent with the MSRB's original intent with respect to Rule G-11, primarily to address the disclosure of syndicate practices rather than dictate what those practices must be?

[8] SIFMA Letter at p 6.

[9] SIFMA Letter at p 7.

3. Is there an alternative, less burdensome method, for communicating to the full syndicate at once that restrictions on an issue of municipal securities have been lifted and sales in the secondary market may commence?

B. Additional Information for the Issuer

Rule G-11(g) requires the senior syndicate manager to provide information to the syndicate regarding the designations and allocations of securities in an offering.[10] However, the senior syndicate manager is not required to provide this information to issuers. While issuers sometimes may be involved in reviewing and approving allocations or may be able to obtain information regarding designations and allocations from various sources, including the senior syndicate manager and certain third-party information resources, some market participants have suggested that the senior syndicate manager nonetheless should be required to provide this information to the issuer.

Five commenters addressed this issue in response to the Concept Proposal. BDA, City of San Diego and the GFOA generally supported providing detailed information to the issuer regarding designations and allocations,[11] while SIFMA indicated the information is available if the issuer wishes to obtain it and thus, a change is not necessary.[12] BDA suggested that the senior syndicate manager should be required to provide Rule G-11(g) information to the issuer upon request.[13] City of San Diego suggested that such information should be provided to the issuer unless the issuer opts out of receiving it.[14] City of San Diego further noted that senior syndicate managers in negotiated sales should be required to obtain an issuer's approval of designations and allocations unless otherwise agreed to between the parties.[15] GFOA

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[10] In particular, Rule G-11(g)(ii) and (iii) require information to be given to the syndicate with respect to allocations and designations. "Designation" typically refers to the percentage of the takedown or spread that a buyer directs the senior syndicate manager to credit to a particular syndicate member (or members) in a net designated order (see Section I.C. infra). "Allocation" generally refers to the process of setting bonds apart for the purpose of distribution to syndicate members.

[11] BDA Letter at p. 2; City of San Diego Letter at p. 1 and GFOA Letter at 1.

[12] SIFMA Letter at p. 8.

[13] BDA Letter at p. 2.

[14] City of San Diego Letter at p.1.

[15] *Id*.

indicated that issuers should be made aware of Rule G-11(g) information distributed to the syndicate and the senior syndicate manager should distribute the information to the entire syndicate at the same time.[16] GFOA also noted that it is a best practice for the senior syndicate manager to have discussions with the issuer about the issuer's approval of designations and/or allocations.[17] SIFMA indicated that it is not aware of circumstances where an issuer did not receive Rule G-11(g) information from a syndicate manager upon the issuer's request.[18] SIFMA further noted that, if the MSRB undertakes rulemaking in this area, it should seek to strengthen existing practices rather than create new processes and should only require the syndicate manager to provide Rule G-11(g) information upon request, rather than having to provide it to the issuer in all cases.[19]

The MSRB seeks input as to whether this is an appropriate area for rulemaking or one that should continue to be negotiated between the senior syndicate manager and the issuer.

As set forth in the text of draft amendments attached hereto, the MSRB is proposing to require extending the senior syndicate manager's obligations under Rule G-11(g)(ii) and (iii) to include providing information regarding designations and allocations to the issuer. The MSRB believes that providing this information to the issuer will better inform the issuer of the orders, allocations and economics of their offering.

Questions

1. Should the senior syndicate manager be required to send the information under Rule G-11(g) upon the request of the issuer or should the senior syndicate manager be required to provide the information to the issuer regardless of whether it is requested?

2. Should the senior syndicate manager be required to provide the information under Rule G-11(g) unless the issuer opts out of receiving the information?

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[16] GFOA Letter at p. 1.

[17] *Id*.

[18] SIFMA Letter at p. 7-8.

[19] SIFMA Letter at p. 9.

3. Do issuers generally understand this information currently is available to them from the senior syndicate manager or certain third-party information resources upon request? Would education of the issuer on this point be more appropriate than amending the rule?

C. Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits

Rule G-11(i) states that the final settlement of a syndicate or similar account shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate. Group net sales credits (*i.e.*, those sales credits for orders in which all syndicate members benefit according to their participation in the account)[20] are paid out of the syndicate account when it settles pursuant to Rule G-11(i). As a result, syndicate members must wait 30 calendar days following receipt of the securities by the syndicate before they receive their group net sales credits. By contrast, Rule G-11(j) states that sales credits due to a syndicate member as designated by a customer in connection with the purchase of securities ("net designated orders") "shall be distributed" within 10 calendar days following the date the issuer delivers the securities to the syndicate.

The Securities and Exchange Commission (SEC) approved amendments to Rule G-11(i) in 2009 to, among other things, shorten the timeframe for settlement of the syndicate account from 60 calendar days to 30 calendar days following the date the issuer delivers the securities to the syndicate. In addition, the amendments shortened the timeframe for payments of net designated orders in Rule G-11(j) from 30 calendar days to 10 calendar days. The MSRB indicated that the shortened timeframes were intended to reduce the exposure of co-managers to the credit risk of the senior manager pending settlement of the accounts.[21]

In the Concept Proposal, the MSRB sought comment as to whether the timing of payment of group net sales credits should be aligned with the timing of payment of net designation sales credits to provide consistency in syndicate practices and, in particular, the payments to syndicate members of sales credits to which they are entitled. In addition, the MSRB sought

[20] *See* MSRB Glossary of Terms.

[21] *See* Exchange Act Release No. 60725 (Sept. 28, 2009), 74 FR 50855 (Oct. 1, 2009); MSRB Notice 2009-55 (Sept. 30, 2009).

comment as to whether the overall period of time for distribution of sales credits for both group net and net designated orders should be shortened to a period of less than 10 days.

BDA supported aligning the overall time period for payment of group net and net designation sales credits.[22] SIFMA indicated its view that absent evidence of significant problems with the current timeframes, no changes to the current rule-based time frames are needed.[23]

The MSRB believes aligning the time frames for payment and receipt of sales credits would be a minor adjustment that would ensure consistency in making and receiving such payments. The MSRB further believes that the time period of 10 calendar days would be appropriate and would provide balance between reducing risk of exposure of co-managers to the credit risk of the senior manager while providing the time needed to pay the sales credits.

In the attached draft rule amendment language, the MSRB is proposing to amend Rule G-11(j) to require the payment of group net sales credits within 10 calendar days following the date the issuer delivers securities to the syndicate. By aligning the payment of group net sales credits with the timing of payment of net designation sales credits, the MSRB seeks to create a consistent and uniform timeframe for payment of sales credits to syndicate members.

Questions

1. Are there advantages or disadvantages (including any new burdens) if syndicate members are paid group net and net designation sales credits pursuant to the same timeframe (*i.e.*, within 10 calendar days following receipt of the securities)?

2. Would consistency as between these timeframes be helpful to syndicate members?

3. Are there reasons the payment cycles should remain different?

[22] BDA Letter at p. 3.

[23] SIFMA Letter at p. 10.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

Rule G-32 sets forth the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Among other things, Rule G-32 requires underwriters in primary offerings to submit electronically to the MSRB's Electronic Municipal Market Access (EMMA) system official statements and advance refunding documents, if prepared, related primary market documents and new issue information, such as that collected on Form G-32. The rule is designed to ensure that a customer that purchases new issue municipal securities is provided with timely access to information relevant to his or her investment decision. Rule G-32 was originally adopted by the Board in 1977,[24] and has been amended periodically since then to help ensure that, as market practices evolved and other regulatory developments occurred, Rule G-32 would remain current and achieve its goal of providing timely access to relevant information about primary offerings.

In the Concept Proposal, the MSRB sought input on aspects of Rule G-32 to help inform whether the existing disclosure practices continue to serve the municipal securities market appropriately. Based on comments received, the MSRB now seeks comment on whether to: (A) require disclosure of CUSIP numbers refunded and the percentages thereof to all market participants at the same time;[25] (B) require non-dealer municipal advisors that prepare official statements to make the official statement available to the underwriter after the issuer approves it for distribution; (C) auto-populate into Form G-32 certain information that is submitted to the Depository Trust Company's (DTC) New Issue Information Dissemination Service (NIIDS) but is not currently required to be provided on Form G-32; and (D) request additional information on Form G-32 that is not currently provided to NIIDS.[26]

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[24] File No. SR-MSRB-77-12 (Sept. 20, 1977). The SEC approved Rule G-32 in Release No. 34-15247 (Oct. 19, 1978), 43 FR 50525 (Oct. 30, 1978).

[25] CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments including municipal securities. CUSIP numbers are made up of nine characters (including letters and numbers) that uniquely identify a company or issuer and the financial instrument.

[26] NIIDS is an automated, electronic system that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating the information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

A. Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof

Currently, under Rule G-32(b)(ii), if a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in the offering is required to submit the advance refunding document to EMMA, and to provide the information related to the advance refunding document on Form G-32, no later than five business days after the closing date. The MSRB understands that some market participants may be informed of the refunding details before the information is made public.

In the Concept Proposal, the MSRB sought comment as to whether underwriters should be required to disclose, within a shorter timeframe and to all market participants at the same time, the CUSIP numbers refunded and the percentages of each CUSIP number being refunded. BDA, City of San Diego and NFMA supported making refunding information available earlier in the process and to all market participants at the same time.[27] NABL did not espouse a view regarding the specific proposed change, but noted any requirement should not serve as an indirect regulation of issuers by requiring that CUSIP numbers be identified by the issuer at pricing or any time before the issuer is otherwise obligated to provide such information.[28] SIFMA noted that receiving refunding information earlier might be beneficial, but questioned the value of providing the percentage of the CUSIP number advance refunded, and further noted that the MSRB should not prohibit market participants from disclosing information regarding an advance refunding prior to the submission of the advance refunding documents to EMMA.[29]

The MSRB understands that in some instances information about refundings is not available to the syndicate earlier than five business days following the closing date. Therefore, the MSRB is not proposing a requirement that the refunding information be provided in a shorter timeframe at this time. However, the MSRB continues to believe that equal access to refunding information is critical to the efficient functioning of the primary market for municipal securities. Requiring senior syndicate managers to provide

[27] BDA Letter at p. 3; City of San Diego Letter at p. 1 and NFMA Letter at p. 2.

[28] NABL Letter at p. 2.

[29] SIFMA Letter at p. 13-14.

information to the market regarding CUSIP numbers refunded in a manner that allows access to the information by all market participants at the same time would support this effort. Accordingly, in addition to providing information on the percentage of the CUSIP number being refunded as a new data point on Form G-32,[30] the proposed change, as set forth in the attached draft rule amendment language, would require the underwriters to communicate the refundings in a manner that provides access to the information to all market participants at the same time.

Questions

1. Some market participants have stated that the current five-business day time period is necessary in some instances to allow adequate time to receive relevant information. Is there any reason the MSRB should reconsider shortening this timeframe?

2. In what manner should the information regarding CUSIP numbers being refunded and the percentage thereof be provided?

3. Is there a less-burdensome alternative to this proposed change that would further the same purpose?

4. Should the MSRB consider requiring underwriters to provide information on Form G-32 for *partial* current refundings by CUSIP number and the percentage of each bond to be refunded?

5. Though not discussed in the Concept Release, the MSRB understands that sometimes the syndicate produces a list of *potential* refundings before or at the time of pricing and this list is not shared with market participants with any consistency. Should this list be required to be posted on EMMA, if produced? Should posting of the list be voluntary?

B. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

Rule G-32(c) requires a dealer that acts as a financial advisor ("dealer municipal advisor") and prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities to make the official statement available to the managing underwriter or sole underwriter in a

[30] *See infra* Section II.D.

designated electronic format, after the issuer approves its distribution. Because this requirement was adopted before the MSRB had jurisdiction over municipal advisors that are not also dealers ("non-dealer municipal advisors"), the requirement does not extend to these market participants.[31] In the Concept Proposal, the MSRB sought comment as to whether the current requirement in Rule G-32(c) should be extended to non-dealer municipal advisors to ensure delivery of the official statement is made in a consistent manner regardless of whether it is prepared by a dealer or non-dealer municipal advisor. BDA and SIFMA supported the proposed requirement,[32] while NAMA opposed requiring municipal advisors to provide the official statement unless asked to do so by the issuer.[33]

The MSRB is proposing to require all municipal advisors to comply with the requirements of Rule G-32(c) to provide consistency in the delivery of the official statement, regardless of whether a dealer or non-dealer municipal advisor is retained.

Questions

1. Is there any reason why a non-dealer municipal advisor should not be subject to the same requirement under Rule G-32(c) as a dealer municipal advisor?

2. What would be the advantages of extending this requirement to all municipal advisors?

C. Additional Data Fields on Form G-32 Auto-Populated From NIIDS

Pursuant to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements, an underwriter of a new issue of municipal securities must, as applicable, make the new issue depository eligible and submit information about the new issue to NIIDS.[34] In addition, the

[31] The MSRB continues to review its rules to align requirements as between dealer municipal advisors and non-dealer municipal advisors, as appropriate.

[32] BDA Letter at p. 4 and SIFMA Letter at p 19.

[33] NAMA Letter at p. 4-5.

[34] *See* Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information.

underwriter in a primary offering of municipal securities is required, pursuant to Rule G-32, to submit electronically to the MSRB's EMMA Dataport system ("EMMA Dataport"), in a timely and accurate manner, certain primary market disclosure documents and related information, including the data elements set forth on Form G-32.[35]

In 2012, the MSRB adopted amendments to Rule G-32 and Rule G-34 to streamline the process by which underwriters submit data in connection with primary offerings. The amendments integrated the submission of certain matching data elements to NIIDS with EMMA, obviating the need for duplicative submissions of information in NIIDS-eligible primary offerings.[36]

For a "NIIDS-eligible primary offering," the underwriter must submit all information to NIIDS as required under Rule G-34. Subsequently, Form G-32 is auto-populated by the data the underwriter has input into NIIDS. Information required to be included on Form G-32 and for which no corresponding data element is available through NIIDS must be submitted manually through EMMA Dataport on Form G-32 (*i.e.*, it will not be auto-populated from NIIDS). Any correction to NIIDS data (and thus Form G-32 data) must be made promptly and, to the extent feasible, in the manner originally submitted. For a primary offering ineligible for NIIDS,[37] the

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DTC sets forth the criteria for making a security depository eligible and thus NIIDS eligible. According to DTC, securities that can be made depository eligible include those that have been issued in a transaction that: (i) has been registered with the SEC pursuant to the Securities Act of 1933, as amended ("Securities Act"); (ii) was exempt from registration pursuant to a Securities Act exemption that does not involve (or, at the time of the request for eligibility, no longer involves) transfer or ownership restrictions; or (iii) permits resale of the securities pursuant to Rule 144A or Regulation S under the Securities Act, and, in all cases, such securities otherwise meet DTC's eligibility criteria. *See* The Depository Trust Company, Operational Arrangements p. 2 (Aug. 2017).

[35] *See* Rule G-32(b)(i)(A), on Form G-32 information submissions, and Rule G-32(b)(vi), on procedures for submitting documents and Form G-32 information. Form G-32 submissions may be made by the underwriter or its designated agent through the EMMA Dataport accessed via MSRB Gateway. EMMA Dataport is the utility through which submissions of documents and related information are made to the MSRB and its Market Transparency Programs.

[36] MSRB Notice 2012-64 (Dec. 24, 2012).

[37] *See supra* footnote 34 regarding depository eligibility criteria. In addition, Rule G-34(d) exempts from all Rule G-34 requirements any issue of a municipal security (and for purposes of secondary market municipal securities, any part of an outstanding maturity of an issue) which (i) does not meet the eligibility criteria for CUSIP number assignment or (ii) consists entirely of municipal fund securities.

underwriter of the offering must submit the Form G-32 information manually as set forth under Rule G-32. [38]

The requirement under Rule G-34(a)(ii)(C) that an underwriter of a new issue of municipal securities that is NIIDS eligible submit certain information about the new issue to NIIDS was designed to facilitate timely and accurate trade reporting and confirmation, among other things. In addition, the submission of this information was meant to address difficulties dealers have in obtaining descriptive information about new issues of municipal securities.[39] While underwriters of issues that are NIIDS eligible submit a great deal of information about a new issue to NIIDS, much of this information is not auto-populated into Form G-32 because not all of the fields required to be submitted to NIIDS are required fields on Form G-32.[40]

In the Concept Proposal, the MSRB sought public comment on the inclusion of certain additional data fields on Form G-32 that would be auto-populated with information underwriters currently are required to input into NIIDS. BDA and NAMA supported the inclusion of some existing NIIDS data on Form G-32,[41] and BDA and SIFMA believed the addition of minimum denomination information from NIIDS would be a useful addition to Form G-32.[42]

The MSRB seeks further comment as to whether certain additional information currently submitted to NIIDS but not auto-populated on Form G-32, should now be required data fields on Form G-32. Mandating certain additional data points on Form G-32 would ensure transparency continuity to

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[38] The EMMA Dataport Manual for Primary Market Submissions describes the requirements of MSRB Rule G-32 for underwriters to submit primary market disclosure documents and information to EMMA and gives instructions for making such submissions. Rule G-32 requires that such submissions be made as set forth in the EMMA Dataport Manual.

[39] The requirement to provide this information and the process for doing so are addressed in Rule G-34 and Rule G-32, respectively. While NIIDS provides the system for submitting the information, its use does not obviate the requirement that information submitted pursuant to Rule G-34 be timely, comprehensive and accurate. *See* MSRB Notice 2007-36 (Nov. 27, 2007).

[40] Appendix A sets forth those NIIDS data fields the MSRB is proposing to include on Form G-32. None of these data fields currently is auto-populated into Form G-32 because Form G-32 does not have corresponding data fields to receive the information.

[41] BDA Letter at p. 4 and NAMA Letter at p. 5.

[42] BDA Letter at p. 4 and SIFMA Letter at p. 19.

the MSRB because it would allow the MSRB to control the information submitted. Overall, this would enhance the MSRB's transparency initiatives to the benefit of all stakeholders.

This proposed change would create additional data fields on Form G-32 that would map to the corresponding data fields in NIIDS. The additional data fields the MSRB proposes to include on Form G-32 are set forth in Appendix A hereto.

Questions

1. Does the addition of data elements on Form G-32, which would be auto-populated from NIIDS data already provided by the underwriter, pose any additional burden on the underwriter that has not been considered by the MSRB in this Request for Comment?

2. Are there other NIIDS data fields that should be included on Form G-32?

3. As discussed above, in some instances a new issue is not NIIDS eligible, but the underwriter is still required to complete Form G-32. In these instances, NIIDS data would not exist to auto-populate Form G-32. What benefits are associated with requiring this information to be manually entered on Form G-32 for new issues that are not NIIDS eligible?

D. Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS

The MSRB believes several data points would be useful to investors, which are not currently input into NIIDS, and thus are not auto-populated on Form G-32. In the Concept Proposal, the MSRB sought comment on the addition of these data fields on Form G-32. Five commenters provided feedback on these items. BDA, City of San Diego, GLEIF, NAMA and SIFMA[43] agreed that some information that is not currently required to be input into NIIDS should be added to Form G-32, but the commenters differed with respect to the information they believed would be helpful. After considering the comments received, the MSRB is proposing for further comment the potential requirement that underwriters input the following additional information directly on Form G-32 in corresponding data fields:

[43] BDA Letter at p. 4; City of San Diego Letter at p. 2; GLEIF Letter at p. 1; NAMA Letter at p. 5 and SIFMA Letter at p. 19.

- **Ability for minimum denomination to change** – Currently, Form G-32 (as populated by NIIDS) includes the minimum denomination for the particular issue of municipal securities but does not indicate whether the minimum denomination has the potential to change. The MSRB believes providing a "yes" or "no" indicator as to whether the minimum denomination can change would provide useful information to market participants. For some issues, for example, if a bond is non-rated or below investment grade at the time of issuance but achieves an investment grade rating at some point in the future, this could result in a change to the minimum denomination that would be of interest to investors. Having this indicator would remind market participants to check relevant bond documents for developments that could trigger a change in minimum denominations.

- **Additional syndicate managers** – The MSRB believes that having a data field that indicates all of the syndicate managers (senior and co-managers) on an underwriting would provide useful information for various market participants and regulators. With this information, for example, issuers and municipal advisors or others could identify those underwritings where a particular syndicate manager was engaged or seek more information about particular syndicate managers, as needed, in performing due diligence on a potential upcoming offering. The MSRB believes the complete list of underwriters typically is known at or before the pricing of an issue and, therefore, senior and co-manager information is readily available to the senior underwriter.

- **Full call schedule** – For municipal bonds that are callable, knowing the full call schedule is important information to have when making an investment decision because if a bond is called it impacts the investor's expected return on the bond and possibly any resulting cash flow. By requiring this information on Form G-32, the MSRB would be able to make complete call information available on EMMA to market participants and stakeholders. This information would include premium call dates, par call dates, those calls that are a percentage of par, and frequency of the call after the par call date (*i.e.*, continuously callable).

- **Legal entity identifiers (LEIs) for credit enhancers and obligated person(s),[44] if readily available** – The LEI provides a method to uniquely identify legally distinct entities that engage in financial transactions.[45] The goal of this global identification system is to precisely identify parties to a financial transaction to assist regulators, policymakers and financial market participants in identifying and better understanding risk exposure in the financial markets and to allow monitoring of areas of concern. The MSRB believes that requiring this information on Form G-32, if readily available, would promote the value of obtaining LEIs and encourage industry participants to obtain them as a matter of course. Obtaining this information, when readily available, on credit enhancers and obligated persons would help in the move towards a global identification method for these market participants and improve the quality of municipal market financial data and reporting.

- **Name of obligated person(s)** – The MSRB believes that providing the name(s) of the obligated person(s) of a new issue of municipal securities on EMMA is important because they are responsible for making interest and principal payments, as well as continuing disclosures, and this information is sometimes not readily available for transparency purposes. The MSRB believes that having the name(s) of the obligated person(s) available to market participants on

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[44] For purposes of this Request for Comment, "obligated person" has the same meaning as set forth in Rule 15Ba1-1(k) of the Securities Exchange Act of 1934 ("Exchange Act"). Rule 15Ba1-1(k) defines "*obligated person*" to have the same meaning as that term is defined in section 15B(e)(10) of the Exchange Act, but does not include:

(1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;

(2) A person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or

(3) The federal government.

Exchange Act Section 15B(e)(10) defines the term "obligated person" to mean any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

[45] An LEI is a 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. Only organizations duly accredited by GLEIF are authorized to issue LEIs.

EMMA would enhance transparency, enable investors to better understand who is legally committed to support payment of all or part of an issue of municipal securities and help them to make more informed investment decisions.

- **Percentage of CUSIP numbers refunded** – As noted above, underwriters currently are required, pursuant to Rule G-32(b)(ii), to submit advance refunding documents to EMMA as well as provide information related to the refunding as required by Form G-32. The MSRB believes that requiring information regarding the percentage of each CUSIP number refunded on Form G-32 would provide all market participants information on material changes to a bond's structure and value at the same time. This additional information would assist investors in making informed investment determinations.

- **Retail order period by CUSIP number** – Currently new issues are flagged in EMMA Dataport to indicate whether there is/was a retail order period. The MSRB has heard concerns from market participants about orders being entered that may not meet the definition or spirit of the requirements for a retail order period. The MSRB believes that requiring underwriters to mark a new issue with a flag for the existence of a retail order period for each CUSIP number would provide greater transparency to all market participants, including regulators, about potential non-compliance with the terms of retail order periods. A "yes" or "no" flag by CUSIP number could be helpful in identifying orders that should not have been included in the retail order period.

- **Name of municipal advisor** – The name of the municipal advisor on an issuance is not currently required to be input in NIIDS or on Form G-32. The MSRB believes including this information would allow market participants to consider the experience of the municipal advisor when evaluating a new issue of municipal securities especially for similar credits and structures.

This proposed change would create additional data fields on Form G-32 for manual completion.

Questions

1. Does the addition of the data elements on Form G-32, which would be manually input by the underwriter, pose any burden on the underwriter that has not been identified here?

2. Are the proposed non-NIIDS data fields appropriate? Are there other data fields that should be included in the list of non-NIIDS additional fields?

3. Would requiring the disclosure of LEIs, "if readily available", discourage market participants from obtaining them?

4. Similar to the proposed "yes" or "no" flag for changes in minimum denomination, should the MSRB include a new data point on Form G-32 that would flag when a new issue is issued with restrictions, such as a new issue that is only available for qualified institutional buyers?

Economic Analysis

I. Rule G-11 – Primary Offering Practices

As discussed above, the MSRB is soliciting comments on three proposed changes to existing Rule G-11 based on public comments received in response to the Concept Proposal. These proposed changes are (1) a requirement that the senior syndicate manager disseminate the free-to-trade wire to all syndicate members simultaneously; (2) a requirement that the senior syndicate manager provide information regarding designations and allocations of securities to the issuer in an offering; and (3) aligning the payment of group net sales credits with the payment of net designated sales credits. This economic analysis addresses the three proposed changes to Rule G-11.

A. The need for proposed changes to Rule G-11

The proposed changes are needed to address possible information asymmetry that arises from certain market practices.[46] In the case of dissemination of the free-to-trade wire, the MSRB understands that this wire is not always sent to all members of the syndicate at the same time. Thus, certain syndicate members may temporarily have better information than others about the ability to trade the municipal securities in the secondary market at prices other than the initial offering price. Similarly, detailed information regarding designations and allocations of the securities in a new issue is required to be provided to the syndicate pursuant to Rule G-11(g) but

[46] In economics, information asymmetry refers to economic decisions in transactions where one party has more or better information than the other party.

is not required to be provided to the issuer. Requiring the senior syndicate manager to provide information to the issuer regarding designations and allocations would provide transparency to the issuer, give the issuer the same information received by all the syndicate members and better inform the issuer about the orders and allocations in the issue. The requirement should also better ensure issuer-approved syndicate policies are followed and assist issuers with future decisions on syndicate formation and marketing and structuring of subsequent offerings.[47]

The need for the proposed change to align the timing of payments of group net sales credits and net designation sales credits is based on the desire to have a consistent process for such payments. Previously, the MSRB amended Rule G-11 to reduce the payment timeframe for net designated orders from 30 calendar days to 10 calendar days and the syndicate account settlement window (and therefore the payment of sales credits for group net orders) from 60 calendar days to 30 calendar days.[48] As noted above, the amendments were meant to limit syndicate members' potential exposure to the senior syndicate manager's credit risk. The MSRB believes the same credit risk is present for both types of orders; therefore, reducing the timeframe for payment of group net sales credits has the same rationale as the previous changes, and is appropriate to create consistency in the payment and receipt of sales credits for both types of arrangements while continuing to limit potential credit risk.

B. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of the proposed changes to Rule G-11, a baseline or baselines must be established as a point of reference in comparison to expected future Rule G-11. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.
The baseline for the proposed changes to Rule G-11 is the existing Rule G-11, which establishes primary offering practices. Specific to the three proposed changes to Rule G-11:

- The current Rule G-11 does not require a free-to-trade wire be issued to all syndicate members simultaneously;

[47] *See* City of San Diego Letter.

[48] *See supra* footnote 21.

- Rule current G-11 does not require disclosure of information regarding the designations and allocations of securities in an offering to the issuer; and

- The current Rule G-11 requires the final settlement of a syndicate account – out of which group net sales credits are paid – to occur 30 calendar days following the date the issuer delivers the securities to the syndicate, but mandates payment of net designation sales credits to syndicate members within 10 calendar days following the date the issuer delivers the securities to the syndicate.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider alternative regulatory approaches. Under this policy, only reasonable regulatory alternatives should be considered.

As an alternative to the proposed changes to Rule G-11, the MSRB could choose to make one or two of the proposed changes but not the other(s), as the MSRB believes each proposed change is distinct and independent of the others. However, the MSRB has carefully considered each of the three proposed changes, as well as public comments received in response to the Concept Proposal and has determined that each proposed change is necessary to address an important and separate market issue. Therefore, the MSRB believes that amending Rule G-11 to address only one or two of the proposed changes is a suboptimal alternative.

Another alternative to the proposed changes to Rule G-11 would be to require that the information regarding designations and allocations be provided to the issuer, but only upon the issuer's request. However, the MSRB believes this alternative could result in sophisticated issuers having better access to information than issuers who are unaware that the information is available upon request. The proposed change to this requirement is designed to ensure that all issuers receive the relevant information on designations and allocations.

A similar alternative would be to require the senior syndicate manager to provide designation and allocation information to all issuers with an option to opt out of receiving the information. The MSRB is not aware of any likely rationale behind an issuer's decision to decline the information other than the fact that the issuer may decide the burden of reviewing the information exceeds the benefits of the information itself.

Finally, the MSRB could choose not to amend Rule G-11 and instead leave the rule in its current state. However, this alternative would leave certain market issues unaddressed as discussed above.

D. Assessing the benefits and costs of the proposed changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change with the rule change proposal fully implemented against the context of the economic baselines.

The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed changes. In addition, the MSRB requests market participants to provide quantitative estimates of both the upfront and ongoing cost of providing the information below.

Benefits and Costs – Free-to-Trade Wire. Reduced information asymmetry is the primary benefit associated with requiring senior syndicate managers to issue a free-to-trade wire to all syndicate members at the same time since this would ensure that the entire syndicate has timely access to critical information and would create a fair playing field for syndicate members.

The free-to-trade wire is typically issued by senior syndicate managers to all members of the syndicate. However, the MSRB understands that the timing of receipt of the free-to-trade wire can vary such that information is not always received by all syndicate members at the same time. Typically, the free-to-trade messaging is sent electronically via a third-party service provider and would be simple to provide to all of the syndicate members at the same time. Therefore, above-the-baseline costs to senior syndicate managers associated with this requirement are expected to be insignificant. Syndicate members currently receiving the free-to-trade wire after others in the syndicate have already received it would benefit from being notified earlier about their ability to trade in the secondary market at market prices other than the initial offering price. Thus, the MSRB believes that the likely benefits of this requirement significantly outweigh its likely costs.

Benefits and Costs – Additional Information for the Issuer. The main benefit of providing information regarding designations and allocations to the issuer is to provide transparency to the issuer, give the issuer the same information received by all the syndicate members and better inform the issuer about the designations and allocations of the new issue. This information is beneficial to the issuer for several reasons. First, it provides the issuer relevant details regarding its current issue. Second, the information would make it possible

for the issuer to determine whether certain syndicate rules or terms had been followed. Third, the information, in the aggregate, may help issuers understand the spectrum of syndicate structures, which may benefit them when they come to market again in the future.

Since the senior syndicate manager is already required to provide these disclosures to each syndicate member, the incremental cost of providing this information to the issuers as well should be negligible. Like the free-to-trade wire, the information is typically provided electronically and therefore is easy to disseminate to additional parties.

Benefits and Costs – Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits. Aligning the timeframe for payment of group net sales credits to syndicate members with the timeframe for payment of net designation sales credits would promote consistency in payments of sales credits for syndicate members and further limit syndicate members' exposure to the senior syndicate manager's credit risk.

In order to meet the new timeframe for payment of group net sales credits, some firms acting as senior syndicate manager initially may need to revise certain internal processes, and thus may incur some upfront costs. However, the MSRB is not proposing to change the timeframe related to settlement of the syndicate or similar account, but rather, the timeframe within which payment of group net sales credits occurs. Therefore, the associated costs should not be significant once the new process is in place.

Effect on Competition, Efficiency and Capital Formation. Since all three proposed changes to Rule G-11 would apply equally to all new issues and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. The proposed changes are meant to improve the fairness and efficiency of the underwriting process and thus should improve capital formation. Specifically, the proposed changes are intended to protect issuers and syndicate members, as well as investors. These protections should create additional transparency and promote fairness of the competition in the primary offering process, potentially benefiting issuers and investors alike.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

The additional information on which comment is requested relating to Rule G-32 falls into three categories: (1) additional disclosures in connection with primary offerings; (2) data that is presently available through NIIDS, but not auto-populated on Form G-32; and (3) data that is neither readily available to

the MSRB from existing sources (namely, NIIDS) nor auto-populated on Form G-32.[49] The economic analysis below discusses the three categories separately.

Broadly speaking, the need for the two categories of proposed additional data points on Form G-32 arises from the fact that the existing information not currently on Form G-32, but proposed to be included, would enhance the MSRB's transparency initiatives and facilitate the MSRB's own usage of data. The MSRB currently displays some data that is provided on Form G-32 to the public through EMMA, and the inclusion of additional data for display would provide considerably more transparency to investors and all other market participants. The MSRB believes that providing transparency of municipal market information is an important way to reduce information asymmetry in the market. In these instances, investors receiving information late, or not at all, are evaluating a municipal security based on incomplete information and thus are hampered in their assessment of the market value of the security. The resulting information asymmetries could have an undesirable impact on the municipal securities market, potentially causing market price distortion and/or transaction volume depression. In addition, the two categories of proposed additional data points on Form G-32 should reduce the MSRB's dependence on third-party data providers for information disclosure on EMMA.

A. Additional Disclosures in Connection with Primary Offerings

The MSRB is proposing to require underwriters to disclose CUSIP numbers refunded to all market participants at the same time and non-dealer municipal advisors who prepare official statements in relation to a primary offering to make the official statement available to the managing underwriter or the sole underwriter in a designated electronic format after the issuer approves the official statement for distribution.

1. The need for proposed changes to Rule G-32 for these disclosures

The proposed changes are needed to reduce information asymmetry that may arise in both the primary and the secondary markets. In the case of advanced refundings, information regarding the CUSIP numbers refunded may currently be available to certain market participants before it is available to others. This can result in negative consequences for the less informed

[49] These proposed additional data requirements are also similarly applicable for non-NIIDS eligible issues.

market participants. The proposed change would improve fairness of the market.

Similarly, when a non-dealer municipal advisor prepares an official statement on behalf of an issuer, without a requirement to make the official statement available to the underwriter, the official statement is not required to be shared with the underwriter in a timely manner prior to issuance. This may result in delayed information dissemination to some market participants, hampering their ability to make more informed investment decisions.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

The baseline for these two proposed provisions is the existing Rule G-32.

- Currently, Rule G-32 requires underwriters of an advance refunding to provide the advanced refunding document to EMMA and related information to Form G-32 no later than five business days after the closing date. This document includes a list of the refunded CUSIP numbers.

- Additionally, Rule G-32 requires only dealer-municipal advisors to make the official statement available to the managing underwriter or sole underwriter in electronic format promptly after the issuer approves its distribution. This requirement does not extend to non-dealer municipal advisors.

3. Identifying and evaluating reasonable alternative regulatory approaches

As regulatory alternatives, the MSRB could leave Rule G-32 unchanged or incorporate one of the proposed changes but not the other. However, as stated above, proposed changes to Rule G-32 are designed to ensure consistency in the timing of the disclosure of a particular CUSIP number's refunding information to all market participants and to ensure consistency in the delivery of official statements. Therefore, the MSRB believes those alternatives are inferior to the proposed changes to Rule G-32.

Alternately, the MSRB could require the advanced refunding document to be posted on EMMA sooner than five business days after closing to minimize the chance of discrepancy in the timing of disclosures made to different market participants. However, the MSRB understands that this information sometimes is not available sooner than five business days after closing and

proposing a requirement that the information be provided in a shorter timeframe may not be feasible at this time.

4. Assessing the benefits and costs of the proposed changes

Benefits and Costs – Disclosure of the CUSIP Numbers Refunded to the Market Simultaneously. The main benefit of enhanced refunding disclosure is better information and reduced information asymmetry in the secondary market, which may in turn improve the market's fairness and efficiency. Costs above the baseline would be limited since underwriters are already required to provide advanced refunding documents to EMMA and related information on Form G-32.

Benefits and Costs – Non-Dealer Municipal Advisors Making the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution. The official statement contains information that is critical to underwriters; therefore, this proposed change to Rule G-32 is meant to ensure consistency in the delivery of official statements whether by dealer municipal advisors or by non-dealer municipal advisors.

This proposed change to Rule G-32 would impose a new requirement on non-dealer municipal advisors. However, the costs associated with this change should be insignificant since the requirement exists only where the municipal advisor prepares the official statement and it is therefore readily available to the municipal advisor (dealer or non-dealer) and can easily be provided to the underwriter via electronic means.

Effect on Competition, Efficiency and Capital Formation. Since the proposed changes would apply equally to all new issues and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. In fact, since the proposed changes are meant to improve the fairness and efficiency of the underwriting process and thereafter the secondary market trading, the proposed changes should actually improve capital formation. Specifically, the proposed changes protect underwriters and other market participants, and these protections could improve the competitiveness of the primary and the secondary markets, potentially benefiting issuers and investors alike.

B. Auto Population of Additional Data Fields on Form G-32 with Information from NIIDS

1. The need for proposed changes to Rule G-32 on auto-population of additional data fields

As described above, an underwriter of a new issue that is NIIDS eligible provides data to NIIDS with respect to that issue. Though the information is input into NIIDS, only some of that information is auto-populated into Form G-32 and displayed on EMMA because Form G-32 does not have data fields for all of the information gathered in NIIDS. Therefore, the MSRB is limited in its long-term flexibility to make the information transparent to the broader market on a sustained basis, as a result of the MSRB not being in full control of those additional data fields. The proposed changes should reduce the MSRB's dependence on third-party data providers for information disclosure on EMMA. As described below, these additional data elements comprise pertinent information about the bonds.

While much of the information contained in the proposed additional data fields is currently available to the public in the official statement for a new issue, it is often not easily located or explicitly stated therein. Because official statements are not consistently formatted, and the specific information sought is not necessarily prominently displayed, at least some portion of retail and other investors may be unaware of, or have difficulty locating, pertinent information.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of the proposed changes to additional data points on Form G-32, a baseline or baselines must be established as a point of reference in comparison to expected future Form G-32. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

For the proposed changes related to the auto-population of certain data fields from NIIDS into Form G-32, the baseline is the existing Rule G-32 which requires Form G-32 information to be submitted in a timely and accurate manner as set forth in the rule, and Rule G-34, which requires complete and accurate new issue information to be submitted to NIIDS. This analysis considers the costs and benefits of the proposed changes above this baseline.

For the subset of non-NIIDS eligible issues, the baseline is the existing scenario where no data elements are submitted to NIIDS and information is manually input on Form G-32.

3. Identifying and evaluating reasonable alternative regulatory approaches

Specific to the proposed auto-population of additional data elements on Form G-32 with information from NIIDS, the primary alternative would be to collect this information directly on Form G-32 without auto-population. However, this alternative would impose an unnecessary burden on regulated entities by requiring them to devote additional time and resources to providing duplicative information, where the same information is available from NIIDS. Because the regulatory objectives of transparency and improved usage of information can be achieved through other less burdensome means, this alternative would not be practical. Limiting the burden on regulated entities, whenever possible, makes it more cost effective for those entities to provide information that is critical to the market.

Another alternative would be to collect the additional information from a third-party data vendor other than NIIDS. However, this would require the third party to obtain the information either from NIIDS or from the underwriter directly, again requiring unnecessary duplication of information input. In addition, obtaining information from a third party might limit the MSRB's ability to make the information available, thus hindering the MSRB's goal of increasing market transparency.

A third alternative is to not collect the additional data elements on Form G-32. However, not collecting the data would impede the MSRB's goal of creating an ongoing transparent market for municipal securities. Thus, this alternative is unattractive.

4. Assessing the benefits and costs of the proposed changes

The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed changes. In addition, the MSRB requests market participants to provide quantitative estimates of both the upfront and ongoing cost of providing the data elements below.

Benefits. The MSRB believes that including some or all of the information provided to NIIDS on Form G-32 would improve the MSRB's flexibility regarding data usage. Specifically, by collecting the NIIDS data for inclusion on Form G-32, the MSRB would have greater control and flexibility to make the information available publicly for the foreseeable future without depending on third-party data providers, which would benefit market participants.

The MSRB believes that collecting additional new information on Form G-32 directly, as opposed to relying on third-party data providers, would ensure the long-term sustainability of making the information available to the public. The effort would have several long-term benefits, including increased transparency, improved market information and reduced likelihood of information asymmetries.

Without the proposed changes to Form G-32, the MSRB would have less long-term flexibility to make the information transparent to the market, as the MSRB would have to continue to rely upon third-party data providers to gather the information for public display. With potentially less transparency of information in the long run, retail investors could have access to less information than market professionals, possibly resulting in information asymmetry. Information asymmetry could cause market price distortion and/or transaction volume depression resulting in an undesirable impact on the municipal securities market.

Underwriters of new issues that are not NIIDS eligible must input the information required by Form G-32 directly into the form without the benefit of auto-population of data via NIIDS. However, the information only needs to be entered one time.[50] Because these non-NIIDS eligible new issues are unlikely to trade in the secondary market, the main benefit of the proposed changes would be to facilitate the MSRB's usage of data regarding these issues.

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

Rule G-32 and Rule G-34 already require information to be submitted to NIIDS accurately by underwriters, therefore costs associated with providing these data elements are considered part of the baseline, assuming full

[50] However, according to the EMMA Dataport Manual, until closing, the underwriter is expected to update promptly any information previously provided by it on Form G-32 which may have changed, or to correct promptly any inaccuracies in such information. The underwriter also is responsible for ensuring that such information is accurate as of the closing date.

compliance with Rule G-32 and Rule G-34.[51] The additional cost imposed on market participants for data to be auto-populated from NIIDS onto Form G-32 should be limited, which may include, for example, additional time to review the pre-populated information for accuracy.

Similarly, underwriters of non-NIIDS-eligible new issues are already obligated to complete Form G-32 manually pursuant to Rule G-32(b)(i)(A)(2). Underwriters would also need to provide the proposed additional data elements directly on Form G-32 manually, and this may result in an additional burden for underwriters because of the additional data fields that would need completing and updating. However, the MSRB believes the proposed changes should not impose a significant amount of additional time or burden as the information should be readily available to those underwriters.[52]

Effect on Competition, Efficiency and Capital Formation. Since the data is already provided to and available through NIIDS from underwriters of new issue municipal securities that are NIIDS eligible, the proposed changes would not impose a significant burden on regulated entities. Submitters of Form G-32 would have a responsibility to ensure that pre-populated information, as well as manually-completed information, is accurate. However, this responsibility would not rise to the level of a burden on competition since it would apply equally to all underwriters inputting information whether for NIIDS-eligible or non-NIIDS-eligible new issues. The MSRB believes that the proposed changes would enhance market competition by ensuring market participants continue to receive new issue information.

[51] However, in the event that certain data elements cannot be auto-populated because the information was not currently provided to NIIDS, firms would need to input this information into Form G-32 manually.

[52] Presently, one firm submits partial data to Form G-32 via a business-to-business connection ("B2B"), which is a computer-to-computer connection that does not require any human intervention and provides underwriters a direct data submission channel to Form G-32. With respect to the proposed changes, this B2B submitter would presumably continue to provide some of the proposed data elements via the same B2B connection, because auto-population from NIIDS is not possible with this format of submission. However, B2B is an automated submission itself; therefore, the burden of providing these additional data elements would be limited to the initial time and cost of coding for the process. Subsequently, there should not be additional burden associated with providing this information to the MSRB on a periodic basis.

C. Additional Data Fields on Form G-32 Not Auto-Populated with Information From NIIDS

1. The need for proposed changes to Rule G-32 for additional non-auto-populated data fields

As much as possible, the MSRB seeks to minimize the burden of the proposed regulation by obtaining information from existing sources such as NIIDS. Certain data elements that the MSRB believes would be useful to investors are not input into NIIDS or collected by the MSRB. As set forth above, this information would need to be directly input on Form G-32 to be available to market participants.

As discussed in detail above with regard to the additional data elements not currently captured by NIIDS (i.e., ability for minimum denomination to change, additional syndicate managers, full call schedule, legal entity identifiers for credit enhancers and obligated persons, name of municipal advisor, name of obligated person, percentage of CUSIP number refunded and retail order period by CUSIP number), the MSRB has considered the need to require each of the proposed data elements individually. The MSRB believes that this information is valuable in enhancing transparency and helping ensure an efficient secondary market for municipal securities. Please refer to Section 4 below for a detailed discussion of each data element.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

For the proposed changes to Form G-32 that are related to additional data elements that are not currently submitted to NIIDS, the MSRB is proposing to require underwriters to input this information directly onto Form G-32. Thus, the baseline would be the existing Rule G-32 and the current Form G-32. This analysis considers costs and benefits of the proposed changes above the baseline. Specifically, since certain data elements are already required on Form G-32, submission of currently-required information is considered part of the baseline for purposes of this Request for Comment, and only costs associated with supplying the additional data elements not currently input into NIIDS are addressed in the discussion of costs and benefits.

3. Identifying and evaluating reasonable alternative regulatory approaches

Similar to the alternative above for auto-population of data from NIIDS, one alternative to collecting data directly on Form G-32 would be for the MSRB to collect this information from a third-party vendor. In that case, the MSRB

would require validation of data accuracy for those additional data fields the same way it currently requires accuracy for all data elements submitted to NIIDS. However, reliance on third-party vendors could limit the MSRB's ability and latitude to make the data available to the market, thus hindering the goal of increased transparency.

Likewise, the MSRB could consider not collecting and disseminating the additional data elements. This alternative is undesirable because it would prevent the benefits that are associated with the proposed changes, including enhanced secondary market transparency, from being realized. Regarding selected data elements that the MSRB is proposing to collect through NIIDS above, the MSRB first considered whether information has the intended benefits of enhancing market transparency and improving the MSRB's flexibility regarding usage of the data, and then whether the information is readily available from NIIDS to minimize the burden that it imposes on underwriters.

Finally, the MSRB could consider collecting all of the proposed additional data through NIIDS, including the newly proposed data points that are not currently input into NIIDS. However, those data elements are currently not available from NIIDS; thus, it is more practicable for the MSRB to collect the information directly on Form G-32. If DTC were at some point to change its data collection scope, the MSRB could revisit the approach.

4. Assessing the benefits and costs of the proposed changes

Benefits. The MSRB believes there would be many benefits associated with collection of the proposed additional data elements not currently collected in NIIDS, as these new data elements are currently not available to the MSRB. The proposed changes, such as the disclosure of full call schedule, would enable the MSRB to provide more information to the market. This would increase transparency, which should reduce information asymmetry, enhance market efficiency, assist individual investors with more informed decision making and further reduce transaction costs for investors in the secondary market. As noted above, academic studies have demonstrated the benefits of such transparency to the market.

Academic studies have consistently shown that information disclosures on municipal bond issuances have benefited investors, particularly retail investors who have higher information acquisition costs than institutional investors. For example, a measurable reduction in the transaction costs paid by retail investors and related pricing inefficiencies in the secondary market for municipal securities have been attributed to information disclosure via

online repositories.[53] Without the proposed additions to Form G-32, retail investors would have access to less information than some market professionals, resulting in information asymmetry. Information asymmetry could cause market price distortion and/or transaction volume depression resulting in an undesirable impact on the municipal securities market.

In addition, improved transparency of some other additional data fields, such as names of municipal advisors, corporate obligated persons and syndicate managers, would provide issuers with better information about their potential choices for selecting municipal advisors, obligors and underwriters. The additional information should further enhance the efficiency of primary market activities.

Costs. In the context of this proposal, the relevant costs are those associated with providing information for the proposed new data elements. For the most part, this information is readily available to underwriters. However, it is useful to consider each element individually below.

- **Ability for Minimum Denomination to Change** – The MSRB is proposing a "Y/N" flag on Form G-32 to indicate whether the minimum denomination for the issue has the ability to change. Since this information is contained in the official statement, which is readily available to underwriters prior to issuance, the MSRB believes the costs associated with providing this information would be negligible.

- **Full Call Schedule** – The MSRB is also considering requiring additional call information on Form G-32. Like most of the data elements in the Request for Comment, call information is known to underwriters prior to issuance. Therefore, the costs associated with providing this information on Form G-32 primarily take the form of additional time needed to complete Form G-32. Like other proposed data elements, the MSRB believes that the time required to provide this information (and any subsequent cost) would not be significant.

- **Names of Municipal Advisors, Obligated Person(s) and Additional Syndicate Managers (Senior and Co-Managers)** – The MSRB is also proposing to require the names of municipal advisors, obligated

[53] *See* Cuny, Christine, "Municipal Disclosure and the Small Trade Premium," Working Paper, New York University, November 28, 2016, and Dzigbede, Komla, "Regulatory Disclosure Interventions in Municipal Securities Secondary Markets: Market Price Effects and the Relative Impacts on Retail and Institutional Investors," Working Paper, State University of New York at Binghamton, July 2017.

person(s) and additional syndicate managers (if applicable) on Form G-32. This information is readily available to underwriters and the incremental cost of providing this information takes the form of additional time required to complete Form G-32. The MSRB believes that the time (and the subsequent cost) would not be significant.

- **Retail Order Period by CUSIP Number** – Under the proposed changes, more detailed retail order period information would be required on Form G-32. Specifically, underwriters would be required to provide CUSIP-specific retail order period information. Like other of the proposed data elements, this information is well known to the underwriter prior to issuance and contained in the official statement. Therefore, the burden of providing this proposed additional information is limited to simply inputting it on the form. Thus, the main associated burden would be the additional time required to complete the form. Incrementally, this cost would be minor as it should not require significant time to enter the new information.

- **Percentages of Security Refunded by CUSIP Number** – The proposed change would require the underwriter, in a refunding, to provide the percentage of each CUSIP number refunded in an issue. The percentage of CUSIP numbers being refunded should not be difficult for underwriters to gather and to provide to the market, as underwriters should already have the information on hand.

- **LEIs for Credit Enhancers and Obligated Persons, if available** – The MSRB is proposing to require the LEI for the obligated person and any credit enhancers to be provided, if readily available. In the case of the LEI for credit enhancers, this information would only be required if credit enhancements were used. LEI information is publicly available through various platforms so the cost of obtaining and providing this information would be limited. Additional costs in the form of search time may be incurred if the underwriter does not have the appropriate LEI(s) on hand. In the event that an entity does not have an LEI, the underwriter may incur additional search costs to confirm that an LEI does not exist. The proposed changes might create a disincentive for entities to obtain LEIs since they would require LEI information only when readily available.

The MSRB believes that the long-term accrued benefits of the proposed changes, including the benefit of transparency of this information in the broader market, would outweigh the burden imposed on underwriters.[54]

Effect on Competition, Efficiency and Capital Formation. The MSRB believes that the proposed changes may improve the efficiency of the municipal securities market by promoting consistency and transparency of information. 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 would outweigh the costs over the long term. Additionally, in the MSRB's view, the proposed changes would not result in an undue burden on competition since they would apply to all underwriters equally.

Conclusion

Overall, the MSRB believes the above proposed changes should bring additional benefits to the market, with relatively limited costs to market participants. The MSRB has assessed the impact of the proposed changes and believes that the likely benefits should accrue and outweigh the likely costs over the long term.

The MSRB is soliciting estimates of any costs associated with the proposed changes in this Request for Comment but believes that, on aggregate, the costs would be less than the cumulative benefits.

July 19, 2018

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[54] For B2B submissions, to provide the above-proposed data elements, this submitter would incur development costs to code for the new submission format since their information is not auto-populated on Form G-32 from NIIDS. The MSRB realizes that this firm would most likely face greater up-front costs in the event of a rule change due to the one-time cost to revise the firm's B2B submission code than firms submitting manually.

Text of Proposed Amendments*

Rule G-11: Primary Offering Practices

(a) – (f) No change.

(g) *Designations and Allocations of Securities*. The senior syndicate manager shall:

(i) No change.

(ii) notify all members of the syndicate, simultaneously, via a free-to-trade wire, that trading restrictions have been lifted.

(~~ii~~iii) within two business days following the date of sale, disclose to the other members of the syndicate and the issuer, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated, including any allocation to an order confirmed at a price other than the original list price. The summary shall include allocations of securities to orders submitted through the end of the order period or, if the syndicate does not have an order period, through the first business day following the date of sale;

(~~iii~~iv) disclose, in writing, to each member of the syndicate and the issuer all available information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts within 10 business days following the date of sale and all information about designations paid to syndicate and non-syndicate members expressed in total dollar amounts with the sending of the designation checks pursuant to section (j) below; and

(~~iv~~v) disclose to the members of the syndicate, in writing, the amount of any portion of the take-down directed to each member by the issuer. Such disclosure is to be made by the later of 15 business days following the date of sale or three business days following receipt by the senior syndicate manager of notification of such set asides of the take-down.

(h) – (i) No change.

(j) *Payments of Designations and Sales Credits*. All syndicate or similar account members shall submit the allocations of their designations according to the rules of the syndicate or similar account to the syndicate or account manager within two business days following the date the issuer delivers the securities to the syndicate. Any credit designated by a customer in connection with the purchase of securities as due to a member of a syndicate or similar account or any group net sales credits due to a member of a syndicate or similar account shall be distributed to such member by the broker, dealer or municipal securities dealer handling such order within 10 calendar days following the date the issuer delivers the securities to the syndicate.

* Underlining indicates new language; strikethrough denotes deletions.

(k) - (l) No change.

* * * * *

Rule G-32: Disclosures in Connection with Primary Offerings

(a) No change.

(b) Underwriter Submissions to EMMA.

(i) No change.

(ii) Advance Refunding Documents. If a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in such offering ~~shall,~~ is required to provide access to such information by all market participants at the same time by submitting, no later than five business days after the closing date~~, submit~~:

(A) the advance refunding document to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the advance refunding document as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iii) – (vi) No change.

(c) Preparation of Official Statements By ~~Financial~~ Municipal Advisors. A ~~broker, dealer or municipal securities dealer that, acting as financial advisor,~~ municipal advisor that prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities shall make the official statement available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution.

(d) No change.

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Appendix A Proposed NIIDS Data Points for Inclusion on Form G-32

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2018-15 (JULY 19, 2018)

1. Acacia Financial Group, Inc.: Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, dated September 17, 2018

2. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated September 17, 2018

3. C F I: Email from Stephen Holstein dated July 25, 2018

4. Ehlers Associates, Inc.: Letter from Steve Apfelbacher dated September 17, 2018

5. Government Finance Officers Association: Letter from Emily S. Brock, Director, Federal Liaison Center, dated September 19, 2018

6. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated September 18, 2018

7. National Federation of Municipal Analysts: Letter from Julie Egan, NFMA Industry Practices and Procedures Chair, and Lisa Washburn, NFMA Industry Practices and Procedures Co-Chair, dated September 17, 2018

8. Public Resources Advisory Group: Letter from Marianne F. Edmonds dated September 18, 2018

9. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 17, 2018

10. U.S. Securities and Exchange Commission, Office of the Investor Advocate: Letter from Rick A. Fleming, Investor Advocate, dated September 17, 2018

ACACIA
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September 17, 2018

VIA ELECTRONIC MAIL

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2018-15

Dear Mr. Smith:

Acacia Financial Group, Inc. ("Acacia") is a national municipal advisory firm that serves a wide range of municipal bond issuing clients including high profile issuers, local small issuers and infrequent issuers. We appreciate the opportunity to comment on MSRB Notice 2018-15 related to Primary Offering Practices.

Acacia is fully supportive of the need for intelligent regulation of the municipal marketplace and in creating a thoughtful regime for municipal advisors. We would like to emphasize that all new regulations should look at the rationale behind the rule and to gauge if there is still a need for the rule or if the markets, particularly in the wake of Dodd-Frank, have impacted the roles of the key players in the marketplace. Lastly, Acacia feels it is important to fully address the economic costs associated with the imposition of new rules on the municipal advisory community which is largely composed of small firms.

First, we support the comment letter provided to the MSRB by the National Association of Municipal Advisors and would like to emphasize several points made in that letter.

Requirement to Provide the Official Statement to the Underwriter

We believe the MSRB's proposal to require a municipal advisor to provide the official statement to the underwriter is unnecessary and this *requirement should be removed from broker dealer municipal advisors in order to ensure parity under the rules.*

Our first concern is there is no clear definition as to what constitutes preparation of an official statement. It is important to recognize that some municipal advisors assist in the preparation and may be the scribe, however, the issuer ultimately maintains practical control over their document. At the time of the initial rule, there may have been market dynamics that prompted the MSRB to implement this rule, however, we respectfully submit the advances in technology and the increased focus of issuers on maintaining custody of their offering documents should prompt the MSRB to retract this requirement. As stated in the NAMA letter, **"We are unaware of any problems with underwriters receiving the OS and believe the MSRB should review its rules not just to see where they can unilaterally apply current dealer-MA rules to all MAs, but**

whether or not in this new regulatory environment, the original dealer-MA rules (such as Rule G-32(c)) make sense today or, as we suggest should instead be altogether withdrawn."

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

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

- Market efficiencies and market transparency are not enhanced by this proposal. ***The regulatory imbalance between non-dealer municipal advisors and dealer municipal advisors is a red herring most easily remedied by removing the responsibility of providing the official statement from dealer municipal advisors.*** Acacia believes the market is better served by allowing issuers to retain the responsibility for the dissemination of their offering documents.
- 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. ***This one simple change will remove the regulatory imbalance while improving the efficiency of the marketplace by having the responsibility rest with the owner of the disclosure document, the issuer.***
- Requiring a municipal advisor to distribute the official statement begins to blur the lines between broker dealer activity and municipal advisory activities. The rule was written at a different time and when there was no clear definition of a municipal advisor. We believe Dodd-Frank has irrevocably changed the landscape and new rules should acknowledge this change.
- Finally, the MSRB provides no statistics or factual data that this change will improve efficiency in the marketplace.

Thank you for this opportunity to provide our comments.

Sincerely:

Noreen P. White
Co-President

Kim M. Whelan
Co-President

BDA Bond Dealers of America

1909 K Street NW • Suite 510
Washington, DC 20006
202.204.7900
www.bdamerica.org

September 17, 2018

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 MSRB Rules on Primary Offering Practices

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 Notice 2018-14 (the "Notice"): Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices. BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

We have organized our comments in the order of the Notice.

Rule G-11 Primary Offering Practices

- *Free-to-Trade Wire*

As we discussed in our comments to the Concept Proposal (as defined in the Notice), the BDA supports the MSRB's change to Rule G-11 to require a notification to all members of the syndicate that trading restrictions have been lifted. The BDA suggests, though, that the Rule not prescribe a free-to-trade wire, as industry custom changes from time and time. Accordingly, the BDA suggests that the MSRB change the wording of the Rule amendment to require such notification in any reasonable manner accepted and customary within the industry that notifies all syndicate members simultaneously.

- *Additional Information for the Issuer*

As in our comments in response to the Concept Proposal, the BDA encourages the MSRB to require the additional information to be provided to issuers upon request. The BDA also encourages the MSRB, the GFOA and others to provide education to issuers concerning the additional information that is available to them upon request. Many issuers do not need or want this information.

- *Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits*

As we did in our comments to the Comment Proposal, the BDA supports this Rule change.

Rule G-32 – Disclosures in Connection with Primary Offerings

- *Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof*

As in our comments to the Concept Proposal, the BDA supports the proposed changes to Rule G-32(b)(ii) to require access to this information by all market participants at the same time. We do note, however, that this requirement will be of less significance than it was at the time of the Concept Proposal given the tax law changes that eliminated advance refundings.

- *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves it for Distribution*

As in our comments to the Concept Proposal, the BDA supports this rule change.

- *Additional Data Fields on Form G-32 Auto-Populated From NIIDS*

The BDA does not object to any of the data fields proposed to be auto-populated from NIIDS. The BDA does not recommend that the MSRB auto-populate any additional information from NIIDS into Form G-32.

- *Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS*

The BDA objects to some of the new data fields as either unnecessary or overly burdensome. Here are our views of the various new proposed data fields:

  - Ability for minimum denomination to change. The BDA supports this new data field because it will prevent the perception that municipal

securities trading at a minimum denomination at the time of the issuance of the municipal securities is necessarily lower than the then-effective minimum denomination.

- Additional syndicate managers. The BDA objects to this new data field. This new information would not assist any market participant and, especially for large issuances, can impose new burdens on underwriters.

- Full call schedule. The BDA objects to this new data field because it is unnecessary and will add burdens to underwriters. The call terms of a municipal security are part of the information that dealers communicate to investors at the time of trade. A full call schedule will not assist market participants and will just require underwriters to complete more information, which for some issuances is a significant amount of data.

- Legal entity identifiers. The BDA objects to this new data field because it is not easily obtainable in almost all instances. Right now, underwriters do not have public access to information that would readily reveal this information and would require underwriters to spend the time to determine if the municipal issuer or borrower has an LEI and confirm the number. We do not believe that the market benefits from access to this number and, in any event, any benefits would not outweigh the burdens to underwriters.

- Name of obligated person(s). The BDA supports the inclusion of this data field.

- Percentage of CUSIP numbers refunded. The BDA objects to the inclusion of the data field as this information is both unnecessary and not meaningful. For holders of refunded bonds, what is important is what portion of a particular CUSIP has been refunded. The percentage of CUSIPs across an issuance of municipal securities is of no value to investors and other market participants. This will require a unique calculation to be performed on each partial refunding and thus would present a new burden to underwriters.

- Name of municipal advisor. The BDA objects to this data field. The information is obtainable from the final official statement and does not represent valuable information in the secondary market trading of municipal securities.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

Comment on Notice 2018-15

from Stephen Holstein, C F I

on Wednesday, July 25, 2018

Comment:

My name is Stephen Holstein. I've been buying municipal bonds, to the degree possible, In the primary market since the 1980s.

While I readily admit that I have not read the proposals of the MSRB, with regard to new municipal bond issues, I wish to address a problem that I find as a municipal bond buyer.

I trust the MSRB would agree with me that it is the best interest of the markets that the broadest possible array of buyers have real access to this market.

I have experienced the inability to purchase bonds from entities in which I am a ratepayer or taxpayer because of what I would call designer scales and what I assume to be pre- sold bonds.

More and more I see bond offerings in the original issue market which display characteristics that indicated to me that there has been a scale arranged for the benefit of certain institutions or one certain institution.

For example: when I see a scale which shows 5% coupons on bonds ranging from 2022 to 2047 at various premiums , in my view that scale was created for a particular Institution which will take all or most of the bonds.

If we wish the widest possible distribution with the greatest number of possible buyers of municipal bonds this practice tends to discourage that goal.

I hope the MSRB is either addressing my concern in this notice, or will address it in future rule making activities.

September 17, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Request for Comment: Preliminary Offering Practices

Dear Mr. Smith:

Ehlers Associates, Inc., a registered Municipal Advisor, does not believe the rule requirement for all municipal advisors that "prepare" Official Statements for their clients make the OS available to managing/sole underwriter is necessary for the following reasons:

- This rule was originally described in the August 1985 MSRB Volume 5, Number 5, REPORTS newsletter as follows:

"The Board has adopted these provisions (G-32 disclosures are printed in final form when using a regulated financial advisor no later than two business days prior to the date the securities are delivered by a manager to the syndicate members) because it understands that many dealers settle their customer transactions on the day the securities are delivered to the syndicate. It, therefore, concluded that it was necessary to specify these printing deadlines to facilitate compliance with the rule by these dealers."

While there was a good reason in 1985 to require an OS be provided by the regulated financial advisor two days ahead, we no longer have these printing constraints. This a good time to evaluate the original need for the rule and conclude this requirement is longer needed. Continuing this requirement also results in an economic cost to small firms for which there appears to be no market benefit.

- Not all issuers use a Municipal Advisor which will results in rule requirement that cannot be consistently applied in every municipal transaction.

- There is no clear definition on what is meant by "preparation of the OS". Municipal Advisors may assist with parts of the OS or only review portions of the OS. Where is the line for these types of client engagements that would require the municipal advisor to make the OS available?

Thank you for your efforts to solicit comments on the topic before you make a final decision.

Sincerely,

Steve Apfelbacher

Government Finance Officers Association
660 North Capitol Street, Suite 410
Washington, D.C. 20001
202.393.8467 *fax*: 202.393.0780

September 19, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1100
Washington, D.C. 20005

RE: MSRB Notice 2018-15: Primary Offering Practices

Dear Mr. Smith:

The proposed amendments to MSRB Rules G-11 and G-32 are of interest to issuers of municipal securities, as they are related to a key tenet of the MSRB's mission – to protect issuers from unfair market practices through Rulemaking. The Government Finance Officers Association, representing over 19,000 state and local government public finance professionals, appreciates the opportunity to comment on the MSRB's proposed amendments to these rules.

We provided comments on the MSRB's Concept Proposal on many of these issues last year. We note that the MSRB has abandoned efforts to mandate posting of preliminary offering statements (POS) on EMMA, which was our key concern in the MSRB's past initiative. We also expressed concern with having other parties – underwriters and municipal advisors – posting POSs without the explicit permission of the issuer. GFOA strongly supports, and notes in our own best practices, that issuers should post their POS on EMMA, however we continue to advocate against federal regulation thereof. We are glad to see that the issue is not part of this Notice.

There are two key areas of the current proposed amendments where we wish to comment.

1. Issuer Receiving Information from Senior Syndicate Manager of Designation and Allocation Information

GFOA supports having the senior syndicate manager provide the issuer, at all times, information about order designations and allocations. As the senior syndicate manager is acting on the issuer's approved designations and allocations, information should be given to issuers in order to confirm transparent market practices, and that the issuer's instructions were executed properly.

We do not believe that it is adequate for the senior syndicate manager to "educate" the issuer on where this information may be found on third party platforms nor should education replace the task of providing this information.

2. Information Available to the Market About Refundings

We do not object to the MSRB's proposal to have information about refundings available to market participants at the same time nor do we object to additional information about refundings provided on Form G-32. We do, however, wish that the MSRB would require the timeframe to be shorter than the current five business days.

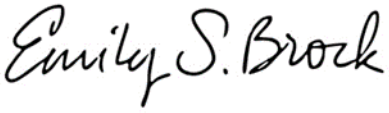
The MSRB asks if a list of "potential" refundings that may be produced by the syndicate before or at the time of pricing should be shared with market participants, or be required or voluntarily posting on EMMA. We believe that this information should only be provided once the refunded maturities information is final. By including potential refunding information, the underwriter (and issuer) could be entangled in providing misleading information, if indeed those refundings are not part of the final transaction. Therefore, only final information about the refundings should be disseminated to everyone at the same time.

We would also point out, as we did in our November letter, that the MSRB language about free to trade wire, does not account for new IRS rules on the issue price of bonds. We suggest that the MSRB include language that trades may not be allowable at any price if certain issue price restrictions (e.g., hold the price), are in place.

We would be pleased to have further discussions with the MSRB Board and/or staff about our comments and the MSRB's efforts related to primary offering practices. Thank you again for the opportunity to comment on these important issues.

Sincerely,

Sincerely,



Emily S. Brock
Director, Federal Liaison Center

NAMA
NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

September 18, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2018-15

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to comment on MSRB Notice 2018-15 related to Primary Offering Practices. NAMA represents independent municipal advisor firms, and individual municipal advisors ("MA") from around the country, and our members are keenly interested in this rulemaking.

Last year NAMA provided comments on the MSRB's Concept Proposal related to Primary Offering Practices (Notice 2017-19). We are pleased to see that the proposed rulemaking eliminated discussion of mandating that Preliminary Offering Statements be posted on EMMA, and eliminated the inclusion of municipal advisor fees on the list of information needed to complete Form G-32. Our November 2017 letter outlined our concerns with including these tasks in rulemaking, and we appreciate having our voice heard in these matters.

However, there are two areas with which we still have significant concerns with the proposed rulemaking. First, having a municipal advisor who is involved with the development of an issuer's official statement (OS) be responsible for delivering that OS to the underwriter, and second, any dilution of information that should be provided to issuers from syndicate managers.

<u>Placing Responsibility on Municipal Advisors to Deliver the Official Statement to Underwriters When the MA Prepares an Official Statement for Issuer Clients</u>

No Municipal Advisor Should Be Responsible for Delivering an Official Statement to the Underwriter

We have previously commented both in our November 2017 letter related to Primary Offering Practices and in letters regarding Rule G-34, having MAs obtain CUSIP numbers in competitive sales, that the MSRB has failed to incorporate into its consideration that there is a SEC definition of municipal advisor, which was not in place when the MSRB first developed these rules for dealer-municipal advisors.

The requirement for dealer-MAs to have this responsibility was developed at a time prior to the *Dodd Frank Act* and the SEC Municipal Advisor Rule when the differences between broker/dealer and MA activities had not been defined by federal regulation. The role of the municipal advisor is to serve the issuer, as determined by the written scope of services between the MA and their client. **Outside of services provided and fiduciary duty to the issuer, there are no statutorily defined market responsibilities on municipal advisors. Unfortunately, this proposed Rule, as well as recently adopted changes to MSRB Rule G-34 ignores this important point and seems to create scope of services for MAs, rather than have that rest solely in their client's hands. We again ask the MSRB to relinquish this requirement for all municipal advisors.**

SEC Rule 15c2-12 Already Covers the Responsibility of OS Delivery

Another concern with having the MSRB extend – and not eliminate – the requirement that MAs deliver the OS to investors, is that SEC Rule 15c2-12 already covers this issue. The SEC's rule allows the issuer great flexibility to provide the Official Statement to the underwriter directly, or have their designated agent do so. As a reminder, the OS is the issuer's document. We are unclear why then there must be a MSRB rule to place further conditions on what the SEC already allows for OS delivery, which may subvert how the issuer wishes its OS to be delivered.

Further, SEC Rule 15c2-12(b)(1) and (3) require an underwriter to obtain and review the Official Statement and contract with the issuer to receive a final Official Statement. For the Municipal Advisor to have this responsibility, currently and going forward if the amendments are adopted, it would unnecessarily interfere with the contractual relationship between the issuer and the underwriter. **The MSRB appears to be placing rulemaking driven responsibilities on MAs rather than applying rules related to the MAs fiduciary duty and scope of services it is contracted to perform for the issuer.**

The Proposed Rule Does Not Define the Term "Prepares"

In its proposed rulemaking, the MSRB does not define the term "prepares" and leaves MAs with confusion about how then the Rule would be applied. Does the rulemaking apply only if the MA prepares the entire document? What if an MA only prepares one section, are they then responsible only for that section and then how would that be made available? What if the MA simply collects the information from the issuer and formats the OS document and the document is then reviewed by others on the deal team? What if the client asks the MA to review the OS, does that review constitute preparation? What if the MA's responsibility is solely to coordinate the final electronic posting of the OS? What if multiple MAs work on the OS (likely with other bond team members)? **Because MAs may provide a variety of types of services to their clients, including tasks related to the OS, how this rulemaking would apply does not have a one size fits all solution. That in combination with the lack of clarity in the proposal, leaves MAs wondering – and concerned – about what threshold must be met for the proposed amendment to apply.**

Additionally, our members are often part of a deal team where bond counsel, or disclosure counsel, has the last look of the OS prior to the issuer signing off that it is ready for distribution. **The MA is most likely not the professional with the last look of the document, and anecdotally we have heard that in some cases, the bond counsel is the party who distributes the document, and does not allow others to do that task. This exposes the concern, and perhaps misunderstanding, that the MA is solely the party responsible when "preparing" an OS, when in practice that is not the case.**

The Proposed Rule Does Not Define the Term "Make Available"

Rule G-32(c) states that a municipal advisor who "prepares an OS shall make the OS available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution." The MSRB does not provide discussion or clarification of how the document is made available, nor what the current practice is for dealer-MAs. This issue leads to concerns related to compliance with the rulemaking which is further discussed below. If the document is posted on electronic platforms for all members of the deal team, does that satisfy the requirement that it is made available? If the OS is delivered to the underwriter by the issuer, rather than the MA per the decision of the issuer, then does that satisfy the requirement? **The uncertainties with this definition go back to our argument that delivery of the OS is already discussed in SEC Rule 15c2-12 (b) (3) and therefore adding conflicting requirements within MSRB rulemaking is at the very least unnecessary and at most inconveniently burdensome.**

Questioning the Purpose of G-32(c) in Today's Environment vs When it was First Adopted

Notice 2018-15 also did not include (despite the request in our November, 2017 letter) why Rule G-32(c) was first developed, nor MSRB's current thinking about why it should be applied to all municipal advisors. **This explanation is especially needed as the Board considers seeking SEC approval of changes to the Rule. The professionals impacted as well as decision makers should be able to know the reasoning behind why the Rule was set in the first place and then determine if it applies in today's regulatory, technological, and market environment.** If, as we believe, Rule G-32(c) was developed when market practices allowed for a municipal advisor to serve in that capacity and then resign and be eligible to underwrite the same deal, then in that context this Rule served a purpose. However, now with the changes to MSRB Rule G-23 which prohibits that practice, the advent of technologies which allow for the OS to be distributed easily and widely to market participants at the same time with a click of a mouse, and a federal definition for municipal advisors in place, we do not see the need for the MSRB to seek this change.

No Discussion of How OS is Made Available to Underwriter Where There is No MA Assisting with Its Preparation

The MSRB does not address how the OS is made available to an underwriter in a transaction where there is no MA or the MA is not assisting the issuer with preparing the OS. We are aware that such practices currently exist, and we are unaware of problems of OS delivery in these circumstances. Again, this harkens back to the argument that SEC Rule 15c2-12 already covers the ground of OS availability to underwriters, and there are no critical market concerns that we are aware of related to underwriters not having official statements in reasonable time to carry out their duties or that would require an MSRB rule to address municipal advisors having to deliver the OS to the underwriter.

Crossing the Line into Dealer Activity

We are very concerned that the MSRB is seeking to involve municipal advisors in the investor offering process which contradicts the SEC's MA Rule and the *Dodd Frank Act*. Doing so ignores the important distinction between dealer activities for offering municipal securities to investors and the municipal advisor's fiduciary duty to issuer clients. This is an overarching concern of our members as they have seen the rulemaking related to CUSIPs and now the proposal for official statement delivery to be laying

the groundwork for further rulemaking being implemented on MAs that are outside the scope of law and the MSRB's charge to develop rules as an extension of the SEC's MA Rule.

Costs Associated with Proposed Amendments - Compliance with the Rulemaking

The MSRB noted in its proposal that "the costs associated with this change should be insignificant since the requirement exists only where the municipal advisor prepares the official statement and it is therefore readily available to the municipal advisor (dealer or non-dealer) and can easily be provided to the underwriter via electronic means." **However, the MSRB only considers the action of delivering an official statement, and not the costs associated with complying with the rulemaking and its vague terms and standards.**

As currently proposed, and as noted above, municipal advisors would have to decipher and determine how the Rule should be applied, as the proposed amendments are not clear either in their discussion of "preparing the OS" or "making the OS available**." In many cases, municipal advisors would have to seek the advice of counsel to understand how their scope of services and work for an issuer may be considered applicable to Rule G-32. At the very least, they would spend significant internal hours making determinations based on the various facts and circumstances associated with their scope of services, the specific provider that is electronically disseminating the official statement, the wishes of their issuer client and the responsibilities of each deal team member. With the MSRB not discussing how the OS can be made available, it is also unclear how the MA will be able to document for compliance purposes that it has made the OS available to the underwriter**. Does posting on electronic deal platforms such as IPREO and MuniOS, qualify and if so, how does the MA document this for their file? If the issuer delivers the OS to the underwriter – as well as others on the financing team – can the MA keep that for the file to demonstrate that the underwriter received the OS or would G-32 require that the MA also send the OS to the underwriter and maintain a copy of that record?

The MSRB continues to avoid addressing the costs associated with complying with their rulemaking, and developing rules clear enough so that MAs can more readily understand how they apply in a variety of transactions and contracts that MAs have with their clients, without seeking interpretation from outside counsel.

In assessing the "benefits and costs of the proposed changes" to Rule G-32, our comment is that there is essentially no benefit to placing this requirement on any MA, and that the MSRB did not adequately analyze the costs associated with complying with the rulemaking. Further, the MSRB is required by the *Exchange Act* not to place undue burdens on small MA firms, and we do not believe this was addressed in the Notice, nor is there acknowledgement of the costs associated with this Rule in aggregation with other MSRB rules.

Parity in Rulemaking Needs to be Thoughtful Not Automatic

Furthermore, while we understand the MSRB's need to review its rulemaking to ensure that the rules are applied fairly to all parties, this is one instance where the argument that this should be applied unilaterally to all MAs needs further discussion and consideration. This also exposes the concern that the Rule is not being proposed to solve a problem in the market but rather to just automatically apply as many rules currently applicable to dealer MAs to all MAs in a misguided attempt at regulatory parity. For reasons discussed in in this letter, **we are unaware of any problems with underwriters receiving the**

OS and believe the MSRB should review its rules not just to see where they can unilaterally apply current dealer-MA rules to all MAs, but whether or not in this new regulatory environment, the original dealer-MA rules (such as Rule G-32(c)) make sense today or, as we suggest should instead be altogether withdrawn.

Providing Designation and Allocation Information From the Senior Syndicate Manager to the Issuer

The MSRB proposed amendments to Rule G-11 that would require senior syndicate managers to provide designations and allocation information to issuers. We support these amendments, and believe issuers should be given that information at all times. We do not believe that having the issuer ask for the information, allowing the issuer to opt out of receiving the information, or to point to where this information can be found on some outside website provided by the senior manager are helpful. **As the MSRB and SEC focus on transparency in the markets, including the municipal market, there seems to be no reason why the issuer should not be given this crucial information about their transaction without hurdles or hesitation.**

We would welcome the opportunity to discuss our comments with MSRB staff and the Board in greater detail. This is especially true related to the MSRB's work to place additional responsibilities on MAs which are outside of SEC's MA Rule that defines municipal advisors and municipal advisory activity and draws a distinction between such activity and broker-dealer activity. Within this Notice and other MSRB rulemaking efforts, we would also ask that the MSRB first look at the reason why rules were first developed, and if those reasons apply in today's regulatory and market environments.

Related to Rule G-32, the MSRB should take into consideration the incorporation of the MA Rule and a definition of municipal advisors and municipal advisory services into the overall regulatory landscape, and realize that placing an unnecessary, vague responsibility on MAs, is unnecessary and does not advance their regulatory mission. Further, the proposed changes to MSRB Rule G-32 are in conflict with and seemingly override what the SEC already has put in place regarding issuer delivery of the OS to the underwriter, and could broach the line of dealer activity.

Thank you for the opportunity to comment on these important issues.

Sincerely,

Susan Gaffney

Susan Gaffney
Executive Director

NATIONAL FEDERATION *of* MUNICIPAL ANALYSTS

September 17, 2018

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

Re: MSRB Regulatory Notice 2018-15

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 MSRB Rules on Primary Offering Practices.

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.

Thank you for giving the NFMA an opportunity to comment on Regulatory Notice 2018-15. Our comments pertain primarily to the discussion in Part II, Rule G-32 - Disclosures in Connection with Primary Offerings, specifically regarding Refunded CUSIPS, Preliminary Official Statement (POS) Disclosure and Additional Data Fields on Form G-32.

In all of these areas, the NFMA supports the full disclosure of all credit and security information to all market participants at the same time to ensure a level playing field. We also support the submission

of a POS to EMMA prior to bond pricing to so that all market participants, including holders of parity bonds, have equal access to the most recent disclosure document of an issuer.

Regarding Part A, Disclosure of the CUSIPs Refunded, and the Percentages

Thereof, the following responses reflect the NFMA's views on the specific questions posed in the release:

1. We support the disclosure to EMMA of CUSIPs being refunded to all market participants concurrently, immediately following the pricing of the refunding bonds and the execution of the escrow agreement.

2. Information regarding refunded CUSIPs should be included in the POS and Final OS and submitted to EMMA as soon as the information becomes available.

3. Our view is that there should be a requirement to provide all the CUSIP information concurrently to market participants.

4. Our view is that the MSRB should require underwriters to provide information on Form G-32 for partial current refunding by CUSIP number and the percentage of each bond to be refunded.

5. Our view is that a list of partial refunding candidates should be made available to all market participants on EMMA, so as to ensure equal access to all market participants.

Regarding Part B, Submission of Preliminary Official Statements to EMMA, the following are our responses:

1. The NFMA supports the filing of a POS to EMMA by the underwriter or municipal advisor prior to the pricing of a bond issue. It is important to the NFMA that a transaction participant that the MSRB has jurisdiction over be required to make such filing. The delivery of the POS to the market for competitive issues may inadvertently exclude other investors who may also be interested in bidding on the transaction, to the detriment of both the issuer and the potential investor. Additionally, the information contained in the document is likely to be the most current disclosure for the issuer or obligated person. If there are outstanding bondholders, this information is of critical importance to them as well. Providing timely access to the POS will help ensure that investors have equal access to information in both the primary and secondary markets.

2. Market transparency and fairness would be enhanced by the inclusion of non-dealer municipal advisors in this Rule.

Regarding Part D - Additional Data Fields on Form G-32 Not Auto-Populated:

From NIIDS

1. We recommend the inclusion of the following information: 1) denomination changes; 2) full call schedule; 3) LEI's; 4) name of obligated persons and 5) name of municipal advisor.

2. We recommend the required disclosure of LEI's in order to encourage market participants to obtain them.

3. We believe that the usage of flags that indicate certain restrictions, including the limitation of sales to a qualified institutional buyer, would be useful to the market.

The NFMA believes that these initiatives will promote increasing transparency and fairness to the market. We continue to be concerned about the selective disclosure of information by an issuer to an investor or group of investors that enables one (or some) investors to have an advantage when making an investment decision. We are also concerned when Rating Agencies receive non-public information in advance and utilize it in their rating actions, putting investors at risk of a sudden loss in the value or liquidity of their investments. The NFMA urges the MSRB to address all issues of unequal and unfair disclosure in the municipal bond market.

Sincerely,

/s/

Julie Egan
NFMA Industry Practices & Procedures Chair

/s/

Lisa Washburn
NFMA Industry Practices & Procedures Co-Chair

PRAG

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PUBLIC RESOURCES ADVISORY GROUP

September 18, 2018

Ronald W. Smith
Corporate Secretary
MSRB
1300 I Street NW
Washington, DC 200005

Dear Mr. Smith:

Re: Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

I appreciate the opportunity to provide comment to the MSRB on Primary Offering Practices. I believe the process of "rationalizing" the rule book began in December 2012, when the MSRB requested "broad industry and public input on its regulation of the municipal securities market as it engages in a comprehensive review to ensure that its rules reflect current market practices." (MSRB 12/18/2012).

There are many other commenters who will address the numerous details of the draft amendment. I am going to limit my comment to one section of the Notice: *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves it for Distribution*.

The answer to this question is no, and, furthermore, dealer municipal advisors **should also be given relief** from this requirement. Market regulation and market practice have evolved since this provision was added to G-32, and all market participants are aware of the need for underwriters to have access to the Official Statement. SEC Rule 15(c)(2)(12) has clearly addressed this matter. The existing provision of G-32 no longer has a purpose, so expanding the Rule provides no value.

My practice is concentrated in Florida where disclosure counsel often prepare the Official Statement. The MSRB cannot regulate these lawyers, yet the Official Statements get delivered as required. The Florida Division of Bond Finance prepares many of its own disclosure documents, and similarly those documents are available to underwriters. This section of the Rule (with or without the amendment) solves no market problem. The best way to address the inequity caused by this requirement is to eliminate it.

Sincerely,

Marianne F. Edmonds

sifma
Invested in America

September 17, 2018

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

Re: MSRB Notice 2018-15: Request for Comment Draft Amendments to MSRB Rules on Primary Offering Practices

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2018-15 (the "Notice")[2] issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on draft amendments to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings of municipal securities by brokers, dealers and municipal securities dealers (collectively, "dealers"). SIFMA is pleased to play a part in the conversation about potential rulemaking or additional guidance in connection with primary offering practices.

I. Rule G-11 – Primary Offering Practices

A. Free to Trade Wire

SIFMA members are supportive of requiring the senior syndicate manager to notify the syndicate via a free-to-trade wire when the syndicate restrictions are lifted. If

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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 2018-15 (July 19, 2018).

the requirement only applied when the underwriter has generated a free-to-trade wire, the new requirement would be marginally less burdensome. SIFMA and its members agree that a standardized process for issuing the free-to-trade wire is consistent with the MSRB's original intent with respect to Rule G-11. Communications to syndicate members via wire are standard practice in the market. It would not cause a significant burden to require the senior syndicate manager to notify the syndicate members simultaneously that restrictions on an issue of municipal securities have been lifted and sales in the secondary market may commence.

B. Additional Information for the Issuer

SIFMA and its members believe that issuers generally understand that information regarding the designations and allocations of securities in an offering is available either from the senior syndicate manager or certain third-party information resources. It is not uncommon for a municipal securities issuer to either sit on the syndicate desk during pricing, or log in to an electronic syndicate management system to monitor orders, designations and allocations. SIFMA would be supportive of further issuer education on this subject. SIFMA and its members are most supportive of only requiring the senior syndicate manager to send the designations and allocation information under Rule G-11(g) upon the request of the issuer, as this is current market practice. We do not believe that the senior syndicate manager should be required to provide the information to the issuer regardless of whether it is requested, as some issuers may not be interested in such information. SIFMA and its members believe that if such a requirement were to be included in Rule G-11, then issuers should be permitted to opt out of receiving the information. Also, if managers are required to provide designation and allocation information to issuers, we feel that guidance will be critical to ensure that this is done in a consistent manner across the industry in order for the information to be useable.

C. Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits

As described in our letter on the concept release,[3] SIFMA understands the MSRB's desire to require group net and net designation sales credits to be subject to the same regulatory timeframe of within 10 calendar days following receipt of the securities. However, there are considerations that weigh against the harmonization of the timing for those payments. The determination of amounts due and owing to each syndicate member for group orders and for designated orders is dependent on different inputs. The time pressure to get the payments for group net sales credits processed would pose an additional burden on the syndicate manager, increasing the potential risk of incorrect

[3] Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ron Smith, Corporate Secretary, MSRB, dated Nov. 15, 2017 ("Prior Letter").

payments being sent. Absent evidence of significant problems with the current timing of payments for group and designated orders and in the spirit of efficiency, SIFMA believes that no changes to the timeframes in the current rule should be made.

On another note, current Rule G-11(j) requires the payment of designations within 10 calendar days of delivery by the issuer. Firms handle payment in different ways, with some sending paper checks, and others distributing wires. SIFMA asks that the MSRB consider amending the verbiage to reflect that payment must made within 10 calendar days following delivery to the syndicate by "electronic means." If the MSRB put such a rule change out for comment, they might be better able to determine the industry costs and benefits of such a rule change. At this time, SIFMA and its members feel the term "electronic means" is general enough to accommodate changes in technology which make payments occur faster thus reducing risk, and eliminates the use of paper checks which are less efficient, slower to receive, and slower to process. SIFMA and its members suggest a parallel change for current Rule G-11(i) with respect to the settlement of syndicate accounts.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

A. Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof

SIFMA supports transparency and communication to the market in a fair and open manner. In light of recent tax law changes that eliminate advance refundings, however, SIFMA questions the value of requiring the collection of the percentage of each bond to be refunded.

The MSRB should consider requiring underwriters to provide information on Form G-32 for partial current refundings by CUSIP number, but not the percentage of each bond to be refunded. A less burdensome disclosure methodology, and more valuable to an investor, would be requiring disclosure by CUSIP with a dollar value of bonds refunded, instead of a percentage.

MSRB has requested comment on potentially shortening the time frame for refunding documents under Rule G-32. If the relevant parties to a new issue advance refunding have complied with their roles in such transaction, underwriters generally have access to information regarding issues that have been advance refunded by the time an issue closes. However, as noted in our Prior Letter, in some offerings underwriters continue to face delays in receiving the advance refunding documents in the required format in order to meet the existing five business day deadline under Rule G-32. In particular, most Rule G-32 filings need a final verification report completed prior to the finalization of the escrow agreement. Thus, it is not realistic to require this information to be delivered sooner than the current deadline.

SIFMA objects to the collection of potential refundings, or refunding candidates, before or at the time of pricing. This list should not be required to be posted on EMMA or produced, as it isn't final or relevant until the refunding candidates are chosen.

B. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

SIFMA feels there is no bona fide reason for dealer municipal advisors and non-dealer municipal advisors to have different requirements pursuant to Rule G-32(c). If any municipal advisors are required to make the official statement available to the underwriter after the issuer approve it for distribution, then all municipal advisors should be required to do so. Principles of fairness dictate there be a level regulatory playing field for all municipal advisors. Additionally, the MSRB has acknowledged, through its own efforts, the value of consistency across the regulatory community and within the language of rules. Inconsistent treatment of different market participants, without purpose, is no different than inconsistent treatment of market activity by separate regulatory agencies. Inconsistency within market regulation ultimately leads to unnecessary confusion and unintentional non-compliance or errors.

C. Additional Data Fields on Form G-32 Auto-Populated From NIIDS

SIFMA applauds the MSRB in its move forward to auto-populate Form G-32 from New Issue Information Dissemination Service (NIIDS) data already provided by the underwriter. As described in our Prior Letter, SIFMA believes that initial minimum denomination information would assist the marketplace as a whole in better complying with MSRB Rule G-15(f), with the understanding that dealers will continue to struggle with ensuring compliance with minimum denomination requirements for bonds with minimum denominations that change over the course of their life. Thus, SIFMA believes that it would be beneficial to add to Form G-32 a field for "initial minimum denomination" to be auto-populated by the "minimum denomination" data element in the NIIDS data to be made available to the public through EMMA. However, the underwriter that submitted the initial NIIDS data should have no obligation to update information regarding changes in minimum denominations over the life of the security. SIFMA believes that dealers' obligation with regard to such data must be limited to ensuring its accuracy at the time of its submission to NIIDS under Rule G-34 and that dealers should not be obligated to undertaking an ongoing duty to update such information.

The auto-population of data elements on Form G-32 poses no clear new burden on the underwriting community, as long as they are auto-populated. The requirement to manually fill in these fields if they are not auto-populated, for example for private placements, would create significant additional burdens for the regulated dealer.

Manually populating fields for issues that are not NIIDS-eligible, such as private placements, is no small task. Additionally, the information is of little value, as private placements are not intended to trade. We ask that the MSRB consider exempting private placement and other issues that are not NIIDS-eligible from this new rule.

The data field listed in Appendix A - Proposed NIIDS Data Points for Inclusion on Form G-32[4] appear to be suitable for collection, auto-population and dissemination.

D. Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS

SIFMA and its members are concerned about the additional burdens on the underwriting community to add a significant amount of data to Form G-32 that needs to be manually input. SIFMA is also concerned about some of the proposed fields to be required, such as the full call schedule. This information is in the official statement, and would be burdensome for the underwriter to re-key in. Collection of information regarding retail order periods by CUSIP may need more thought, given the variety of retail order period structures, and the fluid process that can change demand intra-day. Although currently required, we also question the value of manually keying in the name of an obligated person, as there are no standard naming conventions in our industry. As an alternative, we suggest the MSRB consider a link to the official statement on EMMA as satisfying the requirement to input the full call schedule.

Although SIFMA is supportive of the voluntary collection of legal entity identifiers ("LEIs"), "if readily available," our members want to ensure the submission and dissemination of LEIs for underwriters, credit enhancers, letter of credit providers, issuers and obligated persons is conducted as efficiently as possible. We urge the MSRB to coordinate with the Depository Trust Company, which manages NIIDS, to ensure the most efficient and least burdensome collection methodology. SIFMA and its members don't believe that requiring the disclosure of LEIs, "if readily available", would discourage market participants from obtaining them.

We do not think the additional field to flag when a new issue is issued with restrictions is helpful. Such a field has too broad a scope and is too complicated to make it useful.

IV. Conclusion

SIFMA and its members largely are supportive of the MSRB's proposed amendments to Rule G-11 and G-32, as more fully described above. We would be pleased to discuss any of these comments in greater detail, or to provide any other

[4] See: http://www.msrb.org/~/media/Files/Resources/MSRB-Appendix-A-Proposed-NIIDS-Data-Points-for-Inclusion-on-Form-G-32.ashx?la=en.

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***
Lynnette Kelly, President and Chief Executive Officer
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
John Bagley, Chief Market Structure Officer
Margaret Blake, Associate General Counsel
Barbara Vouté, Director – Market Practices

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

September 17, 2018

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: MSRB Regulatory Notice 2018-15
Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

Dear Mr. Smith:

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), the Office of the Investor Advocate[1] at the U.S. Securities and Exchange Commission ("Commission" or "SEC") is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations ("SROs").[2] In furtherance of this objective, we routinely review significant rulemakings of the Municipal Securities Rulemaking Board ("MSRB"). As appropriate, we also make recommendations and utilize the public comment process to help ensure that the interests of investors are given appropriate weight as rules are being considered.

As indicated in our Report on Objectives for Fiscal Year 2018, our Office is currently focused on municipal market reform initiatives that may impact investors, including, but not limited to, rulemakings and amendments relating to "minimum denomination."[3] Accordingly, we appreciate this opportunity to provide comments in regard to proposed amendments to MSRB Rule G-32 as set forth in MSRB Regulatory Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices ("Notice 2018-15").[4]

We support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the Depository Trust Company's ("DTC") New Issue

[1] This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.
[2] 15 U.S.C. § 78d(g)(4).
[3] *See* Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2018* (June 29, 2017), https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2018.pdf.
[4] MSRB, Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices (July 19, 2018), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2018-15.ashx??n=1 [hereinafter Notice 2018-15].

Information Dissemination Service ("NIIDS").[5] We also support the proposal to create additional required data fields on Form G-32, including a "yes" or "no" indicator as to whether the minimum denomination for a bond is subject to change. As discussed in more detail below, we agree that certain of these proposed data points should be sufficiently useful to investors for the MSRB to begin requiring underwriters to disclose the additional data on Form G-32 even though they are not currently provided to NIIDS.

I. Background

Rule G-32, Disclosure in Connection with Primary Offerings, details the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Rule G-32, among other things, requires underwriters in primary offerings to "submit electronically to the MSRB's Electronic Municipal Market Access ("EMMA") System official statements and advance refunding documents, if prepared, related to primary market documents and new issue information."[6]

Rule G-32 is designed to help ensure that customers who purchase new issue municipal securities are provided with timely access to relevant information relating to their investment decision.[7] The MSRB adopted Rule G-32 in 1977 and amended it periodically as market practices evolved and regulatory developments occurred.[8]

On September 14, 2017, the MSRB published a concept proposal ("2017 Concept Proposal") seeking, in part, "input on aspects of Rule G-32 to help inform whether the existing disclosure practices continue to serve the municipal securities market appropriately."[9] In response, the MSRB received twelve comment letters, some of which were responsive to the MSRB's inquires relating to Rule G-32. The comments received are the foundation for the MSRB's targeted request for comment on its draft amendments to its rules on primary offering practices.

II. Discussion

As relevant to Rule G-32, Notice 2018-15 seeks comment on four specific issues, two of which are of particular interest to the Office of the Investor Advocate.[10] Those two issues are as follows. First, the MSRB seeks comment on whether to auto-populate into Form G-32 certain information that is submitted to DTC's NIIDS but is not currently required to be provided on Form G-32. Second, the

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[5] "NIIDS is an automated, electronic system that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating the information to information vendors supplying formatted municipal securities information for use in automated trade processing systems." Notice 2018-15, *supra* note 4, at 9 n.26.

[6] Notice 2018-15, *supra* note 4, at 9. *See also* MSRB, Rules and Guidance, Rule G-32, Disclosure in Connection with Primary Offerings, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32.aspx (last visited August 15, 2018).

[7] Notice 2018-15, *supra* note 4, at 9.

[8] *Id.*

[9] *Id.*

[10] In Notice 2018-15, the MSRB also seeks comment on whether to (A) require disclosure of CUSIP numbers refunded and the percentage thereof to all market participants at the same time, and (B) require non-dealer municipal advisors that prepare official statements to make the official statements available to the underwriter after the issuer approves it for distribution. Notice 2018-15, *supra* note 4, at 9.

MSRB seeks comment on whether to require additional information on Form G-32 that is not currently provided to NIIDS.[11] We discuss these two issues in more detail below.

A. *Additional Data Fields on Form G-32 Auto-Populated from NIIDS*

MSRB Rule G-34 requires underwriters to provide certain information about a new issue of municipal securities that is NIIDS-eligible by submitting the information to NIIDS. MSRB Rule G-32 describes the process for doing so. In 2012, the MSRB amended these rules to streamline the process for underwriters to submit data in connection with primary offerings. By integrating certain data elements to NIIDS with EMMA, the amendments eliminated the need for duplicative submissions in the two systems in NIIDS-eligible primary offerings.[12] As a result, underwriters currently can submit all information to NIIDS as required by Rule G-34 and subsequently, Form G-32 will auto-populate with the data the underwriters have entered into NIIDS.[13] Additional information required on Form G-32 for which no corresponding data element is available through NIIDS, however, is required to be entered manually through EMMA, and underwriters are required to make any corrections to NIIDS data promptly.[14]

Notice 2018-15 seeks comment on whether certain additional information currently submitted to NIIDS but not auto-populated on Form G-32 should now be designated as required data fields on Form G-32. The MSRB proposes adding initial minimum denomination information to Form G-32. Specifically, Appendix A to Notice 2018-15 suggests adding three data fields relating to minimum denomination: Minimum Denomination, Multiples of Denomination, and Par Value.[15]

Rule G-32 currently does not require underwriters to disclose minimum denomination information. While this information is available to investors in official statements for the new issue, minimum denomination information is often neither easily located nor explicitly identified on the statements. The MSRB states, and we strongly agree, that "[b]ecause official statements are not consistently formatted, and the specific information sought is not necessarily prominently displayed, at least some portion of retail and other investors may be unaware of, or have difficulty locating, pertinent information."[16]

We believe that including the proposed data fields relating to initial minimum denomination on Form G-32, which would auto-populate with information underwriters already enter in NIIDS, will benefit investors by making hard-to-locate information more accessible without adding any burden to issuers. We also support the continued requirement that information not available to be auto-populated from NIIDS into Form G-32 be manually entered into EMMA.

B. *Additional Data Fields on Form G-32 Not Auto-Populated from NIIDS*

The MSRB proposes to include eight additional data fields to Form G-32 that could not auto-populate from any information entered by underwriters in NIIDS. Specifically, the MSRB proposes to

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at Appendix A.
[16] *Id.* at 27.

add: 1) a "yes" or "no" indicator as to whether the minimum denomination information can change; 2) the legal entity identifiers ("LEIs")[17] for credit enhancers and obligated persons; 3) the retail order period by CUSIP number; 4) the percentage of CUSIP numbers refunded; 5) a complete call schedule for the municipal bond; 6) a complete list of the syndicate managers on an underwriting; 7) the name of obligated persons; and 8) the name of the municipal advisor on an issuance.[18]

1. "Yes" or "No" Indicator

We support the MSRB's proposal to include on Form G-32 a "yes" or "no" indicator as to whether the minimum denomination is subject to change; however, we do so with one *caveat*. The MSRB states that the addition of this indicator on Form G-32 would remind market participants to check relevant bond documents for developments that could trigger a change in the minimum denomination. Although we agree that this would trigger a reminder to market participants, we believe this does not go far enough to help ensure that current, accurate information is easily accessible to investors and other market participants. Without an ongoing obligation to update information regarding changes in minimum denomination over the life of the security, the burden shifts onto the investor to decipher the relevancy of events that could trigger a change in the minimum denomination. Additionally, while the "yes" or "no" indicator may serve as a reminder to investors that minimum denomination information may have changed, it does little to direct them to the location of this important information.

The MSRB is not unaware of the importance of changes to minimum denomination information. Indeed, Notice 2018-15 states, "if a bond is non-rated or below investment grade at the time of issuance but achieves an investment grade rating at some point in the future, this could result in a change to the minimum denomination that would be of interest to investors."

Given the importance of this information to investors, we encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Doing so could remove an asymmetric burden from investors and ensure that investors have easy access to necessary, relevant investment information.

2. Legal Entity Identifiers

The Office of the Investor Advocate has long encouraged embracing LEIs in financial markets. For example, in a speech in 2016 at the XBRL US Investor Forum, I stated that "I'd like the SEC to embrace the Legal Entity Identifier with the goal of making public company disclosure to the SEC interoperable with disclosure to other reporting regimes."[19] Consistent with this objective, we strongly support requiring LEI information for credit enhancers and obligated persons[20] on Form G-32.

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[17] An LEI is a unique, 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. *See* Notice 2018-15, *supra* note 4, at 17 n.45.

[18] Notice 2018-15, *supra* note 4, at 16-18.

[19] Rick A. Fleming, Investor Advocate, SEC, Speech at XBRL US Investor Forum 2016: Finding Value with Smart Data, *Improving Disclosure with Smart Data*, New York, N.Y. (Oct. 24, 2016), https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html.

[20] Notice 2018-15 states that "obligated person" has the same meaning as set forth in Rule 15Ba1-1(k) of the Exchange Act, which defines "obligated person" to have the same meaning as the term is defined in section 15B(e)(10) of the Exchange Act, but does not include:

The MSRB argues that "[o]btaining [LEIs], when available, on credit enhancers and obligated persons would help in the move towards a global identification method for these market participants and improve the quality of municipal market financial data and reporting."[21] We concur and believe that LEIs may enhance organization and dissemination of data and disclosure information to the public and market participants. The MSRB has already taken steps towards encouraging the use of LEIs in the municipal securities market by amending its registration form, Form A-12, to provide for the collection of LEIs from registered municipal securities dealers and advisors that have obtained one.[22] We commend the MSRB for taking this step to promote the importance of LEIs, but also believe more needs to be done to encourage the widespread adoption of LEIs by municipal market participants.

Obtaining an LEI is neither overly burdensome nor complicated. LEIs are issued by Local Operating Units ("LOUs") of the Global LEI System.[23] Through self-registration, a legal entity seeking an LEI must supply reference data such as business card information (e.g., name of the entity, business address, etc.) and relationship information to its LOU.[24] The LOU will then verify the data with local Registration Authority[25] and, if appropriate, issue an LEI compliant with the LEI standard.[26] LOUs generally charge a fee for issuing the LEI as well as for validating the reference data upon issuance and after each yearly certification.[27] While there is a cost associated with obtaining and maintaining an LEI, concerns around costs appear to be diminishing as competition drives down costs.[28]

Given the declining costs and positive benefits LEIs could bring to the municipal securities market, we encourage the MSRB to take more initiative, as appropriate, in this important, innovative space toward widespread adoption of LEIs. We also encourage the MSRB to continue incorporating LEI into its rulemakings and rule amendments in municipal markets. We further urge the MSRB to

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(1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;
(2) A person whose financial information or operating data is not material to a municipal security offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or
(3) The federal government.

Exchange Act Section 15B(e)(10) define the term "obligated person" to mean any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

Notice 2018-15, *supra* note 4, at 17 n.44.

[21] *Id.* at 17.

[22] *See* MSRB, Brief, Legal Entity Identifier (2017), http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf.

[23] The list of LOUs accredited by the Global LEI Foundation ("GLEIF") can be found on the GLEIF website. LOUs operating in the United states include Bloomberg and DTCC's Global Market Entity Identifier (GMEI) utility. LEI Regulatory Oversight Committee ("LEI ROC"), How to Obtain an LEI, https://www.leiroc.org/lei/how.htm (last visited Sept. 6, 2018) [hereinafter LEI ROC].

[24] LEI ROC, *supra* note 23.

[25] The GLEIF publishes the Registration Authority List. Global Legal Entity Identifier Foundation ("GLEIF"), Get an LEI: Find LEI Issuing Organization, https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations (last visited Sept. 6, 2018); LEI ROC, *supra* note 23.

[26] LEI ROC, *supra* note 23.

[27] *Id.*

[28] *See* Data Foundation, Who is Who and What is What? The Need for Universal Entity Identification in the United States (Sept. 2017), https://www.datafoundation.org/lei-report-2017.

engage in industry outreach to educate and inform market participants not only about the importance and benefits of LEIs but the process for obtaining an LEI as well.

3. Retail Order Period

In response to concerns from market participants about orders being entered that may not meet the definition or spirit of the requirements for a retail order period,[29] the MSRB proposes requiring underwriters to mark a new issue with a "flag" for the existence of a retail order period for each CUSIP number.

The MSRB suggests a "yes" or "no" flag by the CUSIP number could be helpful in identifying orders that should not have been included in the retail order period. Efforts to highlight the existence of a retail order period and provide transparency to market participants about compliance with the terms of a retail order period are of significant importance. Although retail order period information is non-public, non-compliance with the terms of a retail order period raises serious retail investor protection and fairness concerns.

We believe adding a "yes" or "no" flag by the CUSIP number may benefit investors by helping identify orders that should not have been included in the period, deterring future non-compliance, and protecting the retail investor's interests and order priority. As such, we support the MSRB's proposal to include a "yes" or "no" flag by CUSIP number.

4. Percentage of CUSIP Numbers Refunded

The MSRB proposes adding a data field to Form G-32 requiring disclosure of the percentage of each CUSIP number refunded.[30] The MSRB argues that such information would "provide all market participants information on material changes to a bond's structure and value at the same time" and would assist investors in making informed investment decisions.[31] We believe that providing this information on EMMA to all market participants simultaneously reduces information asymmetry, which may translate to improved fairness and efficiency in the municipal markets. As such, we are generally supportive of this provision.

5. Full Call Schedule

The MSRB proposes adding a data field on Form G-32 to disclose the full call schedule for a municipal bond. The MSRB argues that "[b]y requiring this information on Form G-32, the MSRB would be able to make complete call information available on EMMA to market participants and stakeholders."[32] We have not identified any investor concerns pertaining to this proposal and believe

[29] The term "retail order period" means an order period during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders. MSRB, MSRB Rule G-11(a), Primary Offering Practices, Definitions, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-11.aspx (last visited Aug. 16, 2018).
[30] Notice 2018-15, *supra* note 4, at 18. Currently, under Rule G-32(b)(ii), underwriters are required to submit advance refunding documents and information relating to the refunding to EMMA. *Id.*
[31] Notice 2018-15, *supra* note 4, at 18.
[32] *Id.* at 16.

providing this additional information to the market may increase transparency, enhance efficiency, and assist investors in making more informed investment decisions.

6. Syndicate Managers, Municipal Advisor, and Obligated Person

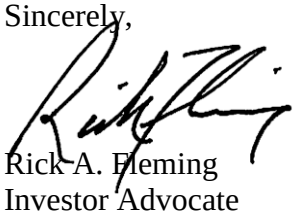
Finally, we support the MSRB's proposal to add data fields to disclose all the syndicate managers (senior and co-managers), the name of municipal advisor on an issuance, and the name of the obligated persons. Providing this additional information may enhance the efficiency of the primary market by providing additional, useful information to issuers. For example, the MSRB believes, and we agree, that requiring the disclosure of all syndicate managers may be beneficial because "issuers and municipal advisors or others could identify those underwritings where a particular syndicate manager was engaged or seek more information about particular syndicate managers, as needed, in performing due diligence on a potential upcoming offering."[33] Further, this additional information may provide additional transparency to the market. For example, the name(s) of the obligated person(s) of a new issue is not always readily available and requiring disclosure of this information may help investors make more informed investment decisions and better understand who is legally committed to support payment of all or some of an issue.

III. Conclusion

We strongly support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the NIIDS. We also support creating a "yes" or "no" indicator as to whether the minimum denomination can change and encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Finally, we generally support adding the LEIs for credit enhancers and obligated person, the retail order period by CUSIP number, the percentage of CUSIP numbers refunded, a complete call schedule for the municipal bond, a complete list of the syndicate managers on an underwriting, the name of obligated persons, and the name of the municipal advisor on an issuance.

Thank you for the opportunity to submit our comments regarding this important issue. Should you have any questions, please do not hesitate to contact me or Senior Counsel Ashlee Steinnerd at (202) 551-3302.

Sincerely,



Rick A. Fleming
Investor Advocate

cc (electronically): Lynnette Kelly, Executive Director, MSRB
Michael Post, General Counsel – Regulatory Affairs, MSRB
Barbara Vouté, Director – Market Practices, MSRB

[33] *Id.*

Rebecca Olsen, Director, SEC, Office of Municipal Securities