

SECURITIES AND EXCHANGE COMMISSION
(Release No 34-86219; File No. SR-MSRB-2019-07)

June 27, 2019

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Amendments to MSRB Rule G-11 and MSRB Rule G-32 and Form G-32 Regarding a Collection of Data Elements Provided in Electronic Format to the EMMA Dataport System in Connection with Primary Offerings

I. Introduction

On April 2, 2019, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of proposed amendments to MSRB Rule G-11 (“Primary Offering Practices”), MSRB Rule G-32 (“Disclosures in Connection With Primary Offerings”), and Form G-32 regarding a collection of data elements provided in electric format to the Electronic Municipal Market Access Dataport (the “EMMA Dataport”)³ system in connection with primary offerings (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on April 12, 2019.⁴

The Commission received three comment letters on the proposed rule change.⁵ On June

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ The EMMA Dataport is the submission portal through which information is provided for display to the public on EMMA.

⁴ Securities Exchange Act Release No. 85551 (Apr. 8, 2019) (the “Notice of Filing”), 84 FR 14988 (Apr. 12, 2019).

⁵ See Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, and Bernard V. Canepa, Vice-President and Assistant General Counsel, the Securities Industry and Financial Market Association (“SIFMA”)

6, 2019, the MSRB responded to those comments⁶ and filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁷ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

As described further below, the MSRB proposes to amend MSRB Rule G-11 and MSRB Rule G-32, as well as Form G-32 to update and enhance the general practices undertaken by underwriters and others, as applicable, in a primary offering of municipal securities.⁸

A. Proposed Rule Change to MSRB Rule G-11 – Primary Offering Practices

1. Revisions to MSRB Rule G-11(f)

The proposed rule change would amend MSRB Rule G-11(f) to codify an existing obligation of selling group members to comply with the written communications they receive from the senior syndicate manager relating to, among other things, issuer requirements, priority provisions and order period requirements.⁹

dated May 2, 2019 (the “SIFMA Letter”); Letter to Secretary, Commission, from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated May 3, 2019 (the “BDA Letter”); and Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”), dated May 3, 2019 (the “NAMA Letter”).

⁶ See Letter to Secretary, Commission, from Margaret R. Blake, Associate Counsel, Municipal Securities Rulemaking Board (“MSRB”), dated Jun. 6, 2019 (the “MSRB Response Letter”).

⁷ Id. As discussed further below, in Amendment No. 1, the MSRB proposed to amend the proposed rule change with two technical amendments (to MSRB Rule G-11(g) and MSRB Rule G-11(k)).

⁸ See Notice of Filing, 84 FR at 14988, and Amendment No. 1.

⁹ See Notice of Filing, 84 FR at 14990.

MSRB Rule G-11(f) currently states that prior to the first offer of any securities by the syndicate, the senior syndicate manager is required to provide, in writing, to syndicate members and selling group members, if any, “(i) a written statement of all terms and conditions required by the issuer, (ii) a written statement of all of the issuer’s retail order period requirements, if any, [and] (iii) the priority provisions . . . [.]”¹⁰ The senior syndicate manager must also promptly furnish, in writing, to the syndicate members and the selling group members any changes in the priority provisions or pricing information.¹¹

Additionally, the MSRB has stated that the activities of all dealers should be viewed in light of the basic fair dealing principles of MSRB Rule G-17, on conduct of municipal securities and municipal advisor activities.¹² In 2013, the MSRB amended MSRB Rule G-11 to, among other things, address concerns related to retail order period practices and required expressly that the senior syndicate manager’s written statement of all terms and conditions required by the issuer also be delivered to selling group members.¹³ The amendment also added MSRB Rule G-11(k) to require that any dealer that submits an order designated as retail during a retail order period must provide certain information that would assist in determining if the order is a bona fide retail order.¹⁴ The MSRB stated that the 2013 amendments to MSRB Rule G-11, coupled

¹⁰ MSRB Rule G-11(f). See also id.

¹¹ Notice of Filing, 84 FR at 14990.

¹² See MSRB Notice 2009-42 (July 14, 2009).

¹³ See Securities Exchange Act Release No. 70532 (Sept. 26, 2013), 78 FR 60956 (Oct. 2, 2013) (File No. SR-MSRB-2013-05).

¹⁴ Id.

with the MSRB Rule G-17 guidance,¹⁵ indicate that selling group members are subject to the issuer requirements in allocating securities to their investors.¹⁶

By codifying this existing obligation, the MSRB noted that the proposed rule change would highlight that selling group members must comply with the priority provisions and other issuer terms and conditions when they receive written notification of such from the syndicate manager.¹⁷

2. New MSRB Rule G-11(g)(ii)

The proposed rule change would also amend MSRB Rule G-11(g) to add new subsection (ii), which would require the senior syndicate manager to notify all members of the syndicate and selling group, at the same time via free-to-trade wire or electronically by other industry-accepted method of communication, that the offering is free to trade at a price other than the initial offering price.¹⁸

In a primary offering of municipal securities where a syndicate is formed (i.e., not a sole-managed offering), a free-to-trade wire is sent by the senior syndicate manager to syndicate members once all of the municipal securities in the issue or a particular maturity (or maturities) are free to trade.¹⁹ The free-to-trade wire communicates to members of the syndicate that they

¹⁵ See MSRB Notice 2009-42 (July 14, 2009).

¹⁶ See Notice of Filing, 84 FR at 14990. See also MSRB Rule G-11(b) (requiring that every dealer that submits an order to a syndicate or to a member of a syndicate for the purchase of securities must disclose at the time of submission if the order is for its dealer account or a related account of the dealer).

¹⁷ See Notice of Filing, 84 FR at 14990.

¹⁸ Id. The other provisions of Rule G-11(g) would be renumbered accordingly to account for this addition.

¹⁹ Id.

may trade the bonds in the secondary market at market prices which could be the same or different from the initial offering price.²⁰

The MSRB stated that equal access to information is important to the fair and effective functioning of the market for primary offerings of municipal securities.²¹ Accordingly, the proposed rule change would require the senior syndicate manager to notify all members of the syndicate and the selling group, at the same time via a free-to-trade wire or electronically by other industry-accepted method of communication, that the offering is free to trade at a price other than the initial offering. The MSRB noted that requiring dissemination of this information for receipt by all syndicate and selling group members at the same time would prevent preferential access to the free-to-trade information.²² Specifically, the MSRB wrote that this dissemination would prevent access by some, while other syndicate and selling group members (who are unaware of the information) are delayed in knowing that they may transact at prices other than the initial offering price.²³

The MSRB stated that, as methods of communication evolve, the dissemination of free-to-trade information eventually may be made by methods other than the traditional “free-to-trade wire.”²⁴ While the MSRB did not propose to dictate the timing of when, or the form of how, the

²⁰ For purposes of reporting transactions after the free-to-trade information has been disseminated, the MSRB has indicated that once a new issue has been released for trading (i.e., is free to trade), normal transaction reporting rules will apply to the syndicate managers, syndicate members and selling group members. See Securities Exchange Act Release No. 49902 (Jun. 22, 2004), 69 FR 38925 (Jun. 29, 2004) (File No. SR-MSRB-2004-02).

²¹ See Notice of Filing, 84 FR at 14990.

²² Id.

²³ Id.

²⁴ Id.

free-to-trade communication should be sent, the MSRB stated that requiring dissemination of this information electronically (by an industry-accepted method that ensures all syndicate and selling group members receive the information simultaneously) would level the playing field.²⁵

3. Revisions to MSRB Rule G-11(g)(ii) and MSRB Rule G-11(g)(iii) (new MSRB Rule G-11(g)(iii) and MSRB Rule G-11(g)(iv))

Currently, the senior syndicate manager is not required to provide information to issuers regarding designations and allocations of municipal securities in a primary offering.²⁶ The proposed rule change, as amended by Amendment No. 1, would amend MSRB Rule G-11(g)(ii) and MSRB Rule G-11(g)(iii)²⁷ to require the senior syndicate manager to comply with the information-dissemination provisions of this rule with respect to issuers, in addition to just syndicate members.²⁸

MSRB Rule G-11(g)(ii) requires, in part, the senior syndicate manager, within two business days following the date of sale, to disclose to the syndicate, in writing, a summary by

²⁵ Id.

²⁶ Id. “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. “Allocation” generally refers to the process of setting securities apart for the purpose of distribution to syndicate and selling group members. See MSRB Glossary of Municipal Securities Terms.

²⁷ Currently, these provisions are MSRB Rule G-11(g)(ii) and MSRB Rule G-11(g)(iii). However, with the proposed addition of MSRB Rule G-11(g)(ii) noted above, these provisions would become MSRB Rule G-11(g)(iii) and MSRB Rule G-11(g)(iv).

²⁸ See Notice of Filing, 84 FR at 14990; Amendment No. 1. The MSRB stated in Amendment No. 1 that it inadvertently deleted language in the Notice of Filing that was necessary to make the disclosure requirements of this rule operate properly and within the prescribed timeframes. Specifically, the MSRB noted that Amendment No. 1 amends the language of the Notice of Filing to correct the deletions and reinstate the timing distinction between: (i) the initial disclosure of all available information within 10 business days following the date of sale; and (ii) the disclosure of all available information with the sending of designation checks 10 calendar days following the date the issuer delivers the securities to the syndicate.

priority category, of all allocations of securities accorded priority over member orders.²⁹ MSRB Rule G-11(g)(iii) requires the senior syndicate manager to disclose, in writing and as set forth in the rule, to each member of the syndicate information on the designations paid to syndicate and non-syndicate members.³⁰

The MSRB stated that providing this information to the issuer along with information on group net sales credits would better inform all issuers of the orders and allocations of their primary offerings.³¹ The MSRB noted that this information would be valued particularly by those issuers who are not aware this information is available for their review.³² The MSRB stated that an issuer who does not wish to receive or review this information could simply delete the communication at its discretion.³³

4. Revisions to MSRB Rule G-11(j)

The proposed rule change would amend Rule G-11(j) to align the timeframe for the payment of group net sales credits with the timeframe for the payment of net designation sales credits as set forth therein.³⁴

Currently, MSRB 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

²⁹ MSRB Rule G-11(g)(ii).

³⁰ MSRB Rule G-11(g)(iii).

³¹ See Notice of Filing, 84 FR at 14991.

³² Id.

³³ Id.

³⁴ Id.

securities to the syndicate.³⁵ Group net sales credits (i.e., those sales credits for orders in which all syndicate members benefit according to their participation in the account) are paid out of the syndicate account when it settles pursuant to MSRB Rule G-11(i).³⁶ As a result, syndicate members may wait 30 calendar days following receipt of the securities by the syndicate before they receive their group net sales credits.³⁷ By contrast, MSRB Rule G-11(j) states that sales credits due to a syndicate member as designated by an investor in connection with the purchase of securities (“net designation payments”) shall be distributed within 10 calendar days following the date the issuer delivers the securities to the syndicate.³⁸

The SEC approved amendments to MSRB 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.³⁹ The amendments also shortened the timeframe for the payment of net designation orders in Rule G-11(j) from 30 calendar days to 10 calendar days.⁴⁰ The MSRB noted 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.⁴¹

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ See Notice of Filing, 84 FR at 14991-92.

⁴¹ See Notice of Filing, 84 FR at 14992. See also Securities Exchange Act Release No. 60725 (Sept. 28, 2009), 74 FR 50855 (Oct. 1, 2009) (File No. SR-MSRB-2009-12).

The MSRB stated that the proposed amendments would not impact the timing of the settlement of the syndicate account, but rather would merely align the timeframe for the payment of group net and net designation sales credits.⁴² The MSRB noted that aligning the time frames for the payment and receipt of sales credits would be a minor adjustment that would ensure uniform practice in making and receiving such payments in a timely manner.⁴³ In addition, the MSRB stated that this proposed rule change would reduce credit risk by decreasing the exposure of syndicate trading account members to the potential deterioration in the credit of the syndicate or account manager during the pendency of account settlements.⁴⁴ The MSRB also noted that the time period of 10 calendar days would provide balance between reducing risk of exposure of co-managers and the credit risk of the senior manager while still providing the senior syndicate manager with the time needed to process and pay the sales credits.⁴⁵

As a result of the alignment of these payments, the MSRB stated that the information that is currently provided within 30 calendar days of delivery of securities to the syndicate under MSRB Rule G-11(h)(ii)(B) would now be provided within 10 business days following the date of sale under revised MSRB Rule G-11(g)(iv).⁴⁶ In addition, the MSRB noted that the proposed rule change would delete MSRB Rule G-11(h)(ii)(B), and would r re-designate current MSRB Rule G-11(h)(ii)(C) as MSRB Rule G-11(h)(ii)(B).⁴⁷

⁴² See Notice of Filing, 84 FR at 14992.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

5. Revisions to MSRB Rule G-11(k)

As amended by Amendment No. 1, the proposed rule change would revise MSRB Rule G-11(k) to codify existing market practices with regard to retail order period representations and required disclosures.⁴⁸ Currently, MSRB Rule G-11(k) requires dealers that submit orders during a retail order period to provide certain representations and disclosures “[f]rom the end of the retail order period but no later than the Time of Formal Award.”⁴⁹

The MSRB agreed with a proposed technical rule change to MSRB Rule G-11(k) suggested in the SIFMA Letter.⁵⁰ The MSRB stated that dealers using electronic order entry systems typically submit these representations and disclosures earlier than the end of the retail order period.⁵¹ The MSRB also noted that the term “end of the retail order period” is not, technically, within the “four corners” of the timeframe specified in MSRB Rule G-11(k).⁵² The proposed rule change, as amended by Amendment No.1, would delete the term “end of the retail order period” from the current preamble to MSRB Rule G-11(k). The MSRB stated that this revision would align the rule with existing industry practice.⁵³

⁴⁸ See Amendment No. 1 at 4.

⁴⁹ MSRB Rule G-11(k).

⁵⁰ See MSRB Response Letter at 2, Amendment No. 1 at 4.

⁵¹ See Amendment No. 1 at 4.

⁵² Id.

⁵³ Id. As discussed further below, the MSRB stated that it proposed this revision in response to the SIFMA Letter.

B. Proposed Rule Change to MSRB Rule G-32

1. Revisions to MSRB Rule G-32(b)(ii)

The proposed rule change would amend MSRB Rule G-32(b)(ii) to require that in an advance refunding,⁵⁴ where advance refunding documents are prepared, the underwriter must provide access to the documents and certain related information to the entire market at the same time.⁵⁵

The MSRB stated that this proposed change would mean underwriters would be precluded from disseminating advance refunding documents and information to any market participant, without first submitting such documents and information to the EMMA Dataport (provided that this restriction does not prohibit communication with anyone that may require such information for purposes of facilitating the completion of the transaction).⁵⁶ Currently, MSRB Rule G-32(b)(ii) requires the advance refunding documents and applicable Form G-32 information be submitted to the EMMA Dataport, no later than five business days after the closing date for the primary offering.⁵⁷

The MSRB stated, however, that in some instances, some market participants may be informed of the advance refunding details before the information is submitted and made public on EMMA.⁵⁸ The MSRB noted that equal access to advance refunding information is important

⁵⁴ In general, advance refunding issues are those municipal bonds issued more than 90 days before the redemption of the refunded bonds. See MSRB Interpretive Guidance - Current Refundings (Aug. 8, 1991).

⁵⁵ See Notice of Filing, 84 FR at 14992.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

for the efficient functioning of the primary and secondary market for municipal securities.⁵⁹ The MSRB also stated that requiring underwriters to provide information to the market regarding CUSIP numbers advance refunded in a manner that allows access to the information by the entire market at the same time would support this effort.⁶⁰

2. Revisions to MSRB Rule G-32(c)

The proposed rule change would repeal the current requirement under MSRB Rule G-32(c) that a dealer financial advisor that prepares an official statement (on behalf of an issuer with respect to a primary offering of municipal securities) make the official statement available to the managing underwriter or sole underwriter in a designated electronic format, promptly after the issuer approves its distribution.⁶¹

The MSRB stated that several participants in a primary offering may be responsible for preparing the official statement,⁶² and while dealers acting as financial advisors and non-dealer municipal advisors may be engaged to review and contribute to portions of the document, they are less frequently engaged to “prepare” the official statement as they might have been in the past.⁶³ The MSRB stated that, while the goal of MSRB Rule G-32(c) is consistent with the

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² For example, the MSRB stated that bond counsel or underwriter’s counsel frequently prepares the official statement on behalf of the issuer and may seek input on various components from the underwriter or the municipal advisor. However, the MSRB noted that Rule G-32(c) does not apply to bond counsel or underwriter’s counsel, and the MSRB does not have jurisdiction over these parties in any event. Therefore, if these parties were engaged to prepare the official statement for the issuer, they would not be subject to the requirements of Rule G-32(c). Id.

⁶³ See Notice of Filing, 84 FR at 14992-93.

overall goal of MSRB Rule G-32 and Exchange Act Rule 15c2-12(b)(3) (that is, to facilitate the prompt distribution of the official statement to investors and other market participants), the MSRB noted that the section of the rule itself is limited in such a way that its usefulness in the current market is questionable.⁶⁴ The MSRB stated it understands that MSRB Rule G-32(c) requirements apply to a limited universe of market participants (i.e., dealers acting as financial advisors that prepare the official statement).⁶⁵ The MSRB noted that this leaves a gap such that MSRB Rule G-32(c) does not extend to parties other than dealers acting as financial advisors who prepare the official statement.⁶⁶

In reviewing MSRB Rule G-32(c) and considering whether to expand the section of the rule to include non-dealer municipal advisors, the MSRB stated that it considered whether the existing rule and/or the expansion thereof would resolve a harm in the market.⁶⁷ After discussions with various market participants, and consideration of the actual scope of the impact of the rule, the MSRB noted that any harm in the market related to the delivery of official statements would not be resolved by MSRB Rule G-32(c) regardless of whether dealers acting as financial advisors and non-dealer municipal advisors are required to comply.⁶⁸ The MSRB stated that it understands that the obligation under Exchange Act Rule 15c2-12(b)(3) for an underwriter to contract with the issuer or its agent to receive the official statement within a defined period of time already ensures that the underwriter would receive the official statement

⁶⁴ See Notice of Filing, 84 FR at 14993.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

within a certain period of time regardless of the party preparing it.⁶⁹ The MSRB also stated that the scope of MSRB Rule G-32(c) may be too limited to have any significant impact on the official statement delivery requirements.⁷⁰

C. Proposed Changes to Form G-32

1. Inclusion of 57 Additional Data Points Already Collected By NIIDS

The proposed rule change would amend Form G-32 to include 57 additional data fields that would be auto-populated with datapoints already required to be input into to the Depository Trust Company's (DTC) New Issue Information Dissemination Service (NIIDS), as applicable, for NIIDS-eligible offerings.⁷¹ These data fields are currently available to regulators and certain other industry participants that have access to NIIDS.⁷² The MSRB stated, however, that adding the data fields to Form G-32 would ensure the MSRB's continued access to important primary offering information, and enhance its ability to oversee the accuracy and distribution of the information provided.⁷³

At this time, however, the MSRB stated that requiring the manual completion of all the above data fields for non-NIIDS-eligible issues such as private placements and other restricted offerings that are not intended for secondary market trading would be burdensome on

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id.

underwriters.⁷⁴ Thus, for a non-NIIDS-eligible primary offering, the MSRB noted that an underwriter would continue to be required to manually complete the same data fields on Form G-32 that it currently completes with the addition of one of the 57 data fields discussed above.⁷⁵ The additional data field would indicate the original minimum denomination of the offering, as applicable.⁷⁶ As with the other data points currently required on Form G-32, once an underwriter provides the information, it would be available to regulators.⁷⁷ The MSRB stated that regulators could use this information to determine whether a new issue of municipal securities is trading at the appropriate minimum denomination in the secondary market.⁷⁸ Additionally, as with the other NIIDS data points discussed above, the MSRB noted that it may disseminate this information in the future.⁷⁹

The MSRB stated that, at this time, requiring this additional information on Form G-32, as applicable, for NIIDS-eligible offerings, and requiring the single additional data point for non-NIIDS-eligible offerings would not only assist the MSRB in ensuring its continued access to new

⁷⁴ The MSRB stated that non-NIIDS-eligible securities are less likely to trade in the secondary market because they typically are issued with trading restrictions and, therefore, less liquid. Notice of Filing, 84 FR at 14993 n.41. In the MSRB's view, such non-NIIDS eligible securities are different from NIIDS-eligible securities, which by their nature are DTC eligible, and are freely tradable in the market. See id.; see also Notice of Filing, 84 FR at 14993 n.8. The MSRB stated it will continue to monitor the need for specific information with respect to non-NIIDS-eligible offerings to determine whether any other additional data elements may be required at a later time. Notice of Filing, 84 FR at 14993 n.41.

⁷⁵ See Notice of Filing, 84 FR at 14993.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

issue information but would enhance MSRB regulatory transparency initiatives.⁸⁰

2. Inclusion of Nine Additional Data Fields Not Currently Collected By NIIDS

The proposed rule change would amend Form G-32 to include nine additional data fields, set forth below, for manual completion (i.e., not auto-populated from NIIDS), as applicable, by underwriters in NIIDS-eligible primary offerings of municipal securities.⁸¹ The MSRB stated that underwriters in non-NIIDS-eligible primary offerings would be required to manually complete two of these data fields: (i) the “yes” or “no” indicator regarding whether the original minimum denomination for a new issue has the ability to change; and (ii) the “yes” or “no” indicator regarding whether the new issue has any restrictions.⁸² The MSRB noted that, however, underwriters in non-NIIDS-eligible offerings would not be required to complete the other seven data fields.⁸³

The MSRB stated that the information collected by these data fields would enhance MSRB regulatory transparency initiatives as all of the additional data elements would be immediately available to regulators to perform regulatory oversight of primary offerings and subsequent secondary market trading practices to ensure a fair and efficient market.⁸⁴

Additionally, the MSRB noted that it may disseminate some or all of this information in the future.⁸⁵ The proposed rule change would amend Form G-32 to add the following data fields:

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

- a. Ability for original minimum denomination to change – The MSRB stated it believes providing a “yes” or “no” indicator at the time of issuance as to whether the original minimum denomination for an issue can change would immediately enhance regulatory transparency and provide useful information to investors, should the MSRB disseminate this information in the future.⁸⁶ The MSRB stated that having this indicator would highlight the need to check relevant disclosure documents for developments that could trigger a change in the original minimum denominations.⁸⁷
- b. Additional syndicate managers – The MSRB stated that having a data field that indicates all the syndicate managers (senior and co-managers) on an underwriting would provide useful information for regulators.⁸⁸ Additionally, the MSRB stated that, should the MSRB disseminate this information in the future, it could be used to evaluate the experience of a syndicate manager for an upcoming offering.⁸⁹ The MSRB noted that 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 before Form G-32 is due.⁹⁰
- c. Call schedule – The MSRB stated that requiring call schedule information on Form G-32 would include, for example, premium call dates and prices, and the

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ See Notice of Filing, 84 FR at 14993-94.

⁸⁹ See Notice of Filing, 84 FR at 14994.

⁹⁰ Id.

par call date.⁹¹ The MSRB stated that this information would immediately increase regulatory transparency, providing regulators with intermediate premium call dates and prices, and, where applicable, a means to differentiate between a call price represented in dollars as opposed to CAV.⁹² Additionally, the MSRB noted that, if the MSRB disseminated this information in the future, access to all the relevant call information could help investors make more informed investment decisions.⁹³

- d. Identity of obligated person(s), other than the issuer – The MSRB stated that it believes that providing the name(s) of the obligated person(s) (other than the issuer) for a primary offering of municipal securities is important because such obligated person(s) generally will have continuing disclosure obligations associated with the issue, and the identity of such obligated person(s) is sometimes not easily identifiable for regulatory transparency purposes.⁹⁴ Also, the MSRB noted that having more ways of identifying those obligated to support payment of all or part of a primary offering would increase transparency (should it disseminate this information in the future).⁹⁵ The MSRB stated that there may

⁹¹ Id. As part of its discussion of call schedules in the Notice of Filing, the MSRB noted that, for primary offerings with call prices stated as a percentage of the compound accreted value (CAV), the underwriter would enter the premium call dates and percentage of CAV the new issue can be called at as well as the par call date.

⁹² Id.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

be confusion in identifying other obligated persons in a consistent manner.⁹⁶ The MSRB noted that, as a result, the identity of the other obligated person(s) should be input on Form G-32 the same as it appears on the official statement, or if there is no official statement, in the manner it appears in the applicable offering documents for the issue.⁹⁷ The MSRB stated that this practice would ensure consistent identification of the obligated person(s), other than the issuer, with respect to that issue.⁹⁸

- e. LEI⁹⁹ for credit enhancers and obligated person(s), other than the issuer, if readily available – The MSRB stated that LEI provides a method to uniquely identify legally distinct entities that engage in financial transactions.¹⁰⁰ The MSRB noted that 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.¹⁰¹ The MSRB stated that

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ 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. The MSRB believes that, at this time, except for credit enhancers and obligated person(s), other than the issuer, the LEI information being sought is not critical in evaluating the financial risks of an issuer, and because issuers typically do not obtain an LEI, the likely time and costs associated with having to conduct a search to determine if LEI information is readily available for an issuer, would exceed any potential benefits. Id.

¹⁰⁰ Id.

¹⁰¹ Id.

requiring this information for credit enhancers and obligated persons, other than the issuer, if readily available, would promote the value of obtaining LEIs and encourage industry participants to obtain them as a matter of course.¹⁰² As stated by the MSRB, an LEI is “readily available” if it is easily obtainable via a general search on the internet (e.g., webpages such as <https://www.gleif.org/en/lei/search>).¹⁰³ The MSRB also noted that obtaining this information, when readily available, on credit enhancers and other obligated persons would help advance the goal of having a global identification method for these parties and improve the quality of municipal market financial data and reporting.¹⁰⁴

- f. Dollar amount of each CUSIP number advance refunded – The MSRB stated that requiring information regarding the dollar amount of each CUSIP number advance refunded on Form G-32 would provide regulators important information regarding material changes to a bond’s structure and value and should the MSRB disseminate this information in the future, may assist investors in making more informed investment determinations.¹⁰⁵ Upon review of comments and discussions with certain market participants, the MSRB stated that it believes requiring the dollar amount of each CUSIP number advance refunded instead of the percentage advance refunded would be more useful in understanding the value

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

of the portion of an issue being advance refunded and would be less burdensome for underwriters to calculate.¹⁰⁶

- g. Retail order period by CUSIP number – Currently, primary offerings are flagged in the EMMA Dataport to indicate whether there is/was a retail order period.¹⁰⁷ The MSRB noted that, quite often, however, not every maturity related to the offering is subject to a retail order period.¹⁰⁸ The MSRB stated that requiring underwriters to mark a primary offering with a flag to indicate the existence of a retail order period for each CUSIP number would provide greater regulatory transparency as to the amount and types of bonds being offered in that retail order period.¹⁰⁹
- h. Name of municipal advisor – The MSRB stated that including this information would enhance regulatory transparency as key market participants would be more easily identifiable to regulators.¹¹⁰ The MSRB also noted that, should the MSRB disseminate this information in the future, it could also assist certain market participants in evaluating the experience of the municipal advisor when reviewing primary offerings, especially for similar credits and structures.¹¹¹ Finally, the

106

Id.

107

Id.

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Id.

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Id.

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Id.

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Id.

MSRB stated that it intends to make this field autofill as the underwriter begins to input the name of the municipal advisor into the applicable text box.¹¹²

- i. Restrictions on the issue – The MSRB stated that adding a “yes” or “no” flag to Form G-32 for an underwriter to indicate whether the primary offering is being made with restrictions would help regulators and, should the MSRB disseminate this information in the future, it could help certain other market participants more easily identify this information.¹¹³

III. Summary of Comments Received and MSRB’s Responses to Comments

As noted previously, the Commission received three comment letters on the proposed rule change, as well as the MSRB Response Letter and Amendment No. 1.

A. Technical Correction to Rule G-11(k)

SIFMA requested that the MSRB make a technical correction to MSRB Rule G-11(k), which was not otherwise amended by the Proposed Rule Change.¹¹⁴ SIFMA requested that the MSRB change the requirement that dealers provide certain representations and disclosures “from the end of the retail order period but no later than the Time of Formal Award” to “by the time of the formal award.”¹¹⁵ In SIFMA’s view, these disclosures are often made earlier than the end of the retail order period and there is no reason to discourage that practice.¹¹⁶

¹¹² Id.

¹¹³ Id.

¹¹⁴ See SIFMA Letter at 2-3.

¹¹⁵ See SIFMA Letter at 3.

¹¹⁶ Id.

The MSRB stated that it agreed with SIFMA regarding MSRB Rule G-11(k), and made corresponding changes in Amendment No. 1.¹¹⁷

B. Additional Data Fields to be Required on Form G-32

1. Comments about Data Fields Generally

SIFMA, BDA, and NAMA commented on the requirement in the proposed rule change that underwriters complete additional fields on Form G-32.¹¹⁸ Generally, both SIFMA and BDA stated that the MSRB has drastically underestimated the time and costs of compliance with these new requirements.¹¹⁹ Further, SIFMA and BDA believe that the MSRB has overestimated the benefits of the additional fields in Form G-32, because this information is generally available in the Official Statement that is already accessible on the MSRB's EMMA system.¹²⁰ BDA suggested that additional burdens on dealers have, and could, continue to lead to contraction in the market.¹²¹ SIFMA additionally requested that the specifications of the new fields should be available for comment prior to implementation, and that the MSRB provide a bulk data uploader such as those provided by FINRA and DTC.¹²² SIFMA also noted that changes will need to be made to the MSRB's Form G-32 Manual, and offered to meet with MSRB staff to discuss.¹²³

¹¹⁷ See MSRB Response Letter.

¹¹⁸ See SIFMA Letter; BDA Letter; NAMA Letter.

¹¹⁹ See SIFMA Letter at 3; BDA Letter at 2.

¹²⁰ See SIFMA Letter at 3-4; BDA Letter at 2.

¹²¹ See BDA Letter at 2-3.

¹²² See SIFMA Letter at 4.

¹²³ See SIFMA Letter at 6.

In the MSRB Response Letter, the MSRB responded to the general comments from SIFMA, BDA, and NAMA about the additional data fields. The MSRB stated that the nine data fields requiring manual completion (as applicable) for NIIDS-eligible offers are necessary to enhance the MSRB's regulatory transparency initiatives.¹²⁴ The MSRB also noted that the time and resources required for compliance with this requirement would not be unduly burdensome.¹²⁵ The MSRB acknowledged that commenters raised concerns with the MSRB's economic analysis, but responded that the commenters did not provide data to illustrate or support such concerns.¹²⁶ The MSRB stated that this data would enhance its ability to perform oversight of primary offerings and secondary market trading practices, as well as assist it in ensuring a fair and efficient market.¹²⁷ The MSRB noted that it plans to publish the data in the future to help investors with their investment decisions.¹²⁸

The MSRB also stated that it appreciated the commenters' concerns about the need to assure the quality of the data they provide, but the MSRB concluded that the importance of such data outweighs any attendant burden.¹²⁹ The MSRB also noted that it appreciated commenters' willingness to meet to discuss suggestions to support technical aspects of implementing the

¹²⁴ See MSRB Response Letter at 6.

¹²⁵ See MSRB Response Letter at 6-7.

¹²⁶ See MSRB Response Letter at 7.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

proposed rule change, but that the MSRB does not believe meeting to discuss such suggestions should delay approval.¹³⁰

2. Comments about Specific Data Fields

With respect to specific fields on proposed amended Form G-32:

- a. **LEI:** Both SIFMA and BDA raised concerns about the requirement to include the LEI for Credit Enhancers and Obligated persons “if readily available.”¹³¹ SIFMA suggested that only the names and LEIs of Obligated Persons would be useful to the market.¹³² Both SIFMA and BDA expressed concerns about the vagueness of “if readily available,” and believe that this qualifier does not provide enough guidance to dealers as to where and how to search.¹³³ BDA further expressed concerns about errors in data entry.¹³⁴

In the MSRB Response Letter, the MSRB responded to these comments about LEI data.¹³⁵ The MSRB stated that LEI information (when readily available) on credit enhancers and obligated persons (other than the issuer) would advance the goal of establishing a global identification method for these parties.¹³⁶ The MSRB noted that such LEI information could improve the quality of municipal market financial data reporting.¹³⁷ The MSRB stated that a LEI could be considered “readily available” if it were easily obtainable via a general search on the internet.¹³⁸ The MSRB also noted that, if, after searching via Form G-32’s LEI search page, an LEI did not result for a particular credit enhancer or obligated

¹³⁰ See MSRB Response Letter at 9.

¹³¹ See SIFMA Letter at 5; BDA Letter at 2.

¹³² See SIFMA Letter at 5.

¹³³ Id.; BDA Letter at 2.

¹³⁴ See BDA Letter at 2.

¹³⁵ See MSRB Response Letter at 7.

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

person, the underwriter could conclude that the LEI was not “readily available.”¹³⁹

- b. **Dollar amount of CUSIPs refunded:** BDA expressed concern that the manual entry of this data could lead to a high risk of errors.¹⁴⁰

The MSRB stated that it understands concerns about quality assurance regarding data input, but that the MSRB concluded that the importance of such data outweighs any associated burdens.¹⁴¹

- c. **Restrictions on the Issue:** SIFMA requested clarifications on what types of restrictions would require a yes or no answer, and believes that restrictions should be limited to the types of investors.¹⁴² Further, SIFMA requested that checkboxes be offered in the form instead of “yes” and “no” choices.¹⁴³

In response, the MSRB stated its continued belief that the “yes” or “no” indicator for whether the offering is being made with a restriction would provide useful information to regulators, allowing regulators to identify transactions involving municipal securities more easily.¹⁴⁴ The MSRB also noted that if such information is made available via EMMA in the future, market participants could identify primary offerings with restrictions and make any inquiries deemed appropriate.¹⁴⁵ The MSRB stated that it is not necessary “at this time” to require an underwriter to provide additional information regarding the specific types of investors to which an offering is limited.¹⁴⁶

- d. **Municipal Advisor:** NAMA requested that a number of elements to the Municipal Advisor field be clarified, including:

¹³⁹ Id.

¹⁴⁰ See BDA Letter at 2.

¹⁴¹ Id.

¹⁴² See SIFMA Letter at 5.

¹⁴³ Id.

¹⁴⁴ See MSRB Response Letter at 8.

¹⁴⁵ Id.

¹⁴⁶ Id.

- i. Will the drop down box display the list of firms registered with the SEC, MSRB, or both?¹⁴⁷ NAMA believed this change is a good opportunity to reconcile any differences.¹⁴⁸
- ii. How will the underwriter determine who should be listed as the Municipal Advisor?¹⁴⁹
- iii. Will there be an option for “No Municipal Advisor?”¹⁵⁰
- iv. Will there be an ability to correct/revise the form?¹⁵¹
- v. How will the MSRB handle DBA Names?¹⁵²

The MSRB responded that it anticipates implementing a method for populating the “municipal advisor” data field that would cause the field to autofill or provide a drop-down of municipal advisors by name.¹⁵³ The MSRB added that the autofill or drop-down would include all municipal advisors registered with the SEC, as well as with the MSRB, and would include a “no municipal advisor” option.¹⁵⁴ The MSRB also noted that an underwriter would look to the municipal advisor named in the Official Statement, or if none is listed, the underwriter would rely on its knowledge of the municipal advisor’s identity.¹⁵⁵ The MSRB stated that it anticipates Form G-32 would allow for an underwriter to add a municipal advisor, if more than one municipal advisor is known.¹⁵⁶

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters

¹⁴⁷ See NAMA Letter at 1.

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ See MSRB Response Letter at 8.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

received, the MSRB Response Letter, and Amendment No. 1. The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of Section 15B(b)(2)(C) of the Act, which provides in part that the MSRB's rules shall be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.¹⁵⁷

The Commission believes that the proposed rule change to MSRB Rule G-11(f) would promote just and equitable principles of trade by codifying the obligation of selling group members, in addition to syndicate members, to comply with the issuer's terms and conditions in a primary offering of municipal securities, particularly in light of the obligations of selling group members to comply with the priority provisions, as well as other issuer terms and conditions.

The Commission believes that the proposed rule changes to MSRB Rule G-11(g) also would promote just and equitable principles of trade by removing any unfair advantage in the secondary market of having advance knowledge of when an issue is free-to-trade, as well as by ensuring issuers in a primary offering have material information regarding the designations and allocations of their offerings. Additionally, the Commission believes that providing this information to issuers removes impediments to a free and open market in municipal securities by giving issuers valuable information they otherwise may not know is available. By reducing

¹⁵⁷ 15 U.S.C. 78q-4(b)(2)(C).

information asymmetry among market participants in primary offerings of municipal securities, this proposed rule change would reduce the potential for an unfair advantage in the secondary sales of municipal securities.

Similarly, the Commission believes that by requiring the underwriter in an advance refunding to disclose advance refunding information, the proposed rule change to MSRB Rule G-32(b)(ii) would remove impediments to and perfect the mechanism of a free and open market, by ensuring that all market participants have access to such information at the same time. The proposed rule change to MSRB Rule G-11(j) also would foster cooperation and coordination with persons engaged in processing information with respect to transactions in municipal securities and municipal financial products, by aligning the timing of payment of sales credits in net designation and group net sales transactions. Additionally, aligning these payments would remove impediments to a free and open market in municipal securities and municipal financial products by reducing credit risk in the market and allowing group net sales credit payments to be made to syndicate members on a shortened timeframe.

The Commission believes that the deletion of MSRB Rule G-32(c) in the proposed rule change would remove impediments to and perfect the mechanism of a free and open market in municipal securities. The Commission believes that, by eliminating a rule that no longer resolves a market harm, the proposed rule change will more appropriately reflect actual market practices, reduce regulatory burdens and thus encourage compliance with a more appropriate process by which the underwriter receives the official statement in a primary offering of municipal securities. Further, because Exchange Act Rule 15c2-12(b)(3) requires an underwriter to contract with the issuer or its agent to receive the official statement within a defined period of

time, the Commission believes that the deletion of MSRB Rule G-32(c) will not adversely affect investors or the public interest.

The Commission believes that the inclusion on Form G-32 of additional data fields will foster cooperation with persons engaged in regulating and processing information with respect to transactions in municipal securities and municipal financial products, by providing more transparency with respect to municipal securities offerings. For example, by obtaining this information, the MSRB and other regulators will have access to more fulsome and useful market data to help inform their regulation of the municipal securities markets.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.¹⁵⁸ Section 15B(b)(2)(C) of the Act¹⁵⁹ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all dealers of new issues of municipal securities in primary offerings.

Furthermore, the Commission believes that the potential burdens created by the proposed rule change are likely to be outweighed by the benefits of increasing regulatory transparency in the primary offering process and secondary market trading. The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation. The Commission believes that the proposed rule change includes provisions that help promote

¹⁵⁸ 15 U.S.C. 78c(f).

¹⁵⁹ 15 U.S.C. 78q-4(b)(2)(C).

efficiency. The amendments requiring that the senior syndicate manager to notify all members of the syndicate and selling group at the same time that the offering is free to trade, and requiring underwriters to provide access to advance refunding documents to the entire market at the same time, would promote efficiency in the market by reducing information asymmetry among market participants. Additionally, the amendments aligning the timeframes for the payment of group net sales credits and net designation sales credit would promote efficiency by reducing credit risk in the market.

As noted above, the Commission received three comment letters on the filing. The Commission believes that the MSRB, through its responses and through Amendment No. 1, has addressed commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use of the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2019-07 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-MSRB-2019-07. This file number should be

included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2019-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As noted by the MSRB, Amendment No. 1 does not raise any significant issues with respect to the proposed rule change and only provides minor technical changes. The proposed rule change to MSRB Rule G-11(g)(iv) corrects an inadvertent drafting error and the proposed rule change to MSRB Rule G-11(k) aligns the current rule to existing industry practice and is directly responsive to comments received.

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VIII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶⁰ that the proposed rule change, as modified by Amendment No.1 (SR-MSRB-2019-07) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.¹⁶¹

Eduardo A. Aleman
Deputy Secretary

¹⁶⁰ 15 U.S.C. 78s(b)(2).

¹⁶¹ 17 CFR 200.30-3(a)(12).