

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (“MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change consisting of amendments to Rule G-32 (on delivery of official statements to new issue customers), Rule G-36 (on delivery of official statements and advance refunding documents to the Board) and Rule G-11 (on new issue municipal securities during the underwriting period). The proposed rule change is intended to improve the efficiency of official statement dissemination in the municipal securities marketplace and the timeliness of official statement deliveries to customers. The proposed rule change is as follows:¹

Rule G-32. Disclosures in Connection with New Issues

(a)-(b) No change.

(c) Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.

(i) Managing Underwriters and Sole Underwriters. When an official statement in final form is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall:

(A) send to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities an official statement in final form and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per \$100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and sold to customers. Such items shall be sent no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

(B) [In addition, the managing underwriter or sole underwriter, upon request, shall] provide all purchasing brokers, dealers and municipal securities dealers with instructions on how to order additional copies of the official statement in final form directly from the printer.

(C) provide promptly to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities a printable electronic version of the official statement in final form, but only if: (1) a printable electronic version has been prepared and the issuer does not object

¹ Underlying indicates new language; brackets denote deletion.

to distribution of such electronic version; and (2) the broker, dealer or municipal securities dealer requests to receive an electronic version and provides the managing underwriter or sole underwriter with an electronic mail address or other instructions acceptable to the managing underwriter or sole underwriter for electronic delivery of such version. With the consent of the purchasing broker, dealer or municipal securities dealer, sending of a printable electronic version of the official statement in final form to the purchasing broker, dealer or municipal securities dealer as provided in this subparagraph (C) shall fully satisfy the requirements of subparagraphs (A) and (B) of this paragraph (c)(i) with respect to the official statement in final form.

(ii) Financial Advisors. A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement in final form on behalf of an issuer, shall make the official statement in final form available to the managing underwriter or sole underwriter promptly after the issuer approves its distribution. **If a printable electronic version of the official statement in final form has been prepared and the issuer does not object to its distribution, such printable electronic version shall also be made available to the managing underwriter or sole underwriter promptly upon request and delivery to the financial advisor of an electronic mail address or other instructions acceptable to the financial advisor for electronic delivery of such version. With the consent of the managing underwriter or sole underwriter, such printable electronic version shall fully satisfy the requirement of this paragraph (c)(ii) with respect to the official statement in final form to be made available by the financial advisor.**

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

(i) The term “new issue municipal securities” shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the issue’s **new issue disclosure [underwriting]** period, but shall not include commercial paper.

(ii) The term “**new issue disclosure [underwriting]** period” shall mean[:] **the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter.**

[(A) for securities purchased from an issuer by a syndicate, the period defined in paragraph (a)(ix) of rule G-11, on sales of new issue municipal securities during the underwriting period; and

(B) for securities purchased from an issuer by one broker, dealer or municipal securities dealer, the period commencing with the first submission

to broker, dealer or municipal securities dealer of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the broker, dealer or municipal securities dealer, and (2) the broker, dealer or municipal securities dealer no longer retain an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.]

(iii)-(iv) No change.

* * * * *

Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a) Definitions. For purposes of this rule, the following items have the following meanings:

(i)-(iii) No change.

(iv) The term “new issue disclosure period” shall mean the period defined in Rule G-32(d)(ii).

(v) The term “underwriter” shall mean any person defined in Securities Exchange Act rule 15c2-12(f)(8).

(b)-(c) No change.

(d) Amended Official Statements. In the event a broker, dealer, or municipal securities dealer provides to the Board or its designee an official statement pursuant to section (b) or (c) above, and the official statement is amended or “stickered” by the issuer during the **new issue disclosure [underwriting]** period, such broker, dealer, or municipal securities dealer must send to the Board or its designee, within one business day after receipt of the amended official statement from the issuer or its designated agent, the amended official statement and an amended Form G-36(OS) as prescribed by the Board, including: the CUSIP number or numbers for the issue; the fact that the official statement previously had been sent to the Board or its designee and that the official statement has been amended.

(e)-(g) No change.

* * * * *

Rule G-11. [Sales of] New Issue Syndicate Practices [Municipal Securities During the Underwriting Period]

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

(i)-(viii) No change.

[(ix) The term “underwriting period” means the period commencing with the first submission to a syndicate of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, which first occurs, and ending at such time as the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of securities, whichever last occurs.]

(ix) [(x)] The term “qualified note syndicate” means any syndicate formed for the purpose of purchasing and distributing a new issue of municipal securities that matures in less than two years where:

(A)-(B) No change.

(b)-(h) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-regulatory Organization

The MSRB adopted the proposed rule change at its May 11-12, 2005 meeting. Questions concerning this filing may be directed to Ghassan Hitti, Assistant General Counsel, at 703-797-6600.

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

(a) Purpose

The proposed rule change is designed to improve the efficiency and timeliness of dissemination of official statements to underwriters and other brokers, dealers and municipal securities dealers (“dealers”), which in turn should also improve the efficiency and timeliness of dealer-to-customer dissemination of official statements. The proposed amendments are described more fully below.

Dissemination of Electronic Official Statements by Managing and Sole Underwriters

The proposed rule change establishes new clause (i)(C) of Rule G-32(c), which requires the managing or sole underwriter for new issues of municipal securities to provide a printable electronic version of the official statement (if an electronic version has been prepared and the issuer does not object to its distribution) to any dealer that requests an electronic version and provides an e-mail address or other delivery instructions acceptable to the managing or sole underwriter. This obligation is in addition to the managing or sole underwriter's obligation to send paper copies of the official statement in the required quantities (*i.e.*, one printed copy plus not less than one additional printed copy per \$100,000 par value purchased by the dealer for sale to customers). However, if the requesting dealer consents, the managing or sole underwriter is permitted to provide such dealer solely with the electronic official statement in lieu of paper copies otherwise required under the rule.²

The proposed rule change does not specify a particular file format for the electronic version of the official statement, other than that the electronic version be printable. Portable document format (PDF) files (and, in the future, any other file formats that it may hereafter accept for purposes of official statement submissions to the MSRB's web-based Electronic OS/ARD Submission System (the "e-OS System") established under Rule G-36) are acceptable formats for purposes of the proposed rule change, so long as such files are printable. In addition, other file formats that are printable using commercially available software then in common usage in the municipal securities industry, or with software that is bundled with such files, also would be acceptable so long as the dealer that makes the delivery promptly delivers a substitute paper version of the official statement if the recipient of the electronic file so requests and a paper version has not previously been sent to such recipient.

The electronic version of the official statement must include every item of information included in the paper version. For example, if a dealer were to consent to receiving solely an electronic version of the official statement pursuant to clause (c)(i)(C) of Rule G-32 but portions of the official statement are not available in electronic form, a managing or sole underwriter could not discharge its obligation to deliver paper versions of the official statement under clause (c)(i)(A) by sending the portions of the official statement available in electronic form and separately forwarding a paper copy of those portions not available in electronic form. In the case where the entire official statement is not available in electronic format, the requirement to disseminate an electronic version upon request under clauses (c)(ii) and (c)(i)(C) would not apply. The MSRB generally would view an electronic version of an official statement to be available only where the issuer has prepared, authorized and delivered the version as a single electronic file, or

² The managing or sole underwriter also need not provide the dealer with information on how to obtain additional copies of the official statement, as would otherwise be required under clause (i)(B) of Rule G-32(c), since such dealer will have agreed to rely exclusively on the printable electronic version.

where multiple files delivered as a single unit are clearly interconnected by hyperlinks or other clear method of organization that ensures that an investor viewing one file would be put on adequate notice that additional accompanying files must be accessed in order to review the official statement in its entirety.

The proposed rule change also does not limit the manner of delivery of the electronic file. For example, the rule language permits the requesting dealer under clause (c)(i)(C) or an underwriter under clause (c)(ii) to provide an e-mail address or instructions for other forms of electronic delivery. An underwriter or dealer financial advisor should be able to meet this electronic delivery obligation in a number of different ways, including by posting the electronic version at an accessible website. At a minimum, any such form of passive delivery of the electronic version of the official statement must provide the recipient with timely notice that the official statement has been posted (*e.g.*, by e-mail notice to the e-mail address provided by the requesting dealer), allow access to the document at no cost, permit the recipient to print and re-transmit the document (*i.e.*, re-transmit a downloaded file of the document or permit the original recipient to forward to another dealer the information necessary to allow such other dealer to have access to the document equivalent to the access afforded to the original recipient), and ensure continued accessibility throughout the “new issue disclosure period” described below. The MSRB believes that best practice would entail transmission of the electronic version in a manner that would take advantage of the ability to make electronic files available substantially instantaneously or otherwise on demand, although certain technological limitations and variations among users would need to be taken into consideration in determining the best method for disseminating a particular document.³

Dissemination of Electronic Official Statements by Financial Advisors

Revised Rule G-32(c)(ii) applies to any dealer that acts as the issuer’s financial advisor and prepares the official statement for the issuer. If an electronic version of the official statement has been prepared and the issuer does not object to its distribution, the dealer financial advisor is required to make available to the managing or sole underwriter (in addition to a printed version of the official statement) a printable electronic version of the official statement, upon request by the underwriter for such an electronic version and if the underwriter provides an e-mail address or other delivery instructions acceptable to the dealer financial advisor. However, if the managing or sole underwriter consents, the dealer financial advisor is permitted to provide such underwriter solely with the electronic official statement in lieu of paper copies otherwise required under the rule.

³ For example, some e-mail systems limit the size of files that users are permitted to receive, and some virus detection software settings can cause file attachments to e-mail messages to be deleted or quarantined. It would be the responsibility of a requesting dealer that provides an e-mail address for delivery of an electronic official statement by e-mail to ensure that its e-mail settings will permit any uninfected official statement file to be received.

Redefining the Time Period of Official Statement Dissemination

The proposed rule change deletes the definition of “underwriting period” in Rule G-32(d)(ii) and replaces it with the new term “new issue disclosure period.” The new issue disclosure period is defined as the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities to or through the underwriting syndicate or sole underwriter. The definition of “new issue municipal securities” in Rule G-32(d)(i) is revised to mean municipal securities (other than commercial paper) that are sold by a dealer during the issue’s new issue disclosure period.

The proposed rule change makes related changes to Rules G-36 and G-11. Clause (a)(iv) is added to Rule G-36 to include a reference to the definition of new issue disclosure period in Rule G-32(d)(ii), and section (d) of Rule G-36 is revised to provide that amendments to official statements made by the issuer during the new issue disclosure period must be sent to the MSRB by the underwriter within the required timeframe. The definition of underwriting period is removed from section (a) of Rule G-11 and the title of the rule is revised to more accurately reflect the subject of the rule.

Clarifying Amendment to Rule G-36

The proposed rule change adds a definition of “underwriter” in new clause (a)(v) of Rule G-36, consisting of a cross-reference to the definition of that term provided in Rule 15c2-12 adopted by the SEC under the Act. The new language merely clarifies which definition applies to this term but does not change its meaning since, by virtue of Rule D-1,⁴ that term already has the same meaning as provided in Rule 15c2-12.

(b) Statutory Basis

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

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating...transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

⁴ Rule D-1 states that, unless the context otherwise specifically requires, the terms used in MSRB rules have the respective meanings set forth in the Securities Exchange Act and the rules of the SEC thereunder.

The MSRB believes that the proposed rule change increases the efficiency of official statement dissemination in the marketplace and the timeliness of official statement deliveries to customers.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, and Others

The MSRB published notices for comment on the draft amendments on May 12, 2004 (the "May 2004 Notice")⁵ and January 21, 2005 (the "January 2005 Notice").⁶ The May 2004 Notice sought comment on draft amendments to Rule G-32 and Rule G-36 (the "original draft amendments"). In response to the May 2004 Notice, the MSRB received four comment letters. After reviewing the comments received in connection with the May 2004 Notice, the MSRB revised the draft amendments to Rules G-32 and G-36, as well as to Rule G-11 (the "revised draft amendments"), and sought further industry comment on those amendments in the January 2005 Notice. No comment letters were received in response to the January 2005 Notice. The language of the proposed rule change is identical to the language of the revised draft amendments, except that the proposed rule change also includes a clarifying amendment to Rule G-36(a)(v), as described above.

Discussion of Comments in Response to the May 2004 Notice

In response to the May 2004 Notice, the Board received comment letters from Jed Bandes ("Bandes"),⁷ Conners & Co., Inc. ("Conners"), American Municipal Securities, Inc. ("AMS"), and The Bond Market Association ("BMA"). Three commentators (Bandes, Conners, and BMA) opposed the original draft amendments. The other commentator (AMS) did not state a position on most portions of the draft amendments but instead answered several questions posed in the notice. The comments are summarized and discussed below.

a. Dissemination of Electronic Official Statements Under Rule G-32

The original draft amendments published in the May 2004 Notice would have required managing or sole underwriters to provide copies of both the paper and electronic

⁵ MSRB Notice 2004-12 (May 12, 2004)

⁶ MSRB Notice 2005-06 (January 21, 2005)

⁷ Mr. Bandes's comment consists of an e-mail stating "I am against this rule" without further elaboration. It is unclear which firm he represents.

version of the official statement to any dealers purchasing new issue municipal securities that request copies of the official statement. The original draft amendments also would have required dealers acting as financial advisors that prepare official statements to provide to the underwriters both paper and electronic versions of the official statement. These obligations to provide electronic versions would arise only if an electronic version had been prepared and the issuer did not object to its distribution. These obligations would not have been conditioned on a request having been made to receive the official statement in electronic form.

Comments Received. Three commentators (Bandes, Conners, and BMA) opposed these requirements. Conners stated that, as a small dealer underwriting issues for small issuers, requiring dissemination of electronic versions of the official statement in addition to paper copies would “make our costs unruly and would cut into our profits.” In addition, Conners stated that passing the cost on to the firm’s small issuer clients would be a burden. BMA also stated that the draft amendments would have been “unduly burdensome” to managing or sole underwriters. It observed that the MSRB’s 1998 notice on electronic delivery of documents (the “e-Document Notice”)⁸ sets forth “strict requirements for effective electronic delivery to dealers, customers and issuers . . . [that are] more arduous than those for paper delivery, and require extra controls on electronic delivery such as tracking confirmation of receipt. Also, email addresses for all dealers are not readily accessible.” BMA suggested instead that electronic versions, if available, be required to be sent to a dealer only if the dealer specifically requests to receive one, in which case the requesting dealer can provide an e-mail address for delivery. It requested that the MSRB review the e-Document Notice “in light of technological advances in order to reduce the extra burdens on electronic delivery of documents over paper delivery and to further encourage use of electronic communications.”

BMA also stated that it is already the accepted practice for dealer financial advisors to provide electronic versions of official statements to the underwriters and that the MSRB should not impose a regulatory requirement to this effect. It further stated that such a requirement would create a new burden of “necessary recordkeeping for compliance purposes” without furthering the goals of the draft amendments.

MSRB Response. The MSRB observes that the proposed requirements would not have obligated any dealer to create an electronic version of the official statement but instead would have merely required the dissemination of any such electronic official statement already created by or on behalf of the issuer. As such, dealers would not have been burdened with costs of production, although some minimal costs may have been entailed with respect to the transmittal of such documents and with ensuring that the sender’s method of transmittal was compatible with the recipient’s method of receipt, depending on the method chosen.

⁸ See Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998), *reprinted in MSRB Rule Book*.

In addition, the MSRB notes that the e-Document Notice generally permits a dealer to fulfill a regulatory delivery obligation electronically if the dealer provides adequate notice of delivery, the electronic means provides access to information comparable to the paper version, and the dealer has reason to believe that electronic delivery will be effective. As noted in the e-Document Notice, this three-part requirement is not the only method by which legal delivery by electronic means can be accomplished. In particular, where MSRB rules provide different requirements for undertaking electronic communications, the e-Document Notice concluded that compliance with those rule-based requirements would satisfy the rule requirement even if the three-part test of the e-Document Notice is not fully met.

The MSRB believed that modifying the original draft amendments to require delivery to dealers of electronic official statements only if the dealer explicitly requests an electronic version would be an appropriate first step toward the ultimate goal of having electronic versions generally available and routinely used for more rapid dissemination of disclosure in the marketplace. The proposed rule change requires a requesting dealer to provide an e-mail address to which the electronic version could be sent or other instructions acceptable to the managing or sole underwriter for electronic delivery. Similarly, the MSRB believed that modifying the original draft amendments to require dealer financial advisors to provide to the underwriters electronic official statements only if the managing or sole underwriter explicitly requests an electronic version and provides an e-mail address or instructions acceptable to the dealer financial advisor for electronic delivery would be appropriate. Neither provision requires the dealer to create an electronic version for purposes of meeting these requirements if the issuer has not produced an electronic version.⁹ In both cases, compliance with these provisions with the proposed rule change would fully satisfy the inter-dealer delivery requirement for purposes of the e-Document Notice.

Although the proposed rule change would permit the underwriter to forego delivering a paper version of the official statement to a dealer if the dealer consents, this provision would not affect the obligation of a dealer selling a new issue municipal security to a customer to deliver a paper copy of the official statement to the customer unless the dealer has taken the necessary steps described in the e-Document Notice in connection with the delivery of the electronic version to customers. Where delivery in paper form to a customer is required, the selling dealer would either need to obtain a paper copy of the official statement or would need to print a copy from its electronic version. Furthermore, the proposed rule change also would permit a dealer financial advisor to make available solely an electronic version of the official statement to the managing or sole underwriter with such underwriter's consent. Underwriters that agree to receive only an electronic version of the official statement from the dealer financial

⁹ In particular, where a dealer acting as financial advisor prepares an official statement on behalf of the issuer, the decision to produce an electronic version remains a matter for agreement between the issuer and the financial advisor.

advisor and that become obligated to deliver a paper version to another dealer or to a customer would need to print a copy from their electronic version.

The MSRB notes that the e-Document Notice was based on an interpretive release published by the SEC in 1996.¹⁰ The e-Document Notice provided guidance on the use of electronic media to satisfy document delivery requirements under MSRB rules in a manner consistent with how other sectors of the securities markets handle delivery of required information through electronic media. The MSRB will take the request to review the e-Document Notice under advisement, particularly in light of the recent publication by the SEC of its securities offering reform proposal that includes significant modifications to the SEC's approach to the use of electronic media under its rules.¹¹

b. Redefining the Time Period of Official Statement Dissemination

Under current Rule G-32, the underwriting period for a new issue generally ends when the underwriting syndicate (or the sole underwriter) has sold out the issue, but no earlier than the issuer's delivery of the issue to the underwriters. The duties imposed on dealers by current Rule G-32 (including but not limited to the obligation to deliver official statements to new issue customers) only extend to municipal securities sold during the underwriting period. However, the duration of the underwriting period may not be definitively known by most market participants since underwriters currently do not always inform the marketplace of when the issue has been sold out. The original draft amendments to Rule G-32 published in the May 2004 Notice would have included a new clause (i)(D) requiring the managing or sole underwriter of a new issue of municipal securities to inform promptly, upon request, any dealer purchasing such securities during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended. In the May 2004 Notice, the MSRB also sought comment on whether the original draft amendments should instead amend the definition of underwriting period to establish a fixed time period (*e.g.*, 60 days after bond closing) during which the provisions of Rule G-32 apply.

Comments Received. Two commentators (AMS and BMA) agreed that a formulation based on a fixed number of days after the bond closing date would better achieve the goal of improved compliance.¹² AMS stated that a period of 60 days after closing is appropriate. BMA suggested a time period of 30 days after the closing, noting that “[m]aking the end of the underwriting period a readily ascertainable date calculated from the issue date of the securities will not only make it easier for brokers, dealers and municipal securities dealers to ensure compliance with Rule G-32, but will also simplify audits on and enforcement of Rule G-32.”

¹⁰ See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996).

¹¹ See Securities Act Release No. 8501 (November 3, 2004), 69 FR 67392 (November 17, 2004).

¹² As noted above, Bandes simply stated that he was “against this rule” without elaboration.

MSRB Response. The MSRB believes that establishing a fixed end date for the obligations arising under Rule G-32 would be appropriate since this would provide an unambiguous timeframe for delivery of new issue disclosures to customers. The proposed rule change would provide in Rule G-32(d)(ii) that this obligation would end 25 days after the final delivery by the issuer of new issue municipal securities to or through the underwriters.¹³

In conjunction with this change, the proposed rule change would discontinue the use of the term “underwriting period” under MSRB rules and replace it with the term “new issue disclosure period.” This change would more clearly reflect the actual usage of the term under MSRB rules and would help to eliminate certain ambiguities regarding the use of the term underwriting period within the municipal securities industry.¹⁴ Currently, the underwriting period is defined in two separate rules – Rules G-11 and G-32 – depending upon whether there is a syndicate or a sole underwriter. The proposed rule change would delete the definition of underwriting period in Rule G-11(a)(ix)¹⁵ and would replace the definition of underwriting period in Rule G-32(d)(ii) with the new definition of new issue disclosure period. “New issue disclosure period” would mean the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter (*i.e.*, 25 days after the closing).¹⁶ Rule G-36 would be amended to replace the current

¹³ The MSRB has proposed a 25-day period since this timeframe should coincide in most primary offerings to the period during which underwriters are required to send the final official statement to potential customers under SEC Rule 15c2-12(b)(4).

¹⁴ For example, the term “end of the underwriting period” in SEC Rule 15c2-12(f)(2) has a different meaning for sole underwriters than under the definition of underwriting period in current Rule G-32(d)(B). In addition, the MSRB has learned that many market participants have come to use the term underwriting period to mean different aspects of the underwriting process unrelated to the use of this term under MSRB rules.

¹⁵ In addition, the title of Rule G-11 would be amended from “Sales of New Issue Municipal Securities During the Underwriting Period” to “New Issue Syndicate Practices.”

¹⁶ The continuous nature of the offering of municipal fund securities (*e.g.*, interests in 529 college savings plans) would mean that no final delivery occurs so long as the issuer continues to offer such securities, resulting in all sales of municipal fund securities being treated as occurring during the new issue disclosure period. Thus, delivery of an official statement would be required for every sale of municipal fund securities under the revised draft amendments, just as is required under current Rule G-32. *See* Rule D-12 Interpretation – Interpretation Relating

reference to underwriting period with a reference to the new issue disclosure period in section (d) and to add a cross-reference to the new definition in clause (a)(iv).

In virtually all cases, the newly defined “new issue disclosure period” would extend the period during which official statements are required to be delivered to customers beyond the period currently required under the existing definition of underwriting period. The amendment also would have an impact on the application of Rule G-36(d) in that the period during which stickers or amendments to official statements must be submitted by the underwriter to the MSRB would be similarly modified.

c. Submission of Official Statements to the MSRB Under Rule G-36

The original draft amendments to Rule G-36 published in the May 2004 Notice would have provided alternative timeframes for complying with the official statement submission requirements for primary offerings subject to SEC Rule 15c2-12, based on when the issues close. Thus, an underwriter would have been permitted to comply with Rule G-36 by sending the official statement to the MSRB by no later than five business days prior to the bond closing (or three business days prior to closing if submitted electronically through the e-OS System). Even if an underwriter were to fail to meet the proposed new timeframes, it would still comply with Rule G-36 if it met the original timeframe of ten business days after the sale date, but no later than one business day after receipt from the issuer, as provided under Rule G-36(b)(i). The original draft amendments were designed to promote the availability of official statements in the marketplace in advance of bond closing and to encourage the use of electronic means for disseminating official statements in a more timely and efficient manner while at the same time reducing the incidence of technical rule violations that did not raise investor protection concerns.

Comments Received. AMS supported the amendment, stating, “The idea of changing the requirement to define submission no later than five or three days prior to the settlement date as timely is appropriate.” AMS also suggested eliminating the existing timeframe for compliance based on submission of official statements within 10 business days of the sale date.

Bandes stated he was against the rule, while BMA stated that, although it “applauds the MSRB’s efforts to promote the availability of official statements in the marketplace,” it suggested that the MSRB not amend Rule G-36 at this time. BMA stated that it is “concerned that these alternative timeframes will serve to frustrate good faith efforts to comply with Rule G-36” and believed that they would “cause unnecessary confusion amongst dealers.” BMA further noted that “time periods between sale and issue dates appear to have been decreasing. It is not uncommon to have an issue date be the very day after the sale date, particularly for variable rate issues. Therefore the use of

this proposed alternative timeframe is likely to be low.”¹⁷ BMA concluded that “[t]he current uniform rule based on sale date covering both paper and electronic delivery of official statements is easier for compliance and audit purposes.”

MSRB Response. The MSRB has determined not to take action on the original draft amendments to Rule G-36 at this time but has taken the comments received under advisement.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice.
2. MSRB Notice 2004-12 (May 12, 2004); MSRB Notice 2005-06 (January 21, 2005) and comment letters.

¹⁷ The MSRB notes, however, that the original draft amendments to Rule G-36 would not have applied to many such variable rate issues, which are often exempt from SEC Rule 15c2-12 and therefore are governed by a different provision of Rule G-36. Instead, the rule proposal would have provided some relief for issues having extended settlement periods or other unusual features.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-MSRB-2005-13)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to Official Statement Delivery Requirements Under Rule G-32, Rule G-36, and Rule G-11

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that on June 23, 2005, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G-32 (on delivery of official statements to new issue customers), Rule G-36 (on delivery of official statements and advance refunding documents to the Board) and Rule G-11 (on new issue municipal securities during the underwriting period). The proposed rule change is intended to improve the efficiency of official statement dissemination in the municipal securities marketplace and the timeliness of official statement deliveries to customers. The text of the proposed rule change is set forth below. New language is underlined; deletions are in brackets.

Rule G-32. Disclosures in Connection with New Issues

(a)-(b) No change.

(c) Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.

(i) Managing Underwriters and Sole Underwriters. When an official statement in final form is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall:

(A) send to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities an official statement in final form and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per \$100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and sold to customers. Such items shall be sent no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

(B) [In addition, the managing underwriter or sole underwriter, upon request, shall] provide all purchasing brokers, dealers

and municipal securities dealers with instructions on how to order additional copies of the official statement in final form directly from the printer.

(C) provide promptly to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities a printable electronic version of the official statement in final form, but only if: (1) a printable electronic version has been prepared and the issuer does not object to distribution of such electronic version; and (2) the broker, dealer or municipal securities dealer requests to receive an electronic version and provides the managing underwriter or sole underwriter with an electronic mail address or other instructions acceptable to the managing underwriter or sole underwriter for electronic delivery of such version. With the consent of the purchasing broker, dealer or municipal securities dealer, sending of a printable electronic version of the official statement in final form to the purchasing broker, dealer or municipal securities dealer as provided in this subparagraph (C) shall fully satisfy the requirements of subparagraphs (A) and (B) of this paragraph (c)(i) with respect to the official statement in final form.

(ii) Financial Advisors. A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement in final form on behalf of an issuer, shall make the official statement in final form available to the managing underwriter or sole underwriter promptly after the issuer approves its distribution. **If a printable electronic version of the official statement in final form has been prepared and the issuer does not object to its distribution, such printable electronic version shall also be made available to the managing underwriter or sole underwriter promptly upon request and delivery to the financial advisor of an electronic mail address or other instructions acceptable to the financial advisor for electronic delivery of such version. With the consent of the managing underwriter or sole underwriter, such printable electronic version shall fully satisfy the requirement of this paragraph (c)(ii) with respect to the official statement in final form to be made available by the financial advisor.**

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

(i) The term “new issue municipal securities” shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the issuer’s **new issue disclosure [underwriting]** period, but shall not include commercial paper.

(ii) The term “**new issue disclosure [underwriting]** period” shall mean[:]**the period commencing with the first submission to an underwriter of an**

order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter.

[(A) for securities purchased from an issuer by a syndicate, the period defined in paragraph (a)(ix) of rule G-11, on sales of new issue municipal securities during the underwriting period; and

(B) for securities purchased from an issuer by one broker, dealer or municipal securities dealer, the period commencing with the first submission to broker, dealer or municipal securities dealer of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the broker, dealer or municipal securities dealer, and (2) the broker, dealer or municipal securities dealer no longer retain an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.]

(iii)-(iv) No change.

* * * * *

Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a) Definitions. For purposes of this rule, the following items have the following meanings:

(i)-(iii) No change.

(iv) The term “new issue disclosure period” shall mean the period defined in Rule G-32(d)(ii).

(v) The term “underwriter” shall mean any person defined in Securities Exchange Act rule 15c2-12(f)(8).

(b)-(c) No change.

(d) Amended Official Statements. In the event a broker, dealer, or municipal securities dealer provides to the Board or its designee an official statement pursuant to section (b) or (c) above, and the official statement is amended or “stickered” by the issuer during the **new issue disclosure [underwriting]** period, such broker, dealer, or municipal securities dealer must send to the Board or its

designee, within one business day after receipt of the amended official statement from the issuer or its designated agent, the amended official statement and an amended Form G-36(OS) as prescribed by the Board, including: the CUSIP number or numbers for the issue; the fact that the official statement previously had been sent to the Board or its designee and that the official statement has been amended.

(e)-(g) No change.

* * * * *

Rule G-11. [Sales of] New Issue Syndicate Practices [Municipal Securities During the Underwriting Period]

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

(i)-(viii) No change.

[(ix) The term “underwriting period” means the period commencing with the first submission to a syndicate of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, which first occurs, and ending at such time as the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of securities, whichever last occurs.]

(ix) [(x)] The term “qualified note syndicate” means any syndicate formed for the purpose of purchasing and distributing a new issue of municipal securities that matures in less than two years where:

(A)-(B) No change.

(b)-(h) No change.

* * * * *

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

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change is designed to improve the efficiency and timeliness of dissemination of official statements to underwriters and other brokers, dealers, and municipal securities dealers (“dealers”), which in turn should also improve the efficiency and timeliness of dealer-to-customer dissemination of official statements. The proposed amendments are described more fully below.

Dissemination of Electronic Official Statements by Managing and Sole Underwriters

The proposed amendments establish new clause (i)(C) of Rule G-32(c), which requires the managing or sole underwriter for new issues of municipal securities to provide a printable electronic version of the official statement (if an electronic version has been prepared and the issuer does not object to its distribution) to any dealer that requests an electronic version and provides an e-mail address or other delivery instructions acceptable to the managing or sole underwriter. This obligation is in addition to the managing or sole underwriter’s obligation to send paper copies of the official statement in the required quantities (*i.e.*, one printed copy plus not less than one additional printed copy per \$100,000 par value purchased by the dealer for sale to customers). However, if the requesting dealer consents, the managing or sole underwriter

is permitted to provide such dealer solely with the electronic official statement in lieu of paper copies otherwise required under the rule.³

The proposed rule change does not specify a particular file format for the electronic version of the official statement, other than that the electronic version be printable. Portable document format (PDF) files (and, in the future, any other file formats that it may hereafter accept for purposes of official statement submissions to the MSRB's web-based Electronic OS/ARD Submission System (the "e-OS System") established under Rule G-36) are acceptable formats for purposes of the proposed rule change, so long as such files are printable. In addition, other file formats that are printable using commercially available software then in common usage in the municipal securities industry, or with software that is bundled with such files, also would be acceptable so long as the dealer that makes the delivery promptly delivers a substitute paper version of the official statement if the recipient of the electronic file so requests and a paper version has not previously been sent to such recipient.

The electronic version of the official statement must include every item of information included in the paper version. For example, if a dealer were to consent to receiving solely an electronic version of the official statement pursuant to clause (c)(i)(C) of Rule G-32 but portions of the official statement are not available in electronic form, a managing or sole underwriter could not discharge its obligation to deliver paper versions of the official statement under clause (c)(i)(A) by sending the portions of the official statement available in electronic form and separately forwarding a paper copy of those

³ The managing or sole underwriter also need not provide the dealer with information on how to obtain additional copies of the official statement, as would otherwise be required under clause (i)(B) of Rule G-32(c), since such dealer will have agreed to rely exclusively on the printable electronic version.

portions not available in electronic form. In the case where the entire official statement is not available in electronic format, the requirement to disseminate an electronic version upon request under clauses (c)(ii) and (c)(i)(C) would not apply. The MSRB generally would view an electronic version of an official statement to be available only where the issuer has prepared, authorized and delivered the version as a single electronic file, or where multiple files delivered as a single unit are clearly interconnected by hyperlinks or other clear method of organization that ensures that an investor viewing one file would be put on adequate notice that additional accompanying files must be accessed in order to review the official statement in its entirety.

The proposed rule change also does not limit the manner of delivery of the electronic file. For example, the rule language permits the requesting dealer under clause (c)(i)(C) or an underwriter under clause (c)(ii) to provide an e-mail address or instructions for other forms of electronic delivery. An underwriter or dealer financial advisor should be able to meet this electronic delivery obligation in a number of different ways, including by posting the electronic version at an accessible website. At a minimum, any such form of passive delivery of the electronic version of the official statement must provide the recipient with timely notice that the official statement has been posted (*e.g.*, by e-mail notice to the e-mail address provided by the requesting dealer), allow access to the document at no cost, permit the recipient to print and re-transmit the document (*i.e.*, re-transmit a downloaded file of the document or permit the original recipient to forward to another dealer the information necessary to allow such other dealer to have access to the document equivalent to the access afforded to the original recipient), and ensure continued accessibility throughout the “new issue

disclosure period” described below. The MSRB believes that best practice would entail transmission of the electronic version in a manner that would take advantage of the ability to make electronic files available substantially instantaneously or otherwise on demand, although certain technological limitations and variations among users would need to be taken into consideration in determining the best method for disseminating a particular document.⁴

Dissemination of Electronic Official Statements by Financial Advisors

Revised Rule G-32(c)(ii) applies to any dealer that acts as the issuer’s financial advisor and prepares the official statement for the issuer. If an electronic version of the official statement has been prepared and the issuer does not object to its distribution, the dealer financial advisor is required to make available to the managing or sole underwriter (in addition to a printed version of the official statement) a printable electronic version of the official statement, upon request by the underwriter for such an electronic version and if the underwriter provides an e-mail address or other delivery instructions acceptable to the dealer financial advisor. However, if the managing or sole underwriter consents, the dealer financial advisor is permitted to provide such underwriter solely with the electronic official statement in lieu of paper copies otherwise required under the rule.

Redefining the Time Period of Official Statement Dissemination

The proposed rule change deletes the definition of “underwriting period” in Rule G-32(d)(ii) and replaces it with the new term “new issue disclosure period.” The new

⁴ For example, some e-mail systems limit the size of files that users are permitted to receive, and some virus detection software settings can cause file attachments to e-mail messages to be deleted or quarantined. It would be the responsibility of a requesting dealer that provides an e-mail address for delivery of an electronic official statement by e-mail to ensure that its e-mail settings will permit any uninfected official statement file to be received.

issue disclosure period is defined as the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities to or through the underwriting syndicate or sole underwriter. The definition of “new issue municipal securities” in Rule G-32(d)(i) is revised to mean municipal securities (other than commercial paper) that are sold by a dealer during the issuer’s new issue disclosure period.

The proposed rule change makes related changes to Rules G-36 and G-11. Clause (a)(iv) is added to Rule G-36 to include a reference to the definition of new issue disclosure period in Rule G-32(d)(ii), and section (d) of Rule G-36 is revised to provide that amendments to official statements made by the issuer during the new issue disclosure period must be sent to the MSRB by the underwriter within the required timeframe. The definition of underwriting period is removed from section (a) of Rule G-11 and the title of the rule is revised to more accurately reflect the subject of the rule.

Clarifying Amendment to Rule G-36

The proposed rule change adds a definition of “underwriter” in new clause (a)(v) of Rule G-36, consisting of a cross-reference to the definition of that term provided in Rule 15c2-12 adopted by the SEC under the Act. The new language merely clarifies which definition applies to this term but does not change its meaning, since by virtue of Rule D-1,⁵ that term already has the same meaning as provided in Rule 15c2-12.

2. Statutory Basis

⁵ Rule D-1 states that, unless the context otherwise specifically requires, the terms used in MSRB rules have the respective meanings set forth in the Securities Exchange Act and the rules of the SEC thereunder.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires that the rules of the MSRB shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating... transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change increases the efficiency of official statement dissemination in the marketplace and the timeliness of official statement deliveries to customers.

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

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The MSRB published notices for comment on the draft amendments on May 12, 2004 (the “May 2004 Notice”)⁶ and January 21, 2005 (the “January 2005 Notice”).⁷ The May 2004 Notice published for comment draft amendments to Rule G-32 and Rule G-36 (the “original draft amendments”). In response to the May 2004 Notice, the MSRB received four comment letters. After reviewing the comments received in connection with the May 2004 Notice, the January 2005 Notice published for comment revised draft amendments to Rules G-32 and G-36, as well as to Rule G-11 (the “revised draft amendments”). No comment letters were received in response to the January 2005

⁶ MSRB Notice 2004-12 (May 12, 2004)

⁷ MSRB Notice 2005-06 (January 21, 2005)

Notice. The language of the proposed rule change is identical to the language of the revised draft amendments, except that the proposed rule change also includes a clarifying amendment to Rule G-36(a)(v), as described above.

Discussion of Comments in Response to the May 2004 Notice

In response to the May 2004 Notice, the Board received comment letters from Jed Bandes (“Bandes”),⁸ Conners & Co., Inc. (“Conners”), American Municipal Securities, Inc. (“AMS”), and The Bond Market Association (“BMA”). Three commentators (Bandes, Conners, and BMA) opposed the original draft amendments. The other commentator (AMS) did not state a position on most portions of the draft amendments but instead answers several questions posed in the notice. The comments are summarized and discussed below.

a. Dissemination of Electronic Official Statements Under Rule G-32

The original draft amendments published in the May 2004 Notice would have required managing or sole underwriters to provide copies of both the paper and electronic version of the official statement to any dealers purchasing new issue municipal securities that request copies of the official statement. The original draft amendments also would have required dealers acting as financial advisors that prepare official statements to provide to the underwriters both paper and electronic versions of the official statement. These obligations to provide electronic versions would arise only if an electronic version had been prepared and the issuer did not object to its distribution. These obligations would not have been conditioned on a request having been made to receive the official statement in electronic form.

⁸ Mr. Bandes’s comment consists of an e-mail stating “I am against this rule” without further elaboration. It is unclear which firm he represents.

Comments Received. Three commentators (Bandes, Conners, and BMA) opposed these requirements. Conners stated that, as a small dealer underwriting issues for small issuers, requiring dissemination of electronic versions of the official statement in addition to paper copies would “make our costs unruly and would cut into our profits.” In addition, Conners stated that passing the cost on to the firm’s small issuer clients would be a burden. BMA also stated that the draft amendments would have been “unduly burdensome” to managing or sole underwriters. It observed that the MSRB’s 1998 notice on electronic delivery of documents (the “e-Document Notice”)⁹ sets forth “strict requirements for effective electronic delivery to dealers, customers and issuers . . . [that are] more arduous than those for paper delivery, and require extra controls on electronic delivery such as tracking confirmation of receipt. Also, email addresses for all dealers are not readily accessible.” BMA suggested instead that electronic versions, if available, be required to be sent to a dealer only if the dealer specifically requests to receive one, in which case the requesting dealer can provide an e-mail address for delivery. It requested that the MSRB review the e-Document Notice “in light of technological advances in order to reduce the extra burdens on electronic delivery of documents over paper delivery and to further encourage use of electronic communications.”

BMA also stated that it is already the accepted practice for dealer financial advisors to provide electronic versions of official statements to the underwriters and that the MSRB should not impose a regulatory requirement to this effect. It further stated that

⁹ See Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998), *reprinted in* MSRB Rule Book.

such a requirement would create a new burden of “necessary recordkeeping for compliance purposes” without furthering the goals of the draft amendments.

MSRB Response. The MSRB observes that the proposed requirements would not have obligated any dealer to create an electronic version of the official statement but instead would have merely required the dissemination of any such electronic official statement already created by or on behalf of the issuer. As such, dealers would not have been burdened with costs of production, although some minimal costs may have been entailed with respect to the transmittal of such documents and with ensuring that the sender’s method of transmittal was compatible with the recipient’s method of receipt, depending on the method chosen.

In addition, the MSRB notes that the e-Document Notice generally permits a dealer to fulfill a regulatory delivery obligation electronically if the dealer provides adequate notice of delivery, the electronic means provides access to information comparable to the paper version, and the dealer has reason to believe that electronic delivery will be effective. As noted in the e-Document Notice, this three-part requirement is not the only method by which legal delivery by electronic means can be accomplished. In particular, where MSRB rules provide different requirements for undertaking electronic communications, the e-Document Notice concluded that compliance with those rule-based requirements would satisfy the rule requirement even if the three-part test of the e-Document Notice is not fully met.

The MSRB believed that modifying the original draft amendments to require delivery to dealers of electronic official statements only if the dealer explicitly requests an electronic version would be an appropriate first step toward the ultimate goal of

having electronic versions generally available and routinely used for more rapid dissemination of disclosure in the marketplace. The proposed rule change requires a requesting dealer to provide an e-mail address to which the electronic version could be sent or other instructions acceptable to the managing or sole underwriter for electronic delivery. Similarly, the MSRB believed that modifying the original draft amendments to require dealer financial advisors to provide to the underwriters electronic official statements only if the managing or sole underwriter explicitly requests an electronic version and provides an e-mail address or instructions acceptable to the dealer financial advisor for electronic delivery would be appropriate. Neither provision requires the dealer to create an electronic version for purposes of meeting these requirements if the issuer has not produced an electronic version.¹⁰ In both cases, compliance with these provisions with the proposed rule change would fully satisfy the inter-dealer delivery requirement for purposes of the e-Document Notice.

Although the proposed rule change would permit the underwriter to forego delivering a paper version of the official statement to a dealer if the dealer consents, this provision would not affect the obligation of a dealer selling a new issue municipal security to a customer to deliver a paper copy of the official statement to the customer unless the dealer has taken the necessary steps described in the e-Document Notice in connection with the delivery of the electronic version to customers. Where delivery in paper form to a customer is required, the selling dealer would either need to obtain a paper copy of the official statement or would need to print a copy from its electronic

¹⁰ In particular, where a dealer acting as financial advisor prepares an official statement on behalf of the issuer, the decision to produce an electronic version remains a matter for agreement between the issuer and the financial advisor.

version. Furthermore, the revised draft amendments also would permit a dealer financial advisor to make available solely an electronic version of the official statement to the managing or sole underwriter with such underwriter's consent. Underwriters that agree to receive only an electronic version of the official statement from the dealer financial advisor and that become obligated to deliver a paper version to another dealer or to a customer would need to print a copy from their electronic version.

The MSRB notes that the e-Document Notice was based on an interpretive release published by the SEC in 1996.¹¹ The e-Document Notice provided guidance on the use of electronic media to satisfy document delivery requirements under MSRB rules in a manner consistent with how other sectors of the securities markets handle delivery of required information through electronic media. The MSRB will take the request to review the e-Document Notice under advisement, particularly in light of the recent publication by the SEC of its securities offering reform proposal that includes significant modifications to the SEC's approach to the use of electronic media under its rules.¹²

b. Redefining the Time Period of Official Statement Dissemination

Under current Rule G-32, the underwriting period for a new issue generally ends when the underwriting syndicate (or the sole underwriter) has sold out the issue, but no earlier than the issuer's delivery of the issue to the underwriters. The duties imposed on dealers by current Rule G-32 (including but not limited to the obligation to deliver official statements to new issue customers) only extend to municipal securities sold during the underwriting period. However, the duration the underwriting period may not

¹¹ See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996).

¹² See Securities Act Release No. 8501 (November 3, 2004), 69 FR 67392 (November 17, 2004).

be definitively known by most market participants since underwriters currently do not always inform the marketplace of when the issue has been sold out. The original draft amendments to Rule G-32 published in the May 2004 Notice would have included a new clause (i)(D) requiring the managing or sole underwriter of a new issue of municipal securities to inform promptly, upon request, any dealer purchasing such securities during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended. In the May 2004 Notice, the MSRB also sought comment on whether the original draft amendments should instead amend the definition of underwriting period to establish a fixed time period (*e.g.*, 60 days after bond closing) during which the provisions of Rule G-32 apply.

Comments Received. Two commentators (AMS and BMA) agreed that a formulation based on a fixed number of days after the bond closing date would better achieve the goal of improved compliance.¹³ AMS stated that a period of 60 days after closing is appropriate. BMA suggested a time period of 30 days after the closing, noting that “[m]aking the end of the underwriting period a readily ascertainable date calculated from the issue date of the securities will not only make it easier for brokers, dealers and municipal securities dealers to ensure compliance with Rule G-32, but will also simplify audits on and enforcement of Rule G-32.”

MSRB Response. The MSRB believes that establishing a fixed end date for the obligations arising under Rule G-32 would be appropriate since this would provide an unambiguous timeframe for delivery of new issue disclosures to customers. The proposed rule change would provide in Rule G-32(d)(ii) that this obligation would end 25

¹³ As noted above, Bandes simply stated that he was “against this rule” without elaboration.

days after the final delivery by the issuer of new issue municipal securities to or through the underwriters.¹⁴

In conjunction with this change, the proposed rule change would discontinue the use of the term “underwriting period” under MSRB rules and replace it with the term “new issue disclosure period.” This change would more clearly reflect the actual usage of the term under MSRB rules and would help to eliminate certain ambiguities regarding the use of the term underwriting period within the municipal securities industry.¹⁵

Currently, the underwriting period is defined in two separate rules – Rules G-11 and G-32 – depending upon whether there is a syndicate or a sole underwriter. The proposed rule change would delete the definition of underwriting period in Rule G-11(a)(ix)¹⁶ and would replace the definition of underwriting period in Rule G-32(d)(ii) with the new definition of new issue disclosure period. “New issue disclosure period” would mean the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter

¹⁴ The MSRB has proposed a 25-day period since this timeframe should coincide in most primary offerings to the period during which underwriters are required to send the final official statement to potential customers under SEC Rule 15c2-12(b)(4).

¹⁵ For example, the term “end of the underwriting period” in SEC Rule 15c2-12(f)(2) has a different meaning for sole underwriters than under the definition of underwriting period in current Rule G-32(d)(B). In addition, the MSRB has learned that many market participants have come to use the term underwriting period to mean different aspects of the underwriting process unrelated to the use of this term under MSRB rules.

¹⁶ In addition, the title of Rule G-11 would be amended from “Sales of New Issue Municipal Securities During the Underwriting Period” to “New Issue Syndicate Practices.”

(i.e., 25 days after the closing).¹⁷ Rule G-36 would be amended to replace the current reference to underwriting period with a reference to the new issue disclosure period in section (d) and to add a cross-reference to the new definition in clause (a)(iv).

In virtually all cases, the newly defined “new issue disclosure period” would extend the period during which official statements are required to be delivered to customers beyond the period currently required under the existing definition of underwriting period. The amendment also would have an impact on the application of Rule G-36(d) in that the period during which stickers or amendments to official statements must be submitted by the underwriter to the MSRB would be similarly modified.

c. Submission of Official Statements to the MSRB Under Rule G-36.

The original draft amendments to Rule G-36 published in the May 2004 Notice would have provided alternative timeframes for complying with the official statement submission requirements for primary offerings subject to SEC Rule 15c2-12, based on when the issues close. Thus, an underwriter would have been permitted to comply with Rule G-36 by sending the official statement to the MSRB by no later than five business days prior to the bond closing (or three business days prior to closing if submitted electronically through the e-OS System). Even if an underwriter were to fail to meet the

¹⁷ The continuous nature of the offering of municipal fund securities (e.g., interests in 529 college savings plans) would mean that no final delivery occurs so long as the issuer continues to offer such securities, resulting in all sales of municipal fund securities being treated as occurring during the new issue disclosure period. Thus, delivery of an official statement would be required for every sale of municipal fund securities under the revised draft amendments, just as is required under current Rule G-32. See Rule D-12 Interpretation – Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001), reprinted in MSRB Rule Book.

proposed new timeframes, it would still comply with Rule G-36 if it met the original timeframe of ten business days after the sale date, but no later than one business day after receipt from the issuer, as provided under Rule G-36(b)(i). The original draft amendments were designed to promote the availability of official statements in the marketplace in advance of bond closing and to encourage the use of electronic means for disseminating official statements in a more timely and efficient manner while at the same time reducing the incidence of technical rule violations that did not raise investor protection concerns.

Comments Received. AMS supported the amendment, stating, “The idea of changing the requirement to define submission no later than five or three days prior to the settlement date as timely is appropriate.” AMS also suggested eliminating the existing timeframe for compliance based on submission of official statements within 10 business days of the sale date.

Bandes stated it was against the rule, while BMA stated that, although it “applauds the MSRB’s efforts to promote the availability of official statements in the marketplace,” it suggested that the MSRB not amend Rule G-36 at this time. BMA stated that it is “concerned that these alternative timeframes will serve to frustrate good faith efforts to comply with Rule G-36” and believed that they would “cause unnecessary confusion amongst dealers.” BMA further noted that “time periods between sale and issue dates appear to have been decreasing. It is not uncommon to have an issue date be the very day after the sale date, particularly for variable rate issues. Therefore the use of

this proposed alternative timeframe is likely to be low.”¹⁸ BMA concluded that “[t]he current uniform rule based on sale date covering both paper and electronic delivery of official statements is easier for compliance and audit purposes.”

MSRB Response. The MSRB has determined not to take action on the original draft amendments to Rule G-36 at this time but will continue to closely monitor the official statement dissemination process.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

¹⁸ The MSRB notes, however, that the original draft amendments to Rule G-36 would not have applied to many such variable rate issues, which are often exempt from SEC Rule 15c2-12 and therefore are governed by a different provision of Rule G-36. Instead, the rule proposal would have provided some relief for issues having extended settlement periods or other unusual features.

or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2005-13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-MSRB-2005-13. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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-2005-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Jonathan G. Katz
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

Exhibit 2

**MSRB Notice 2004-12
(May 12, 2004)**

**Request for Comments on Draft Amendments Relating to
Official Statement Delivery Requirements Under Rule G-32
and Rule G-36**

The Municipal Securities Rulemaking Board (“MSRB”) has adopted rules requiring brokers, dealers and municipal securities dealers (“dealers”) selling new issue municipal securities to deliver official statements to their customers by no later than settlement of their transactions and to take certain steps to disseminate the official statement to other dealers selling the securities and to the MSRB for further dissemination to the marketplace. Delivery of the issuer’s official statement, along with other required disclosures by dealers, are critical elements in ensuring that investors purchasing new issue municipal securities understand the terms of and security for the municipal securities in which they invest.

The MSRB is publishing for industry comment draft amendments to Rule G-32, on disclosures in connection with new issues, and Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSRB, intended to increase the efficiency and timeliness of official statement dissemination in the marketplace and to the ultimate customer. The draft amendments to Rule G-32 would require managing or sole underwriters to provide to requesting dealers electronic official statements if prepared and available for distribution. Similarly, dealers acting as financial advisors that prepare official statements would be required to provide to the underwriters electronic official statements if prepared and available for distribution. In addition, Rule G-32 would be amended to require managing or sole underwriters to inform purchasing dealers whether the underwriting period has ended. Finally, the draft amendments to Rule G-36 would provide alternative timeframes for complying with the official statement submission requirements for most primary offerings, based on when the issues close. The draft amendments are described more fully below. Comments are due by September 15, 2004.

Current Official Statement Delivery and Dissemination Requirements

Delivery to Customers. Rule G-32(a)(i) generally requires any dealer selling a new issue municipal security to a customer to deliver the official statement to the customer by settlement of the transaction.¹ The rule defines new issue municipal securities as municipal securities (other

¹ This obligation applies to all dealers, not just syndicate members. In the case of negotiated sales of new issue municipal securities, certain additional items of information also must be delivered by settlement pursuant to Rule G-32(a)(ii). The rule provides exceptions from the requirement that an official statement be delivered by settlement for issues where no official statement is being prepared, for issues of certain types of puttable securities, and for certain repeat purchasers of municipal fund securities.

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than commercial paper) sold during the issue's underwriting period.² Once the underwriting period has ended for an issue of municipal securities, the requirements of Rule G-32 no longer apply to transactions in such municipal securities.

Delivery to Dealers. To ensure that all dealers have access to the official statement to meet their obligation to deliver it to customers on a timely basis, Rule G-32(b) requires any dealer selling a new issue municipal security to another dealer to send the official statement, if requested, to the purchasing dealer within one business day of request. Further, the managing or sole underwriter also is required under Rule G-32(c)(i) to send the official statement, if requested, to any dealer that purchases new issue municipal securities (even if the requesting dealer did not acquire the security from the managing or sole underwriter) within one business day of request. The managing or sole underwriter is required to send to the requesting dealer one additional copy of the official statement for each \$100,000 par value of new issue municipal securities purchased for resale to customers. These requirements apply only so long as the issue is in its underwriting period. Finally, Rule G-32(c)(ii) obligates a dealer that, acting as financial advisor to an issuer in connection with an offering of municipal securities, prepares an official statement on behalf of the issuer to make the official statement available to the managing or sole underwriter promptly after the issuer approves its distribution.

Delivery to the MSRB. Rule G-36 generally requires the managing or sole underwriter to submit to the MSRB the official statement for primary offerings of municipal securities, along with completed Form G-36(OS). For any offering subject to Exchange Act Rule 15c2-12 adopted by the Securities and Exchange Commission ("SEC"), Rule G-36(b)(i) obligates the managing or sole underwriter to send the official statement (along with Form G-36(OS)) to the MSRB within one business day of receipt from the issuer but no later than 10 business days after any final agreement to purchase, offer or sell the municipal securities.³ With certain exceptions, Rule G-36(c)(i) requires that such documents be sent to the MSRB for any offering exempt from

² The underwriting period for new issue municipal securities ends upon delivery by the issuer of the securities to the underwriters (*i.e.*, the bond closing) if the underwriters no longer retain an unsold balance. If the issue is not sold out by the bond closing, the underwriting period continues until the underwriters no longer retain an unsold balance; provided that, in the case of an issue underwritten by a sole underwriter, if the bond closing has occurred and the underwriter retains an unsold balance 21 calendar days after the first submission to the underwriter of a customer order, the underwriting period nonetheless ends after such 21st day. *See* Rule G-32(d)(ii) and Rule G-11(a)(ix).

³ Section (b)(3) of SEC Rule 15c2-12 obligates an underwriter for an offering subject to the rule to contract with the issuer to receive, within seven business days after any final agreement to purchase, offer or sell the securities and in sufficient time to accompany any money confirmations, copies of the official statement in sufficient quantity to comply with SEC Rule 15c2-12 and the rules of the MSRB.

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SEC Rule 15c2-12 for which an official statement has been prepared by the later of one business day of receipt from the issuer or one business day after the bond closing.⁴ Submissions may be made under Rule G-36 using paper versions of the submitted documents or by electronic means through the MSRB's web-based Electronic OS/ARD Submission System (the "e-OS System") at www.msrb.org.

The official statements submitted by underwriters to the MSRB pursuant to Rule G-36 (as well as advance refunding documents submitted by underwriters pursuant to sections (b)(ii) and (c)(ii) of Rule G-36) are compiled by the MSRB's Municipal Securities Information Library[®] (MSIL[®]) system. Paper submissions are scanned to create imaged electronic files of such submissions, and these imaged files are combined with the electronic submissions received through the e-OS System into a comprehensive collection of submitted official statements and advance refunding documents. The MSIL system makes this document collection available to the marketplace through its public access facility in Alexandria, Virginia and electronically by subscription. Much of the official statement information made available by information vendors in the municipal securities market is derived from the MSIL system.

Use of Electronic Official Statements. The MSRB stated in a notice published in 1998 (the "e-Document Notice") that its rules permit dealers to transmit documents electronically to customers and to other dealers, provided that such dealers adhere to certain specified standards with respect to notice, access and evidence to show delivery.⁵ The MSRB noted that official statement deliveries to customers, as required under Rule G-32(a)(i), could be accomplished by electronic means, although dealers were cautioned on the importance of ensuring that the electronic version meets required standards for comparability to the paper version.⁶ In addition,

⁴ Primary offerings exempt from SEC Rule 15c2-12 but subject to Rule G-36(c)(i) if an official statement is prepared consist of offerings of less than \$1 million, as well as offerings of securities in authorized denominations of \$100,000 that either mature in nine months or less or are puttable at a price of par at least every nine months.

⁵ The MSRB has noted that an electronic communication should provide timely and adequate notice to customers that the information is available electronically, that customers who are provided information through electronic delivery should have access to that information comparable to the access that would be provided if the information were delivered in paper form, and that dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirement (*i.e.*, that the customer actually will effectively receive the information, or that the customer has provided his or her informed consent to delivery by electronic means). *See* Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *reprinted in* MSRB Rule Book.

⁶ *See* e-Document Notice at footnote 26.

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the MSRB stated that a managing or sole underwriter providing official statements to requesting dealers under Rule G-32(c)(i) with respect to such dealers' redelivery obligation to customers must provide paper copies unless the requesting dealers consent to electronic delivery of the official statement in lieu of delivery of paper copies.⁷

In connection with the obligation of managing or sole underwriters to submit official statements to the MSRB under Rule G-36, the MSRB accepts electronic submissions of official statements and accompanying Form G-36(OS) through the e-OS System, as noted above. An official statement that is uploaded through the e-OS System must be in one or more Portable Document Format ("PDF") files. The MSRB currently expects to expand the e-OS System during the summer of 2004 to allow underwriters to complete the on-line Form G-36(OS) by uploading an Extensible Markup Language (XML) file containing the required data, as an alternative to the currently required keystroke inputting of such information.⁸ This expansion should make the use of the e-OS System significantly more efficient and therefore increase the level of electronic submissions of official statements to the MSRB under Rule G-36.

Availability of Official Statements by Closing

The MSRB has been collecting comprehensive data from Forms G-36(OS) submitted by underwriters in connection with their official statement submissions to the MSRB since 1998. The MSRB published a notice in 1999 that observed that over 7% of all official statements delivered by issuers to underwriters in 1998 were reported as being delivered after closing.⁹ In the four years following this initial review, the incidence of reported official statement deliveries by issuers to underwriters after closing for offerings subject to SEC Rule 15c2-12 has ranged from a low of 6.3% in 2001 to a high of 7.5% in 2002.¹⁰ The MSRB remains concerned that so

⁷ See e-Document Notice at footnote 27.

⁸ The MSRB expects to publish on its website by the end of the spring of 2004 file specifications for the XML e-OS System interface and to announce the date on which the new interface will become available. The XML interface will also be available for on-line completion of Form G-36(ARD).

⁹ The MSRB also observed that, according to the Form G-36(OS) submissions, issuers delivered official statements to underwriters more than seven business days after the sale date in approximately 19% of all offerings subject to SEC Rule 15c2-12 in 1998. See *Official Statement Deliveries Under Rules G-32 and G-36 and Exchange Act Rule 15c2-12*, July 15, 1999, published in MSRB Reports, Vol. 19, No. 3 (Sept. 1999).

¹⁰ Similarly, in the four years following the initial review, the incidence of official statement deliveries by issuers to underwriters reported to have occurred more than seven business days after the sale date for offerings subject to SEC Rule 15c2-12 has ranged from a low of 12.8% in 2000 to a high of 18.0% in 2001.

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many official statements are reportedly being delivered to underwriters after closing and that issuers, financial advisors, underwriters and other relevant parties have not succeeded in improving the timeliness of such deliveries. This data raises the question of whether a large number of new issue customers purchasing securities for which the official statement is not available at closing are receiving their official statements by settlement of their trades, as required under Rule G-32.

Draft Amendments to Rule G-32

The MSRB is proposing draft amendments to Rule G-32 designed to improve the efficiency and timeliness of dissemination of official statements to underwriters and other dealers, which in turn should similarly improve the efficiency and timeliness of dealer-to-customer dissemination of official statements. In addition, the draft amendments to Rule G-32 are intended to assist non-syndicate members in determining their obligation to deliver official statements to customers in connection with their sales of recently issued municipal securities. The draft amendments to Rule G-32 are described below. The MSRB seeks comments on all aspects of the draft amendments, including comments on certain specific questions raised below.

Dissemination of Electronic Official Statements by Managing and Sole Underwriters. Rule G-32 imposes certain requirements on managing and sole underwriters to distribute official statements to dealers to ensure that official statements are available for redelivery to their new issue customers. The draft amendments to Rule G-32(c) set forth in new clause (i)(C) would require the managing or sole underwriter to provide dealers requesting copies of the official statement with a printable electronic version if one has been prepared and the issuer does not object to its distribution.¹¹ This obligation would be in addition to the managing or sole underwriter's obligation to send paper copies of the official statement in the required quantities (*i.e.*, one printed copy plus not less than one additional printed copy per \$100,000 par value purchased by the dealer for sale to customers). However, if the requesting dealer consents, the managing or sole underwriter would be permitted to provide such dealer solely with the electronic official statement in lieu of the requirement to send paper copies under the rule.¹²

¹¹ A dealer's request for copies of the official statement need not specifically request that the official statement be provided in electronic form in order to trigger this new requirement.

¹² This is consistent with the e-Document Notice. The managing or sole underwriter also would not need to provide the purchasing dealer with information on how to obtain additional copies of the official statement, as would otherwise be required under redesignated clause (i)(B) of Rule G-32(c), since such dealer will have agreed to rely exclusively on the printable electronic version.

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The draft amendments do not specify a particular file format for the electronic version of the official statement, other than that the electronic version be printable. The MSRB views PDF files and any other file formats that it may in the future accept for purposes of official statement submissions to the e-OS System as acceptable formats for purposes of the draft amendment, so long as such files are printable. In addition, the MSRB believes that other file formats that are printable using commercially available software then in common usage in the municipal securities industry, or with software that is bundled with such files, also would be acceptable so long as the dealer that makes the delivery promptly delivers a substitute paper version of the official statement if the recipient of the electronic file so requests and a paper version has not previously been sent to such recipient.

In establishing the e-OS System, the MSRB agreed with the SEC's stated position that the paper and electronic versions of the official statement must be the same.¹³ In particular, the electronic version of the official statement must include every item of information included in the paper version. For example, if any of the appendices to the official statement are not available in electronic form, a managing or sole underwriter cannot meet its obligation to send an electronic version of the official statement by sending the portions of the official statement that are available in electronic form and forwarding a paper copy of those portions that are not available in electronic form. Of course, in the case where the entire official statement is not available in electronic format, the requirement to disseminate an electronic version would not apply. The MSRB generally would view an electronic version of an official statement to be available only where the issuer has prepared, authorized and delivered the version as a single electronic file, or where multiple files delivered as a single unit are clearly interconnected by hyperlinks or other clear method of organization that ensures that an investor viewing one file would be put on adequate notice that additional files must be accessed in order to review the official statement in its entirety.

The draft amendments also do not specify the manner of delivery of the electronic file. For example, the managing or sole underwriter would be permitted to send the file by electronic mail or to send a copy burned on a CD-ROM. In addition, the MSRB believes that a managing or sole underwriter should be able to meet this delivery obligation by posting the electronic version at an accessible website and taking such other appropriate steps necessary to comply with the notice, access and evidence to show delivery factors described in the e-Document Notice. The MSRB believes that best practice would entail transmission of the electronic version in a manner that would take advantage of the ability to make electronic files available on demand, although the MSRB acknowledges that certain technological limitations and variations

¹³ See Electronic Submission of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB, June 11, 2001, *available at* <http://www.msrb.org/msrb1/archive/E-SubmissionsBoardNotice.htm>; "Use of Electronic Media," Securities Act Release No. 7856, Exchange Act Release No. 42728 (April 28, 2000), 65 FR 25843 (May 4, 2000).

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among users would need to be taken into consideration in determining the best method for disseminating a particular document.¹⁴

The use of electronic official statements between dealers would not affect the obligation of a dealer selling a new issue municipal security to a customer to deliver a paper copy of the official statement to the customer unless the dealer has taken the necessary steps described in the e-Document Notice in connection with the delivery of the electronic version to customers. Where delivery in paper form to a customer is required, the selling dealer would either need to obtain a paper copy of the official statement or would need to print a copy from its electronic version. Further, the MSRB has not proposed to amend section (b) of Rule G-32, pursuant to which dealers other than the managing or sole underwriter who sell new issue municipal securities to other dealers are required to send an official statement to the purchasing dealer upon request. Such selling dealers would not be required to disseminate an electronic version of the official statement since such dealer has little control over whether or when it might receive the electronic version.

- Should the draft amendment require that the issuer affirmatively consent to the distribution of the electronic version of the official statement?
- Do the factors relating to format of the electronic version set forth in the draft amendment and discussed above provide sufficient guidance for compliance with this delivery obligation? Are there other formatting issues on which the MSRB should provide guidance?
- Should the draft amendment include provisions relating to timing and method of electronic dissemination? If so, what should those provisions include?
- Should the draft amendment provide that, for any issue where an electronic version of the official statement is available for dissemination, the managing or sole underwriter only is required to disseminate the electronic version to dealers, thereby effectively requiring that all dealers be capable of handling electronic versions of the official statement?

Dissemination of Electronic Official Statements by Financial Advisors. Rule G-32 obligates a dealer that acts as the issuer's financial advisor and that prepares the official statement for the issuer to make such official statement available to the managing or sole underwriter promptly after the issuer approves its distribution. The draft amendments to Rule G-32(c)(ii) would require the dealer financial advisor to make a printable electronic version of the

¹⁴ For example, some e-mail systems limit the size of files that users are permitted to receive, and some virus detection software settings can cause file attachments to e-mail messages to be deleted or quarantined.

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official statement available to the managing or sole underwriter if one has been prepared and the issuer does not object to its distribution. The MSRB has not proposed allowing the financial advisor to make available solely an electronic version of the official statement to the managing or sole underwriter since such underwriter may itself be required to further disseminate paper versions of the official statement to purchasing dealers under Rule G-32(i)(C).

- Should the draft amendment require that a dealer acting as the issuer's financial advisor and that prepares the official statement on the issuer's behalf create an electronic version for dissemination?
- Should the draft amendment include provisions relating to timing and method of electronic dissemination? If so, what should those provisions include?
- Should the draft amendment provide that, for any issue where an electronic version of the official statement is available for dissemination, the dealer financial advisor only is required to disseminate the electronic version to the managing or sole underwriter?

Dissemination of Information Regarding the End of the Underwriting Period. The duties imposed on dealers by Rule G-32 only extend to municipal securities sold during the underwriting period. The date on which the underwriting period ends is often not definitively known by most market participants since the end of the underwriting period is dependent upon whether the underwriting syndicate (or the sole underwriter) has sold out the issue.¹⁵ The MSRB has received complaints from dealers that are not members of an underwriting syndicate that they are unable to determine whether they are obligated to deliver an official statement to a customer who is purchasing a recently issued municipal security since they have no way of knowing if the underwriting period has ended. In some cases, these dealers have indicated that the managing or sole underwriter has refused to provide or has been slow in providing this information. The draft amendments in new clause (i)(D) of Rule G-32(c) would require the managing or sole underwriter of an issue, upon request, to inform promptly any dealer purchasing the securities of such issue during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended.

Managing and sole underwriters would need to establish practices and procedures that would permit them to comply with the requirement to disclose promptly whether the underwriting period has ended. For example, the required information would need to be readily available to appropriate personnel of the managing or sole underwriter, or the information could be posted electronically and requesting dealers could be referred to such posting.

¹⁵ The other relevant factor is whether the new issue has closed, which is generally known in the marketplace. See footnote 2 above for a description of the end of the underwriting period under Rule G-32.

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- Should the draft amendment include provisions relating to timing and method of providing such information? If so, what should those provisions include?
- Should the draft amendment instead require that the managing or sole underwriter inform the marketplace at the time that the underwriting period has ended? If so, how should the managing or sole underwriter be required to disseminate such information?
- Should the draft amendment instead amend the definition of underwriting period to establish a fixed time period (*e.g.*, 60 days after the bond closing) during which the provisions of Rule G-32 apply?

Draft Amendments to Rule G-36

The MSRB is proposing draft amendments to Rule G-36 designed to promote the availability of official statements in the marketplace in advance of bond closing and in a form that may be disseminated in a more timely and efficient manner. The draft amendments to Rule G-36 are described below. The MSRB seeks comments on all aspects of the draft amendments, including comments on certain specific questions raised below.

As noted above, for offerings subject to SEC Rule 15c2-12, compliance with the official statement submission requirement under Rule G-36 requires that the managing or sole underwriter send the official statement to the MSRB within one business day of receipt from the issuer, but sets an outside timeframe for that submission of no more than 10 business days after the issue's sale date.¹⁶ The draft amendments to Rule G-36 would provide alternative timeframes under new paragraph (b)(iii) for complying with the rule for these offerings based on when the issues close. Thus, a submission would be considered timely if it has been sent to the MSRB within one business day of receipt but no later than five business days prior to the bond closing.¹⁷ This would provide ample time for the MSRB to receive the official statement, process it within the MSIL system and redistribute it to subscribers for use in the marketplace in time for the closing of the underwriting. This would also ensure that the official statement is available to the underwriter for distribution to customers and to other dealers who sell to customers in time for initial trade settlements as required under Rule G-32.

¹⁶ This timing parallels the provision in SEC Rule 15c2-12(b)(3) requiring that the underwriter enter into a contract with the issuer to receive the final official statement within seven business days after the sale date.

¹⁷ In the case of a continuous offering such as for municipal fund securities, the timeframe would be based on the first settlement of a transaction with a customer.

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The draft amendments also would provide that if the underwriter submits the official statement to the MSRB electronically through the e-OS System, the alternative timeframe is reduced from five business days to three business days prior to the bond closing. This would still provide sufficient time to ensure orderly dissemination to the marketplace given that the submission is received instantaneously by the MSRB and the electronic submission is more easily processed by the MSRB for redistribution electronically to MSIL system subscribers. Allowing submissions of electronic versions closer to the bond closing date also would provide underwriters with an incentive for using electronic official statements, particularly for offerings where the period between the sale date and closing date may be compressed and the need for more rapid dissemination may be most pressing. Further, the existence of electronic versions of official statements would in turn trigger the provisions of the draft amendments to Rule G-32 described above designed to promote the timeliness and efficiency of inter-dealer and, ultimately, dealer-to-customer dissemination of official statements.

In addition to partially shifting the focus of Rule G-36 from the sale date to the closing date and providing an incentive for the use of electronic official statements, these alternative timeframes would permit underwriters to comply with the rule in a more orderly fashion for certain types of primary offerings that present significant difficulties for meeting a delivery timeframe based on the sale date. For example, if there is an unusually long period between the sale date and the closing (*e.g.*, in the case of some forward financings and other issues with extended settlement), the existing requirement under Rule G-36 for the submission of the official statement to the MSRB within 10 business days of the sale date (and under SEC Rule 15c2-12 with respect to delivery by the issuer of the official statement within seven business days of the sale date) can call for an official statement to be available well in advance of when it is needed for delivery to customers.¹⁸ This can lead to (i) an official statement becoming stale by the time it is finally used in the marketplace, (ii) an official statement being prepared simply for filing purposes, thereafter being updated or replaced when needed in the marketplace, or (iii) a Rule G-36 violation if the parties to the transaction wait to prepare the official statement at a time they believe is more appropriate for the transaction. The draft amendments would permit underwriters to meet their Rule G-36 submission obligation in a manner that makes sense for the specific financing, so long as the official statement is available the requisite number of days prior to bond closing and its first required use in the market. This should result in a lower incidence of

¹⁸ In addition, there may be circumstances that make determination of the specific sale date problematic for a primary offering (*e.g.*, in the case of special improvement district warrants in certain states or issues sold in continuous offerings, such as municipal fund securities). For example, most events in the course of preparing an offering of municipal fund securities that might be considered the “final agreement to purchase, offer or sell the municipal securities” often occur months before the first sales to customers. Similarly, some special improvement warrants are “awarded” to the underwriter at the beginning of a construction project and are issued over time to pay construction draws. This award date can be many months or even years prior to the settlement of later warrant issues.

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underwriter violations under Rule G-36 without adversely affecting (and in many cases improving) the timeliness of disclosure since the alternative timeframes require completion and distribution of official statements in a manner that promotes timely delivery to customers under Rule G-32. Further, the alternative timeframes should permit underwriters and enforcement agencies to focus their compliance resources on areas that have a direct impact on investor protection.

The draft amendments do not alter the existing timeframe for the sending of the official statement to the MSRB within 10 business days of the sale date, but no later than one business day after receipt from the issuer. If the underwriter is unable to meet the alternative timeframes described above, it could still fully comply with Rule G-36 by meeting the existing 10 business day standard.¹⁹ Further, underwriters should note that the draft amendments in no way affect their obligation under SEC Rule 15c2-12(b)(3) with respect to the contractual provision for delivery by issuers to underwriters of official statements within seven business days of the sale date. Once the underwriter receives the official statement for an offering subject to SEC Rule 15c2-12, the underwriter always is required to send the official statement to the MSRB within one business day of such receipt.

The MSRB reminds underwriters that underwrite offerings subject to SEC Rule 15c2-12 where the period between the sale date and bond closing is short (for example, where the issue closes one week after the sale date) that, even though they may still be able to comply with Rule G-36 if the official statement does not become available until after closing, dealers selling the new issue securities to customers are not permitted by Rule G-32 to settle such transactions until they deliver the official statement to the customers.

- Are the timeframes provided in the draft amendments appropriate? Are there ways to create incentives for use of electronic official statements that would be more effective than the proposal to reduce the timeframe for sending to the MSRB by two business days, while not impairing investor protection?

¹⁹ The MSRB does not have the authority to dictate to issuers the timeframe for producing official statements. In originally adopting Rule G-36, the MSRB viewed the requirements of SEC Rule 15c2-12(b)(3) in connection with the contractual agreement for the issuer to deliver the official statement to the underwriters within seven business days of the sale date as the only reasonably available guidepost for when official statements would be made available by issuers. Although the MSRB believes that issuers are best served by having official statements available well in advance of closing so as to permit delivery to customers when they take ownership of the issuer's securities, it continues to be the case that the only fixed guidepost for official statement deliveries is the obligation arising under SEC Rule 15c2-12(b)(3).

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- Are there circumstances where the alternative timeframes would result in less timely or effective disclosure?
- Should the draft amendments delete the existing 10 business day timeframe and make compliance fully dependent upon sending the official statement to the MSRB the requisite number of days prior to closing?

* * * * *

Comments from all interested parties are welcome. Comments should be submitted no later than June 25, 2004 and may be directed to Ernesto A. Lanza, Senior Associate General Counsel. Written comments will be available for public inspection.

May 12, 2004

TEXT OF DRAFT AMENDMENTS²⁰

Rule G-32. Disclosures in Connection with New Issues

(a)-(b) No change.

(c) Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.

(i) Managing Underwriters and Sole Underwriters. When an official statement in final form is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall:

(A) send to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities an official statement in final form and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per \$100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and sold to customers. Such items shall be sent no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

²⁰ Underlining indicates additions; strikethrough indicates deletions.

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(B) In addition, the managing underwriter or sole underwriter, upon request, shall provide all purchasing brokers, dealers and municipal securities dealers with instructions on how to order additional copies of the official statement in final form directly from the printer.

(C) provide promptly to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities a printable electronic version of the official statement in final form, but only if a printable electronic version has been prepared and the issuer does not object to distribution of such version of the official statement in final form. With the consent of the purchasing broker, dealer or municipal securities dealer, sending of a printable electronic version of the official statement in final form to the purchasing broker, dealer or municipal securities dealer as provided in this subparagraph (C) shall satisfy the requirements of subparagraphs (A) and (B) of this paragraph (c)(i) with respect to the official statement in final form.

(D) provide promptly to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities (and all brokers, dealers and municipal securities dealers that purchase the securities within 60 days after the end of the underwriting period) information as to whether the underwriting period has ended for any issue described in the official statement in final form.

(ii) Financial Advisors. A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement in final form on behalf of an issuer, shall make the official statement in final form available to the managing underwriter or sole underwriter promptly after the issuer approves its distribution. **If a printable electronic version of the official statement in final form has been prepared and the issuer does not object to its distribution, such printable electronic version shall also be made available to the managing underwriter or sole underwriter promptly.**

(d) No change.

Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a) No change.

(b) Delivery Requirements for Issues Subject to Securities Exchange Act Rule 15c2-12.

(i) **Subject to paragraph (iii) below, each** ~~Each~~ broker, dealer or municipal securities dealer that acts as underwriter in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee, within one business day after

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receipt of the official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, the final official statement and completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii) No change.

(iii) A broker, dealer or municipal securities dealer shall be deemed to have complied with paragraph (i) of this section (b) if it has sent the items and information required thereunder to the Board or its designee within one business day after receipt of the official statement from the issuer or its designated agent, but no later than:

(A) in the case of an official statement submitted in electronic form pursuant to paragraph (ii) of section (g), three business days prior to the date of initial delivery of the securities by the issuer to the broker, dealer or municipal securities dealer; or

(B) in the case of any other official statement, five business days prior to the date of initial delivery of the securities by the issuer to the broker, dealer or municipal securities dealer.

(c)-(g) No change.



**MSRB Notice 2005-06
(January 21, 2005)**

**Request for Comments on Revised Draft Amendments
Relating to Official Statement Delivery Requirements Under
Rule G-32, Rule G-36 and Rule G-11**

On May 12, 2004, the Municipal Securities Rulemaking Board (“MSRB”) published for comment draft amendments to Rule G-32, on disclosures in connection with new issues, and Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSRB (the “2004 Notice”).¹ The draft amendments were intended to increase the efficiency and timeliness of official statement dissemination among brokers, dealers and municipal securities dealers (“dealers”) and to the ultimate customer. After reviewing the comments received in connection with the 2004 Notice, the MSRB has determined to seek further industry comment on revised draft amendments to Rules G-32 and G-36, as well as to Rule G-11, on sales of new issue municipal securities during the underwriting period. Comments are due by March 18, 2005.

Description of Revised Draft Amendments

The revised draft amendments are designed to improve the efficiency and timeliness of dissemination of official statements to underwriters and other dealers, which in turn should similarly improve the efficiency and timeliness of dealer-to-customer dissemination of official statements. The MSRB believes that the revised draft amendments would be an appropriate first step toward the ultimate goal of having electronic versions of official statements generally available and routinely used for more rapid dissemination of disclosure in the marketplace. The revised draft amendments also address the concerns of commentators regarding the potential burdens entailed in a transition to an electronic-based dissemination system. The revised draft amendments are described more fully below. The changes made in the revised draft amendments from the original draft amendments published in the 2004 Notice are described in the discussion of industry comments that follows.

Dissemination of Electronic Official Statements by Managing and Sole

Underwriters. The revised draft amendments to Rule G-32(c) set forth in new clause (i)(C) would require the managing or sole underwriter for new issues of municipal securities to provide a printable electronic version of the official statement (if an electronic version has been prepared and the issuer does not object to its distribution) to any dealer that requests an electronic version and provides an e-mail address or other delivery instructions acceptable to the managing or sole underwriter. This obligation would be in addition to the managing or sole underwriter’s obligation to send paper copies of the official statement in the required quantities (*i.e.*, one printed copy plus not less than one additional printed copy per \$100,000 par value purchased by

¹ MSRB Notice 2004-12 (May 12, 2004).

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the dealer for sale to customers). However, if the requesting dealer consents, the managing or sole underwriter would be permitted to provide such dealer solely with the electronic official statement in lieu of paper copies otherwise required under the rule.²

Dissemination of Electronic Official Statements by Financial Advisors. Revised Rule G-32(c)(ii) would obligate a dealer that acts as the issuer's financial advisor and that prepares the official statement for the issuer to make available to the managing or sole underwriter, in addition to a printed version of the official statement, a printable electronic version of the official statement (if an electronic version has been prepared and the issuer does not object to its distribution) upon request for such an electronic version if the underwriter provides an e-mail address or other delivery instructions acceptable to the financial advisor. However, if the managing or sole underwriter consents, the dealer financial advisor would be permitted to provide such underwriter solely with the electronic official statement in lieu of paper copies otherwise required under the rule.

Dissemination of Official Statements During New Issue Disclosure Period. The revised draft amendments would delete the definition of "underwriting period" in Rule G-32(d)(ii) and would replace it with the new term "new issue disclosure period." The new issue disclosure period would be defined as the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities to or through the underwriting syndicate or sole underwriter. The definition of "new issue municipal securities" in Rule G-32(d)(i) would be revised to mean municipal securities (other than commercial paper) that are sold by a dealer during the issuer's new issue disclosure period.

The revised draft amendments would make related changes to Rules G-36 and G-11. Clause (a)(iv) would be added to Rule G-36 to include a reference to the definition of new issue disclosure period in Rule G-32(d)(ii) and section (d) of Rule G-36 would be revised to provide that amendments to official statements made by the issuer during the new issue disclosure period must be sent to the MSRB by the underwriter within the required timeframe. The definition of underwriting period would be removed from section (a) of Rule G-11 and the title of the rule would be revised to more accurately reflect the subject of the rule.

² The managing or sole underwriter also would not need to provide the dealer with information on how to obtain additional copies of the official statement, as would otherwise be required under redesignated clause (i)(B) of Rule G-32(c), since such dealer will have agreed to rely exclusively on the printable electronic version.

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Discussion of Comments and Revisions to Draft Amendments

The MSRB received comment letters on the 2004 Notice from four commentators. Three commentators opposed the draft amendments, while the fourth answered several questions posed in the 2004 Notice without stating a position on most portions of the draft amendments.

Dissemination of Electronic Official Statements Under Rule G-32. The original draft amendments published in the 2004 Notice would have required managing or sole underwriters to provide copies of both the paper and electronic version of the official statement to any dealers purchasing new issue municipal securities that request copies of the official statement. The draft amendments also would have required dealers acting as financial advisors that prepare official statements to provide to the underwriters both paper and electronic versions of the official statement. These obligations to provide electronic versions would arise only if an electronic version had been prepared and the issuer did not object to its distribution. These obligations would not have been conditioned on a request having been made to receive the official statement in electronic form.

Three commentators opposed these requirements. One commentator stated that, as a small dealer underwriting issues for small issuers, requiring dissemination of electronic versions of the official statement in addition to paper copies would “make our costs unruly and would cut into our profits.” In addition, it stated that passing the cost on to the firm’s small issuer clients would be a burden. Another commentator also stated that the draft amendments would have been “unduly burdensome” to managing or sole underwriters. It observed that the MSRB’s 1998 notice on electronic delivery of documents (the “e-Document Notice”)³ sets forth “strict requirements for effective electronic delivery to dealers, customers and issuers . . . [that are] more arduous than those for paper delivery, and require extra controls on electronic delivery such as tracking confirmation of receipt. Also, email addresses for all dealers are not readily accessible.” This commentator suggested instead that electronic versions, if available, be required to be sent to a dealer only if the dealer specifically requests to receive one, in which case the requesting dealer can provide an e-mail address for delivery. This commentator requested that the MSRB review the e-Document Notice “in light of technological advances in order to reduce the extra burdens on electronic delivery of documents over paper delivery and to further encourage use of electronic communications.”

One commentator stated that it is already the accepted practice for dealer financial advisors to provide electronic versions of official statements to the underwriters and that the MSRB should not impose a regulatory requirement to this effect. This commentator stated that

³ See Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998), *reprinted in MSRB Rule Book.*

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this would create a new burden of “necessary recordkeeping for compliance purposes” without furthering the goals of the draft amendments.

The MSRB observes that the proposed requirements would not have obligated any dealer to create an electronic version of the official statement but instead would have merely required the dissemination of any such electronic official statement already created by or on behalf of the issuer. As such, dealers would not have been burdened with costs of production, although some minimal costs may have been entailed with respect to the transmittal of such documents and with ensuring that the sender’s method of transmittal was compatible with the recipient’s method of receipt, depending on the method chosen.

In addition, the MSRB notes that the e-Document Notice generally permits a dealer to fulfill a regulatory delivery obligation electronically if the dealer provides adequate notice of delivery, the electronic means provides access to information comparable to the paper version, and the dealer has reason to believe that electronic delivery will be effective. As noted in the e-Document Notice, this three-part requirement is not the only method by which legal delivery by electronic means can be accomplished. In particular, where MSRB rules provide different requirements for undertaking electronic communications, the e-Document Notice concluded that compliance with those rule-based requirements would satisfy the rule requirement even if the three-part test of the e-Document Notice is not fully met.

On balance, the MSRB believes that modifying the draft amendments to require delivery to dealers of electronic official statements only if the dealer explicitly requests an electronic version would be an appropriate first step toward the ultimate goal of having electronic versions generally available and routinely used for more rapid dissemination of disclosure in the marketplace. The revised draft amendments would require a requesting dealer to provide an e-mail address to which the electronic version could be sent or other instructions acceptable to the managing or sole underwriter for electronic delivery. Similarly, we believe that modifying the draft amendments to require dealer financial advisors to provide to the underwriters electronic official statements only if the managing or sole underwriter explicitly requests an electronic version and provides an e-mail address or instructions acceptable to the dealer financial advisor for electronic delivery would be appropriate. Neither provision would require the dealer to create an electronic version for purposes of meeting these requirements if the issuer has not produced an electronic version.⁴ In both cases, compliance with the revised draft amendment provisions would fully satisfy the inter-dealer delivery requirement for purposes of the e-Document Notice, subject to the guidance set forth below.

⁴ In particular, where a dealer acting as financial advisor prepares an official statement on behalf of the issuer, the decision to produce an electronic version remains a matter for agreement between the issuer and the financial advisor.

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The revised draft amendments do not specify a particular file format for the electronic version of the official statement, other than that the electronic version be printable. The MSRB views PDF files (and, in the future, any other file formats that it may hereafter accept for purposes of official statement submissions to the MSRB's web-based Electronic OS/ARD Submission System (the "e-OS System") established under Rule G-36) as acceptable formats for purposes of the revised draft amendment, so long as such files are printable. In addition, the MSRB believes that other file formats that are printable using commercially available software then in common usage in the municipal securities industry, or with software that is bundled with such files, also would be acceptable so long as the dealer that makes the delivery promptly delivers a substitute paper version of the official statement if the recipient of the electronic file so requests and a paper version has not previously been sent to such recipient.

The electronic version of the official statement must include every item of information included in the paper version. For example, if a dealer were to consent to receiving solely an electronic version of the official statement pursuant to clause (c)(i)(C) of revised draft Rule G-32 but portions of the official statement are not available in electronic form, a managing or sole underwriter could not discharge its obligation to deliver paper versions of the official statement under clause (c)(i)(A) by sending the portions of the official statement available in electronic form and separately forwarding a paper copy of those portions not available in electronic form. In the case where the entire official statement is not available in electronic format, the requirement to disseminate an electronic version upon request under clauses (c)(ii) and (c)(i)(C) would not apply. The MSRB generally would view an electronic version of an official statement to be available only where the issuer has prepared, authorized and delivered the version as a single electronic file, or where multiple files delivered as a single unit are clearly interconnected by hyperlinks or other clear method of organization that ensures that an investor viewing one file would be put on adequate notice that additional accompanying files must be accessed in order to review the official statement in its entirety.

The revised draft amendments also do not limit the manner of delivery of the electronic file. For example, the rule language permits the requesting dealer under clause (c)(i)(C) or an underwriter under clause (c)(ii) to provide an e-mail address or instructions for other forms of electronic delivery. The MSRB believes that an underwriter or dealer financial advisor should be able to meet this electronic delivery obligation in a number of different ways, including by posting the electronic version at an accessible website. At a minimum, any such form of passive delivery of the electronic version of the official statement must provide the recipient with timely notice that the official statement has been posted (*e.g.*, by e-mail notice to the e-mail address provided by the requesting dealer), allow access to the document at no cost, permit the recipient to print and re-transmit the document (*i.e.*, re-transmit a downloaded file of the document or permit the original recipient to forward to another dealer the information necessary to allow such other dealer to have access to the document equivalent to the access afforded to the original recipient), and ensure continued accessibility throughout the "new issue disclosure period" described below. The MSRB believes that best practice would entail transmission of the electronic version in a manner that would take advantage of the ability to make electronic files available substantially instantaneously or otherwise on demand, although the MSRB

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acknowledges that certain technological limitations and variations among users would need to be taken into consideration in determining the best method for disseminating a particular document.⁵

Although the revised draft amendments would permit the underwriter to forego delivering a paper version of the official statement to a dealer if the dealer consents, this provision would not affect the obligation of a dealer selling a new issue municipal security to a customer to deliver a paper copy of the official statement to the customer unless the dealer has taken the necessary steps described in the e-Document Notice in connection with the delivery of the electronic version to customers. Where delivery in paper form to a customer is required, the selling dealer would either need to obtain a paper copy of the official statement or would need to print a copy from its electronic version. Furthermore, the revised draft amendments also would permit a dealer financial advisor to make available solely an electronic version of the official statement to the managing or sole underwriter with such underwriter's consent. Underwriters that agree to receive only an electronic version of the official statement from the dealer financial advisor and that become obligated to deliver a paper version to another dealer or to a customer would need to print a copy from their electronic version.

The MSRB notes that the e-Document Notice was based on an interpretive release published by the SEC in 1996.⁶ The e-Document Notice provided guidance on the use of electronic media to satisfy document delivery requirements under MSRB rules in a manner consistent with how other sectors of the securities markets handle delivery of required information through electronic media. The MSRB will take the request to review the e-Document Notice under advisement, particularly in light of the recent publication by the SEC of its securities offering reform proposal that includes significant modifications to the SEC's approach to the use of electronic media under its rules.⁷

Dissemination of Official Statements During New Issue Disclosure Period. Under current Rule G-32, the underwriting period for a new issue generally ends when the underwriting syndicate (or the sole underwriter) has sold out the issue, but no earlier than the issuer's delivery

⁵ For example, some e-mail systems limit the size of files that users are permitted to receive, and some virus detection software settings can cause file attachments to e-mail messages to be deleted or quarantined. However, the MSRB believes that it would be the responsibility of a requesting dealer that provides an e-mail address for delivery of an electronic official statement by e-mail to ensure that its e-mail settings will permit any uninfected official statement file to be received.

⁶ See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996).

⁷ See Securities Act Release No. 8501 (November 3, 2004), 69 FR 67392 (November 17, 2004).

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of the issue to the underwriters. The duties imposed on dealers by current Rule G-32 (including but not limited to the obligation to deliver official statements to new issue customers) only extend to municipal securities sold during the underwriting period, the duration of which may not be definitively known by most market participants since underwriters currently do not always inform the marketplace of when the issue has been sold out. The original draft amendments to Rule G-32 published in the 2004 Notice would have included a new clause (i)(D) requiring the managing or sole underwriter of a new issue of municipal securities to inform promptly, upon request, any dealer purchasing such securities during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended. In the 2004 Notice, the MSRB also sought comment on whether the draft amendments should instead amend the definition of underwriting period to establish a fixed time period (*e.g.*, 60 days after bond closing) during which the provisions of Rule G-32 apply.

Two commentators agreed that a formulation based on a fixed number of days after the bond closing date would better achieve the goal of improved compliance.⁸ One of these commentators stated that a period of 60 days after closing is appropriate. The other commentator suggested a time period of 30 days after the closing, noting that “[m]aking the end of the underwriting period a readily ascertainable date calculated from the issue date of the securities will not only make it easier for brokers, dealers and municipal securities dealers to ensure compliance with Rule G-32, but will also simplify audits on and enforcement of Rule G-32.”

The MSRB believes that establishing a fixed end date for the obligations arising under Rule G-32 would be appropriate since this would provide an unambiguous timeframe for delivery of new issue disclosures to customers. The revised draft amendments would provide in Rule G-32(d)(ii) that this obligation would end 25 days after the final delivery by the issuer of new issue municipal securities to or through the underwriters.⁹

In conjunction with this change, the revised draft amendments would discontinue the use of the term “underwriting period” under MSRB rules and replace it with the term “new issue disclosure period.” This change would more clearly reflect the actual usage of the term under MSRB rules and would help to eliminate certain ambiguities regarding the use of the term underwriting period within the municipal securities industry.¹⁰ Currently, the underwriting

⁸ A third commentator simply stated that he was “against this rule” without elaboration.

⁹ The MSRB has proposed a 25-day period since this timeframe should coincide in most primary offerings to the period during which underwriters are required to send the final official statement to potential customers under SEC Rule 15c2-12(b)(4).

¹⁰ For example, the term “end of the underwriting period” in SEC Rule 15c2-12(f)(2) has a different meaning for sole underwriters than under the definition of underwriting period in current Rule G-32(d)(B). In addition, the MSRB has learned that many market

(continued . . .)

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period is defined in two separate rules – Rules G-11 and G-32 – depending upon whether there is a syndicate or a sole underwriter. The revised draft amendments would delete the definition of underwriting period in Rule G-11(a)(ix)¹¹ and would replace the definition of underwriting period in Rule G-32(d)(ii) with the new definition of new issue disclosure period. “New issue disclosure period” would mean the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter (*i.e.*, 25 days after the closing).¹² Rule G-36 would be amended to replace the current reference to underwriting period with a reference to the new issue disclosure period in section (d) and to add a cross-reference to the new definition in clause (a)(iv).

In virtually all cases, the newly defined “new issue disclosure period” would extend the period during which official statements are required to be delivered to customers beyond the period currently required under the existing definition of underwriting period. The amendment also would have an impact on the application of Rule G-36(d) in that the period during which stickers or amendments to official statements must be submitted by the underwriter to the MSRB would be similarly modified.

Submission of Official Statements to the MSRB Under Rule G-36. The original draft amendments to Rule G-36 published in the 2004 Notice would have provided alternative timeframes for complying with the official statement submission requirements for primary offerings subject to SEC Rule 15c2-12, based on when the issues close. Thus, an underwriter would have been permitted to comply with Rule G-36 by sending the official statement to the MSRB by no later than five business days prior to the bond closing (or three business days prior to closing if submitted electronically through the e-OS System). Even if an underwriter were to

(. . . continued)

participants have come to use the term underwriting period to mean different aspects of the underwriting process unrelated to the use of this term under MSRB rules.

¹¹ In addition, the title of Rule G-11 would be amended from “Sales of New Issue Municipal Securities During the Underwriting Period” to “New Issue Syndicate Practices.”

¹² The continuous nature of the offering of municipal fund securities (*e.g.*, interests in 529 college savings plans) would mean that no final delivery occurs so long as the issuer continues to offer such securities, resulting in all sales of municipal fund securities being treated as occurring during the new issue disclosure period. Thus, delivery of an official statement would be required for every sale of municipal fund securities under the revised draft amendments, just as is required under current Rule G-32. *See* Rule D-12 Interpretation – Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001), *reprinted in* MSRB Rule Book.

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fail to meet the proposed new timeframes, it would still comply with Rule G-36 if it met the original timeframe of ten business days after the sale date, but no later than one business day after receipt from the issuer, as provided under Rule G-36(b)(i). This draft amendment was designed to promote the availability of official statements in the marketplace in advance of bond closing and to encourage the use of electronic means for disseminating official statements in a more timely and efficient manner while at the same time reducing the incidence of technical rule violations that did not raise investor protection concerns.

One commentator supported the amendment, stating, “The idea of changing the requirement to define submission no later than five or three days prior to the settlement date as timely is appropriate.” This commentator also suggested eliminating the existing timeframe for compliance based on submission of official statements within 10 business days of the sale date.

Another commentator stated it was against the rule, while a third commentator stated that, although it “applauds the MSRB’s efforts to promote the availability of official statements in the marketplace,” it suggested that the MSRB not amend Rule G-36 at this time. This commentator stated that it is “concerned that these alternative timeframes will serve to frustrate good faith efforts to comply with Rule G-36” and believed that they would “cause unnecessary confusion amongst dealers.” The commentator noted that “time periods between sale and issue dates appear to have been decreasing. It is not uncommon to have an issue date be the very day after the sale date, particularly for variable rate issues. Therefore the use of this proposed alternative timeframe is likely to be low.”¹³ This commentator concluded that “[t]he current uniform rule based on sale date covering both paper and electronic delivery of official statements is easier for compliance and audit purposes.”

The MSRB has determined not to take action on the original draft amendments to Rule G-36 at this time but will continue to closely monitor the official statement dissemination process.

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¹³ The MSRB notes, however, that the original draft amendments to Rule G-36 would not have applied to many such variable rate issues, which are often exempt from SEC Rule 15c2-12 and therefore are governed by a different provision of Rule G-36. Instead, the rule proposal would have provided some relief for issues having extended settlement periods or other unusual features.

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Comments from all interested parties are welcome. Comments should be submitted no later than March 18, 2005 and may be directed to Ernesto A. Lanza, Senior Associate General Counsel. Written comments will be available for public inspection.

January 21, 2005

TEXT OF REVISED DRAFT AMENDMENTS¹⁴

Rule G-32. Disclosures in Connection with New Issues

(a)-(b) No change.

(c) Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.

(i) Managing Underwriters and Sole Underwriters. When an official statement in final form is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall:

(A) send to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities an official statement in final form and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per \$100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and sold to customers. Such items shall be sent no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

~~(B) In addition, the managing underwriter or sole underwriter, upon request, shall~~ provide all purchasing brokers, dealers and municipal securities dealers with instructions on how to order additional copies of the official statement in final form directly from the printer.

(C) provide promptly to all brokers, dealers and municipal securities dealers that purchase the new issue municipal securities a printable electronic version of the official statement in final form, but only if: (1) a printable electronic version has been prepared and the issuer does not object to distribution of such electronic

¹⁴ Underlining indicates additions; strikethrough indicates deletions.

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version; and (2) the broker, dealer or municipal securities dealer requests to receive an electronic version and provides the managing underwriter or sole underwriter with an electronic mail address or other instructions acceptable to the managing underwriter or sole underwriter for electronic delivery of such version. With the consent of the purchasing broker, dealer or municipal securities dealer, sending of a printable electronic version of the official statement in final form to the purchasing broker, dealer or municipal securities dealer as provided in this subparagraph (C) shall fully satisfy the requirements of subparagraphs (A) and (B) of this paragraph (c)(i) with respect to the official statement in final form.

(ii) Financial Advisors. A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement in final form on behalf of an issuer, shall make the official statement in final form available to the managing underwriter or sole underwriter promptly after the issuer approves its distribution. **If a printable electronic version of the official statement in final form has been prepared and the issuer does not object to its distribution, such printable electronic version shall also be made available to the managing underwriter or sole underwriter promptly upon request and delivery to the financial advisor of an electronic mail address or other instructions acceptable to the financial advisor for electronic delivery of such version. With the consent of the managing underwriter or sole underwriter, such printable electronic version shall fully satisfy the requirement of this paragraph (c)(ii) with respect to the official statement in final form to be made available by the financial advisor.**

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

(i) The term “new issue municipal securities” shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the issuer’s **new issue disclosure underwriting** period, but shall not include commercial paper.

(ii) The term “**new issue disclosure underwriting** period” shall mean: **the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter.**

~~(A) for securities purchased from an issuer by a syndicate, the period defined in paragraph (a)(ix) of rule G-11, on sales of new issue municipal securities during the underwriting period; and~~

~~(B) for securities purchased from an issuer by one broker, dealer or municipal securities dealer, the period commencing with the first submission to broker, dealer or municipal securities dealer of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer~~

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~~delivers the securities to the broker, dealer or municipal securities dealer, and (2) the broker, dealer or municipal securities dealer no longer retain an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.~~

(iii)-(iv) No change.

* * * * *

Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a) Definitions. For purposes of this rule, the following items have the following meanings:

(i)-(iii) No change.

(iv) The term “new issue disclosure period” shall mean the period defined in Rule G-32(d)(ii).

(b)-(c) No change.

(d) Amended Official Statements. In the event a broker, dealer, or municipal securities dealer provides to the Board or its designee an official statement pursuant to section (b) or (c) above, and the official statement is amended or “stickered” by the issuer during the **new issue disclosure underwriting** period, such broker, dealer, or municipal securities dealer must send to the Board or its designee, within one business day after receipt of the amended official statement from the issuer or its designated agent, the amended official statement and an amended Form G-36(OS) as prescribed by the Board, including: the CUSIP number or numbers for the issue; the fact that the official statement previously had been sent to the Board or its designee and that the official statement has been amended.

(e)-(g) No change.

* * * * *

Rule G-11. ~~Sales of New Issue~~ Syndicate Practices ~~Municipal Securities During the Underwriting Period~~

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

(i)-(viii) No change.

~~(ix) The term “underwriting period” means the period commencing with the first submission to a syndicate of an order for the purchase of new issue municipal securities or~~

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~~the purchase of such securities from the issuer, which first occurs, and ending at such time as the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of securities, whichever last occurs.~~

(ix) ~~(x)~~ The term “qualified note syndicate” means any syndicate formed for the purpose of purchasing and distributing a new issue of municipal securities that matures in less than two years where:

(A)-(B) No change.

(b)-(h) No change.

Alphabetical List of Comment Letters on MSRB Notice 2004-12 (May 12, 2004) (“May 2004 Notice”)

1. American Municipal Securities, Inc.: Letter to MSRB from W.W. Satterfield, Vice President (May 21, 2004) relating to the May 2004 Notice
2. Jed Bandes: E-Mail to MSRB from Bandes (May 13, 2004) relating to the May 2004 Notice
3. Bond Market Association: Letter to Ernesto A. Lanza, MSRB, from Leslie M. Norwood, Vice President and General Counsel (June 25, 2004) relating to the May 2004 Notice
4. Connors and Company, Inc.: Letter to MSRB from W. Pat Connors (May 17, 2004) relating to the May 2004 Notice



*Public Finance Department
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Little Rock, Arkansas 72211
(501) 224-4435 • 1 (800) 723-2663 • Fax (501) 224-8364
e-mail address: PublicFinance@amuni.com*

May 21, 2004

MSRB
1900 Duke Street
Suite 600
Alexandria, VA 22314

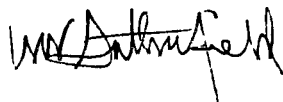
Re: MSRB Notice 2004-12
Request for Comments on Draft Amendments Relating to Official Statement
Delivery Requirements Under Rule G-32 and Rule G-36

Ladies and Gentlemen:

Attached are our comments related to the proposed draft amendments.

Please contact me if you have questions about this matter.

Sincerely,



W. W. Satterfield
Vice President

MSRB Notice 2004-12
Comments from American Municipal Securities, Inc.

Draft amendments to Rule G-32:

1. Dissemination of Electronic Official Statements by Managing and Sole Underwriters

Should the draft amendment require that the issuer affirmatively consent to the distribution of the electronic version of the official statement? *No. Not necessary.*

Do the factors relating to format of the electronic version set forth in the draft amendment and discussed above provide sufficient guidance for compliance with this delivery obligation? *Yes.* Are there other formatting issues on which the MSRB should provide guidance? *Yes. An acceptable document should be in a format that can be transmitted via email and printed without affecting the pagination of the document.*

Should the draft amendment include provisions relating to timing and method of electronic dissemination? *No*

Should the draft amendment provide that, for any issue where an electronic version of the official statement is available for dissemination, the managing or sole underwriter only is required to disseminate the electronic version to dealers, thereby effectively requiring that all dealers be capable of handling electronic versions of the official statement? *No. Dealers should have the option of electronic or paper. If an electronic version is available and the dealer consents to receiving the electronic version the underwriter should not be required to also provide paper copies.*

2. Dissemination of Electronic Official Statements by Financial Advisors

Should the draft amendment require that a dealer acting as the issuer's financial advisor and that prepares the official statement on the issuer's behalf create an electric version for dissemination? *No. Should not be required.*

Should the draft amendment include provisions relating to timing and method of electronic dissemination? If so, what should those provisions include? *Timing should be the same as printed form.*

Should the draft amendment provide that, for any issue where an electronic version of the official statement is available for dissemination, the dealer financial advisor only is required to disseminate the electronic version to the managing or sole underwriter? *No. Printed version should be available if requested.*

3. Dissemination of Information Regarding the End of the Underwriting Period

Should the draft amendment include provisions relating to timing and method of providing such information? If so, what should those provisions include? *Yes. A set time frame from closing should determine the end of the underwriting period. It is easy to find out when the issue settled and a set time frame would allow everyone to know when the end of the underwriting period will occur*

Should the draft amendment instead require the managing or sole underwriter inform the marketplace at the time that the underwriting period has ended? If so, how should the managing or sole underwriter be required to disseminate such information? *No. A set time period with normally published closing date will provide sufficient information.*

Should the draft amendment instead amend the definition of underwriting period to establish a fixed time period (e.g., 60 days after bond closing) during which the provision of Rule G-32 apply? *Yes! A standard time period will eliminate much confusion. A period of 60 days after closing is appropriate.*

Draft Amendments to Rule G-36

Are the timeframes provided in the draft amendments appropriate? *Yes. The idea of changing the requirement to define submission no later than five or three days prior to the settlement date as timely is appropriate. Are there ways to create incentives for use of electronic official statements that would be more effective than the proposal to reduce the timeframe for sending to the MSRB by two business days, while not impairing investor protection? The proposed changes are sufficient.*

Are there circumstances where the alternative timeframes would result in less timely or effective disclosure? *No.*

Should the draft amendments delete the existing 10 business day timeframe and make compliance fully dependent upon sending the official statement to the MSRB the requisite number of days prior to closing? *Yes.*

Ernie Lanza

From: MSRB
Sent: Thursday, May 13, 2004 10:03 AM
To: Ernie Lanza
Cc: Ron Smith
Subject: FW: MSRB NOTICE 2004-12

-----Original Message-----

From: Jed Bandes [mailto:jed@mutualtrustco.com]
Sent: Thursday, May 13, 2004 9:44 AM
To: MSRB
Subject: RE: MSRB NOTICE 2004-12

I am against this rule

-----Original Message-----

From: MSRB [mailto:MSRB@msrb.org]
Sent: Wednesday, May 12, 2004 1:02 PM
Subject: MSRB NOTICE 2004-12

The MSRB has published a notice requesting comments on draft amendments relating to official statement delivery requirements under Rule G-32 and Rule G-36. Comments are due by June 25, 2004.

<http://www.msrb.org/msrb1/whatsnew/NoticeRulesG32G36.htm>

To be removed from the MSRB's Email Notification System, please visit:

<http://www.msrb.org/msrb1/subscribe/unsubscribe.asp>



June 25, 2004

Ernesto A. Lanza, Esq.
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: Comments to Draft Amendments to Rule G-32 and Rule G-36

Dear Mr. Lanza:

The Bond Market Association¹ (“Association”) appreciates this opportunity to respond to the notice (“Notice”) issued by the Municipal Securities Rulemaking Board (“MSRB”) on May 12, 2004, in which the MSRB proposes draft amendments to Rules G-32 and Rule G-36.²

A. Draft Amendments to Rule G-32

1. Dissemination of Electronic Official Statements by Managing and Sole Underwriters

The Association understands that the draft amendments in new clause (i)(C) of Rule G-32(c) were proposed to improve the efficiency and timeliness of dissemination of official statements to the marketplace. However, we feel that the draft rule amendment is unduly burdensome. This proposed amendment to Rule G-32 is substantially onerous for managing and sole underwriters in that it couples a requirement of electronic delivery with the current requirement of paper delivery, and electronic delivery of an electronic official statement is not a simple task under the current rules. Managing and sole underwriters should not be required to send both an electronic and a paper copy of an official statement. One form of delivery

¹ The Association represents securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. The Association’s Member firms collectively represent in excess of 95% of the initial distribution and secondary market trading of municipal bonds, corporate bonds, mortgage and other asset-backed securities and other fixed income securities. More information about the Association is available on its website www.bondmarkets.com.

² MSRB Notice 2004-12.

Ernesto A. Lanza, Esq.

June 25, 2004

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should suffice. The MSRB's Notice on electronic delivery³ specifically includes communications pursuant to Rule G-32 and provides guidance on delivery, though in doing so sets forth strict requirements for effective electronic delivery to dealers, customers and issuers. It is understood that electronic delivery alone may satisfy Rule G-32, if the electronic delivery comports with the requirements of the e-Document Notice. However, these requirements are more arduous than those for paper delivery, and require extra controls on electronic delivery such as tracking confirmation of receipt. Noting the costs and burdens involved with complying with the e-Document Notice, most managing and sole underwriters rely on paper delivery for compliance purposes under Rule G-32. Taking that into account, this rule amendment essentially would require managing and sole underwriters to distribute to dealers both an electronic and a paper copy of an official statement. Additionally, email addresses for all dealers are not readily accessible, and managing or sole underwriters would not know where to send the electronic official statement unless a dealer contacts the managing or sole underwriter to inform them of the email address to which to send the electronic official statement.

Currently, most, if not all, managing and sole underwriters promptly send a dealer a copy of an electronic official statement, if available, upon request. The requesting dealer typically provides to the managing or sole underwriter an email address to which the electronic official statement should be sent. Therefore, the Association suggests prefacing proposed new clause (i)(C) to Rule G-32 with "upon request of a broker, dealer or municipal securities dealer," to capture the concept that an electronic official statement must be delivered to a dealer by the managing or sole underwriter, if available *and if requested*.

Also, the Association respectfully requests the MSRB review its current guidance on electronic delivery⁴ of documents in light of technological advances in order to reduce the extra burdens on electronic delivery of documents over paper delivery and to further encourage use of electronic communications. In particular, we note that concerns about the possible alteration of electronic official statements have not materialized. Also, concerns about failed delivery of electronic official statements are inconsequential in this era of instantaneous electronic communications, because a dealer can merely request for another electronic copy to be sent.

³ Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers, and Municipal Securities Dealers, November, 20, 1998 (the "e-Document Notice").

⁴ Id.

Ernesto A. Lanza, Esq.
June 25, 2004
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2. Dissemination of Electronic Official Statements by Financial Advisors

The Association understands that the draft amendments to Rule G-32(c)(ii) were also proposed to improve the efficiency and timeliness of dissemination of official statements to the marketplace. However we feel that this draft rule amendment is unnecessary. This proposed amendment to Rule G-32(c)(ii) obligates a dealer acting as an issuer's financial advisor to distribute an electronic official statement to the managing or sole underwriter if one is available and has been approved for distribution by the issuer. Currently, market practice dictates that a dealer acting as financial advisor provide an electronic official statement to the managing or sole underwriter if one is prepared and approved by the issuer for distribution. Particularly due to technological advances which have made common the practice of distributing an electronic official statement to relevant parties in the new issue municipal securities underwriting during the process of approving and printing the official statement, this amendment would not further the stated goals of the amendment. The Association views this matter as a contractual obligation between the parties to the transaction, and not a matter that should give rise to a rule amendment and the necessary recordkeeping for compliance purposes that would ensue.

3. Dissemination of Information Regarding the End of the Underwriting Period

The Association appreciates and is aware that the draft amendments in new clause (i)(D) of Rule G-32(c) were created to ensure compliance with Rule G-32, which imposes certain duties on dealers through the end of the underwriting period. The amendments would require the managing or sole underwriter of an issue, upon request, to inform promptly any dealer purchasing the securities of such issue during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended. As the MSRB stated in the Notice, the date of the end of the underwriting period is not readily transparent to dealers not running the books on the deal and many have found the concept confusing.

In the Association's view, the goal of increased compliance with Rule G-32 would be best achieved by simplifying the definition of "underwriting period" and providing a "bright line" rule. As currently defined, the "underwriting period" has a number of alternative ending dates depending on whether the securities were purchased from the issuer by a syndicate or by a sole underwriter. The Association suggests amending the definition of underwriting period in Rule G-32 to set the end of the underwriting period as a fixed time period of 30 calendar days after the closing

Ernesto A. Lanza, Esq.
June 25, 2004
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date, which is the date that the securities are issued. This bright line test would cover a longer period than the current maximum underwriting period for sole underwriters, which is 21 days, and the vast majority of deals underwritten by a syndicate, when the current underwriting period ends at closing if the syndicate no longer retains an unsold balance. Under the current Rule G-32, the end of the underwriting period for deals underwritten by syndicates could be indefinitely long if the syndicate retains an unsold balance of securities. Underwriters are required to distribute official statements to dealers during this period, and the current rule can have the effect of forcing underwriters to either distribute official statements which may be stale or continually update the official statement with the issuer in perpetuity until there is no longer an unsold balance of securities. Making the end of the underwriting period a readily ascertainable date calculated from the closing date of the securities eliminates this uncertainty. Moreover, it will make it easier for brokers, dealers and municipals securities dealers to ensure compliance with Rule G-32 and will simplify audits and enforcement of Rule G-32.

Please note, the Association is sensitive to the fact that Rule G-32 is not the only rule governing delivery of official statements and our proposal does not affect the responsibilities of underwriters under any of the rules of the Securities and Exchange Commission. However, we feel that our proposal addresses the MSRB's current concern regarding compliance with Rule G-32 by clarifying and simplifying the time period that Rule G-32 covers.

B. Draft Amendments to Rule G-36

The Association applauds the MSRB's efforts to promote the availability of official statements in the marketplace, though remains concerned that the proposed draft amendments to Rule G-36 are not a clear route to achieve this goal. The draft amendments to Rule G-36 would create alternative timeframes for compliance with Rule G-36 based on sale date or issue date, as well as for electronic or paper delivery of official statements to the MSRB.

The Association is concerned that these alternative timeframes will serve to frustrate good faith efforts to comply with Rule G-36. The current rule states that an official statement must be filed with the MSRB within one business day of receipt from the issuer but no later than ten business days from the date of the sale. The proposed rule amendments proffer additional alternative timeframes for compliance with Rule G-36, being no later than either three or five days before closing, depending on whether an official statement is delivered to the MSRB by paper or electronically. The Association notes that time periods between sale and issue dates appear to have been decreasing. It is not uncommon to have an issue date be the day after the sale date, particularly for variable rate issues; some fixed rate deals close less than a week after the sale date. Therefore the use of this proposed alternate timeframe is likely to be low.

Ernesto A. Lanza, Esq.
June 25, 2004
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The Association feels such a rule amendment will cause unnecessary confusion among dealers, even though the proposed amendments grant dealers submitting official statements to the MSRB extra time to comply with Rule G-36 if (1) there is an extended period between the sale date and the issue date and (2) an electronic official statement is sent to the MSRB. The current uniform rule based on sale date covering both paper and electronic delivery of official statements is easier for compliance and audit purposes. Therefore, the Association suggests not amending Rule G-36 at this time.

We look forward to discussing these issues further with the MSRB staff, and appreciate your attention to our comments. Please contact the undersigned at (646)637-9230 or via e-mail at Lnorwood@bondmarkets.com with any questions that you might have.

Sincerely,

A handwritten signature in black ink, appearing to be "Leslie M. Norwood", written over a horizontal line.

Leslie M. Norwood
Vice President and
Assistant General Counsel

Ernesto A. Lanza, Esq.
June 25, 2004
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cc: ***Securities and Exchange Commission***

The Honorable William H. Donaldson, Chairman
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
Giovanni P. Prezioso, General Counsel, Office of the General Counsel
Annette L. Nazareth, Director, Division of Market Regulation
Martha Mahan Haines, Director, Office of Municipal Securities

NASD Regulation, Inc.

Malcolm P. Northam, Director, Fixed Income Securities Regulation
Marc Menchel, General Counsel
Sharon K. Zackula, Assistant General Counsel

Municipal Securities Rulemaking Board

Christopher A. Taylor, Executive Director
Diane G. Klinke, General Counsel

The Bond Market Association

Executive Committee, Municipal Securities Division
Legal Advisory Committee, Municipal Securities Division
Operations Committee, Municipal Securities Division
Syndicate and Trading Committee, Municipal Securities Division

Connors & Co., Inc.

Established 1959

Investment Securities

36 East Fourth Street

Cincinnati, Ohio 45202

Telephone: (513) 421-0606 Fax: (513) 421-0407

Toll Free 1-800-582-2688

May 17, 2004

Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314-3412

RE: Comments Relating to Official Statement
Delivery Requirements Under Rule G-32
and Rule G-36

Gentlemen:

We are in receipt of MSRB Notice 2004-12, which requests comments on settlement delivery requirements under Rule G-32 and Rule G-36.

Connors & Co., Inc. is a small municipal securities dealer located in the City of Cincinnati and we do occasionally underwrite issues of bonds over \$1,000,000.00 in principal amount. Under the new rules, this would require Connors & Co., Inc. to spend extra money on electronic transmission of Official Statements to dealers and institutions that buy municipal securities in smaller amounts.

We are aware of Rule G-32 and Rule G-36 as to their requirements now and have a hard time fulfilling our obligation to distribute the Official Statement, because the printing is not done in a timely manner and the delivery of the Official Statement is not done in a timely manner to us. If we are required to not only deliver a written Official Statement, but also an electronic Official Statement, it would make our costs unruly and would cut into our profits.

As you can see, Connors & Co., Inc. deals with small issuers and, to pass the cost on to them of delivering the Official Statement electronically and physically, would be a burden to the issuer. We, therefore, request that delivery of Official Statements electronically not be made a rule.

Very truly yours,

CONNERS & CO., INC.

By:



W. Pat Connors

WPC:pm

Member
SIPC