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**Affected Rules**  
[Rule G-34](#)

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

### Overview

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

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

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



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

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

## Background

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

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

<sup>2</sup> Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).

<sup>3</sup> Exchange Act Release No. 18959 (Aug. 13, 1982), 47 FR 36737-03 (Aug. 23, 1982) (SR-MSRB-82-11).

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

<sup>5</sup> Exchange Act Release No. 22128 (Jun. 7, 1985), 50 FR 25140 (Jun. 17, 1985) (SR-MSRB-85-14).

<sup>6</sup> Exchange Act Release No. 25020 (Oct. 14, 1987), 52 FR 39580-01 (Oct. 22, 1987) (SR-MSRB-87-10).

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

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

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

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

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

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

## Summary of Draft Amendments to Rule G-34

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

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

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

<sup>10</sup> See Exchange Act Release No. 50773 (Dec. 1, 2004), 69 FR 70731-02 (Dec. 7, 2004) (SR-MSRB-2004-08).

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

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

each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue.

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

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

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

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

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

Preliminary note to 17 CFR 230.144.

<sup>13</sup> 17 CFR 240.15c2-12(f)(8).

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

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

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

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

## Questions

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

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

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

2. If a dealer is involved in a private placement of municipal securities and does not apply for a CUSIP number because it does not believe it is an underwriter, is it customary for the dealer to obtain assurances from the purchaser that it will not be reselling the municipal security? Do dealers obtain assurances when a transaction is booked by the purchaser as a loan?
3. The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Do the draft amendments alleviate this issue?
4. Should the MSRB provide an exception from the requirements of Rule G-34(a) for dealers and/or municipal advisors in private placements of municipal securities to a single purchaser? How difficult would it be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales?
5. The draft amendments are intended to codify existing guidance regarding the application of Rule G-34(a). Do commenters believe the proposed codification would impact the existing obligations on underwriters under Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information? If so, how?

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

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

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<sup>15</sup> Exchange Act Release No. 22128 (Jun. 7, 1985), 50 FR 25140 (Jun. 17, 1985) (SR-MSRB-85-14).

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

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

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

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

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

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

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

### Questions

1. Does Rule G-34(b) clearly indicate when dealers must obtain a new CUSIP number with respect to secondary market securities? Is further clarification needed?
2. Is it understood in the industry that mode changes in a remarketing do not require a new CUSIP number as long as the entire maturity of a particular CUSIP number changes in the same way? Are there other scenarios where a new CUSIP number might not be necessary?
3. Is further clarification necessary of those instances when a new CUSIP number would not be required under Rule G-34(b)?
4. Are the eight specific information items listed in Rule G-34(a)(i)(A)(4)(a) - (h) the appropriate items to evaluate for fungibility? Have instruments in public finance changed such that the items to be considered should be different than those set out in Rule G-34(a)(i)(A)(4)(a) - (h)?

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

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

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

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

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

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

**Questions**

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

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<sup>19</sup> Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

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

2. Would issuers forgo working with either dealers or municipal advisors in certain circumstances to avoid the CUSIP numbering requirements?
3. Is there another way to achieve the desired requirements of the draft amendments without including non-dealer municipal advisors?

### **Other Draft Amendments**

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

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

### **Question**

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

## **Economic Analysis**

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

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

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

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

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

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

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

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

each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue . . . .

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

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

### **3. Identifying and evaluating reasonable alternative regulatory approaches.**

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

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

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

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

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

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

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

#### **Benefits**

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

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<sup>21</sup> The MSRB is aware of the present CUSIP issue fee charged by CUSIP Global Services.

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

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

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

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

### **Costs**

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

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

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

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

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

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

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

### **Effect on Competition, Efficiency and Capital Formation**

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

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

### **Conclusion**

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

### **Questions**

1. Are there other relevant baselines the MSRB should consider when evaluating the economic impact of the proposal?
2. If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?
3. Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?
  - a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments?
  - b. What is the frequency of private placements and secondary market securities without municipal CUSIP numbers?
  - c. What is the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances?
  - d. What is the frequency of dealer municipal advisors acting as a financial advisor in a competitive sale of municipal securities without obtaining CUSIP numbers?
  - e. Is there an estimate of the total cost of obtaining and maintaining a CUSIP number in each of these instances?

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

March 1, 2017

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## Text of Draft Amendments\*

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

#### (a) *New Issue Securities.*

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

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

(1) No change.

(2) No change.

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

(4) No change.

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

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\* Underlining indicates new language; strikethrough denotes deletions.

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

(C) – (E) No change.

(ii) - (iv) No change.

(b) *Secondary Market Securities.*

(i) No change.

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

(iii) No change.

(A) No change.

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

(C) No change.

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

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

## (A) Auction Rate Securities Data.

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

~~(a) – (m) No change.~~

~~(2) – (6) No change.~~

(B) No change.

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

~~(A) – (B) No change.~~

(d) No change.

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

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

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

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

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

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

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

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

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

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