

MSRB Notice

2019-10

Publication Date

March 21, 2019

**Retrospective Rule
Review**



Stakeholders

Municipal Securities
Dealers

Notice Type

Informational Notice

Category

Fair Practice; Market
Transparency

Affected Rules

[Rule G-11](#), [Rule G-32](#)

MSRB Proposes Amendments to Rules Related to Primary Offering Practices

Overview

The Municipal Securities Rulemaking Board (MSRB) is publishing this notice to announce that, as a result of its retrospective rule review of primary market offering practices in the municipal securities market, the MSRB has filed a proposed rule change with the Securities and Exchange Commission (SEC) to amend MSRB Rule G-11, on primary offering practices and MSRB Rule G-32, on disclosures in connection with primary offerings. The MSRB is also proposing to implement changes to MSRB Form G-32 regarding certain data elements provided in electronic format to the Electronic Municipal Market Access Dataport ("EMMA® Dataport")¹ system in connection with primary offerings.²

Assuming all amendments are approved, the MSRB will publish one or more regulatory notices within 180 days of effectiveness, which will specify the compliance date(s) for the respective rule changes, which in any case shall be not less than 90 days nor more than one year following the date of the notice establishing each such compliance date. The MSRB will also make amended Form G-32 and the updated EMMA Dataport Manual and Specifications for Primary Market Submissions (the "Form G-32 Manual") available to underwriters in advance of relevant compliance date(s) to aid them in completing the amended form. The MSRB will announce the availability of amended Form G-32 and the updated Form G-32 Manual by publishing a regulatory notice at a later date.

Questions about this notice may be directed to Margaret Blake, Associate General Counsel, Hollie Mason, Assistant General Counsel, or Barbara Vouté, Director – Market Practices, at 202-838-1500.



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¹ EMMA is a registered trademark of the MSRB. EMMA Dataport is the submission portal through which information is provided for display to the public on EMMA.

² [File No. SR-MSRB-2019-07](#).

Background

Rule G-11, adopted in 1978, establishes terms and conditions for sales by brokers, dealers and municipal securities dealers (together, “dealers”) of new issues of municipal securities in primary offerings, including provisions on communications relating to the syndicate and designations and allocations of securities. Rule G-32, adopted in 1977, sets forth the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Rule G-32 requires underwriters in primary offerings to submit electronically to EMMA Dataport official statements and advance refunding documents, if prepared, and related primary market documents and new issue information, such as that collected on Form G-32.

As part of its retrospective rule review, the MSRB considered the application of Rule G-11 and Rule G-32 to determine whether these rules remain effective in light of any changes in industry practices in primary offerings of municipal securities. In addition, the MSRB considered whether the information required to be submitted on Form G-32 was adequate to ensure the MSRB had the ability to oversee the accuracy and distribution of the information being provided.

On September 14, 2017, the MSRB published a concept proposal (“Concept Proposal”) requesting comment on possible amendments to the current primary offering practices of dealers³ and on July 19, 2018, the MSRB published a subsequent Request for Comment on Draft Rule Changes Related to Primary Offering Practices (“Request for Comment”).⁴ Following review of the comments received in response to the Concept Proposal and the Request for Comment,⁵ the MSRB conducted additional stakeholder outreach with various market participants. The comments and discussions formed the basis for the proposed amendments.

Summary of Amendments

The proposed amendments are meant to update and enhance the general practices undertaken by underwriters and others in a primary offering of municipal securities. This summary provides a high-level overview of the proposed amendments. Interested parties are encouraged to review the proposed rule filing in its entirety for additional detail and explanation.

Proposed amendments to Rule G-11 would:

³ [MSRB Regulatory Notice 2017-19 \(September 14, 2017\)](#).

⁴ [MSRB Notice 2018-15 \(July 19, 2018\)](#).

⁵ The comment letters are discussed in the MSRB’s proposed rule change filing with the SEC. See *supra* note 2.

- Codify the requirement that selling group members must comply with communications relating to the issuer terms and conditions, priority provisions and order period requirements in a primary offering;
- Require that the senior syndicate manager communicate to all syndicate members and selling group members, at the same time, when the issue is free to trade;
- Require the senior syndicate manager to provide to the issuer the same information it currently provides to the syndicate members regarding designations and allocations of municipal securities in the primary offering; and
- Align the timeframe for payment of group net sales credits to syndicate members with the payment of net designation sales credits so that group net sales credits also are paid within 10 calendar days (as opposed to the current 30 calendar days) following the date the issuer delivers the securities to the syndicate.⁶

Proposed amendments to Rule G-32 would:

- Require each underwriter of a primary offering that advance refunds outstanding municipal securities to submit any advance refunding document, if one is prepared, to EMMA within the timeframe prescribed by the rule so that all market participants have equal access to the information at the same time; and
- Eliminate the current requirement that a dealer acting as a financial advisor that prepares the official statement must make it available to the managing or sole underwriter after the issuer approves it for distribution.

Finally, the proposed changes to Form G-32 would:

- Amend Form G-32 to include 57 additional data points that would be auto-populated, as applicable, with information already collected by the New Issue Information Dissemination System (NIIDS) for NIIDS-eligible new issues, and would require manual completion by underwriters of one data point for non-NIIDS eligible new issues; and

⁶ Corresponding technical changes resulting from this amendment also would be made as illustrated in the draft rule language.

- Amend Form G-32 to include nine additional data elements not currently collected by NIIDS that would require manual completion by underwriters for NIIDS-eligible new issues, and would require manual completion of two data fields for non-NIIDS eligible new issues.⁷

March 21, 2019

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Text of Proposed Amendments*

Rule G-11: Primary Offering Practices

(a) – (e) No change.

(f) *Communications Relating to Issuer Requirements, Priority Provisions and Order Period.* Prior to the first offer of any securities by a syndicate, the senior syndicate manager shall furnish in writing to the other members of the syndicate and to members of the selling group, if any, for compliance therewith by all parties in sales or distribution of the new issue, (i) a written statement of all terms and conditions required by the issuer, (ii) a written statement of all of the issuer's retail order period requirements, if any, (iii) the priority provisions, (iv) the procedure, if any, by which such priority provisions may be changed, (v) if the senior syndicate manager or managers are to be permitted on a case-by-case basis to allocate securities in a manner other than in accordance with the priority provisions, the fact that they are to be permitted to do so, (vi) if there is to be an order period, whether orders may be confirmed prior to the end of the order period, and (vii) all pricing information. Any change in the priority provisions or pricing information shall be promptly furnished in writing by the senior syndicate manager to the other members of the syndicate and the selling group, if any. Syndicate and selling group members shall promptly furnish in writing the information described in this section to others, upon request. If the senior syndicate manager, rather than the issuer, prepares the written statement of all terms and conditions required by the issuer, such statement shall be provided to the issuer for its approval. An underwriter shall promptly furnish in writing to any other broker, dealer, or municipal securities dealer with which such underwriter has an arrangement to market municipal securities that includes the issuer's new issue, all of the information provided to it from the senior syndicate manager as required by this section.

(g) Net Designations, Group Net Sales Credits, and Allocations of Securities and Free-to-Trade Communications. The senior syndicate manager shall:

⁷ With respect to the new data fields on Form G-32, the MSRB does not plan to make the additional information provided on Form G-32 immediately available to the public at this time.

* Underlining indicates new language; strikethrough denotes deletions.

(i) No change.

(ii) notify all members of the syndicate and the selling group members, at the same time, via an industry-accepted electronic method of communication, that the issue is free to trade.

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

~~(iv)~~ disclose, in writing, to each member of the syndicate and the issuer all available information on net designations paid to any syndicate and non-syndicate members, or any group net sales credits (including the identity of each person submitting a group order) paid to any syndicate members, expressed in total dollar amounts, within 10 business days following the date of sale, ~~and all information about designations paid to syndicate and non-syndicate members, paid to syndicate members, expressed in total dollar amounts,~~ with the sending of the net designation and group net sales credit checks pursuant to section (j) below; except this paragraph shall not apply to the senior syndicate manager of a qualified note syndicate as defined in subsection a(ix) above; and

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

(h) *Disclosure of Syndicate Expenses and Other Information.* At or before the final settlement of a syndicate account, the senior syndicate manager shall furnish to the other members of the syndicate:

(i) No change.

(ii) a summary statement showing:

(A) the identity of each related account submitting an order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated; and

~~(B) the identity of each person submitting a group order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated except that this subparagraph shall not apply to the senior syndicate manager of a qualified note syndicate as defined in subsection (a)(ix) above; and~~

~~(C) the aggregate par values and prices (expressed in terms of dollar prices or yields) of all securities sold from the syndicate account. This subparagraph shall not apply to a qualified note syndicate as defined in subsection (a)(ix) above.~~

(i) No change.

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

(k) - (l) No change.

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Rule G-32: Disclosures in Connection with Primary Offerings

(a) No change.

(b) Underwriter Submissions to EMMA.

(i) No change.

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

(A) – (B) No change.

(iii) – (vi) No change.

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

(d) No change.