

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95602; File No. SR-MSRB-2022-05)

August 25, 2022

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Amendments to MSRB Rule G-34 to Better Align the CUSIP Requirements for Underwriters and Municipal Advisors with Current Market Practices

I. Introduction

On July 1, 2022, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder², a proposed rule change to consisting of amendments to MSRB Rule G-34, on CUSIP numbers, New Issue, and Market Information Requirements (the “proposed rule change”). The proposed rule change would make amendments to better align Rule G-34’s requirements for obtaining CUSIP numbers with the process followed by market participants and facilitate compliance with MSRB Rule G-34 by streamlining the rule text.

The proposed rule change was published for comment in the Federal Register on July 13, 2022.³ The public comment period closed on August 3, 2022, and three comment letters were

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ Exchange Act Release No. 95208 (July 7, 2022) (the “Notice of Filing”), 87 FR 41846 (July 13, 2022).

received on the proposed rule change.⁴ On August 22, 2022, the MSRB responded to those comments.⁵ This order approves the proposed rule change.

II. Description of Proposed Rule Change

As described further herein and in the Notice of Filing, the proposed rule change specifies that CUSIP applications must be made to the Board’s designee (and not the Board itself); removes the obligation for municipal advisors providing advice with respect to a competitive offering to apply for the CUSIP number by no later than one business day after dissemination of a notice of sale in favor of a more flexible standard that still obligates the application to be made within sufficient time to ensure timely CUSIP number assignment; removes language dictating the precise content of a CUSIP number application that the MSRB believes would more appropriately be left to the Board’s designee for receiving and reviewing such applications; and provides that certain obligations set forth in the rule do not apply when CUSIP numbers have been preassigned.⁶

A. Designee of the Board

MSRB Rule G-34(a)(i)(A) currently requires an underwriter or municipal advisor to obtain CUSIP numbers through an application in writing to the Board or its designee. The

⁴ See Letter to Secretary, Commission, from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America (“BDA”), dated August 3, 2022 (the “BDA Letter”); Letter to Secretary, Commission, from Kim M. Whelan, Co-President, and Noreen P. White, Co-President, Acacia Financial Group Inc., dated August 3, 2022 (the “Acacia Letter”); and Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”), dated July 6, 2022 (the “NAMA Letter”).

⁵ See Letter to Secretary, Commission, from Gail Marshall, Chief Regulatory Officer, MSRB, dated August 22, 2022 (the “MSRB Response Letter”).

⁶ See Notice of Filing 87 FR 41846 at 41847.

proposed rule change amends this language by providing that underwriters and municipal advisors must apply to the Board’s designee and removing the language in the rule text that makes reference to the Board as an option with which to submit CUSIP application.⁷ The MSRB states that this revised language is designed to avoid the potential for confusion associated with the current rule text and to more clearly convey the MSRB’s expectations with respect to the process of obtaining a CUSIP number.⁸ The MSRB notes that it does not currently assign CUSIP numbers to municipal securities; underwriters and municipal advisors may only obtain a CUSIP by application to the only entity that provides these identifiers, CUSIP Global Services, which is currently the only entity serving as the Board’s designee.⁹ This designation would remain unchanged by the proposed rule change and would be reflected in new Supplementary Material .01.¹⁰ The MSRB states that if CUSIP numbers become available from another source or another identifier for municipal securities becomes market practice at some point in the future, the MSRB would notify the market of a decision to modify the designee via publication of an MSRB regulatory notice.¹¹

In addition, as it is the Board’s designee, and not the Board, that controls the CUSIP number application process, the MSRB proposes to remove the in-writing requirement for the application made for obtaining CUSIP numbers.¹² Because it does not receive or review CUSIP

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

applications, the MSRB believes that the manner in which an applicant applies for CUSIP numbers is best left to the entity that reviews applications and assigns the CUSIP number.¹³

B. One Business Day Obligation

MSRB Rule G-34(a)(i)(A)(3) states that a municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities shall make an application by no later than one business day after dissemination of a notice of sale or other such request for bids. The proposed rule change removes the obligation to make such application by no later than one business day because, the MSRB believes that it is not always practical for municipal advisors to comply given the realities of the marketplace,¹⁴ and therefore may place an undue burden on municipal advisors.¹⁵ The MSRB notes that the rule already obligates the application to be made at a time sufficient to ensure final CUSIP number assignment occurs prior to the award of the issue.¹⁶ The MSRB believes that this language is sufficient to ensure that any such application is timely without dictating a more burdensome approach of requiring a specific numeric time obligation.¹⁷ Additionally, the MSRB has stated that it understands that, from an

¹³ Id.

¹⁴ *See* Letter from Susan Gaffney, Executive Director, NAMA, dated May 28, 2019 available at: <https://www.msrb.org/rfc/2019-08/gaffney.pdf> (stating that there is an inherent timing inconsistency with respect to Rule G-34(a)(i)(A)(3) as it requires application for CUSIP numbers no later than one business day after the Notice of Sale, which will almost always be before the identity of the investors are known, and therefore the [municipal advisor] could not reasonably obtain the investors' written representations).

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

operational perspective, it may be impracticable for municipal advisors to apply for a CUSIP number within one business day after dissemination of a notice of sale, as currently required by Rule G-34(a)(i)(A)(3).¹⁸ Accordingly, the MSRB believes that removal of this language would better align the rule text with the operational process followed by municipal advisors in connection with their CUSIP applications.¹⁹

C. Information to be Provided When Applying for CUSIP Numbers

MSRB Rule G-34(a)(i)(A)(4) lists specific data points that must be provided when applying for CUSIP numbers.²⁰ The proposed rule change removes these data points from the rule and instead provides that underwriters and municipal advisors shall provide the information required by the Board's designee in connection with their CUSIP application.²¹ The proposed rule change also makes a similar amendment to Rule G-34(a)(i)(D), removing from the rule text the three specified pieces of information that must be included in an application to obtain a CUSIP number in connection with certain new issuances that refund part of an outstanding issuance.²² The MSRB states that it believes that Rule G-34 should not contain specific data points to be provided to its designee, as the MSRB does not control the specifics of the application process, nor does it make a determination on the sufficiency of an application to receive CUSIP numbers.²³ The MSRB believes that the entity awarding CUSIP numbers, the

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 41848.

²² Id.

²³ Id.

Board's designee, is the appropriate entity to dictate what individual data points must be provided with an application for CUSIP numbers in order to sufficiently evaluate an application.²⁴ The MSRB believes that this flexibility will help create a rule that is less likely to become stale and require further amendments over time.²⁵

D. CUSIP Pre-Assignment

The proposed rule change specifies that the Rule G-34(a)(i)(A)(3) obligation to apply for a CUSIP number only applies where no CUSIP numbers have been pre-assigned.²⁶ The MSRB states that it believes that this change aligns with the common understanding among market participants that there is no obligation to seek a CUSIP number where one has already been pre-assigned.²⁷ A similar amendment to Rule G-34(a)(i)(C) provides that the provisions of Rule G-34(a)(i) regarding the assignment and affixture of CUSIP numbers do not apply with respect to any new issue of municipal securities on which CUSIP numbers have been preassigned.²⁸

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

As noted previously, the Commission received three comment letters on the proposed rule change, as well as the MSRB Response Letter. All three comment letters were supportive of the proposed rule change.²⁹ However, two commenters raised questions about the process by

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ See BDA Letter, Acacia Letter, NAMA Letter.

which the MSRB considered and ultimately submitted the proposed rule change for Commission approval.³⁰ One commenter raised three questions regarding the MSRB's rulemaking process: (1) What time-frame requirements, if any, are in place for the MSRB to send to the SEC for approval any rules that its Board has approved; (2) Outside of the formal rulemaking and amendment process which typically includes public notice and comment (except in necessary special and emergency circumstances), what processes and standards are in place for the Board to create, reconsider or make changes to a rule; and (3) What responsibilities does the MSRB have to provide public notice that the Board will discuss, consider/reconsider, and vote on its rulemaking?³¹

The MSRB issued a response to the comments on August 22, 2022.³² The MSRB responded to comments that the MSRB's rulemaking process lacked transparency and predictability by reviewing the history of the Rule G-34 amendment process that began in March of 2017 to show that, in the MSRB's view, stakeholder feedback had been received and considered over a period of several years before the current proposal was submitted to the SEC for public comment.³³ Further, the MSRB provided data related to an economic analysis that was conducted in conjunction with the proposal to support the obligation for dealer and non-dealer municipal advisors to obtain CUSIP numbers in competitive offerings.³⁴ The MSRB Response Letter did not address the commenter's questions regarding the MSRB's rulemaking process.

³⁰ See Acacia Letter, NAMA Letter.

³¹ See NAMA Letter.

³² See MSRB Response Letter.

³³ Id.

³⁴ Id.

In the MSRB Response Letter, the MSRB described a proposed rule change to MSRB Rule G-34 that the Commission approved on December 14, 2017.³⁵ The MSRB stated that subsequently, municipal advisors expressed concern over the burden of developing and following compliance and supervisory policies related to the amendments,³⁶ which led the MSRB to issue an RFC on February 27, 2019 to obtain feedback on various aspects of the rule.³⁷ The MSRB states in the MSRB Response Letter that the Board then reconsidered the new amendments to Rule G-34 and authorized MSRB staff to file with the SEC a proposed rule change to eliminate the requirement for both dealer and non-dealer municipal advisors to apply for CUSIP numbers in a competitive transaction in which they advise.³⁸ On October 2, 2019, the Commission requested comment on a proposed exemptive order permitting registered municipal advisors to engage in certain solicitation activities, while acting in their roles as municipal advisors, in connection with the direct placement of municipal securities without registering as a broker.³⁹ Although the Commission's proposed exemptive order did not pertain to the type of competitive transactions at issue in Rule G-34, the MSRB states that it then decided to pause

³⁵ See Securities Exchange Act Release No. 82321 (December 14, 2017), 82 FR 60433 (December 20, 2017). <https://www.sec.gov/rules/sro/msrb/2017/34-82321.pdf>

³⁶ See MSRB Response Letter.

³⁷ See MSRB Notice 2019-08, Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales (February 27, 2019). <https://msrb.org/-/media/Files/Regulatory-Notices/RFCs/2019-08.ashx??n=1>

³⁸ See MSRB Press Release (July 29, 2019). https://www.msrb.org/About-MSRB/Governance/MSRB-Board-of-Directors/~/_link.aspx?_id=9E75A24433E942E8B910E102360317E3&_z=z

³⁹ See Securities Exchange Act Release No. 87204 (October 2, 2019), 84 FR 54062 (October 9, 2019). <https://www.sec.gov/rules/exorders/2019/34-87204.pdf>

moving forward with Rule G-34 rule changes in response to the Commission’s request for comment on the proposed exemptive order.⁴⁰ The MSRB further states that the COVID-19 pandemic then occurred which caused the MSRB change its focus as it worked to reduce regulatory burdens for municipal advisors during this period of uncertainty.⁴¹ The MSRB states that the Board of Directors then determined at its April 2021 meeting that since the rule had been in place for several years and had proven to enhance market efficiency that the rule would remain in its current form.⁴² The MSRB states that it continued to engage with stakeholders after the Board’s decision and, as a result of these stakeholder discussions, the Board authorized the proposed rule change.⁴³ The MSRB notes that it delayed submitting the proposed changes to the Rule G-34 proposal in large part due to operational issues presented by the pandemic.⁴⁴

The MSRB provided data on CUSIP generation in a competitive offering based on information received from CUSIP Global Services.⁴⁵ The MSRB states that it interpreted this data to mean the competitive sale market is more orderly and efficient as a result of the 2017 amendments to MSRB Rule G-34.⁴⁶ The MSRB noted that the 91.2% regular request rate in 2021 is consistent with the percentage of competitive offerings utilizing a municipal advisor,

⁴⁰ See MSRB Response Letter.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

which the MSRB interprets as showing that approximately all competitive offerings with a municipal advisor apply for a CUSIP number through a regular request.⁴⁷

The MSRB acknowledged that all three commenters expressed support for the proposed rule change, and stated that if the Commission approves the proposed rule change, the Board will continue to engage with stakeholders to support implementation of the amendments.⁴⁸

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Exchange Act Section 15B(b)(2)(C), which provides, in part, that the MSRB's rules 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, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.⁴⁹

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ 15 U.S.C. 78o-4(b)(2)(C).

The Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, as further described below, because the amendments would: (i) promote just and equitable principles of trade; (ii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products; (iii) remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and (iv) protect investors, municipal entities, obligated persons, and the public interest.

A. Promote Just And Equitable Principles Of Trade

The Commission finds the proposed rule change would promote just and equitable principles of trade by amending the rule text to better represent the realities of the marketplace and not place undue hardships on underwriters and municipal advisors in obtaining a CUSIP number in a new municipal securities offering. The Commission believes the proposed rule change provides certainty to underwriters and municipal advisors regarding the entity with which CUSIP applications must be sent which reduces confusion with the application process. Additionally, the Commission believes that eliminating the one business day requirement for municipal advisors to apply for a CUSIP number and explicitly providing that a CUSIP application is not necessary where a CUSIP number is preassigned removes unnecessary obstacles and better aligns with current market practice. As the MSRB noted, in many instances, the requirement for municipal advisors to submit a CUSIP application within one business was impossible, and replacing the one business day requirement with a flexible time frame better aligns with business practice and allows municipal advisors to remain in compliance with the rule. The Commission further believes that explicitly providing within the rule that a CUSIP application is not necessary when a CUSIP has been preassigned ensures market participants are

not taking redundant action that may impose unnecessary financial and time burdens. Finally, removing the content requirement of CUSIP applications provides certainty as to the entity underwriters and municipal advisors should follow regarding the requirements of the CUSIP application and prevents confusion in the event the Board's designee develops different content requirements than those outlined within the rule.

B. Foster Cooperation And Coordination With Persons Engaged In Regulating, Clearing, Settling, Processing Information With Respect To, And Facilitating Transactions In Municipal Securities And Municipal Financial Products

The Commission finds that the proposed rule change would foster cooperation and coordination between the SEC, the MSRB, and the Board's designee by directing underwriters and municipal advisors to submit CUSIP applications to the correct entity and stating their obligations in a manner that better aligns the requirements of the rule to the realities of the marketplace. The Commission believes these changes will provide regulatory clarity and facilitate compliance with the rule.

C. Remove Impediments To And Perfect The Mechanism Of A Free And Open Market In Municipal Securities And Municipal Financial Products

The Commission finds that the proposed rule change would remove impediments to, and perfect the mechanism of, a free and open market in municipal securities by reduce confusion arising from the MSRB Rule G-34 and removing burdensome obligations that conflict with current business practices. The Commission believes that he proposed rule change provides certainty to underwriters and municipal advisors which helps to ensure a timely application process. Further, the Commission believes that replacing the one business day requirement for municipal advisors to submit a CUSIP application with a flexible timing requirement better aligns with the practicalities of a competitive municipal offering which better allows for municipal advisors to comply with the rule. Finally, the Commission finds that explicitly stating

that municipal advisors do not have to submit a CUSIP application when a CUSIP number has been preassigned ensures that municipal advisors are not engaging in redundant actions that needlessly consume time and resources.

D. Protect Investors, Municipal Entities, Obligated Persons, And The Public Interest

The Commission finds that the proposed rule change will protect investors, municipal entities, obligated persons, and the public interest by preventing ambiguity in the process and ultimately ensuring that CUSIP numbers for new municipal offerings are obtained in a timely and efficient manner while facilitating compliance with the rule.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.⁵⁰ Exchange Act Section 15B(b)(2)(C)⁵¹ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposed rule change would encourage fair competition by reducing confusion and fostering compliance with existing CUSIP number requirements. Furthermore, the proposed rule change would apply equally to all MSRB regulated entities.

The Commission has also reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation.

⁵⁰ 15 U.S.C. 78c(f).

⁵¹ 15 U.S.C. 78q-4(b)(2)(C).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵² that the proposed rule change (SR-MSRB-2022-05) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁵³

J. Matthew DeLesDernier,
Deputy Secretary.

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 17 CFR 200.30-3(a)(12).