

Comment on Notice 2017-05

from Shelley Aronson, First River Advisory L.L.C.

on Wednesday, March 22, 2017

Comment:

This comment relates to the section entitled, "Clarification of Rule G-34(a) Application to Private Placements."

With respect to Question #4 thereunder, the MSRB should 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. I understand that it is not at all difficult to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales, provided that "view to" is limited to the purchaser's present intention and does not absolutely prohibit secondary market resales.

In this instance, and even more generally, there is no reason to require that CUSIP numbers be assigned to private placements. After all, private placements are supposed to be private. Assigning CUSIP numbers would cause issuers to incur unnecessary costs for no value-added. The principal reasons for assigning CUSIP numbers are to facilitate 1) trading and the posting of trade data on EMMA, and 2) the dissemination of continuing disclosure information on EMMA. Because private placements are not expected to trade, reason #1 does not apply (conversely, assigning CUSIP numbers to private placements might promote something that's not supposed to happen). Reason #2 applies only when the issuer has public-offered bonds outstanding, a critical distinction. The National Federation of Municipal Analysts and investors in municipal bonds have insisted, validly in my opinion, that having access to information on an issuer's private placements is essential to the proper and complete analysis of an issuer's credit quality. In those cases, private placement information can be posted on EMMA under the CUSIP numbers for the issuer's outstanding publicly-offered bonds. Because the publicly-offered bonds are affected by the private placement, it would seem logical to access information on private placements using CUSIP numbers for the affected publicly-offered bonds. Investors' information systems are keyed to the CUSIP numbers of their holdings. Forcing investors to cross-reference CUSIP numbers for private placements which may be important because of their relationship to their holdings would represent an unnecessary burden.

Assigning CUSIP numbers to private placements in other situations is totally unnecessary. If an issuer has even multiple private placements outstanding, but no publicly-offered bonds, CUSIP numbers are unnecessary because continuing disclosure information with respect to each of the private placements will ordinarily be conveyed directly to the purchasers thereof without relying on EMMA. There is no need to achieve market transparency or consistency because the only market participants who care about private placements (without the issuer also having publicly-offered bonds outstanding) are the purchasers thereof. Lastly, if an issuer who has private placements outstanding and subsequently were to proceed with the issuance of publicly-offered bonds, then information on those private placements will, of course, have to be disclosed in the Official Statement for the publicly-offered bonds. Post-sale, material and relevant information associated with those prior private placements can be disclosed through EMMA using the CUSIP numbers assigned to the new publicly-offered bonds.