

VIA ELECTRONIC MAIL

June 30, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-11, Second Request for Comments on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the above second request for comments on the above proposal issued by the Municipal Securities Rulemaking Board (MSRB). ABA members regularly purchase municipal obligations directly from the obligors and extend loans and provide other credit accommodations to municipalities and conduit borrowers. In addition, many of our members provide services as regulated municipal securities dealers, either through separately identifiable departments in commercial banks or through broker-dealer affiliates of commercial banks.

On March 1, 2017, the MSRB sought industry input on draft amendments to Rule G-34(a) that (1) confirm 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 (2) add a new requirement that municipal advisors that are not dealers must also obtain CUSIP numbers for new issue securities when acting as a financial advisor in new issue municipal securities sold in a competitive offering.² The proposal also sought input on an exception to the requirement to obtain CUSIP numbers in private placements of municipal securities to a single purchaser. In ABA's March 17, 2017 response, we offered strong support for such an exception.

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

² The proposal would amend the text of Rule G-34(a)(i)(A) to delete the existing phrase "for the purpose of distributing such new issue," to make clear that the CUSIP requirement applies to placement agents.

The MSRB in this re-proposal seeks comments on a limited exception to both the requirement to obtain CUSIP numbers and to apply for depository eligibility in the case of a “direct purchase of municipal securities by a bank, affiliated bank or a consortium of banks formed for the purpose of participating in the direct purchase.” ABA understands that the MSRB in doing so has recognized our concerns and the potential impact on the direct purchase market.

Support for Exception

ABA supports an exception from the requirement to obtain CUSIP numbers and depository eligibility requirements of Rule G-34(a) for dealers and municipal advisors in private placements of municipal obligations to a single bank or bank affiliate purchaser or a consortium of banks. We believe such an exception would help alleviate the concerns of MSRB-regulated entities with respect to whether a particular financial obligation is a loan or a security, while at the same time it would facilitate their compliance with securities laws³ as well as address the concerns of our member banks raised in our comment letter.

As the MSRB has recognized, the need for an identifier such as a CUSIP number may be less critical for purposes of identifying and tracking the trading of municipal securities where the municipal dealer has a reasonable belief that securities will not enter the public municipal securities market. Accordingly, the proposal includes new subsection (F) as follows:

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or a municipal advisor advising the issuer with respect to a competitive sale of a new issue, which is being purchased directly by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary.

While ABA supports the proposed exception, we have significant concerns about this formulation, particularly with the term “affiliated banks.” Commercial banks often use direct or indirect subsidiaries of the bank itself to provide funding to municipalities and conduit borrowers. However, the majority of funding subsidiaries are non-bank subsidiaries. We are also aware that some banks use bank holding company affiliates to provide this type of funding. In addition, unlike the MSRB’s draft language, the funding entity may transfer the obligation to an *existing* consortium, rather than creating a new consortium for every transaction.

³ See, MSRB Regulatory Notice: Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market (April 4, 2016).

Accordingly, ABA believes the following language would address these concerns and bring into the scope of the exception the types of entities currently involved in the direct purchase market:

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or municipal advisor advising the issuer with respect to a competitive sale of a new issue may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchaser(s) of the municipal securities is:

(1) a bank;

(2) any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker-dealer registered under the Securities Exchange Act of 1934; or

(3) a consortium of the institutions described in (1) or (2) above used for the purpose of participating in a direct purchase of a new issue of municipal securities (collectively “purchasers”), and

(4) such purchasers:

(a) represent that the municipal securities are being purchased for their own account, with no present intent to sell or distribute the municipal securities, and

(b) represent that they will limit resale of the municipal securities to institutions described in (1) through (3) above or a “qualified institutional buyer” as defined under SEC Rule 144A, or an “accredited investor” as defined in Rule 501, Regulation D of the Securities Act of 1933.

Paragraph (F)(2) would include non-bank subsidiaries or affiliates of commercial banks and thus address our concerns about the originating funding entities. This language is commonly found in federal securities laws, including Section 15 of the Securities and Exchange Act of 1934.

As we indicated in our March comment letter, direct purchase transactions are not expected to make their way into the hands of investors in the public municipal securities market. Paragraph (F)(4) would address the existing common bank funding model and the existing limitations on transferability of direct purchase transactions. Banks fund themselves with, among other things, short-term deposits; and while they may intend to hold securities to maturity, given the long-term tenor of municipal securities the documents must allow for the possibility of transfer. Indeed, most banks currently include in their transaction documents language limiting transfers in support of their determination to treat the instrument as a loan, and the terms used in subparagraph (4) reflect common language in direct purchase transaction documents. Potential

future transfers are limited to institutional participants in the direct purchase market and are not transferred into the public municipal securities markets where retail investors might be expected to rely on an identifier such as a CUSIP number to access information about the obligation.

ABA believes that the language described in subparagraph (4) is sufficient for municipal dealers and municipal advisors to satisfy the requisite reasonable belief standard for limitations on transfer. Because such language is already commonly found in direct purchase transaction documents, there should be little burden on MSRB-regulated entities to document their reliance on such representations.

With reference to depository eligibility, we believe the proposed language of subsection (ii)(A)(3) could be changed simply to refer to the institutions referenced above, as follows:

(3) a new issue of municipal securities purchased directly by a purchaser described in section (i)(F)(1) through (i)(F)(3).

Conclusion

ABA appreciates the MSRB's acknowledgment of the banking industry's concerns about impact of the CUSIP requirement on the direct purchase market. We believe the exception language proffered above will address our concerns while recognizing the existing participants in the direct purchase market. Further, we believe that MSRB-regulated entities will readily be able to rely on representations by commercial banks and their related entities.

We look forward to continuing to work with the MSRB staff on this proposal.

Sincerely,



Cristeena G. Naser
Vice President and Senior Counsel
Center for Securities, Trust & Investment