

SMA
Southern Municipal Advisors, Inc.

June 29, 2017

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

Re: MSRB Rule G-34

Dear Mr. Smith,

The MSRB argues the need to amend Rule G-34 to cause it to, among other regulations, require non-dealer municipal advisors obtain CUSIP when advising issuers in a competitive new municipal securities issue (with one exception) arises from “[1] instances where underwriters are not consistently obtaining CUSIP numbers in sales of new issue municipal securities sold in private placements and [2] the desire to address the potential regulatory imbalance between CUSIP number requirements as applied to dealer and non-dealer municipal advisors.” See Page 11 of the Regulatory Notice, Economic Analysis, Section 1.

As to the first justification, if the failure to obtain CUSIPs (assuming there is a need which is arguable in the case of a private placement) is the fault of the underwriter why impose an obligation on the municipal advisor, rather than insisting through regulation that the underwriter must obtain the CUSIPs in a private placement transaction? Obtaining CUSIPs is typically an underwriter responsibility in competitive and negotiated sales of new issue municipal securities. It simply makes sense, if the MSRB sees some need to apply CUSIPs to private placements, that the responsibility to obtain the CUSIPs rest with the entity which has traditionally assumed that role. It makes no sense to involve the municipal advisor. The municipal advisors role is to assist the issuer in the sale of the securities, not to market the securities, register them or in any way interact with the investing public. It seems the MSRB is expanding the role of the municipal advisor in inappropriate ways by involving the municipal advisor in the CUSIP process.

As to the second rationale – it too makes no sense. The MSRB defines a Dealer as “[a] person or firm engaged in the business of effecting securities transactions for that person’s or firm’s own account. Dealer is defined in the [Securities Exchange Act of 1934](#). See: [BROKER-DEALER](#); [MUNICIPAL SECURITIES DEALER](#). Compare: [BROKER](#).” In contrast, the MSRB defines a Municipal Advisor as “[a] person or entity (with certain exceptions) that (a) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (b) solicits a municipal entity, for compensation, on behalf of an unaffiliated municipal securities dealer, municipal advisor, or investment adviser to engage such party in connection with municipal financial products, the issuance of municipal securities, or investment advisory services. See: [FINANCIAL ADVISOR](#); [PRICING ADVISOR](#); [SWAP ADVISOR](#).” Nowhere in this definition is there any reference to “effecting securities transactions” because municipal advisors do not deal in municipal securities. Consequently there is a significant difference between dealers and non-dealer municipal advisors. Whatever potential regulatory imbalance the MSRB perceives between the treatment of dealers and non-dealer municipal advisors is perfectly justified by the differing role they play in the municipal marketplace.

If the MSRB insists upon imposing the burden of obtaining CUSIPs upon the municipal advisor, it does not need to require municipal advisors have in place “policies and procedures reasonably designed to assist in

arriving at a reasonable belief regarding the likelihood that the purchasing bank would hold the securities **until maturity or limit resale to another bank.” Closing documents in private placements include an** investment letter signed by the purchasing bank clearly stating its intent to hold the securities to security or if sold, sold only to another bank or affiliated entity. Reliance upon the investment letter ought to be sufficient.

Finally, there are only two approaches to municipal securities transactions. In the case of a public sale (either competitive or negotiated) CUSIPs are obtained by the underwriter and are necessary to track the securities in the municipal market. In the case of the alternative private placement, since the securities will not find their way into the municipal marketplace CUSIPs serve no purpose.

Thank you for the opportunity to provide comment.

Sincerely,

Michael C. Cawley

Senior Consultant