



September 17, 2018

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

**Re: MSRB Notice 2018-15: Request for Comment Draft
Amendments to MSRB Rules on Primary Offering Practices**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2018-15 (the “Notice”)² issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB is requesting comment on draft amendments to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings of municipal securities by brokers, dealers and municipal securities dealers (collectively, “dealers”). SIFMA is pleased to play a part in the conversation about potential rulemaking or additional guidance in connection with primary offering practices.

I. Rule G-11 – Primary Offering Practices

A. Free to Trade Wire

SIFMA members are supportive of requiring the senior syndicate manager to notify the syndicate via a free-to-trade wire when the syndicate restrictions are lifted. If

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² MSRB Notice 2018-15 (July 19, 2018).

the requirement only applied when the underwriter has generated a free-to-trade wire, the new requirement would be marginally less burdensome. SIFMA and its members agree that a standardized process for issuing the free-to-trade wire is consistent with the MSRB's original intent with respect to Rule G-11. Communications to syndicate members via wire are standard practice in the market. It would not cause a significant burden to require the senior syndicate manager to notify the syndicate members simultaneously that restrictions on an issue of municipal securities have been lifted and sales in the secondary market may commence.

B. Additional Information for the Issuer

SIFMA and its members believe that issuers generally understand that information regarding the designations and allocations of securities in an offering is available either from the senior syndicate manager or certain third-party information resources. It is not uncommon for a municipal securities issuer to either sit on the syndicate desk during pricing, or log in to an electronic syndicate management system to monitor orders, designations and allocations. SIFMA would be supportive of further issuer education on this subject. SIFMA and its members are most supportive of only requiring the senior syndicate manager to send the designations and allocation information under Rule G-11(g) upon the request of the issuer, as this is current market practice. We do not believe that the senior syndicate manager should be required to provide the information to the issuer regardless of whether it is requested, as some issuers may not be interested in such information. SIFMA and its members believe that if such a requirement were to be included in Rule G-11, then issuers should be permitted to opt out of receiving the information. Also, if managers are required to provide designation and allocation information to issuers, we feel that guidance will be critical to ensure that this is done in a consistent manner across the industry in order for the information to be useable.

C. Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits

As described in our letter on the concept release,³ SIFMA understands the MSRB's desire to require group net and net designation sales credits to be subject to the same regulatory timeframe of within 10 calendar days following receipt of the securities. However, there are considerations that weigh against the harmonization of the timing for those payments. The determination of amounts due and owing to each syndicate member for group orders and for designated orders is dependent on different inputs. The time pressure to get the payments for group net sales credits processed would pose an additional burden on the syndicate manager, increasing the potential risk of incorrect

³ Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ron Smith, Corporate Secretary, MSRB, dated Nov. 15, 2017 ("Prior Letter").

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payments being sent. Absent evidence of significant problems with the current timing of payments for group and designated orders and in the spirit of efficiency, SIFMA believes that no changes to the timeframes in the current rule should be made.

On another note, current Rule G-11(j) requires the payment of designations within 10 calendar days of delivery by the issuer. Firms handle payment in different ways, with some sending paper checks, and others distributing wires. SIFMA asks that the MSRB consider amending the verbiage to reflect that payment must be made within 10 calendar days following delivery to the syndicate by “electronic means.” If the MSRB put such a rule change out for comment, they might be better able to determine the industry costs and benefits of such a rule change. At this time, SIFMA and its members feel the term “electronic means” is general enough to accommodate changes in technology which make payments occur faster thus reducing risk, and eliminates the use of paper checks which are less efficient, slower to receive, and slower to process. SIFMA and its members suggest a parallel change for current Rule G-11(i) with respect to the settlement of syndicate accounts.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

A. Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof

SIFMA supports transparency and communication to the market in a fair and open manner. In light of recent tax law changes that eliminate advance refundings, however, SIFMA questions the value of requiring the collection of the percentage of each bond to be refunded.

The MSRB should consider requiring underwriters to provide information on Form G-32 for partial current refundings by CUSIP number, but not the percentage of each bond to be refunded. A less burdensome disclosure methodology, and more valuable to an investor, would be requiring disclosure by CUSIP with a dollar value of bonds refunded, instead of a percentage.

MSRB has requested comment on potentially shortening the time frame for refunding documents under Rule G-32. If the relevant parties to a new issue advance refunding have complied with their roles in such transaction, underwriters generally have access to information regarding issues that have been advance refunded by the time an issue closes. However, as noted in our Prior Letter, in some offerings underwriters continue to face delays in receiving the advance refunding documents in the required format in order to meet the existing five business day deadline under Rule G-32. In particular, most Rule G-32 filings need a final verification report completed prior to the finalization of the escrow agreement. Thus, it is not realistic to require this information to be delivered sooner than the current deadline.

SIFMA objects to the collection of potential refundings, or refunding candidates, before or at the time of pricing. This list should not be required to be posted on EMMA or produced, as it isn't final or relevant until the refunding candidates are chosen.

B. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

SIFMA feels there is no bona fide reason for dealer municipal advisors and non-dealer municipal advisors to have different requirements pursuant to Rule G-32(c). If any municipal advisors are required to make the official statement available to the underwriter after the issuer approve it for distribution, then all municipal advisors should be required to do so. Principles of fairness dictate there be a level regulatory playing field for all municipal advisors. Additionally, the MSRB has acknowledged, through its own efforts, the value of consistency across the regulatory community and within the language of rules. Inconsistent treatment of different market participants, without purpose, is no different than inconsistent treatment of market activity by separate regulatory agencies. Inconsistency within market regulation ultimately leads to unnecessary confusion and unintentional non-compliance or errors.

C. Additional Data Fields on Form G-32 Auto-Populated From NIIDS

SIFMA applauds the MSRB in its move forward to auto-populate Form G-32 from New Issue Information Dissemination Service (NIIDS) data already provided by the underwriter. As described in our Prior Letter, SIFMA believes that initial minimum denomination information would assist the marketplace as a whole in better complying with MSRB Rule G-15(f), with the understanding that dealers will continue to struggle with ensuring compliance with minimum denomination requirements for bonds with minimum denominations that change over the course of their life. Thus, SIFMA believes that it would be beneficial to add to Form G-32 a field for "initial minimum denomination" to be auto-populated by the "minimum denomination" data element in the NIIDS data to be made available to the public through EMMA. However, the underwriter that submitted the initial NIIDS data should have no obligation to update information regarding changes in minimum denominations over the life of the security. SIFMA believes that dealers' obligation with regard to such data must be limited to ensuring its accuracy at the time of its submission to NIIDS under Rule G-34 and that dealers should not be obligated to undertaking an ongoing duty to update such information.

The auto-population of data elements on Form G-32 poses no clear new burden on the underwriting community, as long as they are auto-populated. The requirement to manually fill in these fields if they are not auto-populated, for example for private placements, would create significant additional burdens for the regulated dealer.

Manually populating fields for issues that are not NIIDS-eligible, such as private placements, is no small task. Additionally, the information is of little value, as private placements are not intended to trade. We ask that the MSRB consider exempting private placement and other issues that are not NIIDS-eligible from this new rule.

The data field listed in Appendix A - Proposed NIIDS Data Points for Inclusion on Form G-32⁴ appear to be suitable for collection, auto-population and dissemination.

D. Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS

SIFMA and its members are concerned about the additional burdens on the underwriting community to add a significant amount of data to Form G-32 that needs to be manually input. SIFMA is also concerned about some of the proposed fields to be required, such as the full call schedule. This information is in the official statement, and would be burdensome for the underwriter to re-key in. Collection of information regarding retail order periods by CUSIP may need more thought, given the variety of retail order period structures, and the fluid process that can change demand intra-day. Although currently required, we also question the value of manually keying in the name of an obligated person, as there are no standard naming conventions in our industry. As an alternative, we suggest the MSRB consider a link to the official statement on EMMA as satisfying the requirement to input the full call schedule.

Although SIFMA is supportive of the voluntary collection of legal entity identifiers (“LEIs”), “if readily available,” our members want to ensure the submission and dissemination of LEIs for underwriters, credit enhancers, letter of credit providers, issuers and obligated persons is conducted as efficiently as possible. We urge the MSRB to coordinate with the Depository Trust Company, which manages NIIDS, to ensure the most efficient and least burdensome collection methodology. SIFMA and its members don’t believe that requiring the disclosure of LEIs, “if readily available”, would discourage market participants from obtaining them.

We do not think the additional field to flag when a new issue is issued with restrictions is helpful. Such a field has too broad a scope and is too complicated to make it useful.

IV. Conclusion

SIFMA and its members largely are supportive of the MSRB’s proposed amendments to Rule G-11 and G-32, as more fully described above. We would be pleased to discuss any of these comments in greater detail, or to provide any other

⁴ See: <http://www.msrb.org/~media/Files/Resources/MSRB-Appendix-A-Proposed-NIIDS-Data-Points-for-Inclusion-on-Form-G-32.ashx?la=en>.

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assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Leslie M. Norwood".

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, President and Chief Executive Officer
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
John Bagley, Chief Market Structure Officer
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