



May 28, 2019

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

Re: 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

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”) appreciates this opportunity to respond to Notice 2019-08 (the “Notice”)¹ issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB is requesting comment on MSRB Rule G-34(a)(i)(A)(3)(the “CUSIP Requirement”), which requires a municipal advisor advising an issuer with respect to a competitive sale of a new issue of municipal securities to apply for the assignment of a CUSIP number or numbers with respect to such issue within a specified time frame, subject to exceptions.

I. Considerations with Respect to the Rule

A. Private Placements

We acknowledge the MSRB’s concerns about unintended results in the market, should municipal advisors be relieved of the duty to apply for CUSIP numbers. Issuers choosing to engage only a municipal advisor in a placement could find themselves in a situation where no party would be responsible for applying for CUSIP numbers. Removing the requirement for municipal advisors to obtain CUSIP numbers runs counter to the intent of the changes implemented in the revision of 2017 G-34 Amendments,²

¹ MSRB Notice 2019-08 (February 27, 2019).

² As defined in the Notice.

which were, in part, to ensure private placement transactions were reported to MSRB and such information made available to investors.

Further, the 2017 G-34 Amendments clarified the application of the CUSIP Requirement to dealers in private placements and provided an exception from the CUSIP number and other requirements in the case of private placements of municipal securities to a bank, non-dealer control affiliate of a bank or a consortium thereof. However, the 2017 G-34 Amendments seem to have given certain market participants the idea that one can have a competitive private placement, distinct from a typical negotiated private placement.

SIFMA and its members question whether a competitive private placement is a viable concept in the first instance but, in any event, if Rule G-34 were to be amended, it might make sense to recognize the procedural distinction between all private placements and competitive underwritings of municipal securities.

In the case of private placements, if CUSIPs are to be obtained at all, it is most appropriate for CUSIPs to be obtained by the placement agent once the investor has been determined, not when the request for bids is distributed. Once determined, the investor may end up being a bank, a non-dealer control affiliate of a bank or a consortium thereof, whereby no CUSIP number would be necessary. Also, time is not of essence, and such securities are not expected to trade if the appropriate representations have been received. Transfers of such securities that do occur do not involve DTCC. There is no binding commitment to transact until the issuer and the purchaser sign a final term sheet, which is analogous to a bond purchase agreement.

Moreover, prior to that time there is likely no structure and a placement agent is likely trying to get a sense of investor demand. Applying for CUSIP numbers prior to the signing of the final term sheet is premature. Unlike a competitive underwriting where all of the terms other than coupons and prices are set forth in the notice of sale, solicitations of bids for placements allow flexibility in the terms that bidders may submit. Indeed, in many cases, the lack of specificity of terms results in an unwillingness of the CUSIP Service Bureau to assign CUSIPs at the time that bids are solicited.

B. Competitive Public Offerings of Notes

In the case of competitive public offerings of notes, in the event that the MSRB proceeds in making any changes or putting out a more formal request for comment, the MSRB may consider whether or not to provide limited relief for municipal advisors of the obligation to obtain the relevant CUSIP numbers for these transactions. In this limited case, it may make more sense for the winning underwriters to obtain the CUSIP numbers for the notes. Unlike the case of a competitive underwriting of securities, where there is likely to be one underwriter and one coupon per maturity, competitive notes transactions may be underwritten by multiple underwriters resulting in multiple coupons

for the same maturity of notes, each requiring its own CUSIP numbers. In this scenario, the winning bidders may be the most appropriate parties to obtain the CUSIP numbers to avoid any potential confusion. It is not clear that the CUSIP Service Bureau will assign CUSIPs in advance for such competitive notes, at any rate.

II. Speed of Rule Review on Rule G-34 Is Unwarranted

SIFMA and its members generally support the MSRB's retrospective review of its rules and guidance. This retrospective rule review commenced in 2012 and has led to 13 rule changes or amendments based on laudable themes such as regulatory consistency, efficiency and modernization.³ We note that one of the factors the MSRB is using to prioritize rule review is "[t]he age of the rule and the length of time since it was reviewed holistically[.]" It is, therefore, surprising that Rule G-34 is under review a mere eight months after the 2017 G-34 Amendments became effective. The MSRB considered economic factors, efficiency issues, investor and market transparency and timing concerns when adopting the 2017 G-34 Amendments. We urge the MSRB to leave Rule G-34 as it is given (i) that the MSRB considered most of the questions raised when considering the 2017 G-34 Amendments themselves and, importantly, (ii) the very limited time since the effectiveness of the 2017 G-34 Amendments.

III. Municipal Advisors Should Obtain CUSIP Numbers for Competitive Underwritings

SIFMA and its members feel strongly that the justifications for the 2017 G-34 Amendments are still valid for competitive underwritings of municipal securities. The original rationale for having municipal advisors apply for CUSIP numbers in competitive underwritings of securities was due, in part, to timing and cost efficiency concerns. Nothing has changed in the last eight months to eliminate these concerns. If a municipal advisor applies for the CUSIP numbers for a competitive underwriting, CUSIP numbers can be applied for with the normal processing time of one to two business days.⁴ Anecdotally, applying for CUSIP numbers typically takes between 5 and 15 minutes, depending on the amount of CUSIP numbers being requested. CUSIP numbers can be applied for by any party from any location via the internet.⁵ The compliance burdens of this rule are currently and fairly the same for all municipal advisors.

If a competitive underwriter must apply for CUSIPs, costs are added and efficiencies are lost. Rule G-34(a)(ii)(C)(2) requires that an underwriter must submit all necessary information to the DTCC NIIDS system no later than two business hours after

³ See generally MSRB Notice 2019-04 (February 5, 2019).

⁴ See Fees for CUSIP Assignment, available at: <https://www.cusip.com/pdf/FeesforCUSIPAssignment.pdf>.

⁵ See <https://www.cusip.com/cusiprequest/municipalDebt.do>.

the time of formal award in a competitive new issue. As a result, a winning bidder must apply for express CUSIP numbers, and pay a premium, after it has won a competitive sale to ensure that it does not violate Rule G-34(a)(ii)(C)(2). The CUSIP Service Bureau can process CUSIP numbers on a one-hour express basis, however, there is a 50% premium charge for this service, adding costs that would assumedly be accounted for in the calculation of an underwriter's bid.⁶ This is an important reason why it is more efficient for the municipal advisor to have applied for CUSIP numbers prior to the competitive underwriting bid by multiple underwriters, avoiding unnecessary costs to the transaction which inevitably are being borne by the very issuers that the MSRB was looking to help.

The MSRB noted that applying Rule G-34 to all municipal advisors encouraged uniformity and efficiency in competitive sales of municipal securities, and that any upfront costs associated with the development of regulatory compliance policies and procedures by the non-dealer municipal advisors would be justified by the aggregate benefits of the rule change. All of these points continue to ring true, and the upfront costs of municipal advisors developing appropriate policies and procedures have already been incurred. As noted above, applying for CUSIP numbers typically takes very little time and can be applied for by any party from any location via the internet.⁷ It was unclear to the MSRB at the time of the 2017 G-34 Amendments and it is unclear to us now why the compliance burdens of this rule should not be the same for all municipal advisors.

Another argument some have made supporting the alleged need for this proposed change is that unnecessary CUSIP numbers may be applied for as the winning underwriter may "term up" some of the serial maturities and thus not use all of the CUSIP numbers for which application was made. However, on competitive underwritings, the CUSIP Service Bureau only charges for the CUSIP numbers that were actually used.

We would note that a municipal advisor has described the obtaining of a CUSIP number as activity outside the municipal advisor's responsibility and that it "epitomize[s] traditional broker-dealer type activity."⁸ Merely because broker-dealers have historically been required to obtain CUSIP numbers does not mean that this purely administrative task cannot be performed by other market participants. Indeed, up until the 2017 G-34 Amendments, broker dealers acting as municipal advisors were required to obtain CUSIPs in competitively bid underwritings.⁹ This comment was made by municipal advisors prior to 2017 G-34 Amendments and dismissed by the MSRB.

⁷ See <https://www.cusip.com/cusiprequest/municipalDebt.do>.

⁸ Letter from Cheryl Maddox, General Counsel, and Leo Karwejna, Compliance Officer, PFM, to Ronald Smith, Corporate Secretary, MSRB, dated March 31, 2017.

⁹ For reference, see the SEC's Guide to Broker Dealer Registration here:

Municipal advisors commonly enter into contracts to perform other services that are also often performed by broker dealers. For example, they routinely:

- assist issuers with the drafting of official statements;
- establish the structure, timing, terms and other similar matters concerning the issue; and
- arrange for printing, advertising and other vendor services necessary or appropriate in connection with the issue.¹⁰

Obtaining CUSIP numbers on behalf of their municipal advisory client is just another task that needs to be performed, and it is in no way inconsistent with a municipal advisor's fiduciary duty that they be required to perform that task when they are in the best position to do it.¹¹ The complaints of new regulatory burdens on the non-dealer municipal advisor community ring hollow and run counter to the regulatory regime that was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

IV. Conclusion

SIFMA and its members reiterate our call for the MSRB to let the 2017 G-34 Amendments stand, subject to the considerations above. SIFMA and its members are available discuss any of these comments in greater detail, or to provide any other

<https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html>.

¹⁰ See SIFMA's Model Municipal Advisor Engagement Letter, available here: <https://www.sifma.org/resources/general/municipal-securities-markets/>.

¹¹ To be clear, municipal advisors have no duties under Rule G-32 (except relating to official statements) to make filings, submit new issue information to DTCC's NIIDS system, or otherwise interface with DTCC.

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
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assistance that would be helpful. If you have any questions, please do not hesitate to contact me at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

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