

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90611; File No. SR-MSRB-2020-08)

December 9, 2020

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change to Amend MSRB Form G-32

I. Introduction

On October 13, 2020, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder², a proposed rule change to amend MSRB Form G-32 to clarify that brokers, dealers, and municipal securities dealers (collectively, “dealers” and, individually, each a “dealer”) acting as underwriters in the primary offering of municipal securities are obligated to manually complete three data fields (collectively, the “Amended Data Fields”) on Amended Form G-32 when such fields are applicable to a primary offering (the “proposed rule change”).³ The proposed rule change was published for comment in the Federal Register on October 28, 2020.⁴ In the Notice of Filing, the MSRB requested that the proposed rule change become effective on March 31, 2021.⁵

The Commission did not receive any comment letters on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ MSRB Form G-32 is an electronic form on which submissions of the information required by Rule G-32 are made to the MSRB.

⁴ Securities Exchange Act Release No. 34-90248 (October 22, 2020) (the “Notice of Filing”), 85 FR 68395 (October 28, 2020).

⁵ See Notice of Filing.

II. Description of Proposed Rule Change

In the Notice of Filing, the MSRB stated that the purpose of the proposed rule change is to clarify a prior rule filing submitted to the SEC on April 10, 2019 and that was subsequently approved by the SEC, as amended, on June 27, 2019 (the “Primary Offering Practices Amendments”) that added new data fields to Form G-32.⁶ The proposed rule change seeks to clarify that the description within the Primary Offering Practices Amendments that describes the Amended Data Fields for three specific data fields as generally being “auto-populated” is incorrect and that these three data fields must be manually completed. The proposed rule change also describes the precise method by which underwriters must complete these new data fields.⁷

A. MSRB Form G-32 Data Fields Impacted by Proposed Rule

The MSRB stated that the proposed rule change is meant to clarify that brokers, dealers, and municipal securities dealers acting as underwriters in the primary offering of municipal securities are obligated to manually complete three data fields on Amended Form G-32 when such fields are applicable to a primary offering.⁸ Further, the MSRB stated that the proposed rule change would clarify the method of completing Amended Form G-32 for the following three data fields:

- Bank Qualified Flag (“BQ Data Field”): The proposed rule change would clarify the “yes/no” flag on amended Form G-32 would, when applicable, need to be

⁶ Securities Exchange Act Release No. 34-86219 (June 27, 2019), 84 FR 31961 (July 3, 2019) (File No. SR-MSRB-2019-07). (The Primary Offering Practices Amendments authorized updates to Form G-32 that will add the BQ Data Field, the PAC Bond Data Field, the Put Date Field, as well as the sixty-three other new data fields, upon their effective date of March 31, 2021.)

⁷ See Notice of Filing.

⁸ Id.

manually completed by an underwriter to indicate whether a bank can deduct a portion of the interest cost of the carry for the municipal securities, in accordance with applicable provisions of the code of the Internal Revenue Service.

- Planned Amortization Class Bond Flag (“PAC Bond Data Field”): The proposed rule change would clarify that the “yes/no” flag on amended Form G-32 would, when applicable, need to be manually completed to indicate whether the offering is an asset-backed bond payable with a fixed sinking fund schedule.
- Put End Date Entry (“Put Date Field”): The proposed rule change would clarify that data fields on Form G-32 relating to whether the offering is puttable would, when applicable, need to be manually completed to indicate when a put end date is defined at the time of issuance.⁹

The MSRB stated its belief that the proposed rule change is necessary to more clearly define the compliance obligation of an underwriter when completing one of the Amended Manual Fields on Amended Form G-32, and, thereby, would promote greater regulatory transparency in the municipal securities market.¹⁰ The MSRB noted that the proposed rule change is intended to put market participants on notice that, when applicable, the Amended Manual Fields will not auto-populate on Amended Form G-32 with information input into the New Issue Information Dissemination Service (“NIIDS”), and thus must be manually completed.¹¹

⁹ Id.

¹⁰ Id.

¹¹ Id.

B. Overview of MSRB Form G-32 Submission Process

The MSRB stated that pursuant to MSRB Rule G-32, an “underwriter” in a primary offering of municipal securities is required to electronically submit to the MSRB certain primary offering disclosure documents and related information, including the data elements set forth on Form G-32.¹² This submission is completed through the MSRB’s Electronic Municipal Market Access Dataport system (“EMMA Dataport”).¹³ The MSRB noted that an underwriter’s submission of Form G-32 in EMMA Dataport is commonly, but not always, preceded by the underwriter’s (1) procurement of CUSIP numbers from CUSIP Global Services, (2) registration of the municipal securities for depository eligibility with the Depository Trust and Clearing Corporation (“DTCC”), and (3) submission of certain information about the characteristics of the offering to NIIDS, all generally pursuant to MSRB Rule G-34.¹⁴ As described in the Primary Offering Practices Amendments and prior amendments approved in 2012, Form G-32 incorporates matching data fields relating to certain information submitted to NIIDS and CUSIP Global Services and, thereby, facilitates the MSRB’s collection of market information utilized in various rulemaking and transparency activities.¹⁵

The MSRB discussed in the Notice of Filing how the Primary Offering Practices Amendments described each of the New Data Fields added to Form G-32 as falling into one of two categories: (1) data fields that generally would be auto-populated with information previously entered by an underwriter in NIIDS (collectively, the “Auto-Populated Fields”) and

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

(2) data fields that would be unique to Amended Form G-32 and, when applicable, would need to be completed via manual data entry because they could not be auto-populated with matching NIIDS information (collectively, the “Manual Fields”).¹⁶ The Primary Offering Practices Amendments identified fifty-seven Auto-Populated Fields and nine Manual Fields.¹⁷ The three Amended Manual Fields that are the subject of this proposed rule change were originally categorized as part of the fifty-seven Auto-Populated Fields, because the MSRB understood, at that time, that there was a corresponding data field match in NIIDS that would allow for the PAC Bond Data Field, the BQ Data Field, and the Put Date Field, respectively, to be auto-populated in EMMA Dataport, when applicable.¹⁸ The MSRB stated that it now understands that, although DTCC’s NIIDS system may allow for an underwriter to input information corresponding to the Amended Manual Fields, presently, this information is not disseminated by DTCC to the MSRB’s EMMA Dataport.¹⁹ Consequently, under the current design of DTCC’s system, the MSRB does not receive the electronic inputs necessary to auto-populate these three fields on Amended Form G-32. Thus, the MSRB determined it was appropriate and necessary to provide guidance to filers clarifying the need to manually input information relating to the Amended Data Fields, when applicable, on Amended Form G-32.²⁰

¹⁶ Id.

¹⁷ See Primary Offering Practices Amendments, *supra* Note 6.

¹⁸ See Notice of Filing.

¹⁹ Id.

²⁰ Id.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.²¹ Section 15B(b)(2)(C) of the Act states that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.²² The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) and necessary and appropriate to ensure the MSRB receives accurate and complete primary offering information in a timely manner. Further, the Commission notes that the clarification that underwriters are obligated to manually complete the three Amended Manual Fields on Amended Form G-32 applies to all applicable filers and ensures the accurate and timely completion of Amended Form G-32.

The Commission believes the proposed rule change would promote just and equitable principles of trade by resolving potential regulatory ambiguities and making clear that, when the filing of Amended Form G-32 is required in connection with a primary offering, an underwriter

²¹ 15 U.S.C. 78o-4(b)(2)(C).

²² Id.

is effectively required to ensure that all applicable fields are complete and accurate, which may require manually completing these three fields on Amended Form G-32. The clarifications made by the proposed rule change would assist any dealer who acts, or may act, as an underwriter of a primary offering of municipal securities in completing Form G-32 accurately.

The Commission also believes the proposed rule change would foster cooperation and coordination with persons engaged in regulating and processing information with respect to transactions in municipal securities and municipal financial products. The Commission believes that the benefits of the proposed rule change will not only accrue to dealer firms, but also to regulated-entity examiners, other regulators, and data vendors by mitigating potential ambiguity and confusion. Just as it would be beneficial to dealer firms to have a uniform clarified understanding of the regulatory obligations associated with Amended Form G-32, the proposed rule change would similarly benefit these other market participants by ensuring that the data submitted on Amended Form G-32 is complete and accurate regardless of whether the dealer directly interfaces with NIIDS or utilizes the interface of a third-party vendor.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change on efficiency, competition, and capital formation.²³ The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission understands the clarification will apply equally to all applicable underwriters without imposing an additional burden within the filing process. Moreover, since the proposed rule change is intended to increase regulatory transparency regarding the obligation of underwriters to manually complete

²³ 15 U.S.C. 78c(f).

the Amended Manual Fields, the Commission believes the proposed change should increase the efficiency of underwriters fulfilling their obligations under Rule G-32, as underwriters would be on notice of the lack of auto-population for these three fields on Amended Form G-32 and, thereby, may avoid certain costs associated with resolving a potentially ambiguous regulatory obligation. The Commission believes the proposed rule change will help market participants avoid the potential for regulatory misinterpretation and confusion, which promotes a fairer and more efficient municipal securities market.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-MSRB-2020-08) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).