

May 9, 2007

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: Notice 2007-10: Draft Rule Changes to MSRB Rule G-14 and to
MSRB Rule G-34

Dear Mr. Pica:

The Securities Industry and Financial Markets Association (“Association”)¹ appreciates this opportunity to respond to the notice (“Notice”) issued by the Municipal Securities Rulemaking Board (“MSRB”) on March 5, 2007 (Notice 2007-10) in which the MSRB requests comment on draft rule changes to MSRB Rule G-14 and Rule G-34. The proposed change to Rule G-14 would provide for a special indicator on price reporting of new issue transactions that are based on priced trading commitments made prior to the time of formal award. The proposed changes to Rule G-34 would require underwriters to follow certain procedures for disseminating information for trade reporting of new issues. The Association supports the MSRB’s proposal for a conditional trading commitment indicator and efforts by the MSRB to improve the efficiency of new issue information to the market necessary for dealers to comply with price reporting requirements. In discussing the MSRB’s proposal, however, Association members have found it difficult to react to proposed rule changes before operational systems are in place to implement communications to (and from) the planned new information dissemination system (“NIIDS”). Our comments would be more informed if they came after broker-dealers had experience with NIIDS.

Proposed Amendments to Rule G-14

The purpose of the conditional trading commitment (“CTC”) special indicator is to identify priced trading commitments made before the time of formal award. Since dealers generally cannot execute transactions before the time of formal award, price reporting of

¹ The Association, or “SIFMA,” brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

CTCs, which occurs after execution, may convey stale pricing information to the market when CTC prices are compared to real time or end of day prices reported in connection with new issue transactions that occur after the time of formal award and underwriter's first execution. As indicated in the Notice, it is necessary for dealers to be advised of the time of formal award in order to accurately identify CTC transactions and to determine when CTC transactions can be executed.

1. The MSRB requests comment on whether the draft amendments to Rule G-34 relating to time of formal award would be effective in allowing dealers to identify and report CTC transactions pursuant to the proposed amendment to Rule G-14. The proposed amendments to Rule G-34 would require the underwriter to ensure that certain information is communicated to NIIDS no later than two hours after the time of formal award. The proposed amendments to Rule G-34 would also modify the definition of the time of formal award to account for the time the issuer actually notifies the underwriter of the final award or the execution of the bond purchase agreement. The Association will comment on the substance of the Rule G-34 proposed amendments below, but assuming they are adopted, the Association agrees the communication of the time of formal award to NIIDS will provide dealers with sufficient information to identify CTC transactions and determine the earliest time CTC transactions can be executed.

In addition to reviewing the Notice and the definition of List Offering Price/Takedown ("LOP/T") Transactions in current Rule G-14, we have also examined MSRB Notice 2007-03 (Jan. 19, 2007) and MSRB Notice 2004-40 (Dec. 10, 2004) describing LOP/T transactions, the LOP/T indicator and end of first day reporting for LOP/T transactions. We have reviewed the proposed CTC transaction indicator and the proposed end of first day reporting requirement for CTC transactions to develop examples (set forth below) of the combined results, including when 15 minute reporting would be required for trades executed on the first day of trading of a new issue.

The definition of a LOP/T transaction in current Rule G-14 is as follows:

"List Offering Price/Takedown Transaction" means a primary market sale transaction executed on the first day of trading of a new issue:

(A) by a sole underwriter, syndicate manager, syndicate member or selling group member at the published list offering price for the security ("List Offering Price Transaction"); or

(B) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the

published list offering price for the security (“RTRS Takedown Transaction”).

Notice 2007-03 makes the following statements:

“The MSRB wishes to clarify that inter-dealer transactions are not included in the definition of ‘List Offering Price Transactions.’”

“The MSRB has previously clarified that the published list offering price is defined as the ‘Publicly announced initial offering price at which a new issue of municipal securities is to be offered to the public.’” (citing Notice 2004-40).

When the proposal for CTC transactions is added to the current rules for LOP/T transactions, we understand the following results would apply:

- (1) A sole underwriter takes an order from a customer prior to the time of formal award (“TFA”) at the list offering price. The trade is executed at the time of first execution (“TFE”) after the TFA. The underwriter uses the LOP/T indicator for end of day reporting.
- (2) A syndicate member (“SM”) receives a conditional allocation from the managing underwriter (“MU”) at the list offering price less takedown prior to the TFA. The allocation is executed at the TFE. Both MU and SM use the LOP/T indicator for end of day reporting.
- (3) A non-syndicate, non-selling group dealer (“D”) receives a conditional commitment from MU for securities at the list offering price prior to the TFA. MU and D execute at TFE. MU and D use the CTC indicator for end of day reporting because the LOP/T indicator does not apply to inter-dealer transactions where the buying dealer is not a syndicate or selling group member. The Association recommends that the MSRB consider changing the definition of a LOP/T transaction to include this trade. As a policy matter, this trade seems to have characteristics more like a LOP/T transaction than the ordinary CTC transaction that is not at list price.

(4) SM receives a conditional allocation from MU at the list offering price less takedown prior to the TFA. SM conditionally trades to a customer ("C") prior to the TFA at a price that is not the list offering price. MU and SM execute the allocation at the TFE and use the LOP/T indicator for end of day reporting. The trade from SM to C is executed immediately after TFE, and SM uses the CTC indicator for end of day reporting.

(5) Same facts as (4) except SM trades to C five minutes after the TFA. SM and C should agree to execute this trade after the TFE because the trade will be subject to 15 minute reporting, and SM and C may not have adequate trade eligibility information for two hours after the TFA. There is no special indicator for this trade.

2. The MSRB requests comment on the extent of "staleness" of price reports that are based on trading commitments formed between the time of formal award and the time of first execution. The time of first execution is defined in the Notice as the time the underwriter plans to execute its first transactions in the new issue. The Association believes that the customary practice in the industry is for syndicate members and selling group members not to execute orders until the managing underwriter commences its first executions since managing underwriter first executions include confirmation of allocations. There are exceptions, but the Association does not believe the number of these commitments (made during the time period after formal award and before underwriter first executions) is sufficient to require another special indicator in addition to the special indicator for CTC transactions simply to distinguish these transactions from ordinary transactions that occur after the time of first execution. The difficulty, however, is that a dealer may not know the time of formal award until two hours after it has taken place when communications are made through NIIDS. If a conditional trade is, fortuitously, made five minutes before the time of formal award it has the benefit, by definition, of being a CTC transaction with end of day reporting. An identical trade may be made five minutes after the time of formal award and will be subject to reporting 15 minutes after trade execution. The only protection the dealer has is to be certain there is not trade execution prior to the time it is made aware of the time of formal award in order to be able to determine whether the CTC indicator is to be used and whether end of day reporting is available or 15 minute reporting is required. The Association recognizes that the best option for dealers when making a trade is to agree on a time of execution when complete information is available.

3. The MSRB requests information on the amount of lead time necessary for dealers to implement the proposed Rule G-14 CTC special indicator. The question assumes that the CTC indicator could be implemented by RTRS in January 2008. Separately, the

MSRB requests information on the lead time necessary to implement the proposed Rule G-34 requirements, and the Notice refers to a “start date for NIIDS” scheduled for August 2007. The Association wishes to emphasize that “start date” is highly ambiguous. Dealers should have six months to place into operation necessary systems after NIIDS is sufficiently final for operational personnel to have something to implement. During these six months, we urge the MSRB to work closely with operational personnel at the dealer firms and have flexibility in Rule G-14 and Rule G-34 to make minor adjustments that are found necessary in response to operational issues that do not affect the basic requirements of the proposed rule changes.

4. The Association fully appreciates the explanation in the Notice of the longstanding MSRB interpretation of MSRB rules to the effect that orders for a new issue may not be executed or confirmed until after the time of formal award. The MSRB requests comment on an approach that would require CTCs to be price reported under Rule G-14 when the commitments are made, despite the fact that they could not be executed or confirmed until after the time of formal award. The theory of this approach is that price reporting of CTC transactions before the time of formal award would provide useful real time price information. The Association opposes this approach primarily for the operational issues recognized in the Notice at both the MSRB and the dealers. A primary operational issue for the dealers is that they may not have the data necessary for Rule G-14 price reporting during the period between informal pricing with the issuer and the time of formal award when CTC transactions occur. For example, even with the proposed amendments to Rule G-34, dealers would not be likely to have final CUSIP numbers prior to the time of formal award. In addition, CTC transactions at dealer firms are likely to be negotiated by personnel on a trading desk, and because the trades are conditional, there may be no communication of the conditional trade to the personnel at the firm who process execution, price reporting and confirmations. We call your attention to footnote 20 of the Notice that recognizes the procedural issues and suggests the possible necessity for manual reporting of CTC transactions if required before the time of formal award. In fact, manual inputting would require an additional layer of operational procedures that broker-dealers are not in a position to effectuate. The footnote then suggests a second set of procedures after the time of formal award that would require review of manually reported CTCs to determine if they were executed. The operational hurdles to price report CTC transactions, before the time of formal award, far exceed any benefits.

5. The MSRB requests comment on a second alternative approach to the CTC special indicator, namely a rule of the MSRB that would require underwriters to shorten the period between pricing and the time of formal award. The Association strongly opposes this approach. As the Notice recognizes, a factor that contributes to the practice of forming conditional trading commitments is that the terms, features and offering prices of a new issue often are concluded between the lead underwriter and issuer informally well in advance of the time of formal award. There are important reasons for this time gap that distinguish public finance from corporate finance. In public finance, the time of a meeting of the governing

body necessary to approve the terms of a bond sale may be highly inflexible. There may be requirements for publication of meeting dates well in advance of meetings, and there may be statutory requirements for the terms of sale to be approved by a meeting of the entire governing body. These legal requirements are strikingly different from corporate practices in which the approval process can be timed to respond immediately to beneficial pricing by underwriters. The board of directors of a private corporation may create a committee with authority to make a formal award with its composition intended specifically to be flexible to the timing of beneficial pricing. Public finance ordinarily has no comparable flexibility, and, therefore, a recommendation of the underwriter of favorable pricing may not occur at the same time as a scheduled meeting. To arbitrarily force pricing and a scheduled meeting to occur within, for example, a 24 hour time period, would be highly detrimental to a successful financing at the lowest possible interest rate. As the Notice recognizes, in an advance refunding there are not only the fluctuations of the municipal securities market, but also the constantly changing government securities market for escrow deposit investments, which affects in-the-money decisions of municipal issuers, totally regardless of scheduled meeting dates.

In summary, of the three alternative possibilities referred to in the Notice, the alternative proposed by the MSRB as an amendment to Rule G-14 (a CTC special indicator and end of day reporting) provides the most benefits for transparency at the least operational and external costs.

Proposed Amendments to Rule G-34

The Notice contains proposals for amendments to Rule G-34 on the timing of application for CUSIP numbers and submission of information to NIIDS, including requirements for the content of NIIDS submissions. The information required to be submitted to NIIDS could be processed directly by the underwriter or through intermediaries.

6. *Timing of application for CUSIP numbers.* The draft amendments would require the underwriter in a negotiated sale, and a dealer acting as financial advisor on a competitive sale, to make an initial application for CUSIP number assignment within one business day of the dissemination of any preliminary official statement (“POS”) for the issue. The Association does not agree that the POS should be the factor determining the time of initial application for CUSIP numbers. The maturity schedule in a POS is tentative and very likely to change requiring underwriters to revise the application. While CUSIP numbers can be revised, the revisions result in numbers being out of sequence, and out of sequence numbers raise questions by investors and traders, as well as complicating operations. As the Notice states, transactions cannot be executed, price reported or confirmed before the time of formal award, and it is execution, price reporting and confirmation that requires CUSIP numbers. Therefore, application for CUSIP numbers, a process that requires one hour for receipt in many instances, at the time of the POS is an arbitrarily early time that leads only to

inefficiencies. CTC transactions before the time of formal award do not require CUSIP numbers because there is no trade execution or reporting. The Association believes the time for application for CUSIP numbers should be based on the time CUSIP numbers are required for providing information to NIIDS, which relates to the time of formal award. If NIIDS functions as expected, much of the problem associated with lack of dealer access to CUSIP numbers will be solved.

The Association recommends that, in a negotiated sale, the CUSIP number application be made no later than a time necessary to assure assignment of CUSIP numbers prior to the award of the issue. Other aspects of the proposed rule will encourage early application. For example, if an underwriter wants to shorten the period between time of formal award and time of first execution, the underwriter will be required to apply for CUSIP numbers early to allow a NIIDS submission before the time of formal award. The Association agrees with the proposed language for competitive sales, that, in the case CUSIP numbers have not been pre-assigned, the underwriter is to make application immediately after receiving notice of the award and ensure numbers are assigned prior to the dissemination of the time of first execution. The Association recommends that the rule for dealer financial advisors be limited to the last sentence of proposed Rule G-34(a)(i)(A)(3) to the effect that the advisor ensure that CUSIP number assignment occurs prior to the award of the issue.

7. *Underwriter requirement to provide information to NIIDS within certain deadlines.* The proposed rule would require that the identified information be provided to NIIDS within two hours of the time of formal award. The Notice also states that underwriters may use an intermediary to accomplish this function. The Association agrees that the information should include the time of formal award and the time of first execution, and the Association agrees with the proposed definitions of both the time of formal award and the time of first execution. For a competitive transaction, we would interpret time of formal award not to occur before there is a set quantity and price. Thus, if the underwriter is notified of the award, but there are subsequent adjustments to the maturity schedule, there is no formal award until adjustments are final. The Association would appreciate MSRB commentary when the rule is finalized that it agrees with this interpretation. The “trade eligibility” information is properly treated as the third category of information necessary to complete the efficiencies being promoted by the proposed amendments to Rule G-14 and Rule G-34. The Association appreciates the flexibility intended by the reference to “All other information identified as required for ‘trade eligibility’ in [NIIDS].” However, the “trade eligibility” information for NIIDS is an ongoing project, and it may be necessary to have further clarification of the trade eligibility data required for Rule G-34.

8. *Advance notification of time of first execution.* The Association agrees that the underwriter’s planned time of first trade executions is an appropriate item of information to be communicated to dealers to allow dealers to set up automated trade processing systems in anticipation of the underwriter’s first executions. The Association further agrees that a two-

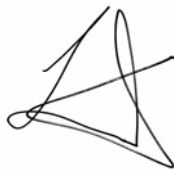
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hour time frame is reasonable, in most circumstances, between the time information is submitted to NIIDS and the time of planned first execution. Nevertheless, the Association recognizes that two hours is an arbitrary time figure, and it may be useful for the MSRB to have the flexibility to make adjustments in response to circumstances. Technology may develop to make a shorter period reasonable, or it may be concluded that two hours in the context of overnight calculations is an unnecessarily long period. We recommend that the MSRB have the flexibility to shorten the two hours by changes made to the RTRS Users Manual. This question serves to underscore the basic point made at the beginning of this comment letter. Until dealers have actual operating experience with NIIDS in its final form, it is difficult to predict which time periods will actually work. If NIIDS functions efficiently, it may be appropriate to shorten the two hour period.

9. *Short-term instruments.* The Notice requests comments on whether certain types of new issues have special characteristics that would present difficulty for underwriters to comply with the draft amendments to Rule G-34. The short-term instruments defined in current Rule G-14 for end of day price reporting (variable rate instruments, auction rate products, and commercial paper) each have operational issues that present problems distinct from long-term fixed-rate securities. For example, intermediaries may not be available to process the fields for trade eligibility with the result that underwriters may themselves be required to populate the fields and have systems in place to enter the data in the two hour period allowed by the proposed rule. The Association recommends that there be a phased-in period for Rule G-34 compliance regarding short-term securities that have end of day reporting under Rule G-14. A phase-in period will allow time for system changes to be made to accommodate operational requirements necessary for short-term securities.

We appreciate the opportunity to comment on this rulemaking. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 646.637.9230 or via email at lnorwood@sifma.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, light-colored signature line.

Leslie M. Norwood
Vice President and
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cc: Mr. Christopher Taylor, Municipal Securities Rulemaking Board
Diane Klinke, Esq., Municipal Securities Rulemaking Board
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Securities Industry and Financial Markets Association

Municipal Executive Committee
Municipal Legal Advisory Committee
Municipal Operations Committee
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