BERNARDI SECURITIES INC

MUNICIPAL BOND SPECIALISTS

May 24, 2019

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

Re: COMMENT LETTER to MSRB Regulatory Notice 2019-08

On behalf of Bernardi Securities, Inc. ("Bernardi" or the "Firm"), we are pleased to submit this letter in response to the MSRB's Regulatory Notice 2019-08 (the "Notice"): Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales.

Bernardi is a broker dealer whose principal business focuses on the municipal bond market. Our Firm is an active participant in competitively bidding and underwriting bond issues nationwide. In calendar year 2018 we underwrote $195 million (66 distinct transactions) as sole manager and served as a co-manager on issues totaling $1.890 billion. When serving in an underwriting capacity, our principal bond distribution network is to institutional and retail investors.

In response to the questions posed in MSRB Notice 2019-08:

1. It is beneficial to the market for both dealer and non-dealer municipal advisors to make application for CUSIP numbers in connection with competitive sales of new issue securities as provided in Rule G-34(a). Eliminating this requirement for all municipal advisors would adversely affect the market.
   We believe the genesis of the Rule is to make the municipal market more efficient and transparent. The assignment of CUSIP numbers for new issue underwritings is an important step in the underwriting process.

   MSRB rule G-34 mandates that the underwriter shall transmit new issue information to NIIDS no later than two business hours after the time of formal award by the issuer. The underwriter also must disseminate this information to Bloomberg and to the MSRB EMMA website.
   Given issuers often make the formal award to an underwriter shortly after the time of sale, if the issuer's MA has not secured CUSIPS in advance then the winning underwriter is required to immediately apply for CUSIP numbers to ensure compliance within the two hour deadline under G-34. Although this process is not complicated it does often distract us from subsequently bidding on other issues on days when the new issue calendar is robust. The regulatory timeline

submission deadline coupled with a non-existent CUSIP base for an issue we bought has resulted in our Firm NOT submitting bids on other competitive bid issues. This is especially true on days where we have bought several issues in a short window of time. This dynamic hurts market liquidity.

Additionally, the required express application to the CUSIP Service Bureau also comes at an additional cost (a 50% higher fee) versus a next day assignment. This places an additional monetary burden on underwriters which they presumably build into their bid. This add on cost is passed onto issuers in terms of higher underwriting spread.

Since the municipal advisor knows weeks in advance the date and details of the issue's sale (while the winning underwriter does not), the advisor has the ability to apply for CUSIPS in advance of the sale. Therefore, the current version of the Rule requiring the advisor to apply for CUSIPS should remain as it improves market efficiency, transparency and lowers issuer costs.

2. The rule should be implemented uniformly regardless of who is serving as the municipal advisor. If a goal is to make the market more efficient and transparent then all market participants should be subject to the Rule.

3. Please see earlier responses.

4. **The CUSIP requirement should add no additional financial costs to municipal advisors**. As it is currently stipulated in most, if not all, notices of sale, the CUSIP Service Bureau charge for the assignment of the CUSIP numbers shall be the responsibility of and shall be paid by the underwriter. The administrative task of applying for CUSIPS is not complicated or unduly burdensome particularly when completed in advance of the sale.

5. Once a dealer municipal advisor or a non-dealer advisor has established policies and procedures the process of applying for CUSIPS in advance of the sale is minimally burdensome.

6. Bernardi is not aware of any meaningful data given the Rule has been in effect for a very short period of time. We believe a retrospective review of this Rule is appropriate only after several years of data is available.

7. In our experience issuers do not apply for CUSIP numbers.

8. The CUSIP Service Bureau will bill the underwriter for fees related to obtaining CUSIP numbers if it is instructed to do so. In most instances, for issues we underwrite, this is the manner in which the CUSIP fee is handled.

9. Obtaining CUSIP numbers is a simple application process once the sale date for an issue has been established. For negotiated transactions we typically apply for CUSIPS in advance of the sale date minimizing any potential for creating tension. The same dynamic should apply for municipal advisors that apply for CUSIPS in competitive bid auctions.

10. N.A.

11. Bernardi is in favor of the Rule as currently written.

12. Please see above response.

Thank you for the opportunity to provide comments on this Rule. Feel free to contact us with any questions you might have

Sincerely,

Lou Lamberti
Sr. Vice President

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Bloomberg

May 28, 2019

Submitted Electronically

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

Re: Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales (MSRB Notice 2019-08)

Dear Mr. Smith:

The Open Symbology Group of Bloomberg L.P. ("Bloomberg") appreciates the opportunity to provide the Municipal Securities Rulemaking Board ("MSRB" or "Board") with comments in response to the above-captioned request for comment ("RFC").

I. About Bloomberg

Bloomberg is a global business and financial information company headquartered in New York. The principal product offered by Bloomberg is the Bloomberg Terminal® service (formerly known as the Bloomberg Professional® service), which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies and other business and financial professionals worldwide. Bloomberg provides real time financial information to more than 325,000 subscribers globally.

In 2009, Bloomberg developed the predecessor to the Financial Instrument Global Identifier ("FIGI"), an open-standard identifier framework that can be used as an alternative to CUSIP for the identification of fixed income securities. In 2014, Bloomberg assigned the rights and interests in FIGI to the Object Management Group ("OMG"), a not-for-profit technology standards consortium that now administers FIGI as an open data standard. FIGI is the only existing standard identification symbology currently in production that, per the requirements set out by the OMG, is fee-free and license-free.

Bloomberg has deep experience with product identification based on our development of the FIGI open symbology as well as decades of experience with managing data pursuant to other symbologies used by our customers. Our comments are based on our significant expertise in transaction reporting, data management, and analytics.

II. Summary

Given global efforts to promote the use of open standard identifiers for financial transactions and products, Bloomberg's overarching recommendation is that the MSRB should consider allowing appropriate open-standard identifiers to compete with CUSIP numbers, in lieu of mandating the exclusive use of the latter. We respectfully assert that modifying MSRB Rule G-34 to permit alternatives to CUSIP will be in the interest of investors and municipal issuers. Bloomberg had previously noted that the expansion of the CUSIP mandate would impose additional costs and burdens on the industry. Certainly, in light of the market's experience with the rule in operation and the additional burden that has been placed on municipal advisers and other market participants, this RFC presents an opportunity to re-examine Rule G-34. Moreover, increasing competition will help the Board fulfill its statutory duty under Securities Exchange Act Section 15B, which requires MSRB rules to be designed "to remove impediments to and perfect the mechanism of a *free and open market* in municipal securities and municipal financial products."[1]

As a preliminary matter, we note that Bloomberg is not alone in advocating for the MSRB to consider allowing greater competition in the financial identifier space. In 2017, the Bond Dealers of America ("BDA") submitted a letter to the Board regarding the MSRB's previous request for comment on Rule G-34. The BDA wrote the following:

> The BDA supports the comments by other commentators that Rule G-34 should not directly require the assignment of a CUSIP number but instead should incorporate a broader concept. Based on input we have received from our members and others in the municipal securities market, other providers of securities identification numbers may be willing to compete with the CUSIP if they were equally accepted under legal regulations. Thus, by specifically requiring CUSIP numbers, the MSRB may have the unintended effect of preventing competition in this area. We encourage the MSRB to incorporate broader language in this and all of its rules (and associated guidance), which would embrace the potential for future securities identification numbers to emerge in the municipal securities market.[2]

Likewise, the Center for Municipal Finance submitted a letter in response to the same request for comment and wrote the following:

[1] 15 U.S.C. 78o-4(b)(2)(C) (emphasis added).
[2] Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (June 29, 2017) at 2, available at http://www.msrb.org/RFC/2017-11/BondDealers.pdf.

> I recognize that the question of whether CUSIPs should be generally required is beyond the scope of this request for comments. However, as you consider whether and how to broaden the requirement to obtain instrument identifiers, MSRB should entertain the possibility of allowing those newly affected by the numbering requirement to use alternatives to CUSIPs. The most viable alternative of which I am aware is OpenFIGI which assigns 12-position symbols at no cost to the issuer and with no material impediments on use. I recommend that the proposed language be altered to require brokers, dealers and advisors to obtain an OpenFIGI symbol if and when they determine that a CUSIP is unnecessary.[3]

Bloomberg shares the belief that competition in this space would be beneficial.

III. The RFC

In connection with the MSRB's ongoing retrospective review of its rules and guidance, the Board posted the RFC to seek input on the market's experience with the operation of the CUSIP requirement provided in MSRB Rule G-34(a)(i)(A)(3) (the "CUSIP Requirement"). Under the CUSIP Requirement, a municipal advisor advising an issuer with respect to a competitive sale of a new issue of municipal securities is required to apply for the assignment of a CUSIP number or numbers with respect to such issue within a specified time frame, subject to exceptions. Although the rule has been in effect for less than a year, the burden that this rule has placed on municipal advisors has made it appropriate to initiate this RFC.

Bloomberg has previously opined on the amendments to Rule G-34 on three separate occasions.[4] Rather than restate all of the points made in those letters, we incorporate them herein by reference and seek to add additional information that we believe will be helpful to the Board. Of the twelve questions posed in the final section of the RFC, we have focused our comments on question #12, as this question relates most closely to our experience with product identification and our prior comments on Rule G-34.

In response to the twelfth question, we submit that yes, there are alternative ways to achieve the intended benefits of the CUSIP Requirement, namely allowing open-standard identifiers[5] to compete with CUSIP numbers.

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[3] Letter from Marc D. Joffe, President, Center for Municipal Finance (June 28, 2017) at 1-2, available at http://www.msrb.org/RFC/2017-11/joffe.PDF.

[4] See Letters from Peter Warms, Senior Manager of Fixed Income, Entity, Regulatory Content and Symbology, Bloomberg L.P., available at http://www.msrb.org/RFC/2017-05/Juzenas.pdf (March 2017), http://www.msrb.org/RFC/2017-11/bloomberg.pdf (June 2017), and https://www.sec.gov/comments/sr-msrb-2017-06/msrb201706-2631530-161220.pdf (October 2017).

[5] Note that the term "open-standard identifiers" refers to financial instrument reference tools that adhere to the core principles of the open source movement, including the principle that a piece of data is open if anyone is free to use, reuse, and redistribute it subject only, at most, to the requirement to attribute and/or share-alike.

When adopting the first iteration of Rule G-34 in 1983, the Board asserted that "the generalized use of the CUSIP numbering system in the clearance and processing activities of the municipal securities industry will contribute to the improved efficiency of such activities."[6] If the intended benefits of the CUSIP Requirement correspond to the initial goals of Rule G-34, then modifying Rule G-34 to permit the use of open-standard alternatives to CUSIP numbers will achieve those intended benefits. In other words, broadening the scope of Rule G-34 to encompass open-standard identifiers will improve efficiency in the clearance and processing activities of the municipal securities industry.

As an initial matter, the MSRB already allows the use of open-standard identifiers for reporting in other contexts. The Legal Entity Identifier ("LEI")[7] is required on Form A-12 for identification of legal entities.[8] The LEI is a global, open, uniform standard for identifying legal entities. While there can be a fee for issuing and maintaining an LEI number, there are no fees or license restrictions for referencing an LEI, republishing an LEI, or using an LEI for derivative works. Since the MSRB has already demonstrated a willingness to work with some open identifiers, we respectfully request that the Board consider allowing open identifiers to compete with CUSIP numbers in the context of Rule G-34.

Similarly, the current state of market data technology and identification standards readily allows for the consideration of alternative approaches to the CUSIP Requirement. For example, FINRA includes data fields for FIGI, as well as the CUSIP and CINS identifiers, in connection with the trade data FINRA disseminates through the Trade Reporting and Compliance Engine.[9]

Allowing open-standard alternatives to CUSIP numbers would also likely increase efficiency in the municipal securities market in the future. License-free, machine-readable open data-based identifiers would increase efficiency because market participants would be able to skip the process of purchasing and licensing CUSIP numbers, saving them time and money. In addition, while it is difficult to functionally map CUSIP numbers and other identifiers (such as Standard Industrial Classification codes) for contractual, cost-based, and technical reasons (i.e., only CGS can add data to CUSIP numbers), FIGI is a metadata-driven standard that allows extensions without restrictions.

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[6] Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).
[7] Bloomberg is a Local Operating Unit (LOU) for the Global LEI System. LOUs are responsible for issuing LEIs.
[8] Municipal Securities Rulemaking Board, "Legal Entity Identifiers" at 2, available at http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf.
[9] See, e.g., Financial Industry Regulatory Authority, "TRACE Corporate Bonds and Agency Debt User Guide Version 4.7" at 88, available at http://www.finra.org/sites/default/files/TRAQS-CA-user-guide-v4.7.pdf.

IV. Closing

Bloomberg believes continued dialogue between regulators and industry is critical to ensuring transparent markets, enabling effective evolution of regulation, and fair rulemaking. We are grateful for the opportunity to provide our comments on the RFC, and would be pleased to discuss any questions that the Board may have with respect to this letter.

Best regards,

Peter Warms
Senior Manager, Entity and Identifier Services, Bloomberg L.P.

BDA Bond Dealers of America

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May 28, 2019

Submitted Electronically

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

RE: 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:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's Notice 2019-08 (the "Notice"): Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales. The BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA does not believe that a retrospective evaluation of the CUSIP Requirement is appropriate.

The BDA does not believe that a retrospective evaluation of the CUSIP Requirement is appropriate. As a practical matter, the CUSIP Requirement with respect to any municipal securities market participant does not impose significant burden on the participant and does not merit re-opening MSRB Rule G-34 so soon after it has been finalized. The entire premise of the Notice and the several questions with respect to which the MSRB is seeking input assumes that the task of applying for CUSIP numbers represents a meaningful cost or burden to either underwriters or municipal advisors. But the task is administrative and does not entail much time or effort and the BDA does not believe that complaints by the municipal advisor community to the contrary have merit. There is nothing new about these complaints. The MSRB has considered them in connection with two separate requests for comment, and the SEC has also considered them. The BDA believes that these are in essence complaints that municipal advisors should not be subject to a regulatory regime, and these kinds of complaints should be moot at this point. The BDA believes that, like with all of the other regulatory changes over the last 10 years, the market should absorb the regulatory change and a retrospective rule review be conducted once there is actual market data to show its impact.

The BDA strongly urges the MSRB to not remove the CUSIP Requirement for municipal advisors for competitive sales that represent private placements.

The Notice does not address at all the impact that eliminating the CUSIP Requirement (as defined in the Notice) may have on the role of municipal advisors in private placements. The primary purpose of the 2017 G-34 Amendments (as defined in the Notice) was to clarify when underwriters and municipal advisors were required to obtain CUSIP numbers in the context of private transactions. The MSRB added Rule G-34(a)(i)(F) to provide that limited set of circumstances – including obtaining a representation from a bank – as to when an underwriter or a municipal advisor could have an exception to the requirement to obtain a CUSIP number. If the MSRB eliminates the CUSIP Requirement for municipal advisors, then that will allow municipal advisors to engage in "competitive sales" that are private in nature and do not have a dealer acting as a placement agent without obtaining a CUSIP number. As the MSRB believed in 2017, if municipal advisors engage in these kinds of transactions, the market needs to have the visibility into the existence of these transactions that a CUSIP number provides, so eliminating the requirement would be inappropriate. Thus, at a minimum, even if the MSRB deletes the CUSIP Requirement for municipal advisors (which the BDA would object to), it should do so only with respect to "competitive sales" as to which there is no broker, dealer or municipal securities dealer acting as an underwriter with respect to the transaction.

* * *

If you or your staff has any questions or need additional information, please do not hesitate contact me directly at 202.204.7901 or mnicholas@bdamerica.org. We look forward to your response.

Sincerely,

Michael Nicholas
Chief Executive Officer
Bond Dealers of America

DIXWORKS LLC
241 Avon Mountain Road
Avon, CT 06001-3942
MSRB K0102

March 4, 2019

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

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

DIXWORKS LLC is a single member firm established in March of 2001 serving small and medium-sized issuers in the State of Connecticut, many which might not otherwise have access to the capital markets on account of their small size, no previous credit, or small or infrequent borrowing needs. DIXWORKS LLC has served this municipal market for 18 years, and its principal, Dennis Dix, Jr., has been engaged in the municipal finance industry since 1971.

I continue to be bewildered by the new imposition on Municipal Advisors to provide CUSIP numbers for competitively bid new issues. This function has been effectively and reliably executed by the broker/dealer ("b/d") community for decades. A vague new concept of "regulatory imbalance" to justify this change escapes my understanding. A b/d may bury its CUSIP cost in the spread, but an MA has no such option. We must either absorb this new cost or invoice our clients in addition to whatever fee we are charging. How do we recover the time-cost of this additional processing? Increase our fees? To what end?

I have profound respect for the MSRB's outreach efforts over the years to try and determine what exactly an MA does. Unlike the b/d community where everyone does essentially the same thing, the regulation of that industry may be fairly uniform for all players. The MA business is extremely diverse as to the services it provides and the type of clients it serves. If I recall correctly, the Dodd-Frank Act included language stating that regulation of small market participants not be unduly burdensome. In my opinion, the shifting of the CUSIP burden from underwriters to MA's serves no useful purpose and does pose an undue burden on small shops such as mine.

To specifically address the MSRB's questions in notice 2019-08:

1) Since the market has performed with admirable efficiency over decades under the prior regime of b/d's obtaining CUSIP numbers for new competitive issues, relieving non-dealer MA's of this burden should have little or no bearing on market efficiency. I believe the new rule is an attempt to fix something that's not broken.

2) I cannot see what impact, if any, would result in adverse market disclosure by returning to the long-accepted practice of b/d's obtaining CUSIPs. The supposed acceleration of CUSIP availability at the time of notice of sale would have little bearing on an investor obtaining disclosure information before a deal is even priced and couponed. A CUSIP is of no value to an investor without all the relevant pricing information that can only come after a deal is sold.

3) see 2) above

4) I cannot speak for the b/d community, but I must suspect it has had policies and procedures in place for years to obtain CUSIPs efficiently and at nominal cost. Non b/d MA's must establish a regime of policies and procedures, deal with the added cost of obtaining the CUSIP, and in some respect, step into the b/d world for which MA's are neither licensed or trained. An MA serves the issuer, not the investor, and I think that distinction is being blurred with this regulation.

5) I cannot speak to this as I have no knowledge of the b/d side of the issue.

6) Aside from the time cost of establishing policies and procedures to comply, the time required to obtain the CUSIP, and the time needed to follow up, I not aware of any monetary impact.

7) In my market (as earlier defined), the issuer does not apply for CUSIPs.

8) I have yet to be forced to obtain a CUSIP, but it is my understanding that the CUSIP Bureau bills the underwriting b/d for the CUSIP.

9) My feeling, as expressed earlier, is that the MA is being forced to perform a duty that is inherently an underwriter function, and that the MA is being compelled to act on behalf of an underwriter or the investor when the MA' sole and fiduciary obligation is to its client, the issuer.

10) See 9) above.

11) I urge in the strongest terms that the rule be revoked or revised to relieve MA's of the CUSIP obligation. If the intent of the current rule is to accelerate the obtaining of CUSIPs, I simply don't see the need or market benefit under the current regulation.

12) As earlier expressed, the current regulation seems to attempt to fix something that's not broken. The intended benefit of quicker CUSIP availability just does not seem to warrant adding yet another burden to the MA industry that is trying its best to comply with the host of new regulations with which it now must comply.

Respectfully,

Dennis Dix, Jr.

May 7, 2019

Mr. Roland Smith
Corporate Secretary
Municipal Securities Rulemaking Board
Washington, D.C.

Dear Mr. Smith,

This letter is proving comments on the "CUSIP Rule" as it affect independent municipal advisors.

The Rule as currently drafted requires that the municipal advisor obtain the CUSIP numbers for bonds that will be issued competitively before the award on the bonds. There are several problems with the Rule and the Rule, I believe, does not accomplish what the Board sought to do, which is to improve the disclosure on bank direct purchases. Rather than accomplish this goal, the Rule places additional burdens on the independent municipal advisors and makes the market less efficient than without the Rule.

Improved Disclosure

The MSRB has championed full and complete disclosure of bank loans and bank direct placements of municipal securities so that all bondholders have the same information regarding the impact of these bank agreements on other parity bondholders. This has been a laudable effort. However, the effect of the SEC's changes to 15c2.12 related to reportable events has corrected the problem moving forward in a much broader initiative than the CUSIP Rule could do. As a result, the CUSIP Rule has been made superfluous by the subsequent action by the SEC.

Municipal Advisor Burden

The Rule requires that the independent municipal advisor to seek and obtain CUSIP numbers before the award on a competitive sale. There are several problems with this approach:

1. Even in a competitive sale, the par amount of the bonds may change as a result of the bid, so that the CUSIP bureau will have to make adjustments, requiring multiple communications with the CUSIP Bureau.
2. Even if an independent advisor obtained the CUSIP number, there is still more to be done to make the bonds DTC eligible. Independent municipal advisors are not DTC eligible, and therefore an underwriter would have to take the CUSIPS to DTC to make them eligible for a FAST closing through DTC.
3. The limitation with respect to DTC does not apply to B/D-MA firms, since they are already a member of DTC.
4. Even is DTC changed its policies to allow non-broker dealers to become DTC participants, the cost would be significant, at over $8,000 per year. However, it is not currently possible for an independent municipal advisor to become a DTC participant, so the threshold problem is more acute than the cost.

All of the above problems are avoided if the bond community went back to its prior practice of allowing the winning bidder in a competitive sale to apply for CUSIP numbers after the award that would then be made DTC eligible. This was a very efficient practice that was disrupted by the Rule, for no apparent benefit to issuers or to improve market efficiency.

If the MSRB was trying to cure an inequity between dealer MAs and non-dealer MAs, then I would suggest that the MSRB work with FINRA to harmonize its rules and allow the standard practice of having the winning bidder obtain the CUSIP numbers on a competitive transaction.

The rule should be modified with respect to this requirement by eliminating the requirement to have the municipal advisor obtain CUSIP numbers before the award on a competitive sale. In my view, the current rule as drafted is unworkable and will only encourage non-dealer municipal advisors to seek ways around a bad rule.

Thank you for the opportunity to provide comment on the Rule.

Yours truly,

Robert A. Lamb
President

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

May 28, 2019

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

RE: MSRB Notice 2019-08

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to comment on Rule G-34 as part of the MSRB's retrospective rule review. NAMA represents independent municipal advisory firms, and individual municipal advisors ("MA") from around the country.

In 2017 NAMA provided comments to the MSRB when it proposed having all municipal advisors be responsible for obtaining CUSIP numbers in competitive sales when they advise their clients in these transactions. Many of the items we raised at the time will be reiterated in this letter.

It is important to note that NAMA's key concern with the changes made to Rule G-34 in 2017 do not specifically relate to the act of obtaining CUSIP numbers. Rather, our concerns are related primarily to the policy matters surrounding the changes to the Rule and the associated compliance costs. Additionally, as was the case in 2017, we are not aware of any market problems that warranted a change in the way in which CUSIPs are obtained. If any changes might be introduced that would make the CUSIP number process more efficient, it was not the introduction of a new party into the process, but instead a focus on streamlining the CUSIP number assignment process into the dealer-driven dataflow that the MSRB has been working toward in its efforts to maximize straight-through processing in the municipal market. Such an approach would more closely align with what should be two of the key factors supporting the reasoning of the MSRB's rule review – what problems need to be addressed, and what efficiencies can be introduced into the market data flow, to better serve the market and protect issuers and investors.

Below please find our input on the questions asked in the Notice.

Questions 1- 3: Should Rule G-34 Requirements be Eliminated and/or applied differently to Broker-Dealer MA firms and Independent MA Firms

NAMA believes that following the regulation of municipal advisors in the Dodd-Frank Act and the subsequent SEC Rules 15Ba1-1 through 1-8 (the "SEC MA Rule"), Rule G-34 should not apply to municipal advisors, whether a municipal advisor firm is affiliated with a broker-dealer or is an independent firm. This was a consistent message in NAMA's previous comments on Rule G-34 and we believe that, although MAs have largely adapted their processes to comply with the Rule amendment (as we discuss below), the MSRB should take this opportunity to make a course correction on how CUSIP numbers are obtained. Thus, we would welcome the MSRB's reversal of its decision made in 2017.

Our concern with the approach taken in 2017 is that the MSRB chose to look at whether Rule G-34 should be applied to all municipal advisors, not just broker-dealer MAs, without taking into account the new MA regulatory structure as stated in the Dodd-Frank Act and the subsequent SEC MA Rule. We believe that this new regulatory structure lends itself to the conclusion that the responsibility of obtaining CUSIP numbers in competitive sales should not apply to any municipal advisors, and support eliminating the requirement for all municipal advisors.

The significant policy reason is that the MA is on a transaction to serve the issuer or obligated person. Obtaining CUSIP numbers is a diversion from the MA's duties. Instead, CUSIP numbers are at the core of broker-dealer activities, used to facilitate the clearing and selling of the securities, which are responsibilities outside the MA regulatory framework. The 2017 Rule Filing stated that "The MSRB continues to believe that obtaining CUSIP numbers is generally a necessary aspect of, for example, tracking the trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping of municipal securities…" These responsibilities are not within the purview of MA activities and therefore should be the responsibility of underwriters, as a consistent matter across all transactions, as CUSIP numbers facilitate the trading of bonds.

While a client may request that their MA secure CUSIP numbers,[1] the MA should not have a more general regulatory obligation to obtain CUSIPs unless such obligation arises within the scope of services determined by the client. In connection with adopting Rule G-42, the MSRB previously recognized that its authority to regulate municipal advisors should not be used to establish what activities are within the scope of duties of an MA's engagement with its client, but instead that the MSRB's rulemaking should be governed by "the overarching principle that the client should be empowered to determine the scope of services and control the engagement with the municipal advisor."[2]

Additionally, as there is not an MA on every transaction, yet there is always an underwriter on every transaction, the market would be best served by having the party who is always at the table secure CUSIP numbers. Our members have also come across the situation where a CUSIP has been pre-assigned (not due to any efforts by the MA) by CUSIP Global Services (CGS), even when the MA applies prior to the Notice of Sale being released. It is unclear as to the reasons or circumstances for such pre-assignment by CGS of CUSIP numbers, and how the MA is to indicate (both for their records and to examiners) that they ordered the CUSIPs when in fact that has already been done. This opaque process makes it challenging for many MA firms to understand and comply with the Rule.

We also note that there did not appear to be a market problem that the changes in 2017 fixed. The market was operating well and we are not aware of any transactions that could not be completed or where there was a problem with CUSIPs being assigned to bond issuances. As such, eliminating the requirement on municipal advisors to obtain CUSIPs in competitive sales would have not adversely affected the market or investors. If anything, it would have made consistent across all scenarios the obligation of the underwriter to ensure that CUSIPs were assigned on a timely basis, thereby reducing opportunities for unintended failures as a result of personnel not understanding whether each individual offering triggered the obligation of one party or another.[3]

To the extent the MSRB believes that there are efficiencies to be achieved in the CUSIP assignment process, the MSRB may wish to explore expanding the straight-through processing of municipal market data that currently

[1] In fact, the provision currently at Rule G-34(a)(i)(C) was included in the original version of the rule in recognition that the issuer might elect to have its financial advisor or other agents obtain CUSIP numbers. *See* "Rule G-34: Proposed Rule on CUSIP Numbers Filed," MSRB Reports, Vol. 2, No. 6 (August 1982) at p. 8.

[2] "Request for Comment on Revised Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors," MSRB Notice 2014 (July 23, 2014) at p. 7.

[3] For example, Rule G-34 does not have a definition of "competitive sale." It is unclear if municipal advisors can rely on the concept of a "competitive bid basis" in Rule G-37 for guidance, or should instead look to the usage of that term under other MSRB rules (such as Rule G-11, the Rule G-17 interpretation regarding underwriter duties to issuers, or elsewhere). In any event, the notion of a competitive sale does not seem to always have the same meaning in every MSRB rule.

exists and which the MSRB has recently proposed to enhance[4] by also including the CUSIP application and assignment process in that work flow for dealers. Thus, an underwriter could submit at a single venue, with a one-time entry of each relevant data element, all information required to be provided to the Depository Trust Company (DTC) for its New Issue Information Dissemination Service (NIIDS), to the MSRB for its Electronic Municipal Market Access (EMMA) website, and to CGS for its CUSIP assignment system, and CGS could automatically distribute to the other entities the newly assigned CUSIP numbers without additional intermediary steps. Currently, regardless of who applies for a CUSIP number, much of the information supplied to CGS to obtain CUSIPs must be rekeyed for purposes of NIIDS and EMMA. As the MSRB's designee under Rule G-34, it would be appropriate for CGS to team with the MSRB and DTC to achieve this more efficient flow of data that would provide greater enhancements to the marketplace than the current CUSIP application process.

Question 4 and 5: Costs Associated with Rule G-34

While the act of obtaining CUSIP numbers is not very burdensome, for independent MA firms who had to ramp up when the Rule became effective in 2018 and for all MAs on an ongoing basis, the most costly aspects of the Rule are related to compliance matters and related liability.

We would highlight especially the costs of complying with the exception to the Rule related to the intent of the investor. The MSRB stated in its Notice 2017-11 that the regulated entity should have reasonably designed policies and procedures in place to make a determination as to whether the transaction involves a municipal security that results in the application of MSRB rules. In order to make this determination on a case by case basis, MAs often have to seek the advice of outside counsel to determine if the exception is met. The unclear language of the Rule, and the premise that the MA should talk with the investor about its intention, are riddled with compliance hurdles. The Rule forces the MA to determine (again likely with the assistance of outside counsel as the vast majority of MA firms do not have in house counsel) whether the transaction is a loan or a security – something that the SEC, MSRB and a plethora of other municipal bond professionals cannot agree on. While at the time of the updated Rule's implementation the MSRB noted that in many occasions language could be added (either by certification or otherwise) stating that the investor does have a current intent to hold the securities so as not to necessitate a direct inquiry by an MA with the investor, our members have indicated that it is frequently NOT the case that this language is used and that in many cases the MA must directly interact with the investor to determine their intent. Additionally, having the MA interact with the investor is a task that the MA community has been repeatedly warned, by regulators and attorneys, may cross the line into broker-dealer activity, which is something that MAs are to avoid. Without further guidance that provides either a relatively bright line (which we understand is not likely) or some other form of relief in cases where the distinction is difficult to make, and without some comfort that regulatory examination staff will not routinely second-guess the firms on their determinations, it is unclear whether this exception can be broadly effective, and for those MAs that seek to use the exception it may prove to be prohibitively costly.

Furthermore, there is an inherent timing inconsistency in the exception, in that Rule G-34(a)(i)(A)(3) requires application for CUSIP numbers no later than one business day after the Notice of Sale, which will almost always be before the identity of the investors are known, and therefore the MA could not reasonably obtain the investors' written representations under Rule G-34(a)(i)(F). While it is conceivable that the competitive sale could be structured to make it possible to use the exception, this raises concerns discussed below.

Questions 6: Specific Costs

Our members indicate that the process of updating their policies and procedures related to the Rule was the most time consuming element and that, on an ongoing basis, the compliance costs related to firm practices will be about 6-10 hours per year.

[4] See "Notice of Filing of a Proposed Rule Change to Amend Rules G-11 and G-32 and Form G-32 Regarding a Collection of Data Elements Provided in Electronic Format to the EMMA Dataport System in Connection with Primary Offerings," Exchange Act Release No. 85551; File No. SR-MSRB-2019-07 (April 8, 2019).

However, firms have also noted that there is a cost per transaction to review whether CUSIP numbers are needed, and the recordkeeping requirements needed to demonstrate that the CUSIPs were applied for prior to the Notice of Sale. Some firms have also stated that there is additional time spent on the "back and forth" with CGS when the structure of the bonds change after the application is sent, and thus the CUSIP numbers need to be adjusted.

Question 7: When the MA Does not Secure CUSIPs in Competitive Sales

NAMA suggests that the MSRB obtain information from CGS about the types of professionals that secure CUSIP numbers.

Question 8: MAs and CUSIP Number Fee

A majority of our members have indicated that they utilize the function that is part of the CGS's system allowing the winning underwriter to be billed for the CUSIP numbers.

CGS was very helpful in providing information and instructions to municipal advisors about how to signal within the CUSIP application to invoice the ultimate underwriter in the transaction, which has helped alleviate the need for the MA to have to pay for the CUSIPs.

Question 9: Obtaining CUSIPs and the role of MAs

As stated previously, the role of the MA is to serve and have a fiduciary duty to their clients. Unless asked by the client to secure CUSIPs, the requirement to obtain information that is used for the purpose of trading and sales with investors should not be unilaterally applied to MAs through regulations as it is unrelated to the duties that the MA owes to the municipal entity as its fiduciary.

Furthermore, the requirement for obtaining CUSIP numbers prior to the award and the conditions for the exception for direct sales both create a potential for regulatory requirements influencing the structure of a new issue and the advice provided by the MA with regard to such structure. The requirement to apply for CUSIPs before the bids have been entered and the new issue has been awarded necessitates that the MA and its issuer client propose a specific structure in its Notice of Sale to allow CUSIP numbers to be applied for. While in many cases an issuer and its MA may already have a particular structure in mind, in other cases they may be happy to receive whatever alternative structures that bidders may want to propose. The provision requiring pre-award CUSIP number application creates a drag on the issuer's freedom to structure its issue and can require a "strawman" structure to be proposed just to fulfill the CUSIP number application requirement, thereby potentially (even if unintentionally) influencing what bidders may think to propose.

In addition, we discussed above the inherent timing inconsistency in the exception under Rule G-34(a)(i)(F). One way an MA could take advantage of the exception would be to prescreen all bidders to fit within the parameters of the exception (that is, as to nature of investors and the provision of the written representation). Given how narrowly drawn the exception is, it could serve as an inducement for a competitive sale to be limited to a particular qualifying group of bidders primarily to meet the exception rather than because it is necessarily in the best interest of the municipal entity. Of course, an MA would be obligated to meet its fiduciary duty and so could not ignore such duty simply to qualify for the exception – nonetheless, the nature of the exception does create a tension with the MA's fiduciary obligation.

Question 10: Specific Problems Related to Independent MAs

We have noted that the most striking policy issue raised within Rule G-34 is that the role of MAs is to serve issuer, while the need for CUSIPs to facilitate the sale and clearing of securities are to help underwriters sell to investors. These are separate and opposite facing tasks. The marketplace would be best served if tasks necessary for a particular set of market activities are placed on those participants undertaking such activities.

We have also commented on the costs of compliance, especially for smaller MA firms which the MSRB has a responsibility to acknowledge and avoid overly burdening (Section 15B(b)(2)(L)(iv) of the *Exchange Act*). A vast majority of independent municipal advisory firms fall within the definition of a small advisory firm as articulated in the SEC MA Rule (https://www.sec.gov/rules/final/2013/34-70462.pdf, page 575), using the Small Business Administration's definition of $7 million in annual revenues. Many firms have had to incur costs to ensure appropriate policies and procedures are in place; but especially with this rule and the exception language therein, they have also had to consult counsel on an ongoing basis to ensure compliance. This has been a disproportionate burden on smaller MA firms, and should be addressed during the MSRB's review of the rulemaking.

Also, as there is not a requirement to have an MA on every transaction, in many ways the Rule as currently in place does not serve the market well, and the market would be better served if the party who is required to be on every transaction, and who is most closely aligned with the market participants who will use CUSIP numbers in their sales, trading and clearance activities, has the responsibility of obtaining CUSIPs.

Question 11: Other Aspects

We have stated that this was a change that did not fix any problem in the marketplace. Based on anecdotal evidence of practices prior to 2018 when only dealer MAs were required to obtain CUSIP numbers, it is our understanding that the underwriters in some cases obtained the CUSIPs themselves and that the broker-dealer MA did not need to do so. There is no reason to think that the type of MA obtaining CUSIP numbers would change the behavior of underwriters with regard to their obtaining CUSIPs. This further points out that there really is no difference in the transaction if the underwriter rather than MA obtains the CUSIP, and in fact reflects preferred practice in the marketplace.

There is also the situation in competitive sales when there is no MA and, therefore, the responsibility rests on the underwriter. This contributes to the unnecessary confusion arising from having to scrutinize each transaction to understand who is on the hook to obtain CUSIPs that would not exist if the underwriter was assigned this task across the board.

We would also note that in an abundance of caution to comply with the Rule, MAs may apply for CUSIPs, but then when changes occur as the final transaction is set (either with an investor where the Rule would not apply or changes to the structure of the transaction), the CUSIPs have to be cancelled or adjusted. This is a problem that the MSRB should discuss with CGS. It is our understanding that CGS prefers to avoid the situation where CUSIPs are cancelled as it causes problems within their own systems (e.g., CUSIP numbers once assigned really can never be erased). If the underwriter applies for CUSIPs, these problems could be avoided.

Conclusion

NAMA requests that the MSRB take this opportunity to review the rulemaking to better focus the CUSIP obligation on a forward-looking, more efficient process and to eliminate the Rule's requirement for (any) municipal advisors to obtain CUSIPs in competitive sales.

We would welcome the opportunity to talk with staff more about NAMA's position on this matter.

Sincerely,

Susan Gaffney

Susan Gaffney
Executive Director

sifma
Invested in America

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

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[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 up-front 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.

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[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.

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

Sincerely yours,

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

Municipal Solutions, Inc.
Municipal Financial Advisors

May 28, 2019

Mr. Robert Smith
MSRB Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. – Suite 1000
Washington, DC 20005

Re: MSRB Notice 2019-08/Rule G-34

Dear Mr. Smith,

I am the President of Municipal Solutions, Inc., an independent municipal advisory firm, located in upstate New York. I welcome the opportunity to comment on the MSRB's request for comments related to Rule G-34 requirements that Municipal Advisors (MAs) obtain CUSIP Numbers when providing advisory services to clients in competitive sales.

After operating under the MSRB CUSIP mandate since 2018 our firm has had practical experience with the CUSIP requirements and we would like to take this opportunity to offer first-hand knowledge and instances where we see that MA CUSIP requirements have resulted in more staff time and efforts for no meaningful benefit to the municipal bond market. Indeed, we have first hand knowledge of issues where orphan CUSIP numbers remain active for bank loans where CUSIP numbers were requested prior to a bond or BAN sale as required by the rule but were never revoked even though the CUSIPs were requested to be canceled.

In my view the MA CUSIP requirement was a solution to a problem that never existed. Prior to the 2018 effective date of revised Rule G-34 requiring all MAs obtain CUSIP numbers in competitive sales, in my over 25 years in the independent municipal advisory profession, I am not aware if any instances where municipal securities could not be sold because CUSIP numbers had not been assigned.

I am not aware if any instance where returning to the pre-2018 MSRB regulations would have negative implications to the municipal market participants or investors.

Since the rule I am aware of duplicate CUSIP numbers being issued for the same transaction, given the fact that even when an MA has obtained CUSIPs as required by the rule, the winning bidder for the transaction requests their own CUSIP numbers using the Express system. In addition, we have had five bond sales so far between June 2018 and today that we have requested CUSIPs that have needed to be canceled after the sale. In all cases the CUSIPs are still showing up on EMMA, even though we had them canceled. This is sure to cause a lot of confusion and lost time trying to figure these phantom CUSIPs out in the future.

Also, for any of our BAN sales, we are submitting the requests for CUSIPs at the time we disseminate the Notices of Sale. However, the CUSIP bureau will not assign a number for note issues until after the BAN has been sold. By that time the underwrites are resubmitting a request for a number to be assigned on their own, independent of our request (typically using CUSIPs Express service).

In my opinion the MA mandate has not contributed any significant improvements to the pre-existing environment that worked well for so many years and has created duplicate work for the MAs and muddied the waters for all market participants.

Though the CUSIP bureau would like us to complete an on-line application, we have been adding them to our pre-sale distribution list, which contains the same and more information as the on-line application to save time and costs to our clients. The CUSIP bureau is sending us follow-up emails to provide pricing information to them after the sale (when previously the purchaser would usually provide this information directly). So, we end up sending an additional email to the CUSIP bureau after the sale with the purchaser's information and the purchaser's contact information for billing, which I have a hunch is probably also duplication from information that the purchaser would be providing to CUSIP when they are submitting their Express assignment online.

Also, because the CUSIP bureau does not keep track of the actual sale dates we receive multiple requests for pricing information that we must open-up, read and respond back many times over for the same transaction. Not that time-consuming but frustrating for staff.

All told, I feel all MAs, whether independent or dealer MAs, should be exempted from the burdensome, confusing, unproductive and time-consuming requirement that adds costs to a transaction with no benefit to the purchaser or investor community and not to mention the existence of phantom CUSIPs issued for bank purchases that are going to hang around and cause confusion for years to come.

The administrative and economic burdens imposed on MAs for no benefit to our clients nor investors, and the possible continuing secondary market concerns must be taken into consideration in your regulation review process. This is a classic, if it's not broke don't fix it situation.

As I stated above, there was no problem obtaining CUSIP numbers before revised Rule G-34 became effective.

Thank you for the opportunity to respond to this very worthwhile effort to review a regulation that offers no benefit to issuers, the market or municipal advisors.

Sincerely,

Jeffrey R. Smith, President
Municipal Solutions, Inc.