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Invested in America

June 30, 2017

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

Re: MSRB Notice 2017-11: Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] greatly appreciates this opportunity to respond to Notice 2017-11 [2] (the "Second Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is seeking comment on revised draft amendments to and clarifications of MSRB Rule G-34 ("Rule G-34"), relating to obtaining CUSIP numbers for municipal securities. SIFMA and its members applaud the MSRB for thoughtfully considering the comments it received with respect to its first request of comment on this issue, Notice 2017-05 (March 1, 2017) (the "First Notice"), and have some additional comments on the Second Notice as described below.

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] MSRB Notice 2017-11 (June 11, 2017).

I. Agree Clarification or Rule Change Should Be Prospective Only

As a fairness matter, we appreciate that the MSRB has stated that the draft changes to Rule G-34 shall only be applied prospectively. It is important to have clarity on this point to avoid unintended consequences during a subsequent FINRA or SEC examination. The MSRB has recognized and understands the application of Rule G-34(a) to private placements, including direct purchase transactions has been uneven.[3] SIFMA and its members believed that Rule G-34, under a fair reading of the current language, exempts transactions that are not distributed.[4] As such, we agree that prospective application is the appropriate and correct solution in connection with any changes to Rule G-34, and any changes to Rule G-34 should not affect outstanding transactions completed under the current language of Rule G-34.

II. Clarification of Eligible Purchasers for the New Exemption for Certain Private Placements of Municipal Securities Would Be Beneficial

SIFMA and its members welcome the MSRB's creation of an exemption from the requirements of Rule G-34 for dealers and municipal advisors in private placements, including direct purchases, of municipal securities to a bank, its affiliated banks or a consortium of banks. This exception largely addresses the discrete group of transactions for which SIFMA feels there is a clear rationale for an exemption and eliminates the need to determine for Rule G-34 purposes whether the transaction involves a security.

However, SIFMA believes that the exception should be clarified to clearly accommodate similar non-bank purchasers. The language below would address the concerns that SIFMA members have about the current structure of the exception, and would clearly bring into the scope of the exception a more accurate description of the types of entities currently involved in the direct purchase market:

> (F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue[5] of municipal securities, or municipal

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3 *See* the First Notice, at FN 12.

4 The language of current Rule G-34(a)(i) refers to a broker, dealer, or municipal securities dealer ("dealers") and others who "acquire" a new issue of municipal securities as principal or agent, "for the purpose of a distribution." In contrast, in a private placement, the instrument is typically acquired directly by the bank or other purchaser.

5 We suggest the MSRB consider changing the term "new issue" to "primary offering", which would include certain remarketings.

advisor advising the issuer with respect to a competitive sale of a new issue thereof may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that:

(1) the purchaser of the municipal securities is:
   a. a bank;
   b. any entity directly or indirectly controlled by the bank or under common control with the bank other than a broker-dealer registered under the Securities Exchange Act of 1934; or
   c. a consortium of the institutions described in a. or b. hereof participating in a purchase of a new issue of municipal securities (collectively "purchasers"); and

(2) either:

   a. the municipal securities are being purchased with no present intent to sell or distribute, or
   b. resales thereof will be limited to (x) institutions described in (1) above or (y) one or more persons that is (i) a "qualified institutional buyer" as defined under SEC Rule 144A, or (ii) an "accredited investor" as defined in Rule 501, Regulation D of the '33 Act.

Our proposed changes to G-34(a)(i)(F)(1) above would (x) clarify that non-bank subsidiaries or affiliates of commercial banks may purchase under the exception, thus addressing our concerns about unnecessarily narrow language in the MSRB's current proposal, and (y) provide more certainty to determinations under the MSRB's current proposal.

III. Clarify Documentation Sufficient to Satisfy Exemption

In the event the MSRB does not make the amendments suggested above, SIFMA and its members would request clarity as to the documentation underwriters and municipal advisors may be required to produce during an examination by FINRA or the SEC. Investors are not reliably willing to sign a letter setting forth their present intention regarding their purchase. SIFMA and its members would appreciate comfort that a reasonableness standard will be applied, and that sufficient documentation would include any reasonable indicia of an investor's present intent, including, without limitation, an investor letter or other certification,

a term sheet stating the conditions for the transactions, deemed representations that apply to investors in the transaction, whether contained in an agreement (such as, "by buying this transaction, the purchaser represents the following . . ") or otherwise, and representations in a loan or purchase agreement related to the transaction. Such written guidance from the MSRB would be extraordinarily helpful to avoid any misunderstandings or misinterpretation of the requirements of the exception to Rule G-34 during future examinations.

IV. Clarify Private Placements of Loans Are Exempt from CUSIP Requirement

SIFMA and its members reiterate our request made in our response to the First Notice[6] that the MSRB clarify that CUSIP numbers would not be required in connection with the private placement of an issuance that are loans to a municipal entity – whether or not the exemption described above was satisfied.

Specifically, SIFMA and, more particularly, many of its members view obtaining a CUSIP number as inapposite to the appropriate approach when making a loan.[7] Some members believe a CUSIP number is a proxy for seeking flexibility in whether or not to re-sell or at least to facilitate sale of the instrument. Thus, although the assigning of a CUSIP number to an instrument is not determinative as to whether or not an instrument is a loan or a security, the lack of a CUSIP number is seen by many market participants as bolstering loan treatment because distribution would only be possible through physical transfer of the relevant instrument. An acknowledgement by the SEC in the adopting release, noting that having a CUSIP number is not determinative as to whether or not an obligation is a security would be appreciated.

V. Unnecessary Language Should Be Removed

Even if the MSRB does not incorporate our suggested changes to Rule G-34(a)(i)(F) as described above in Section II, the following language should nonetheless be removed: "and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary." We feel this language is unnecessary,

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6 *See* letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated March 31, 2017 (regarding the First Notice).

7 Indeed, as described below, banks and other purchasers directly purchasing an obligation from an issuer often specifically request that dealers not obtain a CUSIP number for the transaction, or cancel CUSIP numbers that are obtained for the transaction.

conclusory, and potentially confusing. Similar language in Rule G-34 (a)(ii)(A)(3), "and, therefore applying for depository eligibility is unnecessary", should be removed as well.

VI. Costs and Benefits of the Draft Amendments

a. Obtaining CUSIP Numbers in a Competitive Sale

Rule G-34(a) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities, but non-dealer municipal advisors are not subject to the requirement. SIFMA and its members applaud the MSRB for eliminating this distinction in the draft amendments to G-34(a)(i)(A). The First Notice set forth some of the efficiencies that served as the rationale for the 1986 amendments requiring financial advisors in a competitive sale of a new issue of municipal securities to obtain CUSIPS for the issue, primarily related to time deadlines.

Cost and efficiency are significant factors that must be considered. Currently, if there is a dealer municipal advisor/financial advisor, then one set of CUSIP numbers are applied for, and the bidding dealers do not need to apply for their own CUSIP numbers for the issue. However, if there is a non-dealer municipal advisor assisting the issuer who is currently not required to obtain CUSIP numbers, then each bidding dealer must obtain a set of CUSIP numbers for the transaction, in case they are the winning bidder.[8] Under the draft amendments, the municipal advisor for a competitive transaction, regardless of whether they are a dealer or non-dealer municipal advisor, would apply for CUSIP numbers for the issue; in this case, one set of CUSIP numbers would have been obtained for the issue. It is clear that there is currently a regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors because non-dealer municipal advisors are not currently subject to Rule G-34(a). These amendments would remedy that imbalance. To drive this efficiency point home, if ALL municipal advisors (non-dealer and dealer alike) were required to apply for CUSIP numbers for competitive transactions, then the total CUSIP costs would be $173 for the

[8] A dealer who wins a competitive bid must send all of the required information to NIIDS within 2 hours of the award of the municipal securities. There is insufficient time in between the announcement of the winning bidder and the requirement to input new issue information into the DTCC's NIIDS platform to obtain CUSIP numbers for the issue. Therefore, bidding dealers need to apply for and obtain a CUSIP number or numbers prior to bidding on the transaction. There may be one bidder in a competitive transaction, or more than a dozen. The current process only increases fees for dealers with no benefit to the municipal securities market. For information on CUSIP fees, see: https://www.cusip.com/pdf/2017FeesforCUSIPAssignment.pdf.

first CUSIP and $22 for every CUSIP thereafter. However, if the draft amendments are not adopted, then when a competitive transaction has a non-dealer municipal advisor, then EACH bidding dealer would need to apply for CUSIPS for the same transaction, again, at $173 for the first CUSIP and $22 for every CUSIP thereafter. We feel strongly that this is an opportunity to level the regulatory playing field and require all municipal advisors, dealer and non-dealer alike, to obtain CUSIP numbers for competitive transactions. The costs and benefits of such a rule change all heavily weigh in favor its adoption.

We understand there is a concern about municipal advisors not knowing whether or not a maturity will need a CUSIP number, depending on whether it will be a direct placement subject to the exemption. However, the timing of CUSIP number application, by dealers and municipal advisors alike in a competitive sale, is such that CUSIPs need to be applied for before the issue is sold. The efficiency argument in favor of the amendments continues to hold in this instance. Even assuming a CUSIP number needs to be cancelled, at the very least it will have only been applied for once by the municipal advisor, not by every bidder.

Also, we understand there is a concern by some that the application for CUSIP numbers by a non-dealer municipal advisor on behalf of its issuer client might be perceived to be acting as an unlicensed broker dealer. It would be helpful if the SEC could confirm in the adopting release that the submission of an application for CUSIP numbers, in this context, is not broker dealer activity.

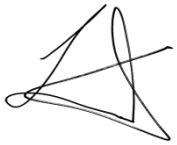
b. Regulatory Implementation Costs

Outside of the competitive sale context, the proposed amendments would impose some costs upon the dealer and municipal advisor in terms of the development of additional policies and procedures, training, and additional legal costs. SIFMA estimates these implementation costs to be at least 10 hours per firm, with some member estimates extending to multiples of that number, not including ongoing compliance costs. Implementation of the proposed amendments would involve the legal, compliance and public finance personnel at the regulated dealer firms, and similar staff at non-dealer municipal advisors. That being said, if the suggested amendments above are adopted to clarify Rule G-34, then SIFMA believes that these costs are largely outweighed by the benefits of the proposed amendments.

VII. Conclusion

Again, SIFMA and its members applaud the MSRB for the changes in the Second Notice of draft amendments to clarify Rule G-34, but wanted to make additional comments and requests for clarification as described above. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
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cc: ***Municipal Securities Rulemaking Board***
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