

December 8, 2017

Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Response to Comments on SR-MSRB-2017-06; Amendment No. 1 to Proposed Rule Change to Amend MSRB Rule G-34, on CUSIP Numbers, New Issue, and Market Information Requirements**

Dear Secretary:

On August 30, 2017, the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC or “Commission”) a proposed rule change to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements (the “proposed rule change”). The SEC published the proposed rule change for comment in the Federal Register on September 18, 2017<sup>1</sup> and received 11 comment letters.<sup>2</sup> On November 7, 2017, in light of comments received by the Commission, the MSRB filed an amendment to the proposed rule change (“Amendment No. 1”) addressing several issues of concern to commenters. The SEC published Amendment No. 1 for comment in the Federal Register on November 17, 2017<sup>3</sup> and received two comment letters, one from the American Bankers Association in support of Amendment No. 1 and one from SIFMA opposed to the proposed rule change (including Amendment No. 1).<sup>4</sup> This letter responds to the SIFMA comment letter.

In its letter to the Commission, SIFMA reiterated concerns about the scope of the proposed principles-based exception in the proposed rule change and urged the SEC to institute

---

<sup>1</sup> See Release No. 34-81595 (Sept. 13, 2017), 82 FR 43587 (Sept. 18, 2017).

<sup>2</sup> The MSRB submitted a response to comment letters to the SEC on November 7, 2017. See [MSRB Response to Comments on SR-MSRB-2017-06 \(Nov. 7, 2017\)](#) (“First Response to Comments”).

<sup>3</sup> See Release No. 34-82053 (Nov. 13, 2017), 82 FR 54455 (Nov. 17, 2017).

<sup>4</sup> See letters from [Tab Stewart, Senior Counsel, American Bankers Association, dated Nov. 30, 2017](#) (“ABA”); and [Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Dec. 1, 2017](#) (“SIFMA”).

disapproval proceedings.<sup>5</sup> SIFMA focused its concern on the requirement that brokers, dealers and municipal securities dealers (collectively, “dealers”) (and municipal advisors in a competitive sale) relying on the principles-based exception are required to have a reasonable belief that the “present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.” SIFMA stated that investors are not always willing to make a representation as to the timeframe for which they intend to hold a security, “other than setting forth their present intention to hold a security.” SIFMA stated that an investor may be hesitant to “make a statement currently required by the amendment . . . that may be second-guessed if they, e.g., many years later, determine to sell their securities.” SIFMA stated that other rules, such as Exchange Act Rule 15c2-12, do not require a specific time frame as to a purchaser’s intention to hold securities, and thus questioned why such a requirement is necessary in Rule G-34. Finally, SIFMA stated that the current principles-based exception is “unduly restrictive” and suggested that the exception should be refined to require the dealer or municipal advisor to have a “reasonable belief (e.g., by obtaining a written representation) that [the] purchasing entity or entities has no present intent to sell or distribute the municipal securities.”

The MSRB addressed most of SIFMA’s concerns in its First Response to Comments and Amendment No. 1. In particular, in its comment letter, SIFMA noted that it may be difficult for dealers or municipal advisors to obtain a representation from investors as to the timeframe for which they intend to hold a security. The MSRB in the First Response to Comments noted that one method by which an underwriter or municipal advisor could arrive at a reasonable belief as to the purchaser’s present intent would be by obtaining a written representation. However, the MSRB agreed with commenters that there are other reasonable indicia that could be considered in order to reach a reasonable belief regarding the purchaser’s present intent. For example, the MSRB noted that another method of reaching a reasonable belief as to the investor’s intention would be by reviewing transaction documentation.<sup>6</sup> The MSRB continues to believe there are multiple ways by which a dealer or municipal advisor could reach a reasonable belief regarding the purchaser’s intent with respect to holding the securities in question. The

---

<sup>5</sup> Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934.

<sup>6</sup> In the First Response to Comments, the MSRB addressed concerns of municipal advisors regarding how to determine a purchaser’s reasonable belief without engaging in broker-dealer activity. The MSRB noted that municipal advisors and dealers are free to define the process by which they reach a reasonable belief regarding a purchaser’s present intent. The MSRB suggested that, for municipal advisors, in addition to reviewing a written representation, a municipal advisor could review transaction documentation without interacting with the purchaser. A dealer also could review transaction documentation to reach a reasonable belief, though a dealer may not need to limit its interactions with the purchaser as noted in the MSRB’s First Response to Comments.

MSRB purposefully made the exception principles based so dealers and municipal advisors could determine, based on their particular business activities, the most effective way of reaching a reasonable belief as to an investor's intent. Obtaining a written representation is merely one method for making such a determination.

In SIFMA's earlier comment letter in response to the proposed rule change, it stated that the proposed language in the principles-based exception was "unduly restrictive" because "[f]or a bond maturing in 20 or 30 years, it is typical to include a call or mandatory tender date at 5 to 10 years to permit a refinancing or other restructuring."<sup>7</sup> The MSRB, in Amendment No. 1, agreed with SIFMA and other commenters, and proposed to refine the language to more accurately reflect the terms of direct purchase transactions including the potential for earlier redemption or mandatory tender. In its comment letter in response to Amendment No. 1, SIFMA noted that the language in Amendment No. 1 is still "unduly restrictive" and may make a purchasing entity uncomfortable to certify as to its present intent to hold the securities to a date certain. SIFMA suggested alternative language that would require the dealer or municipal advisor to have a "reasonable belief (e.g., by obtaining a written representation) that [the] purchasing entity or entities has no present intent to sell or distribute the municipal securities."

The MSRB notes that the principles-based exception requires that the dealer or municipal advisor reach a reasonable belief as to the purchaser's present intent regarding holding the municipal securities in question. This language recognizes that, in those transactions included in the principles-based exception, the dealer or municipal advisor is not required to speculate as to a purchaser's future intent.<sup>8</sup> The rule language makes clear that it is solely the present intent of the purchaser that need be considered. However, the MSRB notes that the purpose of the principles-based exception is to acknowledge those scenarios where a CUSIP number may not

---

<sup>7</sup> See [Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, dated Oct. 10, 2017.](#)

<sup>8</sup> The principles-based exception indicates that a dealer acting as an underwriter of a new issue of municipal securities, or a municipal advisor advising the issuer with respect to a competitive sale of a new issue, which is being purchased directly by a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; or by a municipal entity with funds that are, at least in part, proceeds of, or fully or partially secure or pay, the purchasing entity's issue of municipal obligations (e.g., state revolving fund or bond bank), may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.

be necessary. In particular, the exception addresses the direct purchase market, which, according to earlier comment letters, typically involves banks purchasing municipal securities with the intention of holding them to maturity. Amendment No. 1 merely recognizes that often there are early redemption provisions or mandatory tenders in such arrangements, and thus, the securities are not held to maturity in all instances. If a purchaser's present intent is to hold the securities today, but perhaps sell them tomorrow or sometime before maturity, redemption or tender, this is not the type of transaction the principles-based exception was created to address. Further, the industry group representing many purchasers in direct purchase transactions supported the proposed rule change with Amendment No. 1, indicating that "the exception language in the proposed rule change and Amendment No. 1 to the proposed rule change appropriately recognizes the realities of the direct purchase market."<sup>9</sup>

\* \* \*

If you have any questions regarding this matter, please contact me at 202-838-1500.

Sincerely,



Margaret R. Blake  
Associate General Counsel

---

<sup>9</sup> ABA.