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September 17, 2018

VIA ELECTRONIC MAIL

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2018-15

Dear Mr. Smith:

Acacia Financial Group, Inc. ("Acacia") is a national municipal advisory firm that serves a wide range of municipal bond issuing clients including high profile issuers, local small issuers and infrequent issuers. We appreciate the opportunity to comment on MSRB Notice 2018-15 related to Primary Offering Practices.

Acacia is fully supportive of the need for intelligent regulation of the municipal marketplace and in creating a thoughtful regime for municipal advisors. We would like to emphasize that all new regulations should look at the rationale behind the rule and to gauge if there is still a need for the rule or if the markets, particularly in the wake of Dodd-Frank, have impacted the roles of the key players in the marketplace. Lastly, Acacia feels it is important to fully address the economic costs associated with the imposition of new rules on the municipal advisory community which is largely composed of small firms.

First, we support the comment letter provided to the MSRB by the National Association of Municipal Advisors and would like to emphasize several points made in that letter.

Requirement to Provide the Official Statement to the Underwriter

We believe the MSRB's proposal to require a municipal advisor to provide the official statement to the underwriter is unnecessary and this *requirement should be removed from broker dealer municipal advisors in order to ensure parity under the rules.*

Our first concern is there is no clear definition as to what constitutes preparation of an official statement. It is important to recognize that some municipal advisors assist in the preparation and may be the scribe, however, the issuer ultimately maintains practical control over their document. At the time of the initial rule, there may have been market dynamics that prompted the MSRB to implement this rule, however, we respectfully submit the advances in technology and the increased focus of issuers on maintaining custody of their offering documents should prompt the MSRB to retract this requirement. As stated in the NAMA letter, **"We are unaware of any problems with underwriters receiving the OS and believe the MSRB should review its rules not just to see where they can unilaterally apply current dealer-MA rules to all MAs, but**

whether or not in this new regulatory environment, the original dealer-MA rules (such as Rule G-32(c)) make sense today or, as we suggest should instead be altogether withdrawn."

It should be noted that there is no requirement for any issuer to use the services of a municipal advisor. The MSRB has broadly assumed it can impose regulations on advisors and that it will not impact an issuer's decision to use a municipal advisor. Nothing could be further from the truth, as issuers will not seek the services of an advisor if by doing so, it will potentially cost them additional monies or threaten the successful execution of a transaction. Again, we believe this requirement is unnecessary and will be costly to implement from a compliance perspective.

Our concerns with respect to the proposed changes are as follows:

- Market efficiencies and market transparency are not enhanced by this proposal. ***The regulatory imbalance between non-dealer municipal advisors and dealer municipal advisors is a red herring most easily remedied by removing the responsibility of providing the official statement from dealer municipal advisors.*** Acacia believes the market is better served by allowing issuers to retain the responsibility for the dissemination of their offering documents.
- Cost Impacts. Removing the requirement from broker dealer MAs would result in ***cost savings*** to this segment of the MA community and it would not impose additional costs on independent MAs. ***This one simple change will remove the regulatory imbalance while improving the efficiency of the marketplace by having the responsibility rest with the owner of the disclosure document, the issuer.***
- Requiring a municipal advisor to distribute the official statement begins to blur the lines between broker dealer activity and municipal advisory activities. The rule was written at a different time and when there was no clear definition of a municipal advisor. We believe Dodd-Frank has irrevocably changed the landscape and new rules should acknowledge this change.
- Finally, the MSRB provides no statistics or factual data that this change will improve efficiency in the marketplace.

Thank you for this opportunity to provide our comments.

Sincerely:

Noreen P. White
Co-President

Kim M. Whelan
Co-President

BDA Bond Dealers of America

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202.204.7900
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September 17, 2018

Submitted Electronically

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

RE: Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

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 2018-14 (the "Notice"): Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices. 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.

We have organized our comments in the order of the Notice.

Rule G-11 Primary Offering Practices

- *Free-to-Trade Wire*

As we discussed in our comments to the Concept Proposal (as defined in the Notice), the BDA supports the MSRB's change to Rule G-11 to require a notification to all members of the syndicate that trading restrictions have been lifted. The BDA suggests, though, that the Rule not prescribe a free-to-trade wire, as industry custom changes from time and time. Accordingly, the BDA suggests that the MSRB change the wording of the Rule amendment to require such notification in any reasonable manner accepted and customary within the industry that notifies all syndicate members simultaneously.

- *Additional Information for the Issuer*

As in our comments in response to the Concept Proposal, the BDA encourages the MSRB to require the additional information to be provided to issuers upon request. The BDA also encourages the MSRB, the GFOA and others to provide education to issuers concerning the additional information that is available to them upon request. Many issuers do not need or want this information.

- *Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits*

As we did in our comments to the Comment Proposal, the BDA supports this Rule change.

Rule G-32 – Disclosures in Connection with Primary Offerings

- *Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof*

As in our comments to the Concept Proposal, the BDA supports the proposed changes to Rule G-32(b)(ii) to require access to this information by all market participants at the same time. We do note, however, that this requirement will be of less significance than it was at the time of the Concept Proposal given the tax law changes that eliminated advance refundings.

- *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves it for Distribution*

As in our comments to the Concept Proposal, the BDA supports this rule change.

- *Additional Data Fields on Form G-32 Auto-Populated From NIIDS*

The BDA does not object to any of the data fields proposed to be auto-populated from NIIDS. The BDA does not recommend that the MSRB auto-populate any additional information from NIIDS into Form G-32.

- *Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS*

The BDA objects to some of the new data fields as either unnecessary or overly burdensome. Here are our views of the various new proposed data fields:

  - Ability for minimum denomination to change. The BDA supports this new data field because it will prevent the perception that municipal

securities trading at a minimum denomination at the time of the issuance of the municipal securities is necessarily lower than the then-effective minimum denomination.

- Additional syndicate managers. The BDA objects to this new data field. This new information would not assist any market participant and, especially for large issuances, can impose new burdens on underwriters.

- Full call schedule. The BDA objects to this new data field because it is unnecessary and will add burdens to underwriters. The call terms of a municipal security are part of the information that dealers communicate to investors at the time of trade. A full call schedule will not assist market participants and will just require underwriters to complete more information, which for some issuances is a significant amount of data.

- Legal entity identifiers. The BDA objects to this new data field because it is not easily obtainable in almost all instances. Right now, underwriters do not have public access to information that would readily reveal this information and would require underwriters to spend the time to determine if the municipal issuer or borrower has an LEI and confirm the number. We do not believe that the market benefits from access to this number and, in any event, any benefits would not outweigh the burdens to underwriters.

- Name of obligated person(s). The BDA supports the inclusion of this data field.

- Percentage of CUSIP numbers refunded. The BDA objects to the inclusion of the data field as this information is both unnecessary and not meaningful. For holders of refunded bonds, what is important is what portion of a particular CUSIP has been refunded. The percentage of CUSIPs across an issuance of municipal securities is of no value to investors and other market participants. This will require a unique calculation to be performed on each partial refunding and thus would present a new burden to underwriters.

- Name of municipal advisor. The BDA objects to this data field. The information is obtainable from the final official statement and does not represent valuable information in the secondary market trading of municipal securities.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

Comment on Notice 2018-15

from Stephen Holstein, C F I

on Wednesday, July 25, 2018

Comment:

My name is Stephen Holstein. I've been buying municipal bonds, to the degree possible, In the primary market since the 1980s.

While I readily admit that I have not read the proposals of the MSRB, with regard to new municipal bond issues, I wish to address a problem that I find as a municipal bond buyer.

I trust the MSRB would agree with me that it is the best interest of the markets that the broadest possible array of buyers have real access to this market.

I have experienced the inability to purchase bonds from entities in which I am a ratepayer or taxpayer because of what I would call designer scales and what I assume to be pre- sold bonds.

More and more I see bond offerings in the original issue market which display characteristics that indicated to me that there has been a scale arranged for the benefit of certain institutions or one certain institution.

For example: when I see a scale which shows 5% coupons on bonds ranging from 2022 to 2047 at various premiums , in my view that scale was created for a particular Institution which will take all or most of the bonds.

If we wish the widest possible distribution with the greatest number of possible buyers of municipal bonds this practice tends to discourage that goal.

I hope the MSRB is either addressing my concern in this notice, or will address it in future rule making activities.

September 17, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Request for Comment: Preliminary Offering Practices

Dear Mr. Smith:

Ehlers Associates, Inc., a registered Municipal Advisor, does not believe the rule requirement for all municipal advisors that "prepare" Official Statements for their clients make the OS available to managing/sole underwriter is necessary for the following reasons:

- This rule was originally described in the August 1985 MSRB Volume 5, Number 5, REPORTS newsletter as follows:

"The Board has adopted these provisions (G-32 disclosures are printed in final form when using a regulated financial advisor no later than two business days prior to the date the securities are delivered by a manager to the syndicate members) because it understands that many dealers settle their customer transactions on the day the securities are delivered to the syndicate. It, therefore, concluded that it was necessary to specify these printing deadlines to facilitate compliance with the rule by these dealers."

While there was a good reason in 1985 to require an OS be provided by the regulated financial advisor two days ahead, we no longer have these printing constraints. This a good time to evaluate the original need for the rule and conclude this requirement is longer needed. Continuing this requirement also results in an economic cost to small firms for which there appears to be no market benefit.

- Not all issuers use a Municipal Advisor which will results in rule requirement that cannot be consistently applied in every municipal transaction.

- There is no clear definition on what is meant by "preparation of the OS". Municipal Advisors may assist with parts of the OS or only review portions of the OS. Where is the line for these types of client engagements that would require the municipal advisor to make the OS available?

Thank you for your efforts to solicit comments on the topic before you make a final decision.

Sincerely,

Steve Apfelbacher

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September 19, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1100
Washington, D.C. 20005

RE: MSRB Notice 2018-15: Primary Offering Practices

Dear Mr. Smith:

The proposed amendments to MSRB Rules G-11 and G-32 are of interest to issuers of municipal securities, as they are related to a key tenet of the MSRB's mission – to protect issuers from unfair market practices through Rulemaking. The Government Finance Officers Association, representing over 19,000 state and local government public finance professionals, appreciates the opportunity to comment on the MSRB's proposed amendments to these rules.

We provided comments on the MSRB's Concept Proposal on many of these issues last year. We note that the MSRB has abandoned efforts to mandate posting of preliminary offering statements (POS) on EMMA, which was our key concern in the MSRB's past initiative. We also expressed concern with having other parties – underwriters and municipal advisors – posting POSs without the explicit permission of the issuer. GFOA strongly supports, and notes in our own best practices, that issuers should post their POS on EMMA, however we continue to advocate against federal regulation thereof. We are glad to see that the issue is not part of this Notice.

There are two key areas of the current proposed amendments where we wish to comment.

1. Issuer Receiving Information from Senior Syndicate Manager of Designation and Allocation Information

GFOA supports having the senior syndicate manager provide the issuer, at all times, information about order designations and allocations. As the senior syndicate manager is acting on the issuer's approved designations and allocations, information should be given to issuers in order to confirm transparent market practices, and that the issuer's instructions were executed properly.

We do not believe that it is adequate for the senior syndicate manager to "educate" the issuer on where this information may be found on third party platforms nor should education replace the task of providing this information.

2. Information Available to the Market About Refundings

We do not object to the MSRB's proposal to have information about refundings available to market participants at the same time nor do we object to additional information about refundings provided on Form G-32. We do, however, wish that the MSRB would require the timeframe to be shorter than the current five business days.

The MSRB asks if a list of "potential" refundings that may be produced by the syndicate before or at the time of pricing should be shared with market participants, or be required or voluntarily posting on EMMA. We believe that this information should only be provided once the refunded maturities information is final. By including potential refunding information, the underwriter (and issuer) could be entangled in providing misleading information, if indeed those refundings are not part of the final transaction. Therefore, only final information about the refundings should be disseminated to everyone at the same time.

We would also point out, as we did in our November letter, that the MSRB language about free to trade wire, does not account for new IRS rules on the issue price of bonds. We suggest that the MSRB include language that trades may not be allowable at any price if certain issue price restrictions (e.g., hold the price), are in place.

We would be pleased to have further discussions with the MSRB Board and/or staff about our comments and the MSRB's efforts related to primary offering practices. Thank you again for the opportunity to comment on these important issues.

Sincerely,

Sincerely,

Emily S. Brock

Emily S. Brock
Director, Federal Liaison Center

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

September 18, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1100
Washington, DC 20005

RE: MSRB Notice 2018-15

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates the opportunity to comment on MSRB Notice 2018-15 related to Primary Offering Practices. NAMA represents independent municipal advisor firms, and individual municipal advisors ("MA") from around the country, and our members are keenly interested in this rulemaking.

Last year NAMA provided comments on the MSRB's Concept Proposal related to Primary Offering Practices (Notice 2017-19). We are pleased to see that the proposed rulemaking eliminated discussion of mandating that Preliminary Offering Statements be posted on EMMA, and eliminated the inclusion of municipal advisor fees on the list of information needed to complete Form G-32. Our November 2017 letter outlined our concerns with including these tasks in rulemaking, and we appreciate having our voice heard in these matters.

However, there are two areas with which we still have significant concerns with the proposed rulemaking. First, having a municipal advisor who is involved with the development of an issuer's official statement (OS) be responsible for delivering that OS to the underwriter, and second, any dilution of information that should be provided to issuers from syndicate managers.

<u>Placing Responsibility on Municipal Advisors to Deliver the Official Statement to Underwriters When the MA Prepares an Official Statement for Issuer Clients</u>

No Municipal Advisor Should Be Responsible for Delivering an Official Statement to the Underwriter

We have previously commented both in our November 2017 letter related to Primary Offering Practices and in letters regarding Rule G-34, having MAs obtain CUSIP numbers in competitive sales, that the MSRB has failed to incorporate into its consideration that there is a SEC definition of municipal advisor, which was not in place when the MSRB first developed these rules for dealer-municipal advisors.

The requirement for dealer-MAs to have this responsibility was developed at a time prior to the *Dodd Frank Act* and the SEC Municipal Advisor Rule when the differences between broker/dealer and MA activities had not been defined by federal regulation. The role of the municipal advisor is to serve the issuer, as determined by the written scope of services between the MA and their client. **Outside of services provided and fiduciary duty to the issuer, there are no statutorily defined market responsibilities on municipal advisors. Unfortunately, this proposed Rule, as well as recently adopted changes to MSRB Rule G-34 ignores this important point and seems to create scope of services for MAs, rather than have that rest solely in their client's hands. We again ask the MSRB to relinquish this requirement for <u>all</u> municipal advisors.**

SEC Rule 15c2-12 Already Covers the Responsibility of OS Delivery

Another concern with having the MSRB extend – and not eliminate – the requirement that MAs deliver the OS to investors, is that SEC Rule 15c2-12 already covers this issue. The SEC's rule allows the issuer great flexibility to provide the Official Statement to the underwriter directly, or have their designated agent do so. As a reminder, the OS is the issuer's document. We are unclear why then there must be a MSRB rule to place further conditions on what the SEC already allows for OS delivery, which may subvert how the issuer wishes its OS to be delivered.

Further, SEC Rule 15c2-12(b)(1) and (3) require an underwriter to obtain and review the Official Statement and contract with the issuer to receive a final Official Statement. For the Municipal Advisor to have this responsibility, currently and going forward if the amendments are adopted, it would unnecessarily interfere with the contractual relationship between the issuer and the underwriter. **The MSRB appears to be placing rulemaking driven responsibilities on MAs rather than applying rules related to the MAs fiduciary duty and scope of services it is contracted to perform for the issuer.**

The Proposed Rule Does Not Define the Term "Prepares"

In its proposed rulemaking, the MSRB does not define the term "prepares" and leaves MAs with confusion about how then the Rule would be applied. Does the rulemaking apply only if the MA prepares the entire document? What if an MA only prepares one section, are they then responsible only for that section and then how would that be made available? What if the MA simply collects the information from the issuer and formats the OS document and the document is then reviewed by others on the deal team? What if the client asks the MA to review the OS, does that review constitute preparation? What if the MA's responsibility is solely to coordinate the final electronic posting of the OS? What if multiple MAs work on the OS (likely with other bond team members)? **Because MAs may provide a variety of types of services to their clients, including tasks related to the OS, how this rulemaking would apply does not have a one size fits all solution. That in combination with the lack of clarity in the proposal, leaves MAs wondering – and concerned – about what threshold must be met for the proposed amendment to apply.**

Additionally, our members are often part of a deal team where bond counsel, or disclosure counsel, has the last look of the OS prior to the issuer signing off that it is ready for distribution. **The MA is most likely not the professional with the last look of the document, and anecdotally we have heard that in some cases, the bond counsel is the party who distributes the document, and does not allow others to do that task. This exposes the concern, and perhaps misunderstanding, that the MA is solely the party responsible when "preparing" an OS, when in practice that is not the case.**

The Proposed Rule Does Not Define the Term "Make Available"

Rule G-32(c) states that a municipal advisor who "prepares an OS shall make the OS available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution." The MSRB does not provide discussion or clarification of how the document is made available, nor what the current practice is for dealer-MAs. This issue leads to concerns related to compliance with the rulemaking which is further discussed below. If the document is posted on electronic platforms for all members of the deal team, does that satisfy the requirement that it is made available? If the OS is delivered to the underwriter by the issuer, rather than the MA per the decision of the issuer, then does that satisfy the requirement? **The uncertainties with this definition go back to our argument that delivery of the OS is already discussed in SEC Rule 15c2-12 (b)(3) and therefore adding conflicting requirements within MSRB rulemaking is at the very least unnecessary and at most inconveniently burdensome.**

Questioning the Purpose of G-32(c) in Today's Environment vs When it was First Adopted

Notice 2018-15 also did not include (despite the request in our November, 2017 letter) why Rule G-32(c) was first developed, nor MSRB's current thinking about why it should be applied to all municipal advisors. **This explanation is especially needed as the Board considers seeking SEC approval of changes to the Rule. The professionals impacted as well as decision makers should be able to know the reasoning behind why the Rule was set in the first place and then determine if it applies in today's regulatory, technological, and market environment.** If, as we believe, Rule G-32(c) was developed when market practices allowed for a municipal advisor to serve in that capacity and then resign and be eligible to underwrite the same deal, then in that context this Rule served a purpose. However, now with the changes to MSRB Rule G-23 which prohibits that practice, the advent of technologies which allow for the OS to be distributed easily and widely to market participants at the same time with a click of a mouse, and a federal definition for municipal advisors in place, we do not see the need for the MSRB to seek this change.

No Discussion of How OS is Made Available to Underwriter Where There is No MA Assisting with Its Preparation

The MSRB does not address how the OS is made available to an underwriter in a transaction where there is no MA or the MA is not assisting the issuer with preparing the OS. We are aware that such practices currently exist, and we are unaware of problems of OS delivery in these circumstances. Again, this harkens back to the argument that SEC Rule 15c2-12 already covers the ground of OS availability to underwriters, and there are no critical market concerns that we are aware of related to underwriters not having official statements in reasonable time to carry out their duties or that would require an MSRB rule to address municipal advisors having to deliver the OS to the underwriter.

Crossing the Line into Dealer Activity

We are very concerned that the MSRB is seeking to involve municipal advisors in the investor offering process which contradicts the SEC's MA Rule and the *Dodd Frank Act*. Doing so ignores the important distinction between dealer activities for offering municipal securities to investors and the municipal advisor's fiduciary duty to issuer clients. This is an overarching concern of our members as they have seen the rulemaking related to CUSIPs and now the proposal for official statement delivery to be laying

the groundwork for further rulemaking being implemented on MAs that are outside the scope of law and the MSRB's charge to develop rules as an extension of the SEC's MA Rule.

Costs Associated with Proposed Amendments - Compliance with the Rulemaking

The MSRB noted in its proposal that "the costs associated with this change should be insignificant since the requirement exists only where the municipal advisor prepares the official statement and it is therefore readily available to the municipal advisor (dealer or non-dealer) and can easily be provided to the underwriter via electronic means." **However, the MSRB only considers the action of delivering an official statement, and not the costs associated with complying with the rulemaking and its vague terms and standards.**

As currently proposed, and as noted above, municipal advisors would have to decipher and determine how the Rule should be applied, as the proposed amendments are not clear either in their discussion of "preparing the OS" or "making the OS available**." In many cases, municipal advisors would have to seek the advice of counsel to understand how their scope of services and work for an issuer may be considered applicable to Rule G-32. At the very least, they would spend significant internal hours making determinations based on the various facts and circumstances associated with their scope of services, the specific provider that is electronically disseminating the official statement, the wishes of their issuer client and the responsibilities of each deal team member. With the MSRB not discussing how the OS can be made available, it is also unclear how the MA will be able to document for compliance purposes that it has made the OS available to the underwriter**. Does posting on electronic deal platforms such as IPREO and MuniOS, qualify and if so, how does the MA document this for their file? If the issuer delivers the OS to the underwriter – as well as others on the financing team – can the MA keep that for the file to demonstrate that the underwriter received the OS or would G-32 require that the MA also send the OS to the underwriter and maintain a copy of that record?

The MSRB continues to avoid addressing the costs associated with complying with their rulemaking, and developing rules clear enough so that MAs can more readily understand how they apply in a variety of transactions and contracts that MAs have with their clients, without seeking interpretation from outside counsel.

In assessing the "benefits and costs of the proposed changes" to Rule G-32, our comment is that there is essentially no benefit to placing this requirement on any MA, and that the MSRB did not adequately analyze the costs associated with complying with the rulemaking. Further, the MSRB is required by the *Exchange Act* not to place undue burdens on small MA firms, and we do not believe this was addressed in the Notice, nor is there acknowledgement of the costs associated with this Rule in aggregation with other MSRB rules.

Parity in Rulemaking Needs to be Thoughtful Not Automatic

Furthermore, while we understand the MSRB's need to review its rulemaking to ensure that the rules are applied fairly to all parties, this is one instance where the argument that this should be applied unilaterally to all MAs needs further discussion and consideration. This also exposes the concern that the Rule is not being proposed to solve a problem in the market but rather to just automatically apply as many rules currently applicable to dealer MAs to all MAs in a misguided attempt at regulatory parity. For reasons discussed in in this letter, **we are unaware of any problems with underwriters receiving the**

OS and believe the MSRB should review its rules not just to see where they can unilaterally apply current dealer-MA rules to all MAs, but whether or not in this new regulatory environment, the original dealer-MA rules (such as Rule G-32(c)) make sense today or, as we suggest should instead be altogether withdrawn.

Providing Designation and Allocation Information From the Senior Syndicate Manager to the Issuer

The MSRB proposed amendments to Rule G-11 that would require senior syndicate managers to provide designations and allocation information to issuers. We support these amendments, and believe issuers should be given that information at all times. We do not believe that having the issuer ask for the information, allowing the issuer to opt out of receiving the information, or to point to where this information can be found on some outside website provided by the senior manager are helpful. **As the MSRB and SEC focus on transparency in the markets, including the municipal market, there seems to be no reason why the issuer should not be given this crucial information about their transaction without hurdles or hesitation.**

We would welcome the opportunity to discuss our comments with MSRB staff and the Board in greater detail. This is especially true related to the MSRB's work to place additional responsibilities on MAs which are outside of SEC's MA Rule that defines municipal advisors and municipal advisory activity and draws a distinction between such activity and broker-dealer activity. Within this Notice and other MSRB rulemaking efforts, we would also ask that the MSRB first look at the reason why rules were first developed, and if those reasons apply in today's regulatory and market environments.

Related to Rule G-32, the MSRB should take into consideration the incorporation of the MA Rule and a definition of municipal advisors and municipal advisory services into the overall regulatory landscape, and realize that placing an unnecessary, vague responsibility on MAs, is unnecessary and does not advance their regulatory mission. Further, the proposed changes to MSRB Rule G-32 are in conflict with and seemingly override what the SEC already has put in place regarding issuer delivery of the OS to the underwriter, and could broach the line of dealer activity.

Thank you for the opportunity to comment on these important issues.

Sincerely,

Susan Gaffney
Executive Director

NATIONAL FEDERATION of MUNICIPAL ANALYSTS

September 17, 2018

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

Re: MSRB Regulatory Notice 2018-15

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's (MSRB or Board) Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices.

The NFMA is a not-for-profit association with nearly 1,400 members in the United States, and is primarily a volunteer-run organization. The NFMA's goals are to promote professionalism in municipal credit analysis, to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace. The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds. Annual conferences are open to anyone wishing to attend and our Recommended Best Practices in Disclosure and White Papers are available on our website, www.nfma.org.

The NFMA's membership is diverse and consists of individuals who work for mutual funds, trust banks, wealth management companies, rating agencies, credit providers, independent research groups and broker-dealer firms. NFMA membership is open to all analysts because we believe we can learn from one another and share a common interest in promoting good practices in the municipal market. The NFMA is not an industry interest group and does no political lobbying. NFMA board members, although generally employed within the financial services industry, do not represent their firms during their tenure on the board.

Thank you for giving the NFMA an opportunity to comment on Regulatory Notice 2018-15. Our comments pertain primarily to the discussion in Part II, Rule G-32 - Disclosures in Connection with Primary Offerings, specifically regarding Refunded CUSIPS, Preliminary Official Statement (POS) Disclosure and Additional Data Fields on Form G-32.

In all of these areas, the NFMA supports the full disclosure of all credit and security information to all market participants at the same time to ensure a level playing field. We also support the submission

of a POS to EMMA prior to bond pricing to so that all market participants, including holders of parity bonds, have equal access to the most recent disclosure document of an issuer.

Regarding Part A, Disclosure of the CUSIPs Refunded, and the Percentages

Thereof, the following responses reflect the NFMA's views on the specific questions posed in the release:

1. We support the disclosure to EMMA of CUSIPs being refunded to all market participants concurrently, immediately following the pricing of the refunding bonds and the execution of the escrow agreement.

2. Information regarding refunded CUSIPs should be included in the POS and Final OS and submitted to EMMA as soon as the information becomes available.

3. Our view is that there should be a requirement to provide all the CUSIP information concurrently to market participants.

4. Our view is that the MSRB should require underwriters to provide information on Form G-32 for partial current refunding by CUSIP number and the percentage of each bond to be refunded.

5. Our view is that a list of partial refunding candidates should be made available to all market participants on EMMA, so as to ensure equal access to all market participants.

Regarding Part B, Submission of Preliminary Official Statements to EMMA, the following are our responses:

1. The NFMA supports the filing of a POS to EMMA by the underwriter or municipal advisor prior to the pricing of a bond issue. It is important to the NFMA that a transaction participant that the MSRB has jurisdiction over be required to make such filing. The delivery of the POS to the market for competitive issues may inadvertently exclude other investors who may also be interested in bidding on the transaction, to the detriment of both the issuer and the potential investor. Additionally, the information contained in the document is likely to be the most current disclosure for the issuer or obligated person. If there are outstanding bondholders, this information is of critical importance to them as well. Providing timely access to the POS will help ensure that investors have equal access to information in both the primary and secondary markets.

2. Market transparency and fairness would be enhanced by the inclusion of non-dealer municipal advisors in this Rule.

Regarding Part D - Additional Data Fields on Form G-32 Not Auto-Populated:

From NIIDS

1. We recommend the inclusion of the following information: 1) denomination changes; 2) full call schedule; 3) LEI's; 4) name of obligated persons and 5) name of municipal advisor.

2. We recommend the required disclosure of LEI's in order to encourage market participants to obtain them.

3. We believe that the usage of flags that indicate certain restrictions, including the limitation of sales to a qualified institutional buyer, would be useful to the market.

The NFMA believes that these initiatives will promote increasing transparency and fairness to the market. We continue to be concerned about the selective disclosure of information by an issuer to an investor or group of investors that enables one (or some) investors to have an advantage when making an investment decision. We are also concerned when Rating Agencies receive non-public information in advance and utilize it in their rating actions, putting investors at risk of a sudden loss in the value or liquidity of their investments. The NFMA urges the MSRB to address all issues of unequal and unfair disclosure in the municipal bond market.

Sincerely,

/s/

Julie Egan
NFMA Industry Practices & Procedures Chair

/s/

Lisa Washburn
NFMA Industry Practices & Procedures Co-Chair

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

September 17, 2018

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

RE: MSRB Regulatory Notice 2018-15
Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

Dear Mr. Smith:

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), the Office of the Investor Advocate[1] at the U.S. Securities and Exchange Commission ("Commission" or "SEC") is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations ("SROs").[2] In furtherance of this objective, we routinely review significant rulemakings of the Municipal Securities Rulemaking Board ("MSRB"). As appropriate, we also make recommendations and utilize the public comment process to help ensure that the interests of investors are given appropriate weight as rules are being considered.

As indicated in our Report on Objectives for Fiscal Year 2018, our Office is currently focused on municipal market reform initiatives that may impact investors, including, but not limited to, rulemakings and amendments relating to "minimum denomination."[3] Accordingly, we appreciate this opportunity to provide comments in regard to proposed amendments to MSRB Rule G-32 as set forth in MSRB Regulatory Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices ("Notice 2018-15").[4]

We support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the Depository Trust Company's ("DTC") New Issue

[1] This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.
[2] 15 U.S.C. § 78d(g)(4).
[3] *See* Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2018* (June 29, 2017), https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2018.pdf.
[4] MSRB, Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices (July 19, 2018), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2018-15.ashx??n=1 [hereinafter Notice 2018-15].

Information Dissemination Service ("NIIDS").[5] We also support the proposal to create additional required data fields on Form G-32, including a "yes" or "no" indicator as to whether the minimum denomination for a bond is subject to change. As discussed in more detail below, we agree that certain of these proposed data points should be sufficiently useful to investors for the MSRB to begin requiring underwriters to disclose the additional data on Form G-32 even though they are not currently provided to NIIDS.

I. Background

Rule G-32, Disclosure in Connection with Primary Offerings, details the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Rule G-32, among other things, requires underwriters in primary offerings to "submit electronically to the MSRB's Electronic Municipal Market Access ("EMMA") System official statements and advance refunding documents, if prepared, related to primary market documents and new issue information."[6]

Rule G-32 is designed to help ensure that customers who purchase new issue municipal securities are provided with timely access to relevant information relating to their investment decision.[7] The MSRB adopted Rule G-32 in 1977 and amended it periodically as market practices evolved and regulatory developments occurred.[8]

On September 14, 2017, the MSRB published a concept proposal ("2017 Concept Proposal") seeking, in part, "input on aspects of Rule G-32 to help inform whether the existing disclosure practices continue to serve the municipal securities market appropriately."[9] In response, the MSRB received twelve comment letters, some of which were responsive to the MSRB's inquires relating to Rule G-32. The comments received are the foundation for the MSRB's targeted request for comment on its draft amendments to its rules on primary offering practices.

II. Discussion

As relevant to Rule G-32, Notice 2018-15 seeks comment on four specific issues, two of which are of particular interest to the Office of the Investor Advocate.[10] Those two issues are as follows. First, the MSRB seeks comment on whether to auto-populate into Form G-32 certain information that is submitted to DTC's NIIDS but is not currently required to be provided on Form G-32. Second, the

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[5] "NIIDS is an automated, electronic system that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating the information to information vendors supplying formatted municipal securities information for use in automated trade processing systems." Notice 2018-15, *supra* note 4, at 9 n.26.

[6] Notice 2018-15, *supra* note 4, at 9. *See also* MSRB, Rules and Guidance, Rule G-32, Disclosure in Connection with Primary Offerings, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32.aspx (last visited August 15, 2018).

[7] Notice 2018-15, *supra* note 4, at 9.

[8] *Id.*

[9] *Id.*

[10] In Notice 2018-15, the MSRB also seeks comment on whether to (A) require disclosure of CUSIP numbers refunded and the percentage thereof to all market participants at the same time, and (B) require non-dealer municipal advisors that prepare official statements to make the official statements available to the underwriter after the issuer approves it for distribution. Notice 2018-15, *supra* note 4, at 9.

MSRB seeks comment on whether to require additional information on Form G-32 that is not currently provided to NIIDS.[11] We discuss these two issues in more detail below.

A. *Additional Data Fields on Form G-32 Auto-Populated from NIIDS*

MSRB Rule G-34 requires underwriters to provide certain information about a new issue of municipal securities that is NIIDS-eligible by submitting the information to NIIDS. MSRB Rule G-32 describes the process for doing so. In 2012, the MSRB amended these rules to streamline the process for underwriters to submit data in connection with primary offerings. By integrating certain data elements to NIIDS with EMMA, the amendments eliminated the need for duplicative submissions in the two systems in NIIDS-eligible primary offerings.[12] As a result, underwriters currently can submit all information to NIIDS as required by Rule G-34 and subsequently, Form G-32 will auto-populate with the data the underwriters have entered into NIIDS.[13] Additional information required on Form G-32 for which no corresponding data element is available through NIIDS, however, is required to be entered manually through EMMA, and underwriters are required to make any corrections to NIIDS data promptly.[14]

Notice 2018-15 seeks comment on whether certain additional information currently submitted to NIIDS but not auto-populated on Form G-32 should now be designated as required data fields on Form G-32. The MSRB proposes adding initial minimum denomination information to Form G-32. Specifically, Appendix A to Notice 2018-15 suggests adding three data fields relating to minimum denomination: Minimum Denomination, Multiples of Denomination, and Par Value.[15]

Rule G-32 currently does not require underwriters to disclose minimum denomination information. While this information is available to investors in official statements for the new issue, minimum denomination information is often neither easily located nor explicitly identified on the statements. The MSRB states, and we strongly agree, that "[b]ecause official statements are not consistently formatted, and the specific information sought is not necessarily prominently displayed, at least some portion of retail and other investors may be unaware of, or have difficulty locating, pertinent information."[16]

We believe that including the proposed data fields relating to initial minimum denomination on Form G-32, which would auto-populate with information underwriters already enter in NIIDS, will benefit investors by making hard-to-locate information more accessible without adding any burden to issuers. We also support the continued requirement that information not available to be auto-populated from NIIDS into Form G-32 be manually entered into EMMA.

B. *Additional Data Fields on Form G-32 Not Auto-Populated from NIIDS*

The MSRB proposes to include eight additional data fields to Form G-32 that could not auto-populate from any information entered by underwriters in NIIDS. Specifically, the MSRB proposes to

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at Appendix A.
[16] *Id.* at 27.

add: 1) a "yes" or "no" indicator as to whether the minimum denomination information can change; 2) the legal entity identifiers ("LEIs")[17] for credit enhancers and obligated persons; 3) the retail order period by CUSIP number; 4) the percentage of CUSIP numbers refunded; 5) a complete call schedule for the municipal bond; 6) a complete list of the syndicate managers on an underwriting; 7) the name of obligated persons; and 8) the name of the municipal advisor on an issuance.[18]

1. "Yes" or "No" Indicator

We support the MSRB's proposal to include on Form G-32 a "yes" or "no" indicator as to whether the minimum denomination is subject to change; however, we do so with one *caveat*. The MSRB states that the addition of this indicator on Form G-32 would remind market participants to check relevant bond documents for developments that could trigger a change in the minimum denomination. Although we agree that this would trigger a reminder to market participants, we believe this does not go far enough to help ensure that current, accurate information is easily accessible to investors and other market participants. Without an ongoing obligation to update information regarding changes in minimum denomination over the life of the security, the burden shifts onto the investor to decipher the relevancy of events that could trigger a change in the minimum denomination. Additionally, while the "yes" or "no" indicator may serve as a reminder to investors that minimum denomination information may have changed, it does little to direct them to the location of this important information.

The MSRB is not unaware of the importance of changes to minimum denomination information. Indeed, Notice 2018-15 states, "if a bond is non-rated or below investment grade at the time of issuance but achieves an investment grade rating at some point in the future, this could result in a change to the minimum denomination that would be of interest to investors."

Given the importance of this information to investors, we encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Doing so could remove an asymmetric burden from investors and ensure that investors have easy access to necessary, relevant investment information.

2. Legal Entity Identifiers

The Office of the Investor Advocate has long encouraged embracing LEIs in financial markets. For example, in a speech in 2016 at the XBRL US Investor Forum, I stated that "I'd like the SEC to embrace the Legal Entity Identifier with the goal of making public company disclosure to the SEC interoperable with disclosure to other reporting regimes."[19] Consistent with this objective, we strongly support requiring LEI information for credit enhancers and obligated persons[20] on Form G-32.

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[17] An LEI is a unique, 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. *See* Notice 2018-15, *supra* note 4, at 17 n.45.

[18] Notice 2018-15, *supra* note 4, at 16-18.

[19] Rick A. Fleming, Investor Advocate, SEC, Speech at XBRL US Investor Forum 2016: Finding Value with Smart Data, *Improving Disclosure with Smart Data*, New York, N.Y. (Oct. 24, 2016), https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html.

[20] Notice 2018-15 states that "obligated person" has the same meaning as set forth in Rule 15Ba1-1(k) of the Exchange Act, which defines "obligated person" to have the same meaning as the term is defined in section 15B(e)(10) of the Exchange Act, but does not include:

The MSRB argues that "[o]btaining [LEIs], when available, on credit enhancers and obligated persons would help in the move towards a global identification method for these market participants and improve the quality of municipal market financial data and reporting."[21] We concur and believe that LEIs may enhance organization and dissemination of data and disclosure information to the public and market participants. The MSRB has already taken steps towards encouraging the use of LEIs in the municipal securities market by amending its registration form, Form A-12, to provide for the collection of LEIs from registered municipal securities dealers and advisors that have obtained one.[22] We commend the MSRB for taking this step to promote the importance of LEIs, but also believe more needs to be done to encourage the widespread adoption of LEIs by municipal market participants.

Obtaining an LEI is neither overly burdensome nor complicated. LEIs are issued by Local Operating Units ("LOUs") of the Global LEI System.[23] Through self-registration, a legal entity seeking an LEI must supply reference data such as business card information (e.g., name of the entity, business address, etc.) and relationship information to its LOU.[24] The LOU will then verify the data with local Registration Authority[25] and, if appropriate, issue an LEI compliant with the LEI standard.[26] LOUs generally charge a fee for issuing the LEI as well as for validating the reference data upon issuance and after each yearly certification.[27] While there is a cost associated with obtaining and maintaining an LEI, concerns around costs appear to be diminishing as competition drives down costs.[28]

Given the declining costs and positive benefits LEIs could bring to the municipal securities market, we encourage the MSRB to take more initiative, as appropriate, in this important, innovative space toward widespread adoption of LEIs. We also encourage the MSRB to continue incorporating LEI into its rulemakings and rule amendments in municipal markets. We further urge the MSRB to

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(1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;
(2) A person whose financial information or operating data is not material to a municipal security offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or
(3) The federal government.

Exchange Act Section 15B(e)(10) define the term "obligated person" to mean any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

Notice 2018-15, *supra* note 4, at 17 n.44.

[21] *Id.* at 17.

[22] *See* MSRB, Brief, Legal Entity Identifier (2017), http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf.

[23] The list of LOUs accredited by the Global LEI Foundation ("GLEIF") can be found on the GLEIF website. LOUs operating in the United states include Bloomberg and DTCC's Global Market Entity Identifier (GMEI) utility. LEI Regulatory Oversight Committee ("LEI ROC"), How to Obtain an LEI, https://www.leiroc.org/lei/how.htm (last visited Sept. 6, 2018) [hereinafter LEI ROC].

[24] LEI ROC, *supra* note 23.

[25] The GLEIF publishes the Registration Authority List. Global Legal Entity Identifier Foundation ("GLEIF"), Get an LEI: Find LEI Issuing Organization, https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations (last visited Sept. 6, 2018); LEI ROC, *supra* note 23.

[26] LEI ROC, *supra* note 23.

[27] *Id.*

[28] *See* Data Foundation, Who is Who and What is What? The Need for Universal Entity Identification in the United States (Sept. 2017), https://www.datafoundation.org/lei-report-2017.

engage in industry outreach to educate and inform market participants not only about the importance and benefits of LEIs but the process for obtaining an LEI as well.

3. Retail Order Period

In response to concerns from market participants about orders being entered that may not meet the definition or spirit of the requirements for a retail order period,[29] the MSRB proposes requiring underwriters to mark a new issue with a "flag" for the existence of a retail order period for each CUSIP number.

The MSRB suggests a "yes" or "no" flag by the CUSIP number could be helpful in identifying orders that should not have been included in the retail order period. Efforts to highlight the existence of a retail order period and provide transparency to market participants about compliance with the terms of a retail order period are of significant importance. Although retail order period information is non-public, non-compliance with the terms of a retail order period raises serious retail investor protection and fairness concerns.

We believe adding a "yes" or "no" flag by the CUSIP number may benefit investors by helping identify orders that should not have been included in the period, deterring future non-compliance, and protecting the retail investor's interests and order priority. As such, we support the MSRB's proposal to include a "yes" or "no" flag by CUSIP number.

4. Percentage of CUSIP Numbers Refunded

The MSRB proposes adding a data field to Form G-32 requiring disclosure of the percentage of each CUSIP number refunded.[30] The MSRB argues that such information would "provide all market participants information on material changes to a bond's structure and value at the same time" and would assist investors in making informed investment decisions.[31] We believe that providing this information on EMMA to all market participants simultaneously reduces information asymmetry, which may translate to improved fairness and efficiency in the municipal markets. As such, we are generally supportive of this provision.

5. Full Call Schedule

The MSRB proposes adding a data field on Form G-32 to disclose the full call schedule for a municipal bond. The MSRB argues that "[b]y requiring this information on Form G-32, the MSRB would be able to make complete call information available on EMMA to market participants and stakeholders."[32] We have not identified any investor concerns pertaining to this proposal and believe

[29] The term "retail order period" means an order period during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders. MSRB, MSRB Rule G-11(a), Primary Offering Practices, Definitions, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-11.aspx (last visited Aug. 16, 2018).
[30] Notice 2018-15, *supra* note 4, at 18. Currently, under Rule G-32(b)(ii), underwriters are required to submit advance refunding documents and information relating to the refunding to EMMA. *Id.*
[31] Notice 2018-15, *supra* note 4, at 18.
[32] *Id.* at 16.

providing this additional information to the market may increase transparency, enhance efficiency, and assist investors in making more informed investment decisions.

6. Syndicate Managers, Municipal Advisor, and Obligated Person

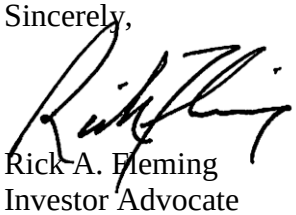
Finally, we support the MSRB's proposal to add data fields to disclose all the syndicate managers (senior and co-managers), the name of municipal advisor on an issuance, and the name of the obligated persons. Providing this additional information may enhance the efficiency of the primary market by providing additional, useful information to issuers. For example, the MSRB believes, and we agree, that requiring the disclosure of all syndicate managers may be beneficial because "issuers and municipal advisors or others could identify those underwritings where a particular syndicate manager was engaged or seek more information about particular syndicate managers, as needed, in performing due diligence on a potential upcoming offering."[33] Further, this additional information may provide additional transparency to the market. For example, the name(s) of the obligated person(s) of a new issue is not always readily available and requiring disclosure of this information may help investors make more informed investment decisions and better understand who is legally committed to support payment of all or some of an issue.

III. Conclusion

We strongly support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the NIIDS. We also support creating a "yes" or "no" indicator as to whether the minimum denomination can change and encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Finally, we generally support adding the LEIs for credit enhancers and obligated person, the retail order period by CUSIP number, the percentage of CUSIP numbers refunded, a complete call schedule for the municipal bond, a complete list of the syndicate managers on an underwriting, the name of obligated persons, and the name of the municipal advisor on an issuance.

Thank you for the opportunity to submit our comments regarding this important issue. Should you have any questions, please do not hesitate to contact me or Senior Counsel Ashlee Steinnerd at (202) 551-3302.

Sincerely,



Rick A. Fleming
Investor Advocate

cc (electronically): Lynnette Kelly, Executive Director, MSRB
Michael Post, General Counsel – Regulatory Affairs, MSRB
Barbara Vouté, Director – Market Practices, MSRB

[33] *Id.*

Rebecca Olsen, Director, SEC, Office of Municipal Securities

PRAG

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PUBLIC RESOURCES ADVISORY GROUP

September 18, 2018

Ronald W. Smith
Corporate Secretary
MSRB
1300 I Street NW
Washington, DC 200005

Dear Mr. Smith:

Re: Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

I appreciate the opportunity to provide comment to the MSRB on Primary Offering Practices. I believe the process of "rationalizing" the rule book began in December 2012, when the MSRB requested "broad industry and public input on its regulation of the municipal securities market as it engages in a comprehensive review to ensure that its rules reflect current market practices." (MSRB 12/18/2012).

There are many other commenters who will address the numerous details of the draft amendment. I am going to limit my comment to one section of the Notice: *Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves it for Distribution.*

The answer to this question is no, and, furthermore, dealer municipal advisors **should also be given relief** from this requirement. Market regulation and market practice have evolved since this provision was added to G-32, and all market participants are aware of the need for underwriters to have access to the Official Statement. SEC Rule 15(c)(2)(12) has clearly addressed this matter. The existing provision of G-32 no longer has a purpose, so expanding the Rule provides no value.

My practice is concentrated in Florida where disclosure counsel often prepare the Official Statement. The MSRB cannot regulate these lawyers, yet the Official Statements get delivered as required. The Florida Division of Bond Finance prepares many of its own disclosure documents, and similarly those documents are available to underwriters. This section of the Rule (with or without the amendment) solves no market problem. The best way to address the inequity caused by this requirement is to eliminate it.

Sincerely,

Marianne F. Edmonds

sifma
Invested in America

September 17, 2018

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

Re: MSRB Notice 2018-15: Request for Comment Draft Amendments to MSRB Rules on Primary Offering Practices

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2018-15 (the "Notice")[2] issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is requesting comment on draft amendments to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings of municipal securities by brokers, dealers and municipal securities dealers (collectively, "dealers"). SIFMA is pleased to play a part in the conversation about potential rulemaking or additional guidance in connection with primary offering practices.

I. Rule G-11 – Primary Offering Practices

A. Free to Trade Wire

SIFMA members are supportive of requiring the senior syndicate manager to notify the syndicate via a free-to-trade wire when the syndicate restrictions are lifted. If

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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 2018-15 (July 19, 2018).

the requirement only applied when the underwriter has generated a free-to-trade wire, the new requirement would be marginally less burdensome. SIFMA and its members agree that a standardized process for issuing the free-to-trade wire is consistent with the MSRB's original intent with respect to Rule G-11. Communications to syndicate members via wire are standard practice in the market. It would not cause a significant burden to require the senior syndicate manager to notify the syndicate members simultaneously that restrictions on an issue of municipal securities have been lifted and sales in the secondary market may commence.

B. Additional Information for the Issuer

SIFMA and its members believe that issuers generally understand that information regarding the designations and allocations of securities in an offering is available either from the senior syndicate manager or certain third-party information resources. It is not uncommon for a municipal securities issuer to either sit on the syndicate desk during pricing, or log in to an electronic syndicate management system to monitor orders, designations and allocations. SIFMA would be supportive of further issuer education on this subject. SIFMA and its members are most supportive of only requiring the senior syndicate manager to send the designations and allocation information under Rule G-11(g) upon the request of the issuer, as this is current market practice. We do not believe that the senior syndicate manager should be required to provide the information to the issuer regardless of whether it is requested, as some issuers may not be interested in such information. SIFMA and its members believe that if such a requirement were to be included in Rule G-11, then issuers should be permitted to opt out of receiving the information. Also, if managers are required to provide designation and allocation information to issuers, we feel that guidance will be critical to ensure that this is done in a consistent manner across the industry in order for the information to be useable.

C. Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits

As described in our letter on the concept release,[3] SIFMA understands the MSRB's desire to require group net and net designation sales credits to be subject to the same regulatory timeframe of within 10 calendar days following receipt of the securities. However, there are considerations that weigh against the harmonization of the timing for those payments. The determination of amounts due and owing to each syndicate member for group orders and for designated orders is dependent on different inputs. The time pressure to get the payments for group net sales credits processed would pose an additional burden on the syndicate manager, increasing the potential risk of incorrect

[3] Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ron Smith, Corporate Secretary, MSRB, dated Nov. 15, 2017 ("Prior Letter").

payments being sent. Absent evidence of significant problems with the current timing of payments for group and designated orders and in the spirit of efficiency, SIFMA believes that no changes to the timeframes in the current rule should be made.

On another note, current Rule G-11(j) requires the payment of designations within 10 calendar days of delivery by the issuer. Firms handle payment in different ways, with some sending paper checks, and others distributing wires. SIFMA asks that the MSRB consider amending the verbiage to reflect that payment must made within 10 calendar days following delivery to the syndicate by "electronic means." If the MSRB put such a rule change out for comment, they might be better able to determine the industry costs and benefits of such a rule change. At this time, SIFMA and its members feel the term "electronic means" is general enough to accommodate changes in technology which make payments occur faster thus reducing risk, and eliminates the use of paper checks which are less efficient, slower to receive, and slower to process. SIFMA and its members suggest a parallel change for current Rule G-11(i) with respect to the settlement of syndicate accounts.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

A. Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof

SIFMA supports transparency and communication to the market in a fair and open manner. In light of recent tax law changes that eliminate advance refundings, however, SIFMA questions the value of requiring the collection of the percentage of each bond to be refunded.

The MSRB should consider requiring underwriters to provide information on Form G-32 for partial current refundings by CUSIP number, but not the percentage of each bond to be refunded. A less burdensome disclosure methodology, and more valuable to an investor, would be requiring disclosure by CUSIP with a dollar value of bonds refunded, instead of a percentage.

MSRB has requested comment on potentially shortening the time frame for refunding documents under Rule G-32. If the relevant parties to a new issue advance refunding have complied with their roles in such transaction, underwriters generally have access to information regarding issues that have been advance refunded by the time an issue closes. However, as noted in our Prior Letter, in some offerings underwriters continue to face delays in receiving the advance refunding documents in the required format in order to meet the existing five business day deadline under Rule G-32. In particular, most Rule G-32 filings need a final verification report completed prior to the finalization of the escrow agreement. Thus, it is not realistic to require this information to be delivered sooner than the current deadline.

SIFMA objects to the collection of potential refundings, or refunding candidates, before or at the time of pricing. This list should not be required to be posted on EMMA or produced, as it isn't final or relevant until the refunding candidates are chosen.

B. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

SIFMA feels there is no bona fide reason for dealer municipal advisors and non-dealer municipal advisors to have different requirements pursuant to Rule G-32(c). If any municipal advisors are required to make the official statement available to the underwriter after the issuer approve it for distribution, then all municipal advisors should be required to do so. Principles of fairness dictate there be a level regulatory playing field for all municipal advisors. Additionally, the MSRB has acknowledged, through its own efforts, the value of consistency across the regulatory community and within the language of rules. Inconsistent treatment of different market participants, without purpose, is no different than inconsistent treatment of market activity by separate regulatory agencies. Inconsistency within market regulation ultimately leads to unnecessary confusion and unintentional non-compliance or errors.

C. Additional Data Fields on Form G-32 Auto-Populated From NIIDS

SIFMA applauds the MSRB in its move forward to auto-populate Form G-32 from New Issue Information Dissemination Service (NIIDS) data already provided by the underwriter. As described in our Prior Letter, SIFMA believes that initial minimum denomination information would assist the marketplace as a whole in better complying with MSRB Rule G-15(f), with the understanding that dealers will continue to struggle with ensuring compliance with minimum denomination requirements for bonds with minimum denominations that change over the course of their life. Thus, SIFMA believes that it would be beneficial to add to Form G-32 a field for "initial minimum denomination" to be auto-populated by the "minimum denomination" data element in the NIIDS data to be made available to the public through EMMA. However, the underwriter that submitted the initial NIIDS data should have no obligation to update information regarding changes in minimum denominations over the life of the security. SIFMA believes that dealers' obligation with regard to such data must be limited to ensuring its accuracy at the time of its submission to NIIDS under Rule G-34 and that dealers should not be obligated to undertaking an ongoing duty to update such information.

The auto-population of data elements on Form G-32 poses no clear new burden on the underwriting community, as long as they are auto-populated. The requirement to manually fill in these fields if they are not auto-populated, for example for private placements, would create significant additional burdens for the regulated dealer.

Manually populating fields for issues that are not NIIDS-eligible, such as private placements, is no small task. Additionally, the information is of little value, as private placements are not intended to trade. We ask that the MSRB consider exempting private placement and other issues that are not NIIDS-eligible from this new rule.

The data field listed in Appendix A - Proposed NIIDS Data Points for Inclusion on Form G-32[4] appear to be suitable for collection, auto-population and dissemination.

D. Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS

SIFMA and its members are concerned about the additional burdens on the underwriting community to add a significant amount of data to Form G-32 that needs to be manually input. SIFMA is also concerned about some of the proposed fields to be required, such as the full call schedule. This information is in the official statement, and would be burdensome for the underwriter to re-key in. Collection of information regarding retail order periods by CUSIP may need more thought, given the variety of retail order period structures, and the fluid process that can change demand intra-day. Although currently required, we also question the value of manually keying in the name of an obligated person, as there are no standard naming conventions in our industry. As an alternative, we suggest the MSRB consider a link to the official statement on EMMA as satisfying the requirement to input the full call schedule.

Although SIFMA is supportive of the voluntary collection of legal entity identifiers ("LEIs"), "if readily available," our members want to ensure the submission and dissemination of LEIs for underwriters, credit enhancers, letter of credit providers, issuers and obligated persons is conducted as efficiently as possible. We urge the MSRB to coordinate with the Depository Trust Company, which manages NIIDS, to ensure the most efficient and least burdensome collection methodology. SIFMA and its members don't believe that requiring the disclosure of LEIs, "if readily available", would discourage market participants from obtaining them.

We do not think the additional field to flag when a new issue is issued with restrictions is helpful. Such a field has too broad a scope and is too complicated to make it useful.

IV. Conclusion

SIFMA and its members largely are supportive of the MSRB's proposed amendments to Rule G-11 and G-32, as more fully described above. We would be pleased to discuss any of these comments in greater detail, or to provide any other

[4] See: http://www.msrb.org/~/media/Files/Resources/MSRB-Appendix-A-Proposed-NIIDS-Data-Points-for-Inclusion-on-Form-G-32.ashx?la=en.

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
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, President and Chief Executive Officer
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
John Bagley, Chief Market Structure Officer
Margaret Blake, Associate General Counsel
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