

City of San Diego Response to

Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers (Notice 2017-19)

Rule G-11 - Primary Offering Practices:

Section I.C. – Additional Information for the Issuer

While the City of San Diego actively requests and receives information from senior syndicate managers underwriting its offerings about designations, allocations, and take-downs directed to syndicate members, it is uncertain whether all issuers have access to such information. The City believes this information provides transparency for the issuer, better ensures issuer approved syndicate policies are followed, and assists with future decisions on syndicate formation and marketing and structuring of subsequent offerings. *If this information is currently not provided to all issuers, then rule G-11 should be amended to require the senior syndicate manager to provide it, unless the issuer actively “opts out” of receiving the information.* The information should be provided electronically to ensure it is received by issuers in a timely manner. Additionally, *senior syndicate managers in negotiated sales should be required to obtain the issuer’s approval of designations and/or allocations unless otherwise agreed to between the parties.* This gives issuers who may not be in the market often, or who may not have a Municipal Advisor, an understanding that they can govern key components of the offering, should they choose to.

Section I.E. – Priority of Orders and Allocation of Bonds

While Rule G-11 seems clear with respect to the obligations of a senior syndicate manager on the priority of orders, since market participants have reported less than full compliance by senior syndicate managers, the rule should be amended to explicitly state that, in negotiated sales, retail priority orders must be allocated up to the amount of priority set by the issuer before allocating to lower priority orders, unless the senior syndicate manager obtains permission from the issuer to allocate otherwise.

Rule G-32 - Disclosures in Connection with Primary Offerings:

Section II.A. – Disclosure of the CUSIPs Refunded and the Percentages Thereof

Based on the City’s experience, the senior managing underwriter will readily have access to the CUSIPs for the refunding bonds and the percentages thereof immediately upon pricing of the refunding well ahead of closing. *As such, the disclosure of this information should be required prior to closing and all market participants should have access to it at the same time.*

Section II.B. – Submission of Preliminary Official Statements (POS) to EMMA

Requiring that the POS be submitted to EMMA would positively aid in the effort to ensure that all market participants have access to the POS at roughly the same time. *There is no valid reason for*

certain market participants to have access to the POS, while others do not. In addition, this would offer greater transparency and notice for the upcoming sale, potentially increasing the investor base among other benefits. The underwriter (for negotiated sales) or municipal advisor (for competitive sales) should be required to submit the POS to EMMA concurrently, or within one business day, of receiving confirmation from the issuer that the POS has been electronically printed/posted. A logical location for posting the POS would be together with related transaction information on EMMA's New Issue Calendar (<https://emma.msrb.org/ToolsAndResources/NewIssueCalendar>).

If information in the POS changes requiring a supplement to the POS, the underwriter or municipal advisor should be required to post the supplement. Additionally, the rule should allow an underwriter or municipal advisor to withdraw the POS once the information becomes stale (i.e., if the sale does not occur, or after the sale once the Official Statement has been posted on EMMA).

Section II.E. – Whether the MSRB Should Request Additional Information on Form G-32 that Currently is Not Provided in NIIDS, and If So, What Data?

Generally speaking, the additional information proposed to be added to Form G-32 seems useful and appropriate, with the exception of the Management Fee and the Municipal Advisor Fee. The Management Fee, which is typically paid to the senior managing underwriters, can vary significantly due to the complexity of a given transaction, making comparisons among different transactions difficult without the necessary background. While it is recommended that it be excluded, if the Management Fee data point is added to Form G-32, it should be properly defined such that it is clear that it should exclude other components of the underwriter's compensation, including the underwriter's take down for syndicate members. The Municipal Advisor fee should be excluded since this is an issuer matter with fees based on a separate contractual arrangement between the issuer and its Municipal Advisor; it is not clear why the underwriter would be required to report this information.