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MSRB Draft Rules Would Clarify CUSIPs Needed for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board has drafted rule amendments that would clarify that dealers must obtain CUSIP numbers for private placements, including direct purchases when the dealer is acting as a placement agent.

The draft amendments to Rule G-34 on "CUSIP Numbers, New Issue and Market Information Requirements" would also subject non-dealer municipal advisors to CUSIP requirements when acting as financial advisors for munis sold in competitive offerings.

Additionally, the amendments would also remind dealers that they have to obtain CUSIP numbers for secondary market securities.

The board is requesting public comments on the draft amendments, which include definitional and technical changes as well, and has asked for the comments to be submitted by March 31.

The MSRB said it will decide whether to proceed with, or reconsider, the draft amendments based on the comments.

"It's important that we clarify and remind dealers of their obligations under Rule G-34, and that we require all municipal advisors to follow the same obligations on new issue transactions," MSRB Executive Director Lynnette Kelly said Thursday. "Great clarity and consistency of regulations on obtaining CUSIP numbers will improve market efficiency and transparency."

In its 21-page release, the board said, that it "believes that these draft amendments will provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices."

The board asked commenters for estimates of the costs of the amendments, but said it "assumes that [the costs] will be significantly less than the benefits that will accrue over time to investors as well as the market as a whole."

The release said the MSRB drafted the amendments after learning that there have been industry questions about the application of CUSIP number requirements for private placements of municipal securities. Some industry participants, such as banks in direct purchase transactions, do not appear to believe that CUSIP numbers are required with respect to muni securities, the board said. There also appears to be some uncertainty regarding the application of CUSIP Number requirements for secondary market securities, where the characteristics of a muni issue have been altered such as through a remarketing or the purchase of insurance on part of the issue.

In addition, the MSRB has been worried about a regulatory imbalance between dealer and non-dealer municipal advisors since the adoption of Dodd-Frank Act, which put non-dealer MAs under federal regulation for the first time. It has become industry practice in competitive offerings, in some cases, for the issuer to let the dealer financial advisor obtain the CUSIP numbers for the bonds so

they can be readily sold after the bonds are awarded. Some issuers appear to have tried to go around dealers and used non-dealer MAs to avoid getting CUSIP numbers. The MSRB amendments would impose on non-dealer MAs the same requirements as dealer MAs in competitive offerings to obtain CUSIP numbers.

The release asks commenters to answer several questions such as whether the proposed amendment to the definition of “underwriter” in G-34 is sufficient to clarify that CUSIP numbers are needed in private placements as well as public offerings. Is there another more effective way to achieve this result? the board asked.

The MSRB asked if the industry understands that mode changes in a remarketing do not require a new CUSIP number as long as the entire maturity of a particular CUSIP number changes in the same way?

The board also asked whether issuers would forgo working with either dealers or non-dealer MAs in certain circumstances to avoid the CUSIP numbering requirements.

The Bond Buyer

By Lynn Hume

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