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Groups Urge MSRB to Drop Idea of Requiring CUSIPs for Private Placements.

WASHINGTON – Most municipal market groups are urging the Municipal Securities Rulemaking Board to abandon what they say is a dangerous proposal to require dealers to obtain CUSIP numbers for private placements.

But the groups have different views on another proposal to require non-dealer municipal advisors acting as financial advisors in a competitive sale to get CUSIPs.

The comments, made in letters sent to the MSRB, respond to changes the self-regulator proposed to its Rule G-34 on obtaining CUSIP numbers.

While many of the market groups believe the MSRB's inclusion of placement agents under G-34 is a change, the MSRB has said it is more a clarification because it has always believed that G-34 applies to private placements.

The Securities Industry and Financial Markets Association and Bond Dealers of America both stressed that it is important that any changes the MSRB makes are done prospectively because many participants would see them as new requirements.

"Failure to do this will create chaos and confusion in the market, which will not further any goal of the MSRB," wrote Mike Nicholas, BDA's chief executive officer.

Leslie Norwood, managing director and associate general counsel with SIFMA, wrote that SIFMA and its members believe the MSRB should provide "a clear exemption from the requirements of Rule G-34 for dealers and municipal advisors in private placements, including direct purchases of municipal securities to a bank, its affiliates or subsidiaries, or any consortium thereof."

Susan Gaffney, executive director of the National Association of Municipal Advisors, said NAMA believes the MSRB should have an exemption from the proposed requirements when the private placement is executed with a single purchaser.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA would agree with such an exemption.

The exemption also makes sense, some groups said, because placement agents may not be able to register with the Depository Trust and Clearing Corp., a requirement under G-34, because they never purchase the securities.

Gaffney said that the MSRB should also clarify that CUSIPs are only required for "clearly identifiable securities."

"This would avoid general confusion that exists in the marketplace related to the definitions of bank loans, private placements, direct placements, etc.," Gaffney wrote. Norwood requested that the

MSRB clarify that private placements of loans would be exempt from the proposed requirements.

BDA takes a somewhat different tack and asks the MSRB to revise its proposed definition of underwriter so that the requirement for an underwriter to obtain CUSIPs would not be triggered if there are five or fewer purchasers of the munis who are sufficiently sophisticated. Such a change would still allow the purchasers to request a CUSIP if they wanted, BDA said.

A number of groups expressed concern that the proposed changes and clarifications could adversely impact the market by presenting a host of challenges, including discouraging banks from pursuing private placements and discouraging issuers from engaging placement agents and municipal advisors.

“A major and overriding concern of the GFOA is that the proposed rulemaking could dampen the bank loan and direct purchase markets, putting issuers in the unfavorable position of either not using a financing structure that is in their best interest, or having to pay more for those financings,” Brock wrote.

Other commenters, including NAMA, the National Association of Health and Educational Facilities Finance Authorities, and the American Bankers Association, also said they are concerned that making CUSIPs a necessity in private placements would drive banks that are only interested in holding loans away from the municipal market. Some market participants, including banks, see CUSIPs as an indicator that an instrument is a security. Dealer groups said they are worried that the CUSIP requirement would take bank business away from dealers, which have a regulatory incentive to call something a security instead of a loan.

SIFMA and BDA lauded the portion of the changes that gives non-dealer MAs acting in competitive deals the same responsibility to apply for CUSIPs that dealer-MAs have in competitive deals under the current rule. However, NAMA said it isn’t necessary and questioned why the winning underwriter in the deal couldn’t continue getting the CUSIPs.

Norwood wrote in SIFMA’s comment letter that dealers would welcome the change because those bidding on competitive transactions are currently forced to each get CUSIP numbers for the transaction in case they win, whereas under the changes, the participating MA would only have to get one set of CUSIP numbers.

Gaffney also wrote that the requirement for MAs is concerning because it could move those MAs closer to carrying out dealer activities.

She added that the MSRB did not include explanations for things like the processes for applying for CUSIPs in competitive transactions when an issuer doesn’t have an MA and when an issuer uses multiple MAs on a transaction.

The National Federation of Municipal Analysts, along with others, expressed some concern that the changes would hurt transparency in the market when efforts have been made in the past to get participants to voluntarily disclose information about things like private placements.

NFMA said a new CUSIP requirement could result in fewer voluntary notices being filed or linked to already outstanding debt. Other commenters urged the MSRB to wait for the Securities and Exchange Commission’s changes to 15c2-12 to help transparency over things like private placements.

The Bond Buyer

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