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Groups Ask MSRB to Broaden CUSIP Exception for Private Placements.

WASHINGTON – Market groups are asking the Municipal Securities Rulemaking Board to broaden a potential exception to its proposal to clarify that CUSIPs are required for private placements, saying the current version doesn't go far enough because it excludes non-bank entities.

The groups made their requests in comment letters responding to a modified proposal from the MSRB on its Rule G-34 on CUSIP numbers. The original proposal, released for comment on March 1, clarified that Rule G-34 requires dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent. The proposal also broached adding a requirement that non-dealer municipal advisors for the first time be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

The board recast that proposal in June in response to market concerns by adding an exception for private placements that involve a limited number of participants and are not expected to be resold. The exception would allow a dealer acting as an underwriter or a placement agent in a new private placement with a bank to “elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit the resale of the municipal securities to another bank.”

It would also apply for MAs in competitive sales of munis where the securities are purchased directly by a bank and the MA believes the bank will hold the securities to maturity or limit any resale to another bank.

Leslie Norwood, managing director and associate general counsel with the Securities Industry and Financial Markets Association, said SIFMA and its members “welcome” the MSRB's exception but believe “that the exception should be clarified to clearly accommodate similar non-bank purchasers.”

SIFMA, in addition to the American Bankers Association, is proposing language that would provide an exception for dealers or MAs if the underwriter or MA reasonably believes that the purchaser of the munis is: a bank; any entity directly or indirectly controlled by the bank or under common control with the bank other than a broker-dealer; or a consortium of the previous institutions used to participate in a purchase of a new issue of municipal securities.

The SIFMA-proposed exception would also require that the munis are either being purchased with no present intent to sell or distribute or that resales will be limited to the institutions described above or qualified institutional buyers or accredited investors as defined by Securities and Exchange Commission rules.

ABA's proposed exception differs from SIFMA's in that it specifies that the exception should apply if the purchasers represent their intentions not to resell and to only resell to the particular investors named, meaning dealers and MAs could rely on the investors' representations. SIFMA does not specifically include the need for a representation.

Bond Dealers of America agreed that the exception should apply to non-bank affiliates. It, along with Bloomberg's Open Symbology Group, also suggested that the MSRB consider moving away from a CUSIP requirement and instead allow other security identifiers.

SIFMA said that in the absence of the language it is proposing, the MSRB should clarify the documentation underwriters and MAs would be required to produce during a regulatory examination. It is asking that a reasonableness standard apply and made clear that written guidance from the MSRB "would be extraordinarily helpful."

The MSRB said in its June proposal that it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs. However, it said it would not set prescriptive steps to comply with the exception, specify instances where the exception would apply, or define the parameters for how a dealer should craft its policies and procedures.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA supports the ABA's representation idea because it would address the group's concern that the original exception language was not clear enough and would ultimately damp demand for bank loans and direct purchase financings. The language ABA is proposing would "allow for all participants to rely on the investor's representation and will add certainty that CUSIPs are not assigned to those securities," Brock said.

The National Association of Municipal Advisors agreed with GFOA and ABA in its comment letter, saying the inclusion of the "represent" language would mean "all parties will have a better understanding and ability to ensure that the intent of the investor is known based on fact."

NAMA also said it is concerned that the process for getting CUSIPs under the proposal would require dealers and MAs to get the CUSIPs before they can determine if they are needed and leave them without the possibility of reimbursement if the CUSIPs are ultimately unnecessary.

Both GFOA and NAMA also said the MSRB should consider including exceptions for other situations like state and local government bonds purchased by other state and local governments with no intention to resell.

NAMA also reiterated its opposition to the MSRB's intent to require non-dealer MAs to be subject to the CUSIP requirement, saying the requirement does not align with the regulatory structure or roles and responsibilities associated with MAs.

The requirement would not benefit MA clients, would create confusion when a competitive deal does not have an MA involved, and would blur the line between MA and dealer activity, according to Susan Gaffney, executive director of NAMA and author of the group's letter.

"Instead of expanding the current responsibility of MAs to obtain CUSIPs in competitive sales, the MSRB should altogether eliminate the responsibility of having any MA (independent or broker/dealer MAs) obtain CUSIP numbers," Gaffney wrote. "This is an activity best suited for underwriters who use the identifiers to sell the bonds."

Gaffney said the MSRB should be aware of the time and cost burdens MAs would face if the proposal were to be approved.

Norwood wrote that there is currently a regulatory imbalance between dealers and MAs because of the existing CUSIP requirements and that the MSRB's proposal to include non-dealer MAs is "an

opportunity to level the regulatory playing field.”

She added that SIFMA understands the concern about non-dealer MAs possibly acting as dealers under the proposed requirements and asked that the SEC confirm that such activity in this context would not constitute dealer activity.

The Bond Buyer

By Jack Casey

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