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Muni Market Torn On Revisiting Municipal Advisor CUSIP Requirements.

Market participants are torn on whether the Municipal Securities Rulemaking Board should eliminate a one year-old requirement that municipal advisors apply for CUSIP numbers when advising on competitive sales.

Some stakeholders said it should be an underwriter's job and that applying for the CUSIP is burdensome to MA's, while other market groups disagreed and said the rule did not need to be revisited. The debate stems from the MSRB's February decision to seek comment on whether it should do away with 2018 amendments to its Rule G-34 on CUSIP requirements. Those amendments said all municipal advisors, whether dealer or non-dealer, needed to apply for CUSIP numbers when advising on a competitive new issue.

CUSIP numbers are six and nine sets of numbers and letters that identify an issuer and each maturity of a municipal issuance. The board said in its notice that in light of the market's experience with the rule in operation after its effective date, along with additional stakeholder input and the burden on municipal advisors in practice that it determined a retrospective review of the CUSIP requirement was needed.

The National Association of Municipal Advisors said Tuesday that many of the issues the group raised in 2017 reflect its current comments and that there were no market problems relating to CUSIP numbers that necessitated the rule change last year.

"...Instead of taking the Rule that was developed prior to 2010 and applying it to all MAs, the MSRB should have - in light of a federal definition of municipal advisors coming into play - withdrawn CUSIP responsibilities for any municipal advisor," Susan Gaffney, NAMA executive director wrote in an email. "We believe that rules for MAs should - or should not - apply to all MAs in the same fashion; and that obtaining CUSIPs should be done by underwriters for both policy and practical reasons."

The Bond Dealers of America told the MSRB on Tuesday that the board did not need to revisit the CUSIP requirement so soon after it took effect and that applying for CUSIPs is not a burden to municipal advisors.

"The BDA does not believe that a retrospective evaluation of the CUSIP requirement is appropriate," BDA CEO Mike Nicholas wrote in the comment letter. "As a practical matter, the CUSIP requirement with respect to any municipal securities market participant does not impose significant burden on the participant and does not merit re-opening MSRB Rule G-34 so soon after it has been finalized."

Nicholas added that the original intent of the Rule G-34 amendments was to clarify when underwriters and municipal advisors were required to obtain CUSIP numbers in private transactions.

"If the MSRB deletes the CUSIP requirement for municipal advisors, then that will allow municipal

advisors to engage in 'competitive sales' that are private in nature and do not have a dealer acting as a placement agent without obtaining a CUSIP number," Nicholas wrote. "As the MSRB believed in 2017, if municipal advisors engage in these kinds of transactions, the market needs to have the visibility into the existence of these transactions that a CUSIP number provides and deleting the requirement would be inappropriate."

Among the issues raised by comment letters to the MSRB and SEC in 2017 was an exception to the private placement requirement that said CUSIP numbers are not needed for direct purchases by banks, their non-dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity. Issuers and dealers alike had raised concerns that investors would be hesitant to certify that they planned to hold "to maturity," since muni bonds often have much earlier call dates.

Under the revision filed with the SEC, titled Amendment No. 1, that exception now reads that a dealer or MA may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.

At a minimum, if the MSRB decides to get rid of the CUSIP requirement for municipal advisors, Nicholas wrote they should do so only with respect to "competitive sales" as to which there is no broker-dealer acting as an underwriter.

The Securities Industry and Financial Markets Association does not want any changes made to Rule G-34, said Leslie Norwood, SIFMA managing director and associate general counsel. However, if the MSRB does decide to reopen the issue, it should be mindful of private placements and Norwood said removing the requirement for municipal advisors to obtain CUSIP numbers runs counter to the intent for changes made in 2017.

"If CUSIPs are to be obtained in private placements, the MSRB should consider that the placement agents should obtain the CUSIPs once the investor has been determined though not when a request for bids is distributed," Norwood said.

The MSRB should consider, if the MSRB wants to make any changes, relief for municipal advisors with getting CUSIP numbers for competitive public offerings of notes and that underwriters should get those CUSIPs, Norwood said.

For competitive underwritings of securities, there is likely one underwriter and one coupon per maturity, Norwood said. Competitive notes transactions have multiple underwriters for the same maturity, resulting in multiple coupons, each with its own CUSIP numbers. So an underwriter should get the CUSIP for notes transactions, Norwood said.

Municipal advisors should not have to provide CUSIP numbers for competitive sales, wrote Dennis Dix Jr., founder of MA firm Dixworks LLC.

"I continue to be bewildered by the new imposition on municipal advisors to provide CUSIP numbers for competitively bid new issues," he wrote.

Dix added that broker-dealers have effectively applied for CUSIPs for decades. Shifting the CUSIP burden from underwriters to MA's isn't useful, Dix wrote, and poses an undue burden on small shops like his.

"I urge in the strongest terms that the rule be revoked or revised to relieve MA's of the CUSIP

obligation,” Dix wrote. “If the intent of the current rule is to accelerate the obtaining of CUSIPs, I simply don’t see the need or market benefit under the current regulation.”

Rule G-34 does not accomplish what the board set out to do, which is to improve the disclosures on bank direct purchases, wrote Robert Lamb, president of Lamont Financial Services Corporation. Instead, it places additional burdens on independent municipal advisors and makes the market less efficient, Lamb added.

Lamb took issue with the rule requiring that an independent municipal advisor seek and obtain CUSIP numbers before the award on a competitive sale.

He wrote that the par amount of the bonds may change as a result of the bid, needing changes and multiple communications with the CUSIP bureau. The bonds would also have to be made Depository Trust Co. eligible, so an underwriter would have to take the CUSIPS to DTC to make them eligible.

Lamb noted that the limitations with respect to DTC does not apply to broker dealer firms since they are already a member of DTC.

“Even if DTC changed its policies to allow non-broker dealers to become DTC participants, the cost would be significant, at over \$8,000 per year,” Lamb wrote. “However, it is not currently possible for an independent municipal advisor to become a DTC participant, so the threshold problem is more acute than the cost.”

Any changes to the rule would need Securities and Exchange Commission approval before they could become effective.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 05/28/19 02:50 PM EDT

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