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Broker-Dealers Participating in Primary Offerings of Municipal Securities: Prepare for Implementation of New Rules - Jones Day

The Situation: The Municipal Securities Rulemaking Board (“MSRB”) amended its rules regarding primary offering practices and disclosures in connection with primary offerings to enhance regulatory transparency, ensure equal dissemination of information in primary offerings, and include selling group members in certain obligations in a primary offering of municipal securities.

The Result: The rule amendments become effective January 13, 2020, and broker-dealers engaged in underwritings of municipal securities, including those participating as selling group members, will be expected to understand and be in compliance with the changes by that date.

Looking Ahead: Underwriters and firms that participate in primary offerings of municipal securities should be familiar with the impending changes. Firms should review and, as necessary, revise their policies and procedures to ensure compliance with the new requirements.

Overview

On January 13, 2020, amendments to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings, will become effective. In [June 2019](#), the U.S. Securities and Exchange Commission (“SEC”) approved the amendments, which are meant to enhance transparency, equalize information dissemination to market participants, and ensure selling group members comply with issuer conditions, priority provisions, and order period requirements that apply to syndicate members.

In short, MSRB Rule G-11 will now:

- ***Require the senior syndicate manager in an underwriting of municipal securities to disseminate the “free-to-trade” information to all syndicate and selling group members at the same time.*** Previously, the syndicate manager had no obligation to provide this information to market participants in a standardized form. As a result, some syndicate members would learn before others that restrictions on an issue had been lifted and the issue was free to trade at prices other than the initial offering price. This created an uneven playing field for syndicate and selling group participants, which the amendment is meant to address.
- ***Require the senior syndicate manager to provide the issuer with the same information the syndicate manager currently provides to syndicate members regarding designations and allocations of municipal securities in the primary offering.*** Currently, the senior syndicate manager is required, within two business days following the date of sale, to disclose to the syndicate, in writing, a summary by priority category of all allocations of securities accorded priority over member orders. In addition, the senior syndicate manager must disclose in writing to each member of the syndicate information on the designations paid to syndicate and nonsyndicate members. The amendment now requires this same information be provided to the issuer regarding their offering.

- **Codify that selling group members are required to comply with the written communications they receive from the senior syndicate manager relating to, among other things, issuer requirements, priority provisions, and order period requirements.** The amendment is meant to clarify any confusion that may have existed among selling group members as to their obligations to comply with such communications.
- **Align the timeframes for the payment of group net sales credits with the existing timeframe for payments of net designation sales credits so all sales credits are received within 10 calendar days following the date the issuer delivers securities to the syndicate.** Currently, group net sale credits are paid out within 30 calendar days following delivery of the securities by the issuer to the syndicate. The amendment requires this payment to instead be made within 10 calendar days for consistency with the timeframe for payments of net designated sales credits.

Amendments to Rule G-32 will:

- **Require the underwriter in an advance refunding, where advance refunding documents are prepared, to provide access to the documents on the MSRB's Electronic Municipal Market Access system so market participants receive the information at the same time.** Currently, some market participants may learn of advance refunding details before the information is more broadly disseminated, giving them an advantage in the market.
- **Eliminate the current requirement that a dealer acting as a financial advisor and preparing the official statement in a primary offering must make it available to the underwriter after the issuer approves it for distribution.** This obligation no longer will be required.

Syndicate and selling group members should be aware of their obligations pursuant to the amended rules and update compliance policies and procedures accordingly.

Three Key Takeaways

- Firms participating in the primary offering of municipal securities should be familiar with how the amendments will affect them and be prepared to meet their obligations thereunder.
- At a minimum, policies and procedures should be reviewed and revised to address the changes well before the January 13, 2020, effective date.
- The SEC also approved changes to Form G-32 for the collection of data elements in connection with primary offerings. The MSRB will issue one or more notices in the near future setting forth compliance date(s) for the changes to Form G-32.

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