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March 31, 2017

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W.
Washington, D.C. 20005

Re: MSRB Regulatory Notice 2017-05

Dear Mr. Smith:

The Government Finance Officers Associations ("GFOA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposal to amend Rule G-34. The GFOA represents over 18,000 members across the United States, many of whom issue municipal securities, and therefore is very interested in the rulemaking that is done in this sector. Members of GFOA's Committee on Governmental Debt Management (the "Committee"), a geographically and organizationally diverse group of 25 municipal securities issuers, were consulted in preparing this comment letter. Below are the Committee's comments.

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. This stems from the MSRB's proposed definition of "underwriter" to include placement agents. The GFOA opposes this change in definition for the reasons noted below.

Direct purchases by banks are an important component of the debt profiles of many issuers, particularly small governments who are not able to readily or economically access the public debt markets, compared to their larger counterparts. The GFOA is very concerned that this amendment would significantly reduce the number of banks that are willing to purchase municipal securities directly from issuers. Direct purchases by banks also present cost savings to issuers compared to public offerings, because they do not require official statements or ratings and can typically be executed in a timelier fashion that better meets the needs of the issuer and investors. Yet, if this proposal were to be implemented, many banks would likely object to: (i)

having CUSIPs for instruments that they plan to treat as loans on their financial statements and (ii) holding those instruments in book-entry form. In applying the U.S. Supreme Court's "family resemblance" test in *Reves v. Ernst & Young*, many banks think that CUSIPs and book-entry form are indicative of a plan of distribution and, therefore, of a security. Furthermore, due to remaining confusion as to the definition of a "bank loan," this proposed rulemaking could cause banks not only to curtail their interest in purchasing private placements of municipal securities, but could also deter interest in executing bank loans with state and local governments. Such actions by banks would result in state and local governments having to pay more for entering into these transactions, costs that will ultimately be paid by taxpayers.

Additionally, the MSRB's proposal is likely to reduce the use of placement agents by issuers, so that CUSIP numbers and book-entry form would not be required. Also, municipal advisors may not serve as placement agents. Issuers may, therefore, be forced to interact with banks on their own, without a placement agent to solicit the banks and assist the issuer with negotiating the most favorable terms for direct purchases. This is averse to the MSRB's mission to protect issuers. This go-between role of the placement agent is a valuable service that, under the proposed change the Rule, is at risk of being lost for the issuers that need it most.

The proposed definition of "underwriter" would have the effect for the first time of requiring placement agents to (i) obtain CUSIPs for municipal securities they place and (ii) applying to DTC to make such securities DTC-eligible. The MSRB asserts that the proposed definition of "underwriter" merely codifies its existing interpretation of the term. However, that interpretation is contradicted by the language of the existing rule, which applies only when a dealer "acquires" a new issue of municipal securities. When a placement agent merely acts as a go-between between the issuer and the investor (e.g., a bank), and never takes title to the securities, even for an instant, the existing rule by its very terms does not apply.

The MSRB states that Rule G-34's CUSIP requirement was originally adopted to improve efficiencies in the processing and clearance activities of the municipal securities industry. However, the lack of CUSIP numbers for direct purchases of securities by banks has not proved to be an impediment to the willingness of banks to make such direct purchases.[1] In terms of investor awareness of such direct purchases, placement agents already are required to notify the MSRB of such placements by filing Form G-32, thus the CUSIP proposal does not appear to add value or provide additional information to investors. We suggest that instead of seeking these changes to Rule G-34, the MSRB spend effort and resources enhancing the EMMA system with regard to bank loan information, and continue to work with the GFOA and other market participants to identify EMMA improvements that would accommodate the transactions being listed on an issuer's home page when Form G-32 is filed. This approach would focus efforts on the pressing matter at hand and allow investors to more easily access bank loan information, without creating collateral damage to issuers and the broader bank loan market.

[1] In 2016, the private placement market topped $20 billion, a number that is 8 times the amount that was issued in 2010; http://www.bondbuyer.com/news/markets-news/private-placements-surge-amid-transparency-value-concerns-1124546-1.html

Furthermore, the application of the new definition of "underwriter" to the DTC process could also prove problematic as it is not clear that DTC would even be willing to interact with a placement agent that is not the owner of the securities, even for a limited period of time. It is the general practice for such securities not to be in book-entry form, but instead simply to be evidenced by a note. By applying the new definition of "underwriter" to the DTC provisions of Rule G-34, the MSRB will be creating unnecessary confusion.

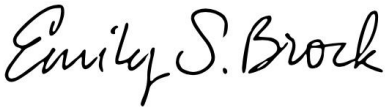
The MSRB asks for comment on whether it should provide an exception from the requirements of Rule G-34(a) for dealers in private placements of municipal securities to a single purchaser. Should the MSRB move forward with the proposed amendment to Rule G-34(a), the GFOA would support such an exception. However, the GFOA believes that such an exception should apply to the entire Rule G-34, not just Rule G-34(a) in light of the DTC concerns discussed above.

The MSRB also asks how difficult it would be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market sales. The GFOA notes that such direct purchases are already structured to take advantage of the Rule 15c2-12 exemption for limited offerings to no more than 35 persons, which already requires the purchaser to state that they are not purchasing the securities "with a view to distributing" them.

Finally, we do not object to the proposal to require non-dealer municipal advisors to obtain CUSIP numbers for competitive issues, as is currently required for dealer municipal advisors.

Thank you again for the opportunity to comment. Please feel free to contact me at ebrock@gfoa.org or (202) 393-8467 if you have any questions on or would like to discuss any of the information provided in this letter.

Sincerely,



Emily Brock
Director, Federal Liaison Center