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March 31, 2017

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Comments to Notice 2017-05, Request for Comments on Amendments to and Clarifications of MSRB Rule G-34

Dear Mr. Smith:

Piper Jaffray & Co. ("Piper") is pleased to respond to the notice issued by the Municipal Securities Rulemaking Board (the "MSRB") on March 1, 2017, entitled, Notice 2017-05, Request for Comments on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers (the "Notice"). Piper Jaffray has extensive experience serving as a placement agent on various types of municipal transactions that have been placed with banks or other investors. In fact, according to Thompson, over the past three years we have completed more transactions as a placement agent than any other firm with over 500 transactions completed during that period. As such we have a lot of practical experience with the issues involved with and the potential consequences of the amendments that the MSRB is proposing to G-34.

You have asked for comments on three separate topics that are each part of the amendments to G-34: (1) the amendments which specify that a CUSIP would be required for private placements which are considered securities, (2) changes to the language on when a new CUSIP would be required on a secondary market transaction and (3) the requirement for non-dealer municipal advisors to obtain CUSIP numbers on a competitive sale. Our comments will be focused primarily on the first topic.

Summary of Comments and Concerns

We believe that the changes that the MSRB is recommending that would require a CUSIP to be obtained on all placement transactions is not a good idea because it will hurt issuers' access to an efficient and low cost capital source, have negative market impacts and are unnecessary regulation that does not result in any quantifiable benefits. We believe that any concerns in the marketplace around transparency of placement transactions are better addressed in other ways including some form of the SEC's

proposed amendments to its Rule 15c2-12 that would require obligors to disclose the incurrence of placement issues. If the MSRB does determine to proceed with the proposed changes, we have suggestions on changes to the current proposal that would minimize the negative consequences of the current proposal.

Complexity in the Legal Analysis of Placement Transactions Creates Uncertainty as to What Regulations Apply to these Transactions

A starting point relative to our concerns on this proposed rule change to G-34 is the complicated and uncertain legal analysis related to these transactions. An initial question on each of these transactions is whether the transaction is a "security" or a "loan" and what regulatory rules apply depending on this determination. While the MSRB's release notes that "regulated entities should have reasonably designed policies and procedures in place to make a determination as to whether the transaction involves a municipal security", there are still many different views as to how particular transactions should be treated. The *Reves* case does not provide any clear answers and we have found that different parties in transactions are often getting conflicting advice as to whether a transaction is a loan or a security and exactly what terms of documentation are the keys to making this analysis.

The uncertainty in the legal analysis described above is then combined with the reality that many of these transactions are placed with banks that are purchasing under the condition that they can treat the issue as a loan on their books and that, as such, they will not have to use mark to market accounting treatment. The analysis of what constitutes a loan and therefor would not require mark to market accounting treatment for a bank is governed by different regulators and different rules than the narrower securities law analysis based solely on *Reves* that we are required to apply as a broker-dealer. In the middle of all of this is the question as to whether a CUSIP number is required and what this means to the analysis as to whether we are placing a loan or a security to a bank purchaser who is categorizing the issue as a loan on their books. While banks seek out a loan characterization as it produces more favorable accounting treatment, broker-dealers are advised to treat the instrument narrowly, as a security, so that they do not risk violating the myriad MSRB and SEC rules applicable to placement agent activity, such as G-32, G-37, A-13 and the municipal advisor rules, to name a few.

Given this complex background, we believe that the MSRB must think carefully about the practical impact of its proposed rule changes.

Key Concerns about the Consequences of the Proposed Rule Changes

1. **We Have Concerns that Requiring CUSIP Numbers on All New Issue Placements Would Eliminate Investors and Reduce Competition in the Placement Market which would Negatively Impact Issuers**

The reality is that most bank purchasers of "placement" transactions or "direct placements" do not want a CUSIP number assigned and, in many cases, will not purchase the transaction if a CUSIP number is assigned. It is important to these bank purchasers that they are able to classify the transaction on their books as a "loan" with the corresponding accounting treatment. If they must classify the transaction as a security, it would be subject to mark to market accounting treatment. It has been made very clear to us on many occasions that a purchaser would back away from the transaction if a CUSIP number was assigned.

As a result, we are concerned that the amendments that you are proposing to require placements be covered under G-34 and require a CUSIP number to be assigned will damage investor interest in the placement market, reduce the number of banks willing to purchase these transactions and ultimately eliminate a cost-effective borrowing option for issuers. These issuers will either be required to pay a higher rate to attract those placement and bank purchasers who are willing to accept a CUSIP or will have to access the public market instead. These issuers have chosen to proceed with a placement for one or more of a variety of reasons that provide tangible benefits including lower interest rates, not having to spend the time and expense to create a full offering document, not having to attain a rating and/or the ability to lock an interest rate and complete a transaction more quickly among others.

2. Requiring CUSIP Numbers on Placements Done with a Placement Agent Would Create an Incentive for Issuers to Complete Placement Transactions without a Placement Agent in Order to Avoid Getting a CUSIP

One of the challenges that broker dealers serving as a placement agent face is that there is still uncertainty and confusion in the market as to the range of activities that municipal advisors are able to conduct related to placement transactions. Many placement transactions are completed in the municipal market that include a municipal advisor but do not include the use of a placement agent. This is acceptable if the municipal advisor is careful not to perform functions that would deem the advisor a placement agent. Piper has served as a municipal advisor on some of these transactions and when we do so are careful to limit the scope of our activities so that we would not be considered a placement agent. However, in many cases, we believe that municipal advisors are violating their duties and actually acting as placement agents on these transactions. When pursuing placement agent business we are frequently in competition with these municipal advisors who are suggesting to clients that they are able to complete placement business and conduct investor solicitations without hiring a placement agent.

This issue has improved somewhat as regulators, including the MSRB, have sent out alerts warning advisors that they must be careful and understand the rules that distinguish when an entity is considered a placement agent in order not to act in this

capacity when serving as a municipal advisor. The rules and legal analysis around when an entity is deemed to be serving as a placement agent rather than an advisor are still somewhat uncertain. We continue to see a number of municipal advisors who we believe are clearly crossing this line or who have not done any in depth analysis of these issues.

If the MSRB proceeds with its proposal to require dealers serving as placement agents to attain a CUSIP, you will be putting in place a regulatory framework that encourages issuers to avoid working with placement agents so that transactions will not require a CUSIP number which effectively limits the potential investor base. Not only will issuers lose the benefits that placement agents bring to transactions, including the ability to solicit multiple investors to find the best proposal for the issuer, but issuers will be encouraged to hire municipal advisors who are or may be crossing the line into placement agent activities to complete these transactions because they have no requirement to obtain a CUSIP. You will also be encouraging issuers to work directly with bank purchasers, again without a placement agent involved, so that no CUSIP is required. In either case, whatever benefits you believe are created by your proposed rule would be circumvented because the same transactions will be completed but without a CUSIP number assigned.

In addition, you will be creating an un-level playing field where placement agents will be viewed as an impediment to a transaction because they bring the requirement of a CUSIP number which most of the purchasers want to avoid. Those advisors who are willing to push the envelope or cross the line into placement activity will have an advantage. Those placement agents who are willing to accept a more aggressive legal analysis around which transactions are considered "loans" will also have an advantage. You will be creating an environment where those who are willing to be most aggressive in circumventing rules or taking aggressive legal stances will be advantaged and those who are trying as carefully as possible to comply with the appropriate laws and regulations will be disadvantaged. We are confident that is not the result that the MSRB is intending in proposing this rule change.

The potential for incentivizing these types of behaviors are very real. We have been involved in multiple instances in the past where we have had bank purchasers (who were solicited and brought to the transaction by Piper in our capacity as a placement agent), municipal advisors, bond attorneys and issuers state to us that if Piper insisted on obtaining a CUSIP for the transaction that they would simply proceed to close the transaction without our participation since we were the only party who was concerned that this was a potential issue or had a regulatory obligation to comply with this requirement. That is an awkward position to be in and is clearly both an unintended result and an un-level playing field. We are confident that our presence as a placement agent on transactions brings significant value to issuers by assuring that the our clients have the opportunity to source capital from as many potential investors as possible and by working with our issuer clients to select and negotiate the best possible placement option relative

to their needs and goals. All of these benefits would be undermined by a rule that only applies to placement agents and encourages issuers and transaction participants to circumvent the CUSIP requirement by simply avoiding having a placement agent involved.

3. This Proposed Rule Change Does Not Create Tangible Benefits for the Market

The section of your release that describes the costs and benefits of the proposed rule changes suggests that benefits will be provided to investors through "increased transparency with respect to market information associated with private placements". We believe that the benefit to municipal market investors of requiring CUSIP numbers on placement transactions would be extremely limited and potentially non-existent.

The MSRB's own release describes the history and original reason for the adoption of G-34 and the reason for assigning CUSIP numbers on new issues as being needed "to improve efficiencies in the processing and clearance activities of the municipal securities industry" and allowing dealers to rely on CUSIP numbers "in receiving, delivering and safekeeping" these securities. On the almost all placement transactions that Piper is involved in, our firm is not involved in any of these activities. The settlement of these transactions is almost always completed directly between the issuer and the purchaser. A CUSIP identifier is not needed for this purpose.

The core issue that has been discussed and noted by many participants in the market related to placement transactions is that there is no requirement for issuers or other participants to report the existence of or key terms of these transactions to the market. This is clearly a problem and information gap for those who own or are considering purchasing other public securities of these issuers. The SEC is proposing to address this key gap by amending 15c2-12 to require issuers to include disclosure of placement terms in their continuing disclosure agreements. While we have various comments on the SEC's proposal, we support the idea that requiring disclosure of the existence and terms of loans and placement transactions through the continuing disclosure process is the right way to make these transactions visible to the market and that this transparency would provide important benefits to municipal market investors. The MSRB's proposed rule change requiring CUSIP numbers on placement transactions, as noted above, creates many other problems and negative consequences but the assignment of a CUSIP itself does not achieve any meaningful improvements to market transparency.

Our Suggested Changes to the Proposed Amendments Related to Private Placements

For all of the reasons that we have noted above, we believe that the MSRB should not proceed with the amendments that require CUSIP numbers on private placements. If the MSRB does decide to proceed, we believe that the proposed amendments to G-34 should be altered to include the following items.

The Amendments Should Also Require Municipal Advisors to Apply for a CUSIP Number for Placement Transactions that Do Not Include a Placement Agent

It is important that this addition be made to the change to G-34(a) for two reasons. First, it would make sure that CUSIP numbers are obtained on the numerous placement transactions where a placement agent is not involved but a municipal advisor (which might be a dealer or non-dealer advisor) is involved. Unfortunately, this would still not address transactions where a purchaser is working directly with an issuer but no placement agent or municipal advisor is involved. It would make sense to require CUSIP numbers on these transactions as well for consistency in the marketplace, but unfortunately I am not sure the MSRB has the authority to regulate these transactions. Second, this change is also important to level the regulatory playing field between dealers and municipal advisors and to assure that placement agents are not discarded as a means of circumventing the CUSIP requirement.

The Amendments Should Provide an Exception for Placement Transactions that Have a Single Purchaser or Limited Number of Purchasers

An exception to the rules to not require a CUSIP number to be obtained for transactions with a single purchaser would be highly beneficial and would eliminate all of the associated problems that we have noted for the majority of placement transactions completed in the market. This matter is discussed in more detail in our responses to the MSRB's questions below. If the MSRB is considering this approach, we would suggest that the MSRB expand this exemption to exempt transactions from the CUSIP requirement that have 5 or less purchasers and meet the provisions required of a limited offering under SEC Rule 15c2-12 (d). This would expand the number of transactions that would meet the exception and would include the vast majority of the placement transactions that we see being completed in the municipal market.

Responses to Questions Asked in MSRB's Release

In your release, some of the questions that you ask that we would like to respond to include the following.

2. *If a dealer is involved in a private placement of municipal securities and does not apply for a CUSIP number because it does not believe it is an underwriter, is it customary for the dealer to obtain assurances from the purchaser that it will not be reselling the municipal security? Do dealers obtain assurances when a transaction is booked by the purchaser as a loan?*

   At Piper Jaffray, we require that on placements of securities we obtain an investor letter in which we get a representation from the purchaser that among other things, the purchaser is not purchasing for more than one account or with a view to distributing the securities. This statement forms the reasonable basis for our belief that the investor intends to hold the securities under the exemption for private placements available under SEC Rule 15c2-12 (d). Because loan transactions under the *Reves* test are customarily constructed to avoid provisions that suggest a "plan of distribution" we don't see explicit representations as necessary or we see them in lender representations in the loan agreements themselves.

3. *The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Do the draft amendments alleviate this issue?*

   As we described above, banks frequently make it a condition of their purchase that no CUSIP number is obtained for the transaction. The amendments do not alleviate this issue because banks generally disagree with our analysis and are not subject directly to G-34. We believe that many of these banks will simply not purchase these transactions if a CUSIP is required which will limit options for issuers. We also believe that there will be pressure for the market to evolve to eliminate the use of placement agents so that these transactions can be completed by municipal advisors or directly between banks and issuers so that CUSIP numbers are not required. This will be detrimental to issuers who only receive one proposal directly from a bank purchaser. Engaging a placement agent typically results in the issuer getting the benefit of soliciting multiple investors and receiving multiple proposals on the issuer's behalf. As such, we do not believe that the amendments will meet the goals that the MSRB expects to achieve.

4. *Should the MSRB provide an exception from the requirements of Rule G-34(a) for dealers and/or municipal advisors in private placements of municipal securities to a single purchaser? How difficult would it be to obtain assurances from purchasers in such scenarios that they are purchasing without a view to secondary market resales?*

   Our recommendation is that the MSRB not proceed with the changes that require CUSIP numbers on placement transactions. But if the MSRB does proceed with these amendments, we believe that an exception to the rule for private placements with a single purchaser (or even a limited number of purchasers) should be provided and would help eliminate the concerns that we have expressed for most placement transactions. The majority of the placement transactions have a single purchaser and almost all have five or less purchasers. Exempting these issues from the proposed rule would eliminate the concerns that we have expressed on most of the placement transactions done in the market.

   As we noted above, we have been able to attain assurances in investor letters that investors are purchasing with an intent to hold and not with a view to resell in the market. From a practical matter, we have seen almost no reselling of any of these transactions in the market. We can only recall one or two instances of the hundreds of transactions that we have been involved in where to date a placement investor has attempted to sell some or all of the transaction in the secondary market. We cannot recall a single instance where a secondary sale was made or attempted on a transaction that had a single bank purchaser.

We would be happy to discuss further our views and experience on these issues with the MSRB staff. Feel free to contact us with any questions that you might have.

Sincerely,

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