

**WELLS CAPITAL MANAGEMENT INCORPORATED**

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November 1, 2017

Municipal Securities Rulemaking Board (MSRB)  
1900 Duke St., Suite 600  
Alexandria, VA 22314  
Attention: Ronald W Smith  
Corporate Secretary

**RE: Comments On MSRB Rules G-11: Primary Offering Practices and G-32:  
Disclosures In Connection With Primary Offerings**

To The MSRB:

Wells Capital Management, Inc. is a registered investment advisor that manages municipal mutual funds, separate municipal accounts and other third party municipal investment products for both retail and institutional investors (Wells Cap). Wells Cap hereby responds to the MSRB's Request For Comments On MSRB Rules G-11 Primary Offering Practices and G-32: Disclosures In Connection With Primary Offerings (MSRB Proposal).

Wells Cap provides the following comments to the MSRB Proposal regarding MSRB Rule G-11:

1) Wells Cap believes that there may be a practice whereby issuers directly influence or even dictate the allocation of primary market issuance to certain buy-side firms by having final approval on an underwriter's primary market allocations. This practice hurts buy-side investors in several ways. First, it appears to reward buy-side firms that have a "cozy" relationship with the deal municipal advisor. Second, it may distort primary issue pricing by not getting "best execution" on primary market pricing. Third, it may cause fewer buy-side firms to participate in a deal if they sense that the issuer can over-ride a final underwriter deal allocation. Lastly, it prefers certain buy-side firms and may lead them to "soft pedal" any critical public comments regarding a pending deal during an investor conference call/presentation, site visit or roadshow just to get a favorable issuer allocation.

Wells Cap provides the following comments to the MSRB Proposal regarding MSRB Rule G-32:

1) Wells Cap specifically addresses the MSRB questions on section II as follows:

Question A: WellsCap agrees with MSRB proposal that underwriters promptly disclose on EMMA the refunding of CUSIPS to all market participants at the same time. Incomplete refunding disclosures or selective refunding disclosures can create inequitable trading advantages for those obtaining refunding information prior to posting on EMMA, and the beneficiaries of such refunding information is usually the larger institutional broker/dealers and not the general buy-side (and especially not retail municipal investors);

Question B: WellsCap agrees with MSRB proposal that underwriters or municipal advisors promptly submit the initial POS on EMMA so that all potential buyers/investors are aware of the transaction and have the same length of time to review the POS and undertake needed due diligence. Selective disclosure of a POS to interested parties is a common practice, but creates unwarranted favoritism to certain parties and can create problems in undertaking needed credit work and due diligence when a "late" POS is obtained by an investor interested in the transaction. Obviously, there is a different process, market and procedure for so-called "private placements" that are intended to go only to sophisticated institutional investors who can bear the risks of the transaction. These private placement deals should continue to be given special treatment as regards the distribution of this type of POS so as to achieve the desired investor limited distribution qualifications and/or compliance with applicable federal/state securities laws.

On a related matter is the distribution of supplements to a POS before pricing (aka stickering). Wells Cap is familiar with many instances where underwriters notify buy-side firms looking at a deal that amendments, corrections or updates will be made to a POS, but they are not distributed until right before/after pricing. This practice has two adverse consequences. First, buy-side firms that begin to look at the POS late in the offering may be unaware of a pending POS supplement; and second, buy-side analysts are unable to review and digest the POS supplement in time to communicate any changes in their credit view to their portfolio managers. Wells Cap urges MSRB to require underwriters to distribute POS supplements at least one complete business day before the pricing date (and not just a mere 24 hours before pricing) so as to allow all interested buy-side investors an adequate opportunity to evaluate the POS changes.

Although not specifically a topic of requested Comments, Wells Cap also requests the MSRB address in Rule 32 the current practices regarding the "deemed final" POS required under SEC Rule 15c2-12 as regards both the timing of the pricing and the deemed final POS, and the completeness of the "deemed final" POS. Wells Cap undertakes credit reviews on over a thousand municipal transactions a year. While practices do vary from underwriter to underwriter, a relatively consistent problem for Wells Cap and other buy-side investors is that pricing of municipal deals usually is not undertaken based on a "deemed final" POS as required by SEC Rule 15c-12. Wells Cap often is faced with addressing the pricing of a municipal transaction without a POS that

contains all the exhibits, appendices or maturity structure. Wells Cap requests the MSRB to address the "deemed final" requirements in MSRB Rule 32 and reinforce the Sec Rule 15c2-12 requirements by underwriters. Often times prior to pricing, certain municipal investors (usually larger institutional investors) can obtain key missing exhibits, appendices or information referenced in the POS ahead of final pricing. This sets up a selective disclosure problem for the general municipal buy-side. In addition, it appears there is an underwriter practice of refraining from distributing an updated POS containing the needed exhibits and appendices prior to final pricing in the hopes of getting better pricing on a transaction. These practices hurt the buy-side especially less sophisticated buy-side investors.

Although not specifically a topic of the requested Comments, Wells Cap also requests the MSRB to address in Rule 32 the current practices regarding the minimum time needed between the issuance of a "deemed final" POS and pricing. All municipal buy-side investors need adequate time to review each POS and to undertake needed due diligence in order to arrive at an educated credit view on the transaction. This needed time is even more important for municipal deals that are not publicly rated and is especially true for higher risk project finance type deals. Wells Cap urges the MSRB to add a section to MSRB Rule 32 to impose a minimum number of business days between the distribution of a "deemed final" POS and the pricing of that transaction. Often times it appears underwriters attempt to rush final pricing without a "deemed final" POS in the hopes that municipal buy-side will not be able to detect all the "warts" in a deal or raise questions/issues not adequately addressed in the POS. The MSRB is in the best position to provide some minimum time frame (e.g. three business days) between final pricing and a "deemed final" POS so that all municipal buy-side investors can undertake the proper due diligence and form a complete, informed credit view before committing to pricing.

Although not specifically a topic of the requested Comments, Wells Cap also requests the MSRB to address in the applicable MSRB Rule the current practice by issuers and underwriters of selective disclosure of material information to public rating agencies—and leaving it out of the POS. Here is a real life disclaimer that was "buried" in a POS:

"The Authority furnished S&P with certain information not included in this Official Statement, including the Indenture of Trust, budgets and financial statements. Generally, rating agencies base their ratings on the information and materials so furnished and on investigations, studies, and assumptions by the rating agencies. An explanation of the significance of such ratings may be obtained from S&P. The ratings reflect only the view of S&P and the Authority makes no representation as to the appropriateness of such ratings. The Authority can make no assurance that the S&P ratings will continue for any period of time..."

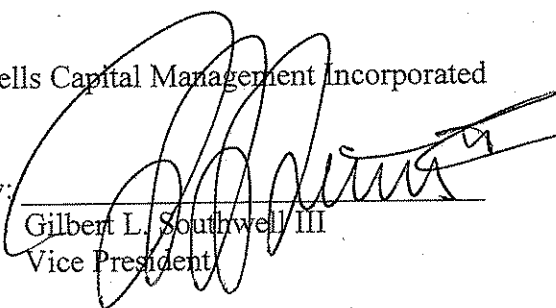
This selective disclosure to rating agencies is a real problem for buy-side investors on several levels. First, as a matter of principle, issuers and underwriters should not be selectively disclosing material information. Second, as public ratings drive secondary market pricing, buy-side analysts have no way of verifying or countering public ratings/rating changes when these public ratings are driven by non-public material

information. Third, public rating agencies are participating in a flawed offering and disclosure system which may subtly “reward” certain issuers with a better public rating by delivering non-public material information to the rating agencies. Lastly, public rating agencies can “front-run” the municipal market with public rating changes and secondary market pricing changes based on non-public material information from issuers thereby benefiting those buy-side firms that get direct daily internet rating feeds versus the more general retail investor and financial advisor who relies on EMMA postings of public rating changes. Overall, this process of selective public rating agency disclosure has no place in the muni market. Public rating agencies should be able to request additional information from issuers without limits—but that information must be shared promptly on EMMA so that all municipal investors can evaluate it independently from the rating agency filters.

If you need any further information on these Comments, please contact me at 414-359-3776 or [gsouthwe@wellscap.com](mailto:gsouthwe@wellscap.com).

Wells Capital Management Incorporated

By:

  
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