

2017-11

Publication Date

June 1, 2017

Stakeholders

Municipal Securities
Dealers, Municipal
Advisors, Issuers

Notice Type

Request for Comment

Comment Deadline

June 30, 2017

Category

Market Transparency

Affected Rules

[Rule G-34](#)

Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Overview

On March 1, 2017, the Municipal Securities Rulemaking Board (MSRB) published a request for comment seeking industry input on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements (“first request for comment”).¹ The first request for comment sought to clarify the existing application of the CUSIP number requirements under Rule G-34(a) to certain new issue municipal securities and expand the application of the rule to certain additional industry participants.² In light of comments received and after further review and consideration of the issues presented, the MSRB is publishing this second request for comment on draft rule amendments to Rule G-34 that would provide a limited exception to the requirement to obtain CUSIP numbers, and to apply for depository eligibility, in the case of a direct purchase of municipal securities by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in the direct purchase (herein “bank” or “banks”).

Comments should be submitted no later than June 30, 2017, and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities

¹ [MSRB Notice 2017-05 \(Mar. 1, 2017\).](#)

² The first request for comment also reminded market participants of the requirements under Rule G-34(b) regarding secondary market securities and proposed to make definitional and technical changes to the existing rule.



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Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.³

Questions about this notice should be directed to Margaret R. Blake, Associate General Counsel, at 202-838-1500.

Background

In the first request for comment, the MSRB sought input on amendments to Rule G-34(a) that would have clarified the requirement for brokers, dealers and municipal securities dealers ("dealers") to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer acts as a placement agent. The MSRB noted its long-standing interpretation that the CUSIP number requirement in Rule G-34(a) applies to a dealer acting as a placement agent,⁴ and explained that by amending the definition of "underwriter" to cross reference to the definition of that term in Rule 15c2-12(f)(8) of the Securities Exchange Act of 1934 ("Exchange Act"), any ambiguity surrounding this requirement would be alleviated.⁵

In addition, in the first request for comment, the draft rule amendments would have required municipal advisors that are not dealers also to be subject to the CUSIP number requirement for new issue securities when

³ Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

⁴ See, e.g., CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992). In this notice, the MSRB defined "private placement" to mean "any new issue of municipal securities that is 'placed' by a dealer, on an agency basis, with one or more investors." See Exchange Act Release No. 50773 (Dec. 1, 2004), 69 FR 70731-02 (Dec. 7, 2004) (SR-MSRB-2004-08). See also MSRB Notice 2008-28 (Jun. 27, 2008) ("Rule G-34 defines 'underwriter' very broadly to include a dealer acting as a placement agent . . .").

⁵ 17 CFR 240.15c2-12(f)(8). This rule defines an underwriter as

any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

acting as a municipal advisor in new issue municipal securities sold in a competitive offering. The MSRB explained that in its current form, the requirement in Rule G-34(a) applies only to dealer municipal advisors, creating a potential regulatory imbalance.⁶

The MSRB, in this second request for comment, proposes to proceed largely in the same manner as set forth in the first request for comment, that is, to amend the definition of “underwriter” in Rule G-34(a) to cross reference to the definition of “underwriter” set forth in Exchange Act Rule 15c2-12(f)(8) and to require all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities. However, as explained in more detail below, the MSRB seeks comment on draft proposed exceptions from each of these requirements in certain limited circumstances. Finally, as requested by commenters, the MSRB proposes to make the application of the draft rule amendments set forth in this second request for comment prospective.

Summary of Draft Amendments to Rule G-34

Clarification of Rule G-34(a) Application to Private Placements

As set forth in the first request for comment, the MSRB adopted the CUSIP number requirements in 1983 as a method of improving efficiencies in the processing and clearance activities of the municipal securities industry.⁷ CUSIP numbers are relied on in the municipal securities market to identify securities for a number of purposes, including trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping. These factors are relevant even when the municipal securities are sold in a private placement. As a result, the MSRB continues to believe that Rule G-34(a)(i) should be amended to express more clearly in the text of the rule the MSRB’s longstanding interpretation that the requirement to obtain CUSIP numbers applies to dealers acting as placement agents in private placements, including direct purchases. The MSRB believes that amending the definition

⁶ As noted in the first request for comment, this application of the CUSIP number requirement only to dealers acting as municipal advisors is the result of Rule G-34 pre-dating the municipal advisor regulatory regime that resulted from the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. 111–203, H.R. 4173 (2010). The MSRB amended Rule G-34(a) in 1986 to apply the CUSIP requirements to dealers acting as financial advisors in competitive sales of a new issue. Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

⁷ See Exchange Act Release No. 18959 (Aug. 13, 1982), 47 FR 36737-03 (Aug. 23, 1982) (SR-MSRB-82-11); and Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).

of “underwriter” to map to the definition of “underwriter” in Exchange Act Rule 15c2-12(f)(8) is the best approach to clarifying this requirement and ensures that the purposes of the CUSIP number requirement are upheld as intended.

Though the MSRB is again proposing to express more clearly its view that dealers acting as placement agents in the private placement of municipal securities are subject to the CUSIP number requirements under Rule G-34(a), a number of commenters, in response to the first request for comment, opposed a strict application of this requirement and urged the MSRB to consider a prospective exception for certain scenarios. Specifically, the MSRB understands that questions regarding the need for a CUSIP number often arise for dealers in direct purchase transactions with banks. While a dealer may determine that a transaction involves a municipal security for securities law purposes, the MSRB understands that the purchasing bank may consider the transaction to be a loan for banking law purposes and thus treat it as such.⁸ Banks may be less likely to engage in a financing where the new issue has a CUSIP number and may consequently be viewed as something other than a loan for banking law purposes. As a result, dealers, on behalf of their municipal issuer clients, may be hindered in their ability to directly place municipal securities with banks.

In July 1992, the MSRB sought comment on possible exemptions from Rule G-34, including in sales of smaller issues, short-term issues and issues sold to a limited number of customers (*i.e.*, private placements).⁹ The MSRB noted that in many of these instances, CUSIP numbers are not obtained because the dealer or financial advisor believes the securities will not trade in the secondary market. While the MSRB sought comment on a possible exemption, it noted that, at the time, it “strongly believe[d] that whenever municipal securities are offered for sale in the market or must be processed through financial intermediaries, CUSIP numbers should be available to identify the securities accurately.”¹⁰

While the MSRB continues to believe that obtaining CUSIP numbers is a necessary aspect of, for example, tracking the trading, recordkeeping,

⁸ This second request for comment does not attempt to address banking law requirements that may apply to banks in direct purchase transactions.

⁹ CUSIP Number Eligibility Standards and Requirements to Obtain CUSIP Numbers, MSRB Reports, Vol. 12, No. 2 (Jul. 1992).

¹⁰ *Id.*

clearance and settlement, customer account transfers and safekeeping of municipal securities, the MSRB also is of the view that the increase in the number of direct purchase transactions between municipal issuers and banks as an alternative to letters of credit and other similar types of financings may support an exception from the blanket requirement to obtain CUSIP numbers in all private placements. Where municipal securities are purchased directly by a bank, and the dealer reasonably believes that the bank is purchasing the new issue of municipal securities with the intention of holding them to maturity, and will limit any resale of the issue to another bank, the MSRB believes the need for a CUSIP number may be less critical for purposes of, among other things, identifying the securities and tracking the trading, recordkeeping and clearance and settlement of the issue.

As a result, the MSRB is seeking comment on a principles-based exception from the CUSIP number requirement. This exception would allow a dealer acting as an underwriter (including as a placement agent) in the sale of new issue municipal securities being offered in a direct purchase transaction with a bank to elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit resale of the municipal securities to another bank.¹¹

¹¹ Pursuant to MSRB Rule D-1, for purposes of this Rule G-34, the term “bank” would be defined as it is under Section 3(a)(6) of the Exchange Act. MSRB Rule D-1 states that,

Unless the context otherwise specifically requires, the terms used in the rules of the Municipal Securities Rulemaking Board shall have the respective meanings set forth in the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the rules and regulations of the Securities and Exchange Commission thereunder.

Exchange Act Section 3(a)(6) defines “bank” to mean

(A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners’ Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

A dealer would be expected to have policies and procedures in place reasonably designed to assist in formulating its belief and would be expected to apply those policies and procedures consistently across all CUSIP number evaluations pursuant to Rule G-34(a)(i). In addition, a dealer would be expected to document its findings regarding its ultimate determinations with respect to each particular offering. The proposed amendment would not set forth prescriptive steps to comply with the exception and would not further specify those instances where the exception would apply, nor would the amendment define parameters for how a dealer should craft applicable policies and procedures to arrive at a reasonable belief with respect to a transaction. Dealers would have the ability to establish reasonable policies and procedures for applying a principles-based evaluation. Finally, as noted in the first request for comment, nothing in the proposed amendment would obviate a dealer's initial obligation to determine whether the transaction in question involves a municipal security as opposed to a loan or other instrument.¹² This is true regardless of how the bank in a direct purchase transaction determines to book the transaction for its own purposes.

If a dealer is permitted to apply the proposed exception from the CUSIP number requirement to applicable transactions involving direct purchases by banks, the MSRB's longstanding interpretation of the CUSIP number requirement under Rule G-34(a)(i) remains intact without impinging on a dealer's ability to access banks as a potential source of financing for their issuer clients.

The MSRB seeks comment on all aspects of the proposed amendment, including the clarification of the "underwriter" definition and the proposed exception from the CUSIP number requirement for dealers acting as underwriters in a direct purchase transaction with a bank.

¹² As set forth in the first request for comment, when a dealer or municipal advisor works with a municipal securities issuer on a financing transaction to raise capital for the issuer, the dealer or municipal advisor should have reasonably designed policies and procedures to assist in making a determination as to whether the transaction involves a municipal security that results in the application of MSRB rules and other federal securities laws. If the transaction is not an issuance of a municipal security (*e.g.*, a commercial loan), there is no Rule G-34 requirement to apply for a CUSIP number. Note that the draft amendments do not affect the necessity for this determination. The Supreme Court set forth the relevant guidance in *Reves v. Ernst & Young, Inc.*, 494 U.S. 56 (1990), and the MSRB has reminded the industry of the requirement to conduct the appropriate analysis in an offering prior to applying for a CUSIP number. See MSRB Notice 2011-52 (Sept. 12, 2011) and MSRB Notice 2016-12 (Apr. 4, 2016) (noting that the placement of what might be referred to as a "bank loan" may, as a legal matter, involve a municipal security and therefore trigger the application of various federal securities laws, including MSRB rules such as Rule G-34).

The MSRB is aware that certain other requirements under Rule G-34 may be impacted by the clarification of the definition of “underwriter” to include placement agents in a private placement of municipal securities. In particular, commenters on the first request for comment noted that certain obligations under Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information would be implicated by the proposed amendment, but from a practical standpoint, these requirements may not appropriately apply to a direct purchase of municipal securities by a bank. As a result, the MSRB seeks comment on a similar exception from the depository eligibility and new issue information dissemination requirements of Rule G-34(a)(ii) for dealers acting as underwriters.

The proposed amendment would except from the requirements of Rule G-34(a)(ii) those municipal securities purchased directly by a bank where the underwriter reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank such that immobilization in a depository would be unnecessary. This exception would allow the underwriter to make a principles-based assessment as to whether depository eligibility, and thus, dissemination of new issue information, would be necessary for the particular new issue. As with the proposed exception under Rule G-34(a)(i), a dealer relying on the exception under Rule G-34(a)(ii) would be expected to have in place policies and procedures reasonably designed to assist in arriving at a reasonable belief regarding the likelihood that the purchasing bank would hold the securities until maturity or limit resale to another bank. The dealer would be expected to apply its policies and procedures consistently and document its determinations. Again, the MSRB does not intend to set forth prescriptive steps to be taken by dealers in evaluating various scenarios. Where the dealer acts as a placement agent in other private placement transactions outside of the proposed draft exception, the requirements of Rule G-34(a)(ii) would continue to apply.¹³

¹³ Note that in MSRB Notice 2008-23 (May 9, 2008), the MSRB filed a proposed rule change to amend Rule G-34 to require underwriter registration and testing with DTCC’s New Issue Information Dissemination System (NIIDS). The proposed amendment required all dealers underwriting municipal securities with nine months or greater effective maturity to register to participate in NIIDS and required the dealers to successfully test NIIDS prior to acting as underwriter on a new issue of municipal securities. The MSRB noted that “underwriter” in this context was defined “very broadly to include a dealer acting as a placement agent”

As with the first request for comment, the MSRB believes that amending the definition of “underwriter” to cross reference to the definition set forth in Exchange Act Rule 15c2-12(f)(8) would codify existing guidance and provide more clearly in the rule text that dealers acting as placement agents in private placement transactions, including direct purchases of municipal securities, are subject to the requirements set forth in Rule G-34(a)(i) and (ii). However, based on comments received, the MSRB further believes that the CUSIP number requirements and depository eligibility and new issue information dissemination requirements may not be necessary in all circumstances. Thus, the MSRB believes an exception from those requirements should be made available to dealers in direct purchase transactions with banks where the dealer reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale to another bank such that CUSIP numbers or immobilization in a depository would be unnecessary. The MSRB seeks public comment on the proposed amendments and exceptions.

Questions

1. Does the proposed exception from the CUSIP number requirement provide the appropriate level of flexibility for dealers to determine when CUSIP numbers are required under the rule?
2. Does the proposed exception resolve commenters’ concerns regarding loss of access to bank financings where CUSIP numbers might previously have been required?
3. Is the proposed exception broad enough or are there other instances when a dealer acts as an underwriter that should be included in this exception?
4. Should the proposed exception be principles-based as proposed or more prescriptive in its application?
5. Are there specific, minimum parameters that should be met before allowing an underwriter to rely on either exception, or is the requirement to have a reasonable belief as to the likelihood that the municipal securities will be held to maturity by the bank purchaser and, if not, limited in resale to another bank adequate?
6. Does the exception from Rule G-34(a)(ii) resolve existing discrepancies with the application of the requirements under that subsection of the rule? Should other private placement transactions

be excepted from the requirements of Rule G-34(a)(ii)?

7. The MSRB understands that banks purchasing a direct purchase often request that dealers not obtain a CUSIP number for the transaction, or that the banks may cancel CUSIP numbers that are issued for the transaction. Would the proposed exception alleviate this issue?

Application of Rule G-34 CUSIP Number Requirements to Certain Municipal Advisors

As noted in the first request for comment, Rule G-34(a)(i) currently applies to a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities. Financial advisory activities are now generally defined also as municipal advisory activities. Nevertheless, non-dealer municipal advisors are not subject to the CUSIP application requirements under the current rule, thus creating the potential for a regulatory imbalance between dealer and non-dealer municipal advisors. In order to resolve this potential imbalance and generally to promote early application for CUSIP numbers, in the first request for comment, the MSRB proposed requiring all municipal advisors – dealer and non-dealer alike – to be subject to the CUSIP number requirements under Rule G-34(a)(i). Commenters were split on the proposed amendment with some supporting the idea of requiring all municipal advisors to be subject to the requirements of Rule G-34(a), and others indicating that requiring non-dealer municipal advisors to obtain CUSIP numbers in competitive transactions harmed small municipal advisors and served no purpose.

In 1986, the MSRB amended Rule G-34(a) to require a dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities to obtain CUSIP numbers “in sufficient time to allow for assignment of a number prior to the date of award.”¹⁴ Reference to “competitive sale” was largely understood to refer to competitive offerings in a typical public distribution of municipal securities. The MSRB understands, however, that the competitive process has evolved, and that currently, in some direct purchase scenarios, a municipal advisor might arrange competitive bids from, for example, three banks competing for a direct purchase. In circumstances such as this, the MSRB believes there may be less of a need to obtain a CUSIP number where the municipal advisor reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the securities to another bank.

¹⁴ Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

As in the first request for comment, the draft amendments would apply the requirements of Rule G-34(a)(i) to all municipal advisors (whether dealer or non-dealer) when advising the issuer in a competitive sale of a new issue of municipal securities. However, in this second request for comment, the draft amendments would provide an exception from the CUSIP number requirement in those instances where, in a competitive sale of municipal securities purchased directly by a bank, the municipal advisor reasonably believes it is likely that the bank will hold the securities to maturity or limit any resale of the securities to another bank such that a CUSIP number would not be necessary. As with the proposed exception under Rule G-34(a)(i) for dealers, a municipal advisor would be expected to have policies and procedures to assist in arriving at a reasonable belief as to the likelihood that the bank would hold the municipal securities to maturity or limit any resale to another bank. The municipal advisor would be expected to apply its policies and procedures consistently and to document its determinations with respect to the CUSIP number requirements.

The draft amendment would further clarify that the municipal advisor advising the issuer in a competitive sale of new issue municipal securities must make application for the CUSIP number by no later than one business day after dissemination of a notice of sale or other such request for bids. The addition of “or other such request for bids” would ensure the timing of the application for a CUSIP number in those instances where a municipal advisor seeks bids in a competitive sale of municipal securities using documentation other than a traditional notice of sale.

Questions

1. Does the proposed exception for municipal advisors advising the issuer in a direct purchase competitive sale to a bank resolve commenters’ concerns regarding a potentially unnecessary burden on municipal advisors with respect to the CUSIP number requirement? Are there other scenarios where a municipal advisor should not be required to obtain a CUSIP number when advising an issuer in a competitive sale of new issue securities?
2. Are there other parameters to the exception that should apply to municipal advisors relying thereon?

Other Draft Amendments

As in the first request for comment, the draft amendments would include a definition section to clarify certain terms as used in Rule G-34. For example, the current definitional language for the term “underwriter” would be

replaced with new language mapping to the term as defined in Exchange Act Rule 15c2-12(f)(8), with the reiteration that this definition includes a dealer acting as a placement agent. In addition, definitions currently in the body of the rule that continue to apply, such as that for “remarketing agent,” would be moved to the proposed definition section, as appropriate. The draft amendment would not include definitions of “municipal advisor” or “bank”, thus resulting in those terms being defined as they are under the Exchange Act.¹⁵

The draft amendments would make technical and conforming changes throughout the rule as needed to ensure clarity and consistency in the application of the rule.

Questions

1. Does mapping the definition of “underwriter” to Exchange Act Rule 15c2-12(f)(8) sufficiently clarify that a dealer, when acting as a placement agent, is an underwriter for purposes of Rule G-34(a)?
2. Are there definitions in the rule that need further clarification or definitions that should be included?

Economic Analysis

1. The need for the draft amendments to Rule G-34 and how the draft amendments to Rule G-34 would meet that need.

The need for the draft amendments to Rule G-34(a) arises from instances where underwriters are not consistently obtaining CUSIP numbers in sales of new issue municipal securities sold in private placements and the desire to address a potential regulatory imbalance between CUSIP number requirements as applied to dealer and non-dealer municipal advisors.

The MSRB believes that the draft amendments would clarify the requirement that a dealer acting as a placement agent in a private placement, including a direct purchase, should be required to obtain CUSIP numbers for all new issue municipal securities. Further, in addition to clarifying its longstanding interpretation, the MSRB believes that the draft amendments would create a uniform practice for market participants while reducing the number of municipal securities that fail to have CUSIP numbers assigned by

¹⁵ See *supra* note 11.

underwriters in private placements. In addition, the draft amendment to Rule G-34(a) to require all municipal advisors advising an issuer in a competitive sale of new issue municipal securities is necessary to alleviate any existing regulatory imbalance between dealer municipal advisors and non-dealer municipal advisors.

After reviewing the comment letters received in response to the first request for comment, the MSRB is proposing new principles-based exceptions to obtaining CUSIP numbers for dealers acting as placement agents in the sale of new issue municipal securities and all municipal advisors advising an issuer with respect to a competitive sale of new issue municipal securities. The exception for dealers would apply in direct purchase transactions with a bank, where the underwriter reasonably believes that the purchasing bank is likely to hold the municipal securities until maturity or will limit resale of the municipal securities to another bank. The exception for municipal advisors would apply to all municipal advisors advising an issuer with respect to a competitive sale of new issue municipal securities where the purchaser is a bank and the municipal advisor reasonably believes the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-34 can be considered.

To evaluate the potential impact of the draft amendments, a baseline or baselines must be established as a point of reference in comparison to the expected state with the draft amendments in effect. The economic impact of the draft amendments is generally viewed to be the difference between the baseline and the expected states.

The relevant baseline for purposes of the proposed amendment to Rule G-34(a) regarding the clarification of the requirement to obtain CUSIP numbers in private placements including a direct purchase where the dealer acts as a placement agent is existing Rule G-34(a) which, as noted above, requires that:

each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue

Rule G-34(a) also serves as a baseline for the requirement that all municipal advisors advising an issuer in a competitive sale of new issue municipal securities be required to obtain CUSIP numbers for such new issues. Under the current rule, only dealer municipal advisors are required to obtain CUSIP numbers in competitive sales of new issue municipal securities. Non-dealer municipal advisors are not currently subject to the requirements of the rule.

The intent of the first and second request for comments is to clarify the MSRB's interpretation that dealers acting as placement agents in private placements of municipal securities, including direct purchases, must obtain CUSIP numbers for the new issues and to propose an amendment that would require non-dealer municipal advisors to obtain CUSIP numbers when advising an issuer on competitive sales of new issue securities. In addition, in the second request for comment, the MSRB is proposing principles-based exceptions from these requirements. It is possible that, in practice, a sizable portion of these municipal securities currently with no CUSIP numbers have never or rarely been resold in the market; therefore, dealers and municipal advisors would be able to exercise the newly proposed principles-based exceptions by the MSRB to avoid obtaining CUSIP numbers. If this is the case, the expected state may not be significantly different from the current state.

3. Identifying and evaluating reasonable alternative regulatory approaches.

Rule G-34(a) requires underwriters to obtain CUSIP numbers when conducting a private placement of new issue municipal securities. The draft amendment only serves to remind the underwriters of this requirement, while allowing a principles-based exception in certain scenarios. An alternative would be to leave Rule G-34(a) as it is without amending the definition of "underwriter" to clarify the requirement. However, this may lead to non-compliance.

The draft amendments would require, under Rule G-34(a), non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities, with a certain principles-based exception. This requirement is new. The MSRB could leave Rule G-34(a) as is, and only require dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue municipal securities. However, by not including non-dealer municipal advisors, this may cause a regulatory imbalance between dealer and non-dealer municipal advisors advising issuers in competitive sales of municipal securities.

4. Assessing the benefits and costs of the draft amendments to Rule G-34 and the main alternative regulatory approaches.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the draft amendments with the draft amendments fully implemented against the context of the economic baseline. As elaborated above, only the requirement for non-dealer municipal advisors to obtain a CUSIP number when advising an issuer in a competitive sale of new issue municipal securities is a new requirement, while the requirements for dealers to obtain CUSIP numbers for a private placement of new issue securities, including direct purchases where the dealer is a placement agent, is not new. Furthermore, the second request for comment established principles-based exceptions for obtaining CUSIP numbers in both instances.

In the first request for comment, the MSRB asked for additional data or studies relevant to the draft amendments, specifically the frequency of private placements and secondary market securities without CUSIP numbers and the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances. In addition, the MSRB was seeking data or studies relevant to the draft amendment to require non-dealer municipal advisors advising an issuer in a competitive sale of municipal securities to obtain CUSIP numbers. Finally, the MSRB sought estimates of the cost of obtaining and maintaining a CUSIP number in each of these instances.¹⁶

Some commenters in response to the first request for comment expressed the view that the economic analysis conducted by the MSRB was inadequate, particularly with regard to costs borne by small municipal advisory firms, as well as the cumulative regulatory burden of this rulemaking in combination with existing municipal advisor obligations. Those commenters, however, did not provide any quantitative and qualitative information sought by the MSRB.

With the proposed principles-based exceptions in the current request for comment, it is possible that the ultimate number of new transactions that require a CUSIP number may not be significant, and therefore the economic impact, from both the costs and benefits point of view, may not be material. The MSRB does not have the data to estimate the accretive number of new

¹⁶ The MSRB is aware of the current fee charged by CUSIP Global Services for CUSIP numbers.

CUSIP numbers as a result of these draft amendments. The MSRB again is soliciting estimates on the number of transactions that would require CUSIP numbers under the draft amendments, and the proportion of those transactions that would qualify under the newly proposed principles-based exemptions.

Benefits

The MSRB believes that clarifying the intent of Rule G-34(a) for underwriters in a private placement of new issue securities would benefit investors and other market participants by enhancing compliance with the CUSIP number requirement, and therefore would provide increased transparency with respect to relevant market information associated with private placements. CUSIP numbers are an important tool for reducing asymmetric information between retail and institutional investors on one side, and other market participants, such as issuers, municipal advisors, and dealers on the other side. In economics, information asymmetry refers to transactions where one party has more or better information than the other. Asymmetric information may cause market price distortion and/or transaction volume depression, which therefore has an undesirable impact on the municipal securities market, including the market for the private placement of municipal securities.

Specifically, the MSRB believes that all market participants would benefit from increased transparency and reduced information asymmetry in the private placement of municipal securities, including sophisticated institutional investors.¹⁷ Since issues that lack CUSIP numbers circumvent the MSRB's (and other regulatory agencies') market transparency initiatives, clarifying the CUSIP number requirement would improve the information available to investors.

The draft amendment to require non-dealer municipal advisors to obtain CUSIP numbers in competitive sales of new issue securities benefits dealer municipal advisors in that they would be subject to less regulatory imbalance in relation to non-dealer municipal advisors engaged in the same activity.

¹⁷ For example, even if there is no intent to distribute municipal securities publicly following a private placement, when CUSIP numbers are not obtained in a private placement, including a direct purchase, investors may have difficulty understanding an issuer's total indebtedness. This could cause investors to improperly evaluate the credit risk of potential investments in an issuer's municipal securities.

Costs

The analysis of the potential costs does not consider the aggregate costs associated with the draft amendments, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the draft amendments to isolate the costs attributable to the incremental requirements of the draft amendments.

Since the baseline already includes a requirement for underwriters to obtain CUSIP numbers in private placements of municipal securities, and the interpretation of Rule G-34(a) does not change the requirement, except for a newly-proposed principles-based exception in this second request for comment, there should be no incremental costs above the baseline associated with the draft amendments as they relate to these types of securities, except for certain underwriters who are not in compliance presently and who would not be able to take advantage of the new exception.

The draft amendments would create a new burden on non-dealer municipal advisors by requiring them to secure a CUSIP number when advising an issuer in a competitive sale of new issue municipal securities, except for some instances where a municipal advisor reasonably believes that a CUSIP number would not be necessary. Should municipal advisors desire to exercise this exception, there would be costs associated with justifying the non-necessity of obtaining a CUSIP number in accordance with established policies and procedures. However, municipal advisors are unlikely to exercise this exception unless the associated costs are lower than the costs of obtaining a CUSIP number.

The MSRB believes that the costs are perhaps disproportionately higher in certain transactions where the size of lending transactions is small, but without additional data inputs from the industry and issuers, the MSRB is unable to quantify the relative cost burden based on the size of transactions.

Although non-dealer municipal advisors are likely to incur up-front costs associated with securing a CUSIP number, greater benefits should accrue to investors over time as a result of improved transparency, reduced information asymmetry and price dislocation, and therefore potentially improved investor appetite for the relevant issues. In the long term, transparency also may lead to surging interest from investors, which would benefit issuers, dealers, and municipal advisors, and the long-term benefits could offset or exceed the aforementioned up-front costs.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the draft amendments may improve the operational efficiency of the municipal securities market by promoting consistency and transparency. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation, but believes that the benefits outweigh the costs. Additionally, the MSRB believes that the draft amendments would encourage fair competition by ensuring compliance with existing CUSIP number requirements by underwriters in a private placement of new issue securities. It should also encourage fair competition between dealer municipal advisors and non-dealer municipal advisors advising an issuer in competitive sales of municipal securities by eliminating any regulatory imbalance. The MSRB believes that the draft amendments could also reduce confusion and risk to investors and allow them to make more informed investment decisions. Competition, however, may be adversely affected if, to reduce costs and regulatory burden, issuers refrain from using dealers and municipal advisors and instead engage directly with financial institutions for direct purchase private placements.

Conclusion

The MSRB believes that these draft amendments would provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices. The MSRB is soliciting estimates of these costs in this second request for comment, but assumes that they would be significantly less than the benefits that would accrue over time to investors as well as the market as a whole.

With the proposed principles-based exceptions in the current request for comment, it is possible that the ultimate number of new scenarios that require a CUSIP number is not significant, and therefore the impact, from both the costs and benefits point of view, may not be material either. The MSRB does not have the data to estimate the accretive number of new CUSIP numbers as a result of the draft amendments. The MSRB again is soliciting estimates on the number of instances where a CUSIP number should have been obtained by dealers who were not previously in compliance, the number of instances where a CUSIP number would be obtained by municipal advisors who were not previously required to do so, as well as the percentage of those instances that could fall under the newly-proposed principles-based exceptions.

In addition, the MSRB is in the process of considering a framework for performing an impact analysis on the municipal advisory industry as a result of recent implementation of a range of rules for municipal advisors since the

enactment of the Dodd-Frank Act in 2010. The MSRB believes it would be prudent to consider all recent rulemaking for municipal advisors collectively once all of them are effective (expected to be sometime in 2018) in order to measure the cumulative impact.

Questions

1. Are there other relevant baselines the MSRB should consider when evaluating the economic impact of the proposal?
2. If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?
3. Is the principles-based exception likely to be utilized? How frequently do participants expect to exercise the exception?
4. Are there data or studies relevant to the evaluation of the benefits and costs of the proposal that the MSRB should consider?
 - a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments?
 - b. What is the frequency of private placements without municipal CUSIP numbers?
 - c. What is the impact to the overall municipal securities market as a result of not obtaining CUSIP numbers in these instances?
 - d. What is the frequency of dealer municipal advisors advising an issuer in a competitive sale of municipal securities without obtaining CUSIP numbers?
 - e. Is there an estimate of the total cost of obtaining and maintaining a CUSIP number in each of these instances?
5. What specific changes would dealers and municipal advisors need to make to their systems to implement the draft amendments (only if there are system changes that might be required)?

June 1, 2017

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Text of Draft Amendments*

Rule G-34: CUSIP Numbers, New Issue, and Market Information Requirements

(a) *New Issue Securities.*

(i) *Assignment and Affixture of CUSIP Numbers.*

(A) Except as otherwise provided in this section (a) and section (d), ~~each~~ broker, dealer or municipal securities dealer acting as an underwriter in who acquires, whether as principal or agent, a new issue of municipal securities, and a municipal advisor advising the issuer with respect to from the issuer of such securities for the purpose of distributing such new issue ("underwriter") ~~and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue of municipal securities, ("financial advisor")~~ shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

(1) - (2) No change.

(3) A ~~financial~~ municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities shall make an application by no later than one business day after dissemination of a notice of sale or other such request for bids. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) No change.

(5) Any changes to information identified in ~~this~~ subparagraph (a)(i)(A)(4) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the ~~time of~~ first execution required under paragraph (a)(ii)(C) of this Rule G-34.

(B) The information required by subparagraph (i)(A)(4) of this section (a) shall be provided in accordance with the provisions of this subparagraph. The application shall include a copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A)(4) of this section (a). Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A)(4) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form,

* Underlining indicates new language; strikethrough denotes deletions.

is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) – (E) No change.

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or a municipal advisor advising the issuer with respect to a competitive sale of a new issue, which is being purchased directly by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore affixing CUSIP identifiers to the municipal securities is unnecessary.

(ii) Application for Depository Eligibility and Dissemination of New Issue Information. Each underwriter shall carry out the following functions:

(A) Except as otherwise provided in this subparagraph (ii)(A) and section (d), the underwriter shall apply to a securities depository registered with the Securities and Exchange Commission, in accordance with the rules and procedures of such depository, to make such new issue depository-eligible. The application required by this subparagraph (ii)(A) shall be made as promptly as possible, but in no event later than one business day after award from the issuer (in the case of a competitive sale) or one business day after the execution of the contract to purchase the securities from the issuer (in the case of a negotiated sale). In the event that the full documentation and information required to establish depository eligibility is not available at the time the initial application is submitted to the depository, the underwriter shall forward such documentation as soon as it is available; provided, however, this subparagraph (ii)(A) of this rule shall not apply to:

(1) No change.

(2) any new issue maturing in 60 days or less; or

(3) a new issue of municipal securities purchased directly by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in a direct purchase of a new issue of municipal securities, from an issuer in which an underwriter reasonably believes that the purchasing bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank, affiliated banks or a consortium of banks, and, therefore applying for depository eligibility is unnecessary.

(B) No change.

(C) The underwriter of a new issue of municipal securities, which has been made depository eligible pursuant to subparagraph (ii)(A) above, shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers

and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue; provided, however, that this paragraph (a)(ii)(C) shall not apply to commercial paper.

(1) The underwriter shall ensure that the following information is submitted to NIIDS in the manner described in the written procedures for system users and that changes or corrections to submitted information are made as soon as possible:

(a) the Time of Formal Award.

(i) For purposes of this paragraph (a)(ii)(C), the "Time of Formal Award " means:

(A) – (B) No change.

(ii) If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to NIIDS in advance of the actual Time of Formal Award.

(b) the Time of First Execution.

(i) For purposes of this paragraph (a)(ii)(C), the "Time of First Execution " means the time the underwriter plans to execute its first transactions in the new issue.

(ii) The underwriter shall designate a Time of First Execution that is:

(A) No change.

(B) for all other new issues, no less than two Business Hours after all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS; provided that the Time of First Execution may be designated as 9:00 A.M. Eastern Time or later on the RTRS Business Day following the day on which all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS without regard to whether two Business Hours have elapsed.

(c) No change.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is transmitted to NIIDS no later than two Business Hours after the Time of Formal Award. For purposes of this paragraph (a)(ii)(C):

(a) "Business Hours" shall include only the hours from 9:00 A.M. to 5:00 P.M. Eastern Time on an RTRS Business Day.

(b) "RTRS Business Day" shall have the meaning set forth in Rule G-14 RTRS Procedures section (d)(ii).

(3) No change.

(a) – (b) No change.

(D) The underwriter of any new issue of municipal securities consisting of commercial paper shall, as promptly as possible, announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.

(1) No change.

(2) the ~~F~~time of ~~F~~formal ~~A~~award as defined in subparagraph (a)(ii)(C)(1)(a).

(E) No change.

(1) - (2) No change.

(iii) No change.

(iv) *Limited Use of NRO Designation.* From and after the time of initial award of a new issue of municipal securities, a broker, dealer or municipal securities dealer may not use the term “not reoffered” or other comparable term or designation without also including the applicable price or yield information about the securities in any of its written communications, electronic or otherwise, sent by it or on its behalf. For purposes of this subsection (iv), the “time of initial award” means the earlier of (A) the ~~F~~time of ~~F~~formal ~~A~~award as defined in subparagraph (a)(ii)(C)(1)(a), or (B) if applicable, the time at which the issuer initially accepts the terms of a new issue of municipal securities subject to subsequent formal award.

(b) *Secondary Market Securities.*

(i) No change.

(ii) Each broker, dealer or municipal securities dealer, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities which is assigned a CUSIP number that no longer designates securities identical with respect to all features of the issue listed in items ~~(1a)~~ through ~~(8h)~~ of subparagraph (a)(i)(A)~~(4)~~ of this rule, shall apply in writing to the Board or its designee for a new CUSIP number or numbers to designate the part or parts of the maturity which are identical with respect to items ~~(1a)~~ through ~~(8h)~~ of subparagraph (a)(i)(A)~~(4)~~.

(iii) The broker, dealer or municipal securities dealer shall make the application required under this section (b) as promptly as possible, and shall provide to the Board or its designee:

(A) No change.

(B) all information on the features of the maturity of the issue listed in items (4a) through (8h) of subparagraph (a)(i)(A)(4) of this rule and documentation of the features of such maturity sufficient to evidence the basis for CUSIP number assignment; and,

(C) No change.

~~(c) Variable Rate Security Market Information. The Board operates a facility for the collection and public dissemination of information and documents about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System).~~

~~(i) Auction Rate Securities. Auction Rate Securities are municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an agent responsible for conducting the auction process on behalf of the issuer or other obligated person with respect to such Auction Rate Securities ("Auction Agent") that receives orders from brokers, dealers and municipal securities dealers.~~

(A) Auction Rate Securities Data.

~~(1) Each broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process ("Program Dealer") shall report, or ensure the reporting of, the following information about the Auction Rate Security and concerning the results of the auction to the Board:~~

~~(a) - (b) No change.~~

~~(c) Identity of all Program Dealers that submitted orders, including but not limited to hold orders;~~

~~(d) - (g) No change.~~

~~(h) Date and time the interest rate determined as a result of the auction process was communicated to Program Dealers;~~

~~(i) - (k) No change.~~

~~(l) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and~~

~~(m) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for an issuer or conduit borrower for such Auction Rate Security.~~

~~(2) Information identified in subparagraph (c)(i)(A) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an auction occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any~~

item of information identified in subparagraph (c)(i)(A)(1) is not available by the deadline in this subparagraph (c)(i)(A)(2), such item shall be provided to the Board as soon as it is available. In the event that an auction occurs on a non-RTRS Business Day, the information identified in subparagraph (c)(i)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day.

(3) A Program Ddealer may designate an agent to report the information identified in subparagraph (c)(i)(A)(1) to the Board, provided that an Auction Agent may submit information on behalf of a Program Ddealer absent such designation by the Program Ddealer. The failure of a designated agent to comply with any requirement of this paragraph (c)(i) shall be considered a failure by such Program Ddealer to so comply; provided that if an Auction Agent has, within the time periods required under subparagraph (c)(i)(A)(2), reported the information required under subparagraph (c)(i)(A)(1), the Program Ddealer may rely on the accuracy of such information if the Program Ddealer makes a good faith and reasonable effort to cause the Auction Agent to correct any inaccuracies known to the Program Ddealer.

(4) For Auction Rate Securities in which there are multiple Program Ddealers, each Program Ddealer must only report for items (i) through (m) of the items of information identified in subparagraph (c)(i)(A)(1) information reflective of the Program Ddealer's involvement in the auction. A designated agent as described in subparagraph (c)(i)(A)(3) reporting results of an auction on behalf of multiple Program Ddealers must report for items (i) through (m) of the items information identified in subparagraph (c)(i)(A)(1) information reflective of the aggregate of all such Program Ddealers' involvement in the auction for which the designated agent is making a report. A Program Ddealer may rely on the reporting of information by an Auction Agent as provided in subparagraph (c)(i)(A)(3) if the Auction Agent has undertaken to report, and the Program Ddealer does not have reason to believe that the Auction Agent is not accurately reporting, all items of information identified in subparagraph (c)(i)(A)(1), to the extent applicable, for an auction that is reflective of all Program Ddealers that were involved in the auction.

(5) Information reported to the Board pursuant to this section (c)(i) shall be submitted in the manner described in the written procedures for SHORT System users and changes to submitted information must be made as soon as possible.

(6) Every broker, dealer or municipal securities dealer that submits an order to a Program Ddealer on behalf of an issuer or conduit borrower for such Auction Rate Securities shall disclose at the time of the submission of such order that the order is on behalf of an issuer or conduit borrower for such Auction Rate Securities.

(B) Auction Rate Securities Documents.

(1) Each Program Ddealer shall submit to the Board current documents setting forth auction procedures and interest rate setting mechanisms associated with an outstanding Auction Rate Security for which it acts as a Program Ddealer by no later than September 22,

2011 and shall submit to the Board any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the Program Dealer.

(2) All submissions of documents required under subparagraph (c)(i)(B)(1) shall be made by electronic submissions to the SHORT System in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

~~(ii) Variable Rate Demand Obligations. Variable Rate Demand Obligations are securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically with specified advance notice ("Notification Period"), and a broker, dealer or municipal security dealer acts as a remarketing agent ("Remarketing Agent") responsible for reselling to new investors securities that have been tendered for purchase by a holder.~~

(A) Variable Rate Demand Obligations Data.

~~(1) Each Remarketing Agent for a variable Rate Demand Obligation shall report the following information to the Board about the variable Rate Demand Obligation applicable at the time of and concerning the results of an interest rate reset:~~

~~(a) – (b) No change.~~

~~(c) Identity of the Remarketing Agent;~~

~~(d) – (h) No change.~~

~~(i) Identity of liquidity provider, type and expiration date of each liquidity facility applicable to the variable Rate Demand Obligation;~~

~~(j) Identity of the agent of the issuer to which bondholders may tender their security ("Tender Agent"); and~~

~~(k) Aggregate par amount, if any, of the variable Rate Demand Obligation held by a liquidity provider(s) (par amount held as "Bank Bonds"), and aggregate par amount, if any, of the variable Rate Demand Obligation held by parties other than a liquidity provider(s), including the par amounts held by the Remarketing Agent and by investors.~~

(2) Information identified in subparagraph (c)(ii)(A)(1) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an interest rate reset occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(ii)(A)(1) is not available by the deadline in this subparagraph (c)(ii)(A)(2), such item shall be provided to the Board as soon as it is available provided that items (i) through (k) of the information identified in subparagraph (c)(ii)(A)(1) shall reflect the information available to the Remarketing Agent as of the date and

time of the interest rate reset. In the event that an interest rate reset occurs on a non-RTRS ~~B~~business ~~D~~day, the information identified in subparagraph (c)(ii)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS ~~B~~business ~~D~~day.

(3) A ~~R~~remarketing ~~A~~agent may designate an agent to report the information identified in subparagraph (c)(ii)(A)(1) to the Board. The failure of a designated agent to comply with any requirement of this paragraph (c)(ii) shall be considered a failure by such ~~R~~remarketing ~~A~~agent to so comply.

(4) Information reported to the Board pursuant to this section (c)(ii) shall be submitted in the manner described in the written procedures for SHORT ~~S~~system users and changes to submitted information must be made as soon as possible.

(B) Variable Rate Demand Obligations Documents.

(1) Each ~~R~~remarketing ~~A~~agent shall use best efforts to obtain and shall submit to the SHORT ~~S~~system the current versions of the following documents detailing provisions of liquidity facilities associated with the ~~V~~variable ~~R~~rate ~~D~~demand ~~O~~obligation for which it acts as a ~~R~~remarketing ~~A~~agent by no later than September 22, 2011 and shall submit to the SHORT ~~S~~system any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the ~~R~~remarketing ~~A~~agent:

- (a) ~~S~~tand-~~B~~by ~~B~~bond ~~P~~urchase ~~A~~greement;
- (b) Letter of ~~C~~redit ~~A~~greement; and
- (c) No change.

(2) All submissions of documents required under this rule shall be made by electronic submissions to the SHORT ~~S~~system in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(3) In the event that a document described in subparagraph (c)(ii)(B)(1) is not able to be obtained through the best efforts of the ~~R~~remarketing ~~A~~agent, the ~~R~~remarketing ~~A~~agent shall submit notice to the SHORT ~~S~~system that such document will not be provided at such times as specified herein and in the SHORT System Users Manual.

(d) No change.

(e) Definitions. For purposes of this rule, the following terms have the following meanings:

(i) The term “auction agent” shall mean the agent responsible for conducting the auction process for auction rate securities on behalf of the issuer or other obligated person with respect to such securities and that receives orders from brokers, dealers and municipal securities dealers.

(ii) The term “auction rate security” shall mean municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an auction agent.

(iii) The term “notification period” shall mean the specified advance notice period during which an investor in a variable rate demand obligation has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person.

(iv) The term “program dealer” shall mean each broker, dealer or municipal securities dealer that submits an order directly to an auction agent for its own account or on behalf of another account to buy, hold or sell an auction rate security through the auction process.

(v) The term “remarketing agent” shall mean, with respect to variable rate demand obligations, the broker, dealer or municipal securities dealer responsible for reselling to new investors securities that have been tendered for purchase by a holder.

(vi) The term “SHORT system” shall mean the Short-term Obligation Rate Transparency System, a facility operated by the Board for the collection and public dissemination of information and documents about securities bearing interest at short-term rates.

(vii) The term “underwriter” shall mean an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8) and includes a dealer acting as a placement agent.

(viii) The term “variable rate demand obligation” shall mean securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, where an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically within a notification period, and a broker, dealer or municipal securities dealer acts as a remarketing agent responsible for reselling to new investors securities that have been tendered for purchase by a holder.