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Affected Rules
[Rule G-11](#), [Rule G-32](#)

Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings. This request for comment (“Request for Comment”) is intended to elicit views and input from all interested parties regarding the proposed changes, including on the benefits and burdens and possible alternatives, of the proposed changes. The comments will assist the MSRB in determining whether to propose these changes for adoption.

On September 14, 2017, the MSRB published a concept proposal (“Concept Proposal”) requesting comment on possible amendments to the current primary offering practices of brokers, dealers and municipal securities dealers (together, “dealers”).¹ The MSRB received 12 comment letters providing views and insight of market participants.² The comments received,

¹ [MSRB Regulatory Notice 2017-19 \(September 14, 2017\)](#).

² Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated Nov. 16, 2017 (the “BDA Letter”); Letter from City of San Diego, undated (the “City of San Diego Letter”); Letter from Robert W. Doty, dated Nov. 2, 2017; Email from Stephan Wolf, Global Legal Entity Identifier Foundation, dated Nov. 6, 2017 (the “GLEIF Letter”); Letter from Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association, dated Nov. 27, 2017 (the “GFOA Letter”); Letter from Alexandra M. MacLennan, President, National Association of Bond Lawyers, dated Nov. 17, 2017 (the “NABL Letter”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated Nov. 13, 2017 (the “NAMA Letter”); Letter from Julie Egan, NFMA Chair 2017 and Lisa Washburn, NFMA Industry Practices & Procedures Chair, National Federation of Municipal Analysts, dated Nov. 9, 2017 (the “NFMA Letter”); Email from Michael Paganini, dated Sept. 15, 2017; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Nov. 15, 2017 (the “SIFMA Letter”); Letter from John S. Craft, Managing Director, TMC Bonds LLC, dated Nov. 13, 2017; and Letter from Gilbert L. Southwell III, Vice President, Wells Capital Management, Inc., dated Nov. 1, 2017.



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in addition to continuing dialogue with industry stakeholders, formed the foundation for this Request for Comment.

Comments should be submitted no later than September 17, 2018, 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, MSRB, 1300 I Street NW, Washington, DC 20005. Generally, all comments will be made available for public inspection on the MSRB's website.³

Questions about this concept proposal should be directed to Margaret Blake, Associate General Counsel, or Barbara Vouté, Director – Market Practices, at 202-838-1500.

Proposed Changes⁴

I. Rule G-11 – Primary Offering Practices

Rule G-11 establishes terms and conditions for sales by dealers of new issues of municipal securities in primary offerings, including provisions on communications relating to the syndicate and designations and allocations of securities. The rule was first adopted by the MSRB in 1978, and was designed to

increase the scope of information available to syndicate managers and members, other municipal securities professionals and the investing public, in connection with the distribution of new issues of municipal securities without impinging upon the right of syndicates to establish their own procedures for the allocation of securities and other matters.⁵

³ Comments are generally 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 only should submit information that they wish to make publicly available.

⁴ The costs and benefits of each of the proposed changes are considered in the economic analysis section, *infra*.

⁵ MSRB Reports, Vol. 5, No. 6 (Nov. 1985).

The MSRB noted that, in adopting Rule G-11, the Board generally chose to require the disclosure of practices of syndicates rather than dictate what those practices must be.⁶

Because of the evolving nature of the municipal securities market, Rule G-11 has been amended several times over the years. As noted in the Concept Proposal, the MSRB sought industry input on the application of Rule G-11 in light of current market practices. Based on comments received, the MSRB now seeks comment on whether to: (A) standardize the process for issuing a free-to-trade wire; (B) require senior syndicate managers to provide specified information to issuers; and (C) align the payment of group net sales credits with the payment of net designated sales credits.

A. Free-to-Trade Wire

In a primary offering of municipal securities where a syndicate is formed (*i.e.*, not a sole-managed offering), pursuant to the Agreement Among Underwriters (AAU), typically the senior syndicate manager informs others in the syndicate when the bond purchase agreement (BPA) has been executed, thus indicating the date of sale or time of formal award of the issue. Thereafter, the senior syndicate manager may send a communication to the syndicate in the form of a free-to-trade wire. The free-to-trade wire, as a matter of current market practice, is an electronic message sent through a third-party service provider to the syndicate to communicate when all of the municipal securities in the issue or particular maturity (or maturities) are free to trade. The free-to-trade wire communicates to members of the syndicate that the various syndicate restrictions set forth in the AAU or otherwise communicated to the syndicate have been removed and indicates to syndicate members that they may trade the bonds at prices other than the initial offering price.

In the Concept Proposal, the MSRB sought comment as to whether the sending of the free-to-trade wire should be standardized to ensure all syndicate members receive this information at the same time. BDA indicated that once the formal award has been given, the senior syndicate manager should be required to send a notification, via a customarily used platform, to all syndicate members at the same time indicating the free-to-trade status of each maturity of bonds within the offering.⁷ SIFMA noted its belief that

⁶ See, *e.g.*, MSRB Reports, Vol. 2, No. 5 (Jul. 1982).

⁷ BDA Letter at p 2.

specific regulatory requirements are not needed to address the free-to-trade wire.⁸ If any rulemaking were made in this area, SIFMA believed it should be limited to ensuring that communications occur on a materially simultaneous basis and not require specific timeframes within which the communications must occur or the mechanics or venue used by the syndicate manager.⁹

The MSRB believes equal access to information is important to the fair and effective functioning of the market for primary offerings of municipal securities. While the MSRB is not intending to dictate the timing of when the free-to-trade wire should be sent, requiring dissemination of the free-to-trade wire in a manner that ensures all syndicate members receive information simultaneously would level the playing field among syndicate members. The MSRB believes this would prevent some syndicate members from receiving what might be viewed as preferential access to the free-to-trade information while others, who are not aware of the information, are delayed in their ability to transact at prices other than the initial offering price.

As set forth in the text of draft amendments attached hereto, the MSRB is proposing to amend Rule G-11 to require the senior syndicate manager to notify all members of the syndicate, simultaneously, via a free-to-trade wire, that trading restrictions have been lifted.

Questions

1. The draft rule amendments would require the senior syndicate manager to notify the syndicate via a free-to-trade wire when the syndicate restrictions are lifted. Should the proposed dissemination requirement apply only where the underwriter has generated a free-to-trade wire or should the dissemination of a free-to-trade wire be required?
2. Is a standardized process for issuing the free-to-trade wire consistent with the MSRB's original intent with respect to Rule G-11, primarily to address the disclosure of syndicate practices rather than dictate what those practices must be?

⁸ SIFMA Letter at p 6.

⁹ SIFMA Letter at p 7.

3. Is there an alternative, less burdensome method, for communicating to the full syndicate at once that restrictions on an issue of municipal securities have been lifted and sales in the secondary market may commence?

B. Additional Information for the Issuer

Rule G-11(g) requires the senior syndicate manager to provide information to the syndicate regarding the designations and allocations of securities in an offering.¹⁰ However, the senior syndicate manager is not required to provide this information to issuers. While issuers sometimes may be involved in reviewing and approving allocations or may be able to obtain information regarding designations and allocations from various sources, including the senior syndicate manager and certain third-party information resources, some market participants have suggested that the senior syndicate manager nonetheless should be required to provide this information to the issuer.

Five commenters addressed this issue in response to the Concept Proposal. BDA, City of San Diego and the GFOA generally supported providing detailed information to the issuer regarding designations and allocations,¹¹ while SIFMA indicated the information is available if the issuer wishes to obtain it and thus, a change is not necessary.¹² BDA suggested that the senior syndicate manager should be required to provide Rule G-11(g) information to the issuer upon request.¹³ City of San Diego suggested that such information should be provided to the issuer unless the issuer opts out of receiving it.¹⁴ City of San Diego further noted that senior syndicate managers in negotiated sales should be required to obtain an issuer's approval of designations and allocations unless otherwise agreed to between the parties.¹⁵ GFOA

¹⁰ In particular, Rule G-11(g)(ii) and (iii) require information to be given to the syndicate with respect to allocations and designations. "Designation" typically refers to the percentage of the takedown or spread that a buyer directs the senior syndicate manager to credit to a particular syndicate member (or members) in a net designated order (see Section I.C. *infra*). "Allocation" generally refers to the process of setting bonds apart for the purpose of distribution to syndicate members.

¹¹ BDA Letter at p. 2; City of San Diego Letter at p. 1 and GFOA Letter at 1.

¹² SIFMA Letter at p. 8.

¹³ BDA Letter at p. 2.

¹⁴ City of San Diego Letter at p.1.

¹⁵ *Id.*

indicated that issuers should be made aware of Rule G-11(g) information distributed to the syndicate and the senior syndicate manager should distribute the information to the entire syndicate at the same time.¹⁶ GFOA also noted that it is a best practice for the senior syndicate manager to have discussions with the issuer about the issuer's approval of designations and/or allocations.¹⁷ SIFMA indicated that it is not aware of circumstances where an issuer did not receive Rule G-11(g) information from a syndicate manager upon the issuer's request.¹⁸ SIFMA further noted that, if the MSRB undertakes rulemaking in this area, it should seek to strengthen existing practices rather than create new processes and should only require the syndicate manager to provide Rule G-11(g) information upon request, rather than having to provide it to the issuer in all cases.¹⁹

The MSRB seeks input as to whether this is an appropriate area for rulemaking or one that should continue to be negotiated between the senior syndicate manager and the issuer.

As set forth in the text of draft amendments attached hereto, the MSRB is proposing to require extending the senior syndicate manager's obligations under Rule G-11(g)(ii) and (iii) to include providing information regarding designations and allocations to the issuer. The MSRB believes that providing this information to the issuer will better inform the issuer of the orders, allocations and economics of their offering.

Questions

1. Should the senior syndicate manager be required to send the information under Rule G-11(g) upon the request of the issuer or should the senior syndicate manager be required to provide the information to the issuer regardless of whether it is requested?
2. Should the senior syndicate manager be required to provide the information under Rule G-11(g) unless the issuer opts out of receiving the information?

¹⁶ GFOA Letter at p. 1.

¹⁷ *Id.*

¹⁸ SIFMA Letter at p. 7-8.

¹⁹ SIFMA Letter at p. 9.

3. Do issuers generally understand this information currently is available to them from the senior syndicate manager or certain third-party information resources upon request? Would education of the issuer on this point be more appropriate than amending the rule?

C. Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits

Rule G-11(i) states that the final settlement of a syndicate or similar account shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate. Group net sales credits (*i.e.*, those sales credits for orders in which all syndicate members benefit according to their participation in the account)²⁰ are paid out of the syndicate account when it settles pursuant to Rule G-11(i). As a result, syndicate members must wait 30 calendar days following receipt of the securities by the syndicate before they receive their group net sales credits. By contrast, Rule G-11(j) states that sales credits due to a syndicate member as designated by a customer in connection with the purchase of securities (“net designated orders”) “shall be distributed” within 10 calendar days following the date the issuer delivers the securities to the syndicate.

The Securities and Exchange Commission (SEC) approved amendments to Rule G-11(i) in 2009 to, among other things, shorten the timeframe for settlement of the syndicate account from 60 calendar days to 30 calendar days following the date the issuer delivers the securities to the syndicate. In addition, the amendments shortened the timeframe for payments of net designated orders in Rule G-11(j) from 30 calendar days to 10 calendar days. The MSRB indicated that the shortened timeframes were intended to reduce the exposure of co-managers to the credit risk of the senior manager pending settlement of the accounts.²¹

In the Concept Proposal, the MSRB sought comment as to whether the timing of payment of group net sales credits should be aligned with the timing of payment of net designation sales credits to provide consistency in syndicate practices and, in particular, the payments to syndicate members of sales credits to which they are entitled. In addition, the MSRB sought

²⁰ See MSRB Glossary of Terms.

²¹ See Exchange Act [Release No. 60725 \(Sept. 28, 2009\)](#), [74 FR 50855 \(Oct. 1, 2009\)](#); [MSRB Notice 2009-55 \(Sept. 30, 2009\)](#).

comment as to whether the overall period of time for distribution of sales credits for both group net and net designated orders should be shortened to a period of less than 10 days.

BDA supported aligning the overall time period for payment of group net and net designation sales credits.²² SIFMA indicated its view that absent evidence of significant problems with the current timeframes, no changes to the current rule-based time frames are needed.²³

The MSRB believes aligning the time frames for payment and receipt of sales credits would be a minor adjustment that would ensure consistency in making and receiving such payments. The MSRB further believes that the time period of 10 calendar days would be appropriate and would provide balance between reducing risk of exposure of co-managers to the credit risk of the senior manager while providing the time needed to pay the sales credits.

In the attached draft rule amendment language, the MSRB is proposing to amend Rule G-11(j) to require the payment of group net sales credits within 10 calendar days following the date the issuer delivers securities to the syndicate. By aligning the payment of group net sales credits with the timing of payment of net designation sales credits, the MSRB seeks to create a consistent and uniform timeframe for payment of sales credits to syndicate members.

Questions

1. Are there advantages or disadvantages (including any new burdens) if syndicate members are paid group net and net designation sales credits pursuant to the same timeframe (*i.e.*, within 10 calendar days following receipt of the securities)?
2. Would consistency as between these timeframes be helpful to syndicate members?
3. Are there reasons the payment cycles should remain different?

²² BDA Letter at p. 3.

²³ SIFMA Letter at p. 10.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

Rule G-32 sets forth the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Among other things, Rule G-32 requires underwriters in primary offerings to submit electronically to the MSRB's Electronic Municipal Market Access (EMMA) system official statements and advance refunding documents, if prepared, related primary market documents and new issue information, such as that collected on Form G-32. The rule is designed to ensure that a customer that purchases new issue municipal securities is provided with timely access to information relevant to his or her investment decision. Rule G-32 was originally adopted by the Board in 1977,²⁴ and has been amended periodically since then to help ensure that, as market practices evolved and other regulatory developments occurred, Rule G-32 would remain current and achieve its goal of providing timely access to relevant information about primary offerings.

In the Concept Proposal, the MSRB sought input on aspects of Rule G-32 to help inform whether the existing disclosure practices continue to serve the municipal securities market appropriately. Based on comments received, the MSRB now seeks comment on whether to: (A) require disclosure of CUSIP numbers refunded and the percentages thereof to all market participants at the same time;²⁵ (B) require non-dealer municipal advisors that prepare official statements to make the official statement available to the underwriter after the issuer approves it for distribution; (C) auto-populate into Form G-32 certain information that is submitted to the Depository Trust Company's (DTC) New Issue Information Dissemination Service (NIIDS) but is not currently required to be provided on Form G-32; and (D) request additional information on Form G-32 that is not currently provided to NIIDS.²⁶

²⁴ File No. SR-MSRB-77-12 (Sept. 20, 1977). The SEC approved Rule G-32 in Release No. 34-15247 (Oct. 19, 1978), 43 FR 50525 (Oct. 30, 1978).

²⁵ CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments including municipal securities. CUSIP numbers are made up of nine characters (including letters and numbers) that uniquely identify a company or issuer and the financial instrument.

²⁶ NIIDS is an automated, electronic system that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating the information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

A. Equal Access to the Disclosure of the CUSIP Numbers Refunded and the Percentages Thereof

Currently, under Rule G-32(b)(ii), if a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in the offering is required to submit the advance refunding document to EMMA, and to provide the information related to the advance refunding document on Form G-32, no later than five business days after the closing date. The MSRB understands that some market participants may be informed of the refunding details before the information is made public.

In the Concept Proposal, the MSRB sought comment as to whether underwriters should be required to disclose, within a shorter timeframe and to all market participants at the same time, the CUSIP numbers refunded and the percentages of each CUSIP number being refunded. BDA, City of San Diego and NFMA supported making refunding information available earlier in the process and to all market participants at the same time.²⁷ NABL did not espouse a view regarding the specific proposed change, but noted any requirement should not serve as an indirect regulation of issuers by requiring that CUSIP numbers be identified by the issuer at pricing or any time before the issuer is otherwise obligated to provide such information.²⁸ SIFMA noted that receiving refunding information earlier might be beneficial, but questioned the value of providing the percentage of the CUSIP number advance refunded, and further noted that the MSRB should not prohibit market participants from disclosing information regarding an advance refunding prior to the submission of the advance refunding documents to EMMA.²⁹

The MSRB understands that in some instances information about refundings is not available to the syndicate earlier than five business days following the closing date. Therefore, the MSRB is not proposing a requirement that the refunding information be provided in a shorter timeframe at this time. However, the MSRB continues to believe that equal access to refunding information is critical to the efficient functioning of the primary market for municipal securities. Requiring senior syndicate managers to provide

²⁷ BDA Letter at p. 3; City of San Diego Letter at p. 1 and NFMA Letter at p. 2.

²⁸ NABL Letter at p. 2.

²⁹ SIFMA Letter at p. 13-14.

information to the market regarding CUSIP numbers refunded in a manner that allows access to the information by all market participants at the same time would support this effort. Accordingly, in addition to providing information on the percentage of the CUSIP number being refunded as a new data point on Form G-32,³⁰ the proposed change, as set forth in the attached draft rule amendment language, would require the underwriters to communicate the refundings in a manner that provides access to the information to all market participants at the same time.

Questions

1. Some market participants have stated that the current five-business day time period is necessary in some instances to allow adequate time to receive relevant information. Is there any reason the MSRB should reconsider shortening this timeframe?
2. In what manner should the information regarding CUSIP numbers being refunded and the percentage thereof be provided?
3. Is there a less-burdensome alternative to this proposed change that would further the same purpose?
4. Should the MSRB consider requiring underwriters to provide information on Form G-32 for *partial* current refundings by CUSIP number and the percentage of each bond to be refunded?
5. Though not discussed in the Concept Release, the MSRB understands that sometimes the syndicate produces a list of *potential* refundings before or at the time of pricing and this list is not shared with market participants with any consistency. Should this list be required to be posted on EMMA, if produced? Should posting of the list be voluntary?

B. Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

Rule G-32(c) requires a dealer that acts as a financial advisor (“dealer municipal advisor”) and prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities to make the official statement available to the managing underwriter or sole underwriter in a

³⁰ See *infra* Section II.D.

designated electronic format, after the issuer approves its distribution. Because this requirement was adopted before the MSRB had jurisdiction over municipal advisors that are not also dealers (“non-dealer municipal advisors”), the requirement does not extend to these market participants.³¹ In the Concept Proposal, the MSRB sought comment as to whether the current requirement in Rule G-32(c) should be extended to non-dealer municipal advisors to ensure delivery of the official statement is made in a consistent manner regardless of whether it is prepared by a dealer or non-dealer municipal advisor. BDA and SIFMA supported the proposed requirement,³² while NAMA opposed requiring municipal advisors to provide the official statement unless asked to do so by the issuer.³³ The MSRB is proposing to require all municipal advisors to comply with the requirements of Rule G-32(c) to provide consistency in the delivery of the official statement, regardless of whether a dealer or non-dealer municipal advisor is retained.

Questions

1. Is there any reason why a non-dealer municipal advisor should not be subject to the same requirement under Rule G-32(c) as a dealer municipal advisor?
2. What would be the advantages of extending this requirement to all municipal advisors?

C. Additional Data Fields on Form G-32 Auto-Populated From NIIDS

Pursuant to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements, an underwriter of a new issue of municipal securities must, as applicable, make the new issue depository eligible and submit information about the new issue to NIIDS.³⁴ In addition, the

³¹ The MSRB continues to review its rules to align requirements as between dealer municipal advisors and non-dealer municipal advisors, as appropriate.

³² BDA Letter at p. 4 and SIFMA Letter at p 19.

³³ NAMA Letter at p. 4-5.

³⁴ See Rule G-34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information.

underwriter in a primary offering of municipal securities is required, pursuant to Rule G-32, to submit electronically to the MSRB's EMMA Dataport system ("EMMA Dataport"), in a timely and accurate manner, certain primary market disclosure documents and related information, including the data elements set forth on Form G-32.³⁵

In 2012, the MSRB adopted amendments to Rule G-32 and Rule G-34 to streamline the process by which underwriters submit data in connection with primary offerings. The amendments integrated the submission of certain matching data elements to NIIDS with EMMA, obviating the need for duplicative submissions of information in NIIDS-eligible primary offerings.³⁶

For a "NIIDS-eligible primary offering," the underwriter must submit all information to NIIDS as required under Rule G-34. Subsequently, Form G-32 is auto-populated by the data the underwriter has input into NIIDS. Information required to be included on Form G-32 and for which no corresponding data element is available through NIIDS must be submitted manually through EMMA Dataport on Form G-32 (*i.e.*, it will not be auto-populated from NIIDS). Any correction to NIIDS data (and thus Form G-32 data) must be made promptly and, to the extent feasible, in the manner originally submitted. For a primary offering ineligible for NIIDS,³⁷ the

DTC sets forth the criteria for making a security depository eligible and thus NIIDS eligible. According to DTC, securities that can be made depository eligible include those that have been issued in a transaction that: (i) has been registered with the SEC pursuant to the Securities Act of 1933, as amended ("Securities Act"); (ii) was exempt from registration pursuant to a Securities Act exemption that does not involve (or, at the time of the request for eligibility, no longer involves) transfer or ownership restrictions; or (iii) permits resale of the securities pursuant to Rule 144A or Regulation S under the Securities Act, and, in all cases, such securities otherwise meet DTC's eligibility criteria. *See The Depository Trust Company, Operational Arrangements p. 2 (Aug. 2017).*

³⁵ See Rule G-32(b)(i)(A), on Form G-32 information submissions, and Rule G-32(b)(vi), on procedures for submitting documents and Form G-32 information. Form G-32 submissions may be made by the underwriter or its designated agent through the EMMA Dataport accessed via MSRB Gateway. EMMA Dataport is the utility through which submissions of documents and related information are made to the MSRB and its Market Transparency Programs.

³⁶ [MSRB Notice 2012-64 \(Dec. 24, 2012\)](#).

³⁷ See *supra* footnote 34 regarding depository eligibility criteria. In addition, Rule G-34(d) exempts from all Rule G-34 requirements any issue of a municipal security (and for purposes of secondary market municipal securities, any part of an outstanding maturity of an issue) which (i) does not meet the eligibility criteria for CUSIP number assignment or (ii) consists entirely of municipal fund securities.

underwriter of the offering must submit the Form G-32 information manually as set forth under Rule G-32.³⁸

The requirement under Rule G-34(a)(ii)(C) that an underwriter of a new issue of municipal securities that is NIIDS eligible submit certain information about the new issue to NIIDS was designed to facilitate timely and accurate trade reporting and confirmation, among other things. In addition, the submission of this information was meant to address difficulties dealers have in obtaining descriptive information about new issues of municipal securities.³⁹ While underwriters of issues that are NIIDS eligible submit a great deal of information about a new issue to NIIDS, much of this information is not auto-populated into Form G-32 because not all of the fields required to be submitted to NIIDS are required fields on Form G-32.⁴⁰

In the Concept Proposal, the MSRB sought public comment on the inclusion of certain additional data fields on Form G-32 that would be auto-populated with information underwriters currently are required to input into NIIDS. BDA and NAMA supported the inclusion of some existing NIIDS data on Form G-32,⁴¹ and BDA and SIFMA believed the addition of minimum denomination information from NIIDS would be a useful addition to Form G-32.⁴²

The MSRB seeks further comment as to whether certain additional information currently submitted to NIIDS but not auto-populated on Form G-32, should now be required data fields on Form G-32. Mandating certain additional data points on Form G-32 would ensure transparency continuity to

³⁸ The [EMMA Dataport Manual for Primary Market Submissions](#) describes the requirements of MSRB Rule G-32 for underwriters to submit primary market disclosure documents and information to EMMA and gives instructions for making such submissions. Rule G-32 requires that such submissions be made as set forth in the EMMA Dataport Manual.

³⁹ The requirement to provide this information and the process for doing so are addressed in Rule G-34 and Rule G-32, respectively. While NIIDS provides the system for submitting the information, its use does not obviate the requirement that information submitted pursuant to Rule G-34 be timely, comprehensive and accurate. See [MSRB Notice 2007-36 \(Nov. 27, 2007\)](#).

⁴⁰ [Appendix A](#) sets forth those NIIDS data fields the MSRB is proposing to include on Form G-32. None of these data fields currently is auto-populated into Form G-32 because Form G-32 does not have corresponding data fields to receive the information.

⁴¹ BDA Letter at p. 4 and NAMA Letter at p. 5.

⁴² BDA Letter at p. 4 and SIFMA Letter at p. 19.

the MSRB because it would allow the MSRB to control the information submitted. Overall, this would enhance the MSRB's transparency initiatives to the benefit of all stakeholders.

This proposed change would create additional data fields on Form G-32 that would map to the corresponding data fields in NIIDS. The additional data fields the MSRB proposes to include on Form G-32 are set forth in [Appendix A](#) hereto.

Questions

1. Does the addition of data elements on Form G-32, which would be auto-populated from NIIDS data already provided by the underwriter, pose any additional burden on the underwriter that has not been considered by the MSRB in this Request for Comment?
2. Are there other NIIDS data fields that should be included on Form G-32?
3. As discussed above, in some instances a new issue is not NIIDS eligible, but the underwriter is still required to complete Form G-32. In these instances, NIIDS data would not exist to auto-populate Form G-32. What benefits are associated with requiring this information to be manually entered on Form G-32 for new issues that are not NIIDS eligible?

D. Additional Data Fields on Form G-32 Not Auto-Populated From NIIDS

The MSRB believes several data points would be useful to investors, which are not currently input into NIIDS, and thus are not auto-populated on Form G-32. In the Concept Proposal, the MSRB sought comment on the addition of these data fields on Form G-32. Five commenters provided feedback on these items. BDA, City of San Diego, GLEIF, NAMA and SIFMA⁴³ agreed that some information that is not currently required to be input into NIIDS should be added to Form G-32, but the commenters differed with respect to the information they believed would be helpful. After considering the comments received, the MSRB is proposing for further comment the potential requirement that underwriters input the following additional information directly on Form G-32 in corresponding data fields:

⁴³ BDA Letter at p. 4; City of San Diego Letter at p. 2; GLEIF Letter at p. 1; NAMA Letter at p. 5 and SIFMA Letter at p. 19.

- **Ability for minimum denomination to change** – Currently, Form G-32 (as populated by NIIDS) includes the minimum denomination for the particular issue of municipal securities but does not indicate whether the minimum denomination has the potential to change. The MSRB believes providing a “yes” or “no” indicator as to whether the minimum denomination can change would provide useful information to market participants. For some issues, for example, if a bond is non-rated or below investment grade at the time of issuance but achieves an investment grade rating at some point in the future, this could result in a change to the minimum denomination that would be of interest to investors. Having this indicator would remind market participants to check relevant bond documents for developments that could trigger a change in minimum denominations.
- **Additional syndicate managers** – The MSRB believes that having a data field that indicates all of the syndicate managers (senior and co-managers) on an underwriting would provide useful information for various market participants and regulators. With this information, for example, issuers and municipal advisors or others could identify those underwritings where a particular syndicate manager was engaged or seek more information about particular syndicate managers, as needed, in performing due diligence on a potential upcoming offering. The MSRB believes the complete list of underwriters typically is known at or before the pricing of an issue and, therefore, senior and co-manager information is readily available to the senior underwriter.
- **Full call schedule** – For municipal bonds that are callable, knowing the full call schedule is important information to have when making an investment decision because if a bond is called it impacts the investor’s expected return on the bond and possibly any resulting cash flow. By requiring this information on Form G-32, the MSRB would be able to make complete call information available on EMMA to market participants and stakeholders. This information would include premium call dates, par call dates, those calls that are a percentage of par, and frequency of the call after the par call date (*i.e.*, continuously callable).

- Legal entity identifiers (LEIs) for credit enhancers and obligated person(s),⁴⁴ if readily available** – The LEI provides a method to uniquely identify legally distinct entities that engage in financial transactions.⁴⁵ The goal of this global identification system is to precisely identify parties to a financial transaction to assist regulators, policymakers and financial market participants in identifying and better understanding risk exposure in the financial markets and to allow monitoring of areas of concern. The MSRB believes that requiring this information on Form G-32, if readily available, would promote the value of obtaining LEIs and encourage industry participants to obtain them as a matter of course. Obtaining this information, when readily available, on credit enhancers and obligated persons would help in the move towards a global identification method for these market participants and improve the quality of municipal market financial data and reporting.
- Name of obligated person(s)** – The MSRB believes that providing the name(s) of the obligated person(s) of a new issue of municipal securities on EMMA is important because they are responsible for making interest and principal payments, as well as continuing disclosures, and this information is sometimes not readily available for transparency purposes. The MSRB believes that having the name(s) of the obligated person(s) available to market participants on

⁴⁴ For purposes of this Request for Comment, “obligated person” has the same meaning as set forth in Rule 15Ba1-1(k) of the Securities Exchange Act of 1934 (“Exchange Act”). Rule 15Ba1-1(k) defines “*obligated person*” to have the same meaning as that term is defined in section 15B(e)(10) of the Exchange Act, but does not include:

- (1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;
- (2) A person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or
- (3) The federal government.

Exchange Act Section 15B(e)(10) defines the term “obligated person” to mean any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

⁴⁵ An LEI is a 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. Only organizations duly accredited by GLEIF are authorized to issue LEIs.

EMMA would enhance transparency, enable investors to better understand who is legally committed to support payment of all or part of an issue of municipal securities and help them to make more informed investment decisions.

- **Percentage of CUSIP numbers refunded** – As noted above, underwriters currently are required, pursuant to Rule G-32(b)(ii), to submit advance refunding documents to EMMA as well as provide information related to the refunding as required by Form G-32. The MSRB believes that requiring information regarding the percentage of each CUSIP number refunded on Form G-32 would provide all market participants information on material changes to a bond’s structure and value at the same time. This additional information would assist investors in making informed investment determinations.
- **Retail order period by CUSIP number** – Currently new issues are flagged in EMMA Dataport to indicate whether there is/was a retail order period. The MSRB has heard concerns from market participants about orders being entered that may not meet the definition or spirit of the requirements for a retail order period. The MSRB believes that requiring underwriters to mark a new issue with a flag for the existence of a retail order period for each CUSIP number would provide greater transparency to all market participants, including regulators, about potential non-compliance with the terms of retail order periods. A “yes” or “no” flag by CUSIP number could be helpful in identifying orders that should not have been included in the retail order period.
- **Name of municipal advisor** – The name of the municipal advisor on an issuance is not currently required to be input in NIIDS or on Form G-32. The MSRB believes including this information would allow market participants to consider the experience of the municipal advisor when evaluating a new issue of municipal securities especially for similar credits and structures.

This proposed change would create additional data fields on Form G-32 for manual completion.

Questions

1. Does the addition of the data elements on Form G-32, which would be manually input by the underwriter, pose any burden on the underwriter that has not been identified here?

2. Are the proposed non-NIIDS data fields appropriate? Are there other data fields that should be included in the list of non-NIIDS additional fields?
3. Would requiring the disclosure of LEIs, “if readily available”, discourage market participants from obtaining them?
4. Similar to the proposed “yes” or “no” flag for changes in minimum denomination, should the MSRB include a new data point on Form G-32 that would flag when a new issue is issued with restrictions, such as a new issue that is only available for qualified institutional buyers?

Economic Analysis

I. Rule G-11 – Primary Offering Practices

As discussed above, the MSRB is soliciting comments on three proposed changes to existing Rule G-11 based on public comments received in response to the Concept Proposal. These proposed changes are (1) a requirement that the senior syndicate manager disseminate the free-to-trade wire to all syndicate members simultaneously; (2) a requirement that the senior syndicate manager provide information regarding designations and allocations of securities to the issuer in an offering; and (3) aligning the payment of group net sales credits with the payment of net designated sales credits. This economic analysis addresses the three proposed changes to Rule G-11.

A. The need for proposed changes to Rule G-11

The proposed changes are needed to address possible information asymmetry that arises from certain market practices.⁴⁶ In the case of dissemination of the free-to-trade wire, the MSRB understands that this wire is not always sent to all members of the syndicate at the same time. Thus, certain syndicate members may temporarily have better information than others about the ability to trade the municipal securities in the secondary market at prices other than the initial offering price. Similarly, detailed information regarding designations and allocations of the securities in a new issue is required to be provided to the syndicate pursuant to Rule G-11(g) but

⁴⁶ In economics, information asymmetry refers to economic decisions in transactions where one party has more or better information than the other party.

is not required to be provided to the issuer. Requiring the senior syndicate manager to provide information to the issuer regarding designations and allocations would provide transparency to the issuer, give the issuer the same information received by all the syndicate members and better inform the issuer about the orders and allocations in the issue. The requirement should also better ensure issuer-approved syndicate policies are followed and assist issuers with future decisions on syndicate formation and marketing and structuring of subsequent offerings.⁴⁷

The need for the proposed change to align the timing of payments of group net sales credits and net designation sales credits is based on the desire to have a consistent process for such payments. Previously, the MSRB amended Rule G-11 to reduce the payment timeframe for net designated orders from 30 calendar days to 10 calendar days and the syndicate account settlement window (and therefore the payment of sales credits for group net orders) from 60 calendar days to 30 calendar days.⁴⁸ As noted above, the amendments were meant to limit syndicate members' potential exposure to the senior syndicate manager's credit risk. The MSRB believes the same credit risk is present for both types of orders; therefore, reducing the timeframe for payment of group net sales credits has the same rationale as the previous changes, and is appropriate to create consistency in the payment and receipt of sales credits for both types of arrangements while continuing to limit potential credit risk.

B. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of the proposed changes to Rule G-11, a baseline or baselines must be established as a point of reference in comparison to expected future Rule G-11. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

The baseline for the proposed changes to Rule G-11 is the existing Rule G-11, which establishes primary offering practices. Specific to the three proposed changes to Rule G-11:

- The current Rule G-11 does not require a free-to-trade wire be issued to all syndicate members simultaneously;

⁴⁷ See City of San Diego Letter.

⁴⁸ See *supra* footnote 21.

- Rule current G-11 does not require disclosure of information regarding the designations and allocations of securities in an offering to the issuer; and
- The current Rule G-11 requires the final settlement of a syndicate account – out of which group net sales credits are paid – to occur 30 calendar days following the date the issuer delivers the securities to the syndicate, but mandates payment of net designation sales credits to syndicate members within 10 calendar days following the date the issuer delivers the securities to the syndicate.

C. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB policy on economic analysis in rulemaking addresses the need to consider alternative regulatory approaches. Under this policy, only reasonable regulatory alternatives should be considered.

As an alternative to the proposed changes to Rule G-11, the MSRB could choose to make one or two of the proposed changes but not the other(s), as the MSRB believes each proposed change is distinct and independent of the others. However, the MSRB has carefully considered each of the three proposed changes, as well as public comments received in response to the Concept Proposal and has determined that each proposed change is necessary to address an important and separate market issue. Therefore, the MSRB believes that amending Rule G-11 to address only one or two of the proposed changes is a suboptimal alternative.

Another alternative to the proposed changes to Rule G-11 would be to require that the information regarding designations and allocations be provided to the issuer, but only upon the issuer's request. However, the MSRB believes this alternative could result in sophisticated issuers having better access to information than issuers who are unaware that the information is available upon request. The proposed change to this requirement is designed to ensure that all issuers receive the relevant information on designations and allocations.

A similar alternative would be to require the senior syndicate manager to provide designation and allocation information to all issuers with an option to opt out of receiving the information. The MSRB is not aware of any likely rationale behind an issuer's decision to decline the information other than the fact that the issuer may decide the burden of reviewing the information exceeds the benefits of the information itself.

Finally, the MSRB could choose not to amend Rule G-11 and instead leave the rule in its current state. However, this alternative would leave certain market issues unaddressed as discussed above.

D. Assessing the benefits and costs of the proposed changes

The MSRB policy on economic analysis in rulemaking requires consideration of the likely costs and benefits of a proposed rule change with the rule change proposal fully implemented against the context of the economic baselines.

The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed changes. In addition, the MSRB requests market participants to provide quantitative estimates of both the upfront and ongoing cost of providing the information below.

Benefits and Costs – Free-to-Trade Wire. Reduced information asymmetry is the primary benefit associated with requiring senior syndicate managers to issue a free-to-trade wire to all syndicate members at the same time since this would ensure that the entire syndicate has timely access to critical information and would create a fair playing field for syndicate members.

The free-to-trade wire is typically issued by senior syndicate managers to all members of the syndicate. However, the MSRB understands that the timing of receipt of the free-to-trade wire can vary such that information is not always received by all syndicate members at the same time. Typically, the free-to-trade messaging is sent electronically via a third-party service provider and would be simple to provide to all of the syndicate members at the same time. Therefore, above-the-baseline costs to senior syndicate managers associated with this requirement are expected to be insignificant. Syndicate members currently receiving the free-to-trade wire after others in the syndicate have already received it would benefit from being notified earlier about their ability to trade in the secondary market at market prices other than the initial offering price. Thus, the MSRB believes that the likely benefits of this requirement significantly outweigh its likely costs.

Benefits and Costs – Additional Information for the Issuer. The main benefit of providing information regarding designations and allocations to the issuer is to provide transparency to the issuer, give the issuer the same information received by all the syndicate members and better inform the issuer about the designations and allocations of the new issue. This information is beneficial to the issuer for several reasons. First, it provides the issuer relevant details regarding its current issue. Second, the information would make it possible

for the issuer to determine whether certain syndicate rules or terms had been followed. Third, the information, in the aggregate, may help issuers understand the spectrum of syndicate structures, which may benefit them when they come to market again in the future.

Since the senior syndicate manager is already required to provide these disclosures to each syndicate member, the incremental cost of providing this information to the issuers as well should be negligible. Like the free-to-trade wire, the information is typically provided electronically and therefore is easy to disseminate to additional parties.

Benefits and Costs – Alignment of the Timeframe for the Payment of Group Net Sales Credits with the Payment of Net Designation Sales Credits. Aligning the timeframe for payment of group net sales credits to syndicate members with the timeframe for payment of net designation sales credits would promote consistency in payments of sales credits for syndicate members and further limit syndicate members' exposure to the senior syndicate manager's credit risk.

In order to meet the new timeframe for payment of group net sales credits, some firms acting as senior syndicate manager initially may need to revise certain internal processes, and thus may incur some upfront costs. However, the MSRB is not proposing to change the timeframe related to settlement of the syndicate or similar account, but rather, the timeframe within which payment of group net sales credits occurs. Therefore, the associated costs should not be significant once the new process is in place.

Effect on Competition, Efficiency and Capital Formation. Since all three proposed changes to Rule G-11 would apply equally to all new issues and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. The proposed changes are meant to improve the fairness and efficiency of the underwriting process and thus should improve capital formation. Specifically, the proposed changes are intended to protect issuers and syndicate members, as well as investors. These protections should create additional transparency and promote fairness of the competition in the primary offering process, potentially benefiting issuers and investors alike.

II. Rule G-32 – Disclosures in Connection with Primary Offerings

The additional information on which comment is requested relating to Rule G-32 falls into three categories: (1) additional disclosures in connection with primary offerings; (2) data that is presently available through NIIDS, but not auto-populated on Form G-32; and (3) data that is neither readily available to

the MSRB from existing sources (namely, NIIDS) nor auto-populated on Form G-32.⁴⁹ The economic analysis below discusses the three categories separately.

Broadly speaking, the need for the two categories of proposed additional data points on Form G-32 arises from the fact that the existing information not currently on Form G-32, but proposed to be included, would enhance the MSRB's transparency initiatives and facilitate the MSRB's own usage of data. The MSRB currently displays some data that is provided on Form G-32 to the public through EMMA, and the inclusion of additional data for display would provide considerably more transparency to investors and all other market participants. The MSRB believes that providing transparency of municipal market information is an important way to reduce information asymmetry in the market. In these instances, investors receiving information late, or not at all, are evaluating a municipal security based on incomplete information and thus are hampered in their assessment of the market value of the security. The resulting information asymmetries could have an undesirable impact on the municipal securities market, potentially causing market price distortion and/or transaction volume depression. In addition, the two categories of proposed additional data points on Form G-32 should reduce the MSRB's dependence on third-party data providers for information disclosure on EMMA.

A. Additional Disclosures in Connection with Primary Offerings

The MSRB is proposing to require underwriters to disclose CUSIP numbers refunded to all market participants at the same time and non-dealer municipal advisors who prepare official statements in relation to a primary offering to make the official statement available to the managing underwriter or the sole underwriter in a designated electronic format after the issuer approves the official statement for distribution.

1. The need for proposed changes to Rule G-32 for these disclosures

The proposed changes are needed to reduce information asymmetry that may arise in both the primary and the secondary markets. In the case of advanced refundings, information regarding the CUSIP numbers refunded may currently be available to certain market participants before it is available to others. This can result in negative consequences for the less informed

⁴⁹ These proposed additional data requirements are also similarly applicable for non-NIIDS eligible issues.

market participants. The proposed change would improve fairness of the market.

Similarly, when a non-dealer municipal advisor prepares an official statement on behalf of an issuer, without a requirement to make the official statement available to the underwriter, the official statement is not required to be shared with the underwriter in a timely manner prior to issuance. This may result in delayed information dissemination to some market participants, hampering their ability to make more informed investment decisions.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

The baseline for these two proposed provisions is the existing Rule G-32.

- Currently, Rule G-32 requires underwriters of an advance refunding to provide the advanced refunding document to EMMA and related information to Form G-32 no later than five business days after the closing date. This document includes a list of the refunded CUSIP numbers.
- Additionally, Rule G-32 requires only dealer-municipal advisors to make the official statement available to the managing underwriter or sole underwriter in electronic format promptly after the issuer approves its distribution. This requirement does not extend to non-dealer municipal advisors.

3. Identifying and evaluating reasonable alternative regulatory approaches

As regulatory alternatives, the MSRB could leave Rule G-32 unchanged or incorporate one of the proposed changes but not the other. However, as stated above, proposed changes to Rule G-32 are designed to ensure consistency in the timing of the disclosure of a particular CUSIP number's refunding information to all market participants and to ensure consistency in the delivery of official statements. Therefore, the MSRB believes those alternatives are inferior to the proposed changes to Rule G-32.

Alternately, the MSRB could require the advanced refunding document to be posted on EMMA sooner than five business days after closing to minimize the chance of discrepancy in the timing of disclosures made to different market participants. However, the MSRB understands that this information sometimes is not available sooner than five business days after closing and

proposing a requirement that the information be provided in a shorter timeframe may not be feasible at this time.

4. Assessing the benefits and costs of the proposed changes

Benefits and Costs – Disclosure of the CUSIP Numbers Refunded to the Market Simultaneously. The main benefit of enhanced refunding disclosure is better information and reduced information asymmetry in the secondary market, which may in turn improve the market's fairness and efficiency. Costs above the baseline would be limited since underwriters are already required to provide advanced refunding documents to EMMA and related information on Form G-32.

Benefits and Costs – Non-Dealer Municipal Advisors Making the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution. The official statement contains information that is critical to underwriters; therefore, this proposed change to Rule G-32 is meant to ensure consistency in the delivery of official statements whether by dealer municipal advisors or by non-dealer municipal advisors.

This proposed change to Rule G-32 would impose a new requirement on non-dealer municipal advisors. However, the costs associated with this change should be insignificant since the requirement exists only where the municipal advisor prepares the official statement and it is therefore readily available to the municipal advisor (dealer or non-dealer) and can easily be provided to the underwriter via electronic means.

Effect on Competition, Efficiency and Capital Formation. Since the proposed changes would apply equally to all new issues and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. In fact, since the proposed changes are meant to improve the fairness and efficiency of the underwriting process and thereafter the secondary market trading, the proposed changes should actually improve capital formation. Specifically, the proposed changes protect underwriters and other market participants, and these protections could improve the competitiveness of the primary and the secondary markets, potentially benefiting issuers and investors alike.

B. Auto Population of Additional Data Fields on Form G-32 with Information from NIIDS

1. The need for proposed changes to Rule G-32 on auto-population of additional data fields

As described above, an underwriter of a new issue that is NIIDS eligible provides data to NIIDS with respect to that issue. Though the information is input into NIIDS, only some of that information is auto-populated into Form G-32 and displayed on EMMA because Form G-32 does not have data fields for all of the information gathered in NIIDS. Therefore, the MSRB is limited in its long-term flexibility to make the information transparent to the broader market on a sustained basis, as a result of the MSRB not being in full control of those additional data fields. The proposed changes should reduce the MSRB's dependence on third-party data providers for information disclosure on EMMA. As described below, these additional data elements comprise pertinent information about the bonds.

While much of the information contained in the proposed additional data fields is currently available to the public in the official statement for a new issue, it is often not easily located or explicitly stated therein. Because official statements are not consistently formatted, and the specific information sought is not necessarily prominently displayed, at least some portion of retail and other investors may be unaware of, or have difficulty locating, pertinent information.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

To evaluate the potential impact of the proposed changes to additional data points on Form G-32, a baseline or baselines must be established as a point of reference in comparison to expected future Form G-32. The economic impact of the proposed changes is generally viewed as the difference between the baseline state and the expected state.

For the proposed changes related to the auto-population of certain data fields from NIIDS into Form G-32, the baseline is the existing Rule G-32 which requires Form G-32 information to be submitted in a timely and accurate manner as set forth in the rule, and Rule G-34, which requires complete and accurate new issue information to be submitted to NIIDS. This analysis considers the costs and benefits of the proposed changes above this baseline.

For the subset of non-NIIDS eligible issues, the baseline is the existing scenario where no data elements are submitted to NIIDS and information is manually input on Form G-32.

3. Identifying and evaluating reasonable alternative regulatory approaches

Specific to the proposed auto-population of additional data elements on Form G-32 with information from NIIDS, the primary alternative would be to collect this information directly on Form G-32 without auto-population. However, this alternative would impose an unnecessary burden on regulated entities by requiring them to devote additional time and resources to providing duplicative information, where the same information is available from NIIDS. Because the regulatory objectives of transparency and improved usage of information can be achieved through other less burdensome means, this alternative would not be practical. Limiting the burden on regulated entities, whenever possible, makes it more cost effective for those entities to provide information that is critical to the market.

Another alternative would be to collect the additional information from a third-party data vendor other than NIIDS. However, this would require the third party to obtain the information either from NIIDS or from the underwriter directly, again requiring unnecessary duplication of information input. In addition, obtaining information from a third party might limit the MSRB's ability to make the information available, thus hindering the MSRB's goal of increasing market transparency.

A third alternative is to not collect the additional data elements on Form G-32. However, not collecting the data would impede the MSRB's goal of creating an ongoing transparent market for municipal securities. Thus, this alternative is unattractive.

4. Assessing the benefits and costs of the proposed changes

The MSRB is seeking, as part of this Request for Comment, additional data or studies relevant to the costs and benefits of the proposed changes. In addition, the MSRB requests market participants to provide quantitative estimates of both the upfront and ongoing cost of providing the data elements below.

Benefits. The MSRB believes that including some or all of the information provided to NIIDS on Form G-32 would improve the MSRB's flexibility regarding data usage. Specifically, by collecting the NIIDS data for inclusion on Form G-32, the MSRB would have greater control and flexibility to make the information available publicly for the foreseeable future without depending on third-party data providers, which would benefit market participants.

The MSRB believes that collecting additional new information on Form G-32 directly, as opposed to relying on third-party data providers, would ensure the long-term sustainability of making the information available to the public. The effort would have several long-term benefits, including increased transparency, improved market information and reduced likelihood of information asymmetries.

Without the proposed changes to Form G-32, the MSRB would have less long-term flexibility to make the information transparent to the market, as the MSRB would have to continue to rely upon third-party data providers to gather the information for public display. With potentially less transparency of information in the long run, retail investors could have access to less information than market professionals, possibly resulting in information asymmetry. Information asymmetry could cause market price distortion and/or transaction volume depression resulting in an undesirable impact on the municipal securities market.

Underwriters of new issues that are not NIIDS eligible must input the information required by Form G-32 directly into the form without the benefit of auto-population of data via NIIDS. However, the information only needs to be entered one time.⁵⁰ Because these non-NIIDS eligible new issues are unlikely to trade in the secondary market, the main benefit of the proposed changes would be to facilitate the MSRB's usage of data regarding these issues.

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

Rule G-32 and Rule G-34 already require information to be submitted to NIIDS accurately by underwriters, therefore costs associated with providing these data elements are considered part of the baseline, assuming full

⁵⁰ However, according to the EMMA Dataport Manual, until closing, the underwriter is expected to update promptly any information previously provided by it on Form G-32 which may have changed, or to correct promptly any inaccuracies in such information. The underwriter also is responsible for ensuring that such information is accurate as of the closing date.

compliance with Rule G-32 and Rule G-34.⁵¹ The additional cost imposed on market participants for data to be auto-populated from NIIDS onto Form G-32 should be limited, which may include, for example, additional time to review the pre-populated information for accuracy.

Similarly, underwriters of non-NIIDS-eligible new issues are already obligated to complete Form G-32 manually pursuant to Rule G-32(b)(i)(A)(2). Underwriters would also need to provide the proposed additional data elements directly on Form G-32 manually, and this may result in an additional burden for underwriters because of the additional data fields that would need completing and updating. However, the MSRB believes the proposed changes should not impose a significant amount of additional time or burden as the information should be readily available to those underwriters.⁵²

Effect on Competition, Efficiency and Capital Formation. Since the data is already provided to and available through NIIDS from underwriters of new issue municipal securities that are NIIDS eligible, the proposed changes would not impose a significant burden on regulated entities. Submitters of Form G-32 would have a responsibility to ensure that pre-populated information, as well as manually-completed information, is accurate. However, this responsibility would not rise to the level of a burden on competition since it would apply equally to all underwriters inputting information whether for NIIDS-eligible or non-NIIDS-eligible new issues. The MSRB believes that the proposed changes would enhance market competition by ensuring market participants continue to receive new issue information.

⁵¹ However, in the event that certain data elements cannot be auto-populated because the information was not currently provided to NIIDS, firms would need to input this information into Form G-32 manually.

⁵² Presently, one firm submits partial data to Form G-32 via a business-to-business connection (“B2B”), which is a computer-to-computer connection that does not require any human intervention and provides underwriters a direct data submission channel to Form G-32. With respect to the proposed changes, this B2B submitter would presumably continue to provide some of the proposed data elements via the same B2B connection, because auto-population from NIIDS is not possible with this format of submission. However, B2B is an automated submission itself; therefore, the burden of providing these additional data elements would be limited to the initial time and cost of coding for the process. Subsequently, there should not be additional burden associated with providing this information to the MSRB on a periodic basis.

C. Additional Data Fields on Form G-32 Not Auto-Populated with Information From NIIDS

1. The need for proposed changes to Rule G-32 for additional non-auto-populated data fields

As much as possible, the MSRB seeks to minimize the burden of the proposed regulation by obtaining information from existing sources such as NIIDS. Certain data elements that the MSRB believes would be useful to investors are not input into NIIDS or collected by the MSRB. As set forth above, this information would need to be directly input on Form G-32 to be available to market participants.

As discussed in detail above with regard to the additional data elements not currently captured by NIIDS (i.e., ability for minimum denomination to change, additional syndicate managers, full call schedule, legal entity identifiers for credit enhancers and obligated persons, name of municipal advisor, name of obligated person, percentage of CUSIP number refunded and retail order period by CUSIP number), the MSRB has considered the need to require each of the proposed data elements individually. The MSRB believes that this information is valuable in enhancing transparency and helping ensure an efficient secondary market for municipal securities. Please refer to Section 4 below for a detailed discussion of each data element.

2. Relevant baselines against which the likely economic impact of the proposed changes can be considered

For the proposed changes to Form G-32 that are related to additional data elements that are not currently submitted to NIIDS, the MSRB is proposing to require underwriters to input this information directly onto Form G-32. Thus, the baseline would be the existing Rule G-32 and the current Form G-32. This analysis considers costs and benefits of the proposed changes above the baseline. Specifically, since certain data elements are already required on Form G-32, submission of currently-required information is considered part of the baseline for purposes of this Request for Comment, and only costs associated with supplying the additional data elements not currently input into NIIDS are addressed in the discussion of costs and benefits.

3. Identifying and evaluating reasonable alternative regulatory approaches

Similar to the alternative above for auto-population of data from NIIDS, one alternative to collecting data directly on Form G-32 would be for the MSRB to collect this information from a third-party vendor. In that case, the MSRB

would require validation of data accuracy for those additional data fields the same way it currently requires accuracy for all data elements submitted to NIIDS. However, reliance on third-party vendors could limit the MSRB's ability and latitude to make the data available to the market, thus hindering the goal of increased transparency.

Likewise, the MSRB could consider not collecting and disseminating the additional data elements. This alternative is undesirable because it would prevent the benefits that are associated with the proposed changes, including enhanced secondary market transparency, from being realized. Regarding selected data elements that the MSRB is proposing to collect through NIIDS above, the MSRB first considered whether information has the intended benefits of enhancing market transparency and improving the MSRB's flexibility regarding usage of the data, and then whether the information is readily available from NIIDS to minimize the burden that it imposes on underwriters.

Finally, the MSRB could consider collecting all of the proposed additional data through NIIDS, including the newly proposed data points that are not currently input into NIIDS. However, those data elements are currently not available from NIIDS; thus, it is more practicable for the MSRB to collect the information directly on Form G-32. If DTC were at some point to change its data collection scope, the MSRB could revisit the approach.

4. Assessing the benefits and costs of the proposed changes

Benefits. The MSRB believes there would be many benefits associated with collection of the proposed additional data elements not currently collected in NIIDS, as these new data elements are currently not available to the MSRB. The proposed changes, such as the disclosure of full call schedule, would enable the MSRB to provide more information to the market. This would increase transparency, which should reduce information asymmetry, enhance market efficiency, assist individual investors with more informed decision making and further reduce transaction costs for investors in the secondary market. As noted above, academic studies have demonstrated the benefits of such transparency to the market.

Academic studies have consistently shown that information disclosures on municipal bond issuances have benefited investors, particularly retail investors who have higher information acquisition costs than institutional investors. For example, a measurable reduction in the transaction costs paid by retail investors and related pricing inefficiencies in the secondary market for municipal securities have been attributed to information disclosure via

online repositories.⁵³ Without the proposed additions to Form G-32, retail investors would have access to less information than some market professionals, resulting in information asymmetry. Information asymmetry could cause market price distortion and/or transaction volume depression resulting in an undesirable impact on the municipal securities market.

In addition, improved transparency of some other additional data fields, such as names of municipal advisors, corporate obligated persons and syndicate managers, would provide issuers with better information about their potential choices for selecting municipal advisors, obligors and underwriters. The additional information should further enhance the efficiency of primary market activities.

Costs. In the context of this proposal, the relevant costs are those associated with providing information for the proposed new data elements. For the most part, this information is readily available to underwriters. However, it is useful to consider each element individually below.

- **Ability for Minimum Denomination to Change** – The MSRB is proposing a “Y/N” flag on Form G-32 to indicate whether the minimum denomination for the issue has the ability to change. Since this information is contained in the official statement, which is readily available to underwriters prior to issuance, the MSRB believes the costs associated with providing this information would be negligible.
- **Full Call Schedule** – The MSRB is also considering requiring additional call information on Form G-32. Like most of the data elements in the Request for Comment, call information is known to underwriters prior to issuance. Therefore, the costs associated with providing this information on Form G-32 primarily take the form of additional time needed to complete Form G-32. Like other proposed data elements, the MSRB believes that the time required to provide this information (and any subsequent cost) would not be significant.
- **Names of Municipal Advisors, Obligated Person(s) and Additional Syndicate Managers (Senior and Co-Managers)** – The MSRB is also proposing to require the names of municipal advisors, obligated

⁵³ See Cuny, Christine, “Municipal Disclosure and the Small Trade Premium,” Working Paper, New York University, November 28, 2016, and Dzigbede, Komla, “Regulatory Disclosure Interventions in Municipal Securities Secondary Markets: Market Price Effects and the Relative Impacts on Retail and Institutional Investors,” Working Paper, State University of New York at Binghamton, July 2017.

person(s) and additional syndicate managers (if applicable) on Form G-32. This information is readily available to underwriters and the incremental cost of providing this information takes the form of additional time required to complete Form G-32. The MSRB believes that the time (and the subsequent cost) would not be significant.

- **Retail Order Period by CUSIP Number** – Under the proposed changes, more detailed retail order period information would be required on Form G-32. Specifically, underwriters would be required to provide CUSIP-specific retail order period information. Like other of the proposed data elements, this information is well known to the underwriter prior to issuance and contained in the official statement. Therefore, the burden of providing this proposed additional information is limited to simply inputting it on the form. Thus, the main associated burden would be the additional time required to complete the form. Incrementally, this cost would be minor as it should not require significant time to enter the new information.
- **Percentages of Security Refunded by CUSIP Number** – The proposed change would require the underwriter, in a refunding, to provide the percentage of each CUSIP number refunded in an issue. The percentage of CUSIP numbers being refunded should not be difficult for underwriters to gather and to provide to the market, as underwriters should already have the information on hand.
- **LEIs for Credit Enhancers and Obligated Persons, if available** – The MSRB is proposing to require the LEI for the obligated person and any credit enhancers to be provided, if readily available. In the case of the LEI for credit enhancers, this information would only be required if credit enhancements were used. LEI information is publicly available through various platforms so the cost of obtaining and providing this information would be limited. Additional costs in the form of search time may be incurred if the underwriter does not have the appropriate LEI(s) on hand. In the event that an entity does not have an LEI, the underwriter may incur additional search costs to confirm that an LEI does not exist. The proposed changes might create a disincentive for entities to obtain LEIs since they would require LEI information only when readily available.

The MSRB believes that the long-term accrued benefits of the proposed changes, including the benefit of transparency of this information in the broader market, would outweigh the burden imposed on underwriters.⁵⁴

Effect on Competition, Efficiency and Capital Formation. The MSRB believes that the proposed changes may improve the efficiency of the municipal securities market by promoting consistency and transparency of information. 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 would outweigh the costs over the long term. Additionally, in the MSRB's view, the proposed changes would not result in an undue burden on competition since they would apply to all underwriters equally.

Conclusion

Overall, the MSRB believes the above proposed changes should bring additional benefits to the market, with relatively limited costs to market participants. The MSRB has assessed the impact of the proposed changes and believes that the likely benefits should accrue and outweigh the likely costs over the long term.

The MSRB is soliciting estimates of any costs associated with the proposed changes in this Request for Comment but believes that, on aggregate, the costs would be less than the cumulative benefits.

July 19, 2018

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⁵⁴ For B2B submissions, to provide the above-proposed data elements, this submitter would incur development costs to code for the new submission format since their information is not auto-populated on Form G-32 from NIIDS. The MSRB realizes that this firm would most likely face greater up-front costs in the event of a rule change due to the one-time cost to revise the firm's B2B submission code than firms submitting manually.

Text of Proposed Amendments*

Rule G-11: Primary Offering Practices

(a) – (f) No change.

(g) *Designations and Allocations of Securities*. The senior syndicate manager shall:

(i) No change.

(ii) notify all members of the syndicate, simultaneously, via a free-to-trade wire, that trading restrictions have been lifted.

~~(iii)~~ within two business days following the date of sale, disclose to the other members of the syndicate and the issuer, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated, including any allocation to an order confirmed at a price other than the original list price. The summary shall include allocations of securities to orders submitted through the end of the order period or, if the syndicate does not have an order period, through the first business day following the date of sale;

~~(iii)~~ disclose, in writing, to each member of the syndicate and the issuer all available information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts within 10 business days following the date of sale and all information about designations paid to syndicate and non-syndicate members expressed in total dollar amounts with the sending of the designation checks pursuant to section (j) below; and

~~(iv)~~ disclose to the members of the syndicate, in writing, the amount of any portion of the take-down directed to each member by the issuer. Such disclosure is to be made by the later of 15 business days following the date of sale or three business days following receipt by the senior syndicate manager of notification of such set asides of the take-down.

(h) – (i) No change.

(j) *Payments of Designations and Sales Credits*. All syndicate or similar account members shall submit the allocations of their designations according to the rules of the syndicate or similar account to the syndicate or account manager within two business days following the date the issuer delivers the securities to the syndicate. Any credit designated by a customer in connection with the purchase of securities as due to a member of a syndicate or similar account or any group net sales credits due to a member of a syndicate or similar account shall be distributed to such member by the broker, dealer or municipal securities dealer handling such order within 10 calendar days following the date the issuer delivers the securities to the syndicate.

* Underlining indicates new language; strikethrough denotes deletions.

(k) - (l) No change.

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Rule G-32: Disclosures in Connection with Primary Offerings

(a) No change.

(b) Underwriter Submissions to EMMA.

(i) No change.

(ii) Advance Refunding Documents. If a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in such offering ~~shall~~, is required to provide access to such information by all market participants at the same time by submitting, no later than five business days after the closing date, ~~submit:~~

(A) the advance refunding document to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the advance refunding document as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iii) – (vi) No change.

(c) Preparation of Official Statements By ~~Financial-Municipal~~ Advisors. A ~~broker, dealer or municipal securities dealer that, acting as financial advisor,~~ municipal advisor that prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities shall make the official statement available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution.

(d) No change.

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Appendix A [Proposed NIIDS Data Points for Inclusion on Form G-32](#)