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June 29, 2017

VIA ELECTRONIC MAIL

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

Re: Regulatory Notice 2017-11, Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers

Dear Mr. Smith:

Acacia Financial Group, Inc. (“Acacia”) is a national financial advisory firm that serves a wide range of clients including high profile issuers, local small issuers and infrequent issuers. Our firm serves as municipal advisor on numerous competitive deals each year and we work with clients who enter into bank loans, direct purchases and private placements. We submitted comments previously on this proposal and believe many of the comments made in our letter dated March 30th are still applicable and would respectfully request for the Board to review that letter in conjunction with our additional comments provided herein on both the need for non-dealer municipal advisors to obtain CUSIP numbers for competitive transactions and on the exception proposed for CUSIP numbers for direct purchases, bank loans or private placements.

Municipal Advisors Applying for CUSIPs in Competitive Sales

Acacia strongly believes the municipal marketplace would be well served by simply requiring underwriters to be the entity to obtain CUSIP numbers after the award is given on the bonds. The reasons are simple and practical:

- Not all competitive transactions use a municipal advisor. Therefore, in some instances the underwriter needs to still apply for CUSIP numbers. It would be far simpler if underwriters always were able to follow the same procedure and obtain CUSIP numbers when they are awarded the bonds.
- Payment of CUSIP numbers. Issuers would still look to have the cost of CUSIP numbers paid for by the winning underwriter. As this cost will be borne by the underwriter, it would make billing simpler and eliminate any possible confusion, if the winning underwriter simply applied for the CUSIP, eliminating an intermediary in the process.
- Change of structure or postponement or cancellation of sale. Requiring CUSIP numbers in advance of the sale could create issues if the structure of the transaction changes or the deal is delayed or cancelled.
- The regulatory imbalance between non-dealer municipal advisors and dealer municipal advisors is a red herring most easily remedied by changing G-34 to remove the responsibility of obtaining CUSIP numbers from dealer municipal advisors and simply requiring the underwriter who wins the competitive bid to obtain the CUSIP numbers.

- Market efficiencies and market transparency. Again, Acacia believes the market is better served by requiring the underwriter to apply for CUSIPs creating a single regime that would streamline operations for all concerned.
- Cost Impacts. Removing the requirement from broker dealer MAs would result in *cost savings* to this segment of the MA community and it would not impose additional costs on independent MAs. As noted by several commenters in the first round of comment, and noting that those comments came from smaller MA firms, extending this requirement to non-dealer municipal advisors does not acknowledge the increase in work or cost on many of the small firms that currently do competitive transactions. ***And this one simple change will remove the regulatory imbalance while improving the efficiency of the marketplace by having the responsibility rest with the one participant necessary in all competitive and negotiated transactions, the underwriter.***

We echo the comments made by the National Association of Municipal Advisors who stated that it is unclear what problem the MSRB is trying to correct in 2017. We urge the Board to re-examine this issue of CUSIP numbers in light of the current market environment. As stated in our prior comment letter, it has become standard practice for the winning underwriter in a competitive sale to apply for the CUSIP numbers. **Changing this process benefits no one.** The way to achieve parity is **not** by increasing the duties of municipal advisors but by lessening the obligation of dealer MAs and maintaining the duties with the underwriting community to apply for CUSIPs for both competitive and negotiated transactions. The MSRB must consider the impact of this proposed change on the many small municipal advisory firms for whom this duty would create an additional burden and economic cost and the cost savings to dealer MAs by removing this obligation.

Proposed Exception from CUSIP Numbering Requirements for Private Placements

Acacia is pleased to see the proposed exception for private placements, however, we have serious concerns on how placement agents or MAs would establish 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 only way to accomplish this would be to require the bank to certify to this representation, whether through the documentation of the transaction or in a separate certification. There could be no other way for a placement agent or a MA to arrive at this conclusion without the supporting representations from the banks that they will not trade the securities they are planning to hold in their portfolio.

While the new notice exempts private placements from the CUSIP rules, it is imposing an additional regulatory burden on both placement agents and MAs to determine if a CUSIP number is required. This will have significant regulatory costs to both placement agents and MAs as new policies and procedures will need to be developed to document why a CUSIP number was not assigned. Given the intense focus of regulators on bank loans and private placements, requiring placement agents and MAs to determine if an issue is a loan or a security is over-reaching and is full of peril. We would urge the MSRB to withdraw this aspect of the proposed rule change.

Conclusion

Acacia urges the MSRB to level the playing field by eliminating the requirement for dealer MAs to obtain CUSIPs for competitive sales. This will benefit the entire MA community by removing an additional cost. Underwriters who bid on competitive sales will know they are required to pay for and apply for CUSIPs, alleviating any possible confusion regarding costs and duties. The responsibility for obtaining CUSIPs for both competitive and negotiated sales will be identical and will ultimately result in greater efficiencies in the market.

Acacia is supportive of the exception for CUSIP numbers for private placements, however, shifting the burden to determination of the intent of the purchaser to the placement agent and MA should not be implemented at this time because of the impractical nature of the task and costs associated with such a determination.

Acacia recognizes the MSRB was driven by the laudable goals to increase market disclosure of private placement transactions through the use of CUSIP numbers and sought to make additional changes to have a level playing field for all participants. Nevertheless, the change to G-34 has instead increased burdens on municipal market participants without any rationale to the value it will bring to the marketplace. We respectfully request the MSRB limit any change in G-34 to the removal of the requirement for dealer MAs to apply for CUSIPs in a competitive sale. Thank you for this opportunity to provide our comments.

Sincerely:



Noreen P. White
Co-President



Kim M. Whelan
Co-President