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[Rule G-11](#)

MSRB to Implement Protections for Investors Against Unexpected Changes in Bond Authorizing Documents

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on December 5, 2013 to amend MSRB Rule G-11 (on primary offering practices).¹

The amendments to Rule G-11 enhance protections for investors in municipal securities against unexpected changes in underlying bond authorizing documents, while accommodating issuers' legitimate interest in modernizing those documents. The amendments generally prohibit brokers, dealers and municipal securities dealers (dealers) from providing consents to changes in bond authorizing documents—such as trust indentures and bond resolutions. This is based on a recognition that dealers acting in capacities such as underwriter and remarketing agent do not necessarily share the same prior or long-term economic interests as existing bond owners. The amendments include several carefully defined exceptions to the prohibition to provide potential options to amend bond authorizing documents where other appropriate safeguards exist. The amendments also will enhance transparency regarding the practice of obtaining bond owner consents from dealers.

The changes will be made effective on, and apply to consents given on or after, February 3, 2014.

Questions about this notice may be directed to Michael L. Post, Deputy General Counsel, at 703-797-6600.

¹ See SEC Release No. 34-70990 (December 5, 2013), File No. SR-MSRB-2013-08.

Summary of Amendments

General Prohibition

Issuers of municipal securities often seek amendments to authorizing documents to update or modernize provisions or to address operational or other concerns that may emerge post-issuance. For example, an issuer might seek to revise a reserve fund requirement by substituting a surety policy for a cash-funded reserve. The process of obtaining consents from bond owners and related costs can be significant. To address some of these burdens, issuers have requested underwriters, as temporary owners of bonds during the initial distribution period and representing the aggregate principal amount of bonds underwritten, to provide consents to changes to authorizing documents. The amendments to Rule G-11 address concerns with respect to the practice of having a dealer, acting as an underwriter or in some cases a remarketing agent, consent to the changes in authorizing documents that may adversely affect the interests of existing bond owners.

New section (I) of Rule G-11 will generally prohibit dealers from providing consent to any amendment to authorizing documents for municipal securities, either in the capacity as an underwriter, remarketing agent, an agent for bond owners, or in lieu of bond owners. There are exceptions to the general prohibition in the limited circumstances set forth in subsections (I)(i)(A)-(E). The amendments to Rule G-11 do not grant an affirmative right to dealers to provide consents, and do not alter the dealer's obligations applicable under other MSRB rules, including its fair-dealing obligations under Rule G-17.

Exceptions to Prohibition

The exceptions to the prohibition, summarized below, generally address both the interests in preserving the economic expectations of existing bond owners and the interests of issuers in updating authorizing documents.

Subparagraph (I)(i)(A) provides an exception where the authorizing document expressly allows an underwriter to provide bond owner consent and the offering documents for the existing securities expressly disclosed that bond owner consents could be provided by underwriters of other securities issued under the authorizing document. This provision acknowledges a situation in which prospective purchasers of bonds were provided with written notice of the possibility that underwriters might provide consents to changes in authorizing documents.

Subparagraph (I)(i)(B) excepts from the prohibition dealers that own the relevant securities other than in the capacity of an underwriter or a remarketing agent. This provision acknowledges the rights of dealers as owners of securities.

Subparagraph (I)(i)(C) excepts dealers acting as remarketing agents to whom the relevant securities have been tendered as a result of a mandatory tender, provided that all securities affected by the amendment (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent) have been tendered. If a bond owner elected to exercise its right to “hold” bonds subject to a mandatory tender in lieu of tendering, the remarketing agent will be prohibited from providing consents to any amendment to an authorizing document unless it also receives the specific written consent of that bond owner to such change.

Subparagraph (I)(i)(D) excepts underwriters that provide consent solely as agent for and on behalf of bond owners that delivered separate written consents to such amendments. This section recognizes that an underwriter providing an “omnibus” consent is acting as an agent facilitating the collection and delivery of consents.

Subparagraph (I)(i)(E) excepts underwriters that provide consent on behalf of prospective purchasers to amendments to authorizing documents if the amendments would not become effective until all existing bond owners (other than the prospective purchasers for whom the underwriter had provided consent) had also consented. This section addresses a situation in which an issuer might be in the process of accumulating consents from all owners of outstanding bonds and had not completed acquiring the consents prior to issuing a new series of bonds.

Subparagraph (I)(ii) provides definitions of terms used in section (I), specifically the terms “authorizing document,” “bond owner” and “bond owner consent.”

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Text of Amendments²

Rule G-11: Primary Offering Practices

(a) – (k) No change.

(l) (i) Prohibitions on Consents by Brokers, Dealers, and Municipal Securities Dealers. No broker, dealer, or municipal securities dealer shall provide bond owner consent to amendments to authorizing documents for municipal securities, either in its capacity as an underwriter or remarketing agent, or as agent for or in lieu of bond owners, provided that this prohibition shall not apply in the following circumstances:

(A) the authorizing document expressly allows an underwriter to provide bond owner consent and the offering documents for the existing securities expressly disclosed that bond owner consents could be provided by underwriters of other securities issued under the authorizing document;

(B) such securities are owned by such broker, dealer, or municipal securities dealer other than in its capacity as underwriter or remarketing agent;

(C) all securities affected by such amendments (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent to such amendment), are held by the broker, dealer, or municipal securities dealer acting as remarketing agent, as a result of a mandatory tender of such securities;

(D) the broker, dealer or municipal securities dealer provides consent solely as agent for and on behalf of bond owners delivering written consent to such amendments; or

(E) such consent provided by a broker, dealer or municipal securities dealer, in its capacity as an underwriter on behalf of prospective purchasers, would not become effective until all bond owners of securities affected by the proposed amendments (other than the prospective purchasers for whom the underwriter had provided consent) had also consented to such amendments.

(ii) For purposes of this section, the term “authorizing document” shall mean the trust indenture, resolution, ordinance, or other document under which the securities are issued. The term “bond owner” shall mean the owner of municipal securities issued under the applicable authorizing document. The term “bond owner consent” shall mean any consent specified in an authorizing document that may be or is required to be given by a bond owner pursuant to such authorizing document.

² Underlining indicates new language; strikethrough denotes deletions.