NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

March 31, 2017

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

RE: MSRB Notice 2017-05

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on the MSRB's Proposed Amendments to Rule G-34, on Obtaining CUSIP Numbers. NAMA represents independent municipal advisory firms and municipal advisors (MA) from across the country. NAMA, among other objectives, serves to promote and provide educational efforts and assist its members navigate through the federal regulatory and municipal market landscapes.

Our comments are focused on two elements of the proposal: the proposed mandate for MAs to obtain CUSIPs in competitive sales, and requirement to have brokers obtain CUSIPs on private placements.

Municipal Advisors Applying for CUSIPs in Competitive Sales

The MSRB proposes to have all municipal advisors apply for CUSIP numbers when they work for a client on a competitive sale. Such provisions for broker/dealer MAs have been in place since 1986, and this proposal seeks to impose the same responsibilities on all municipal advisors. The Notice, however, did not indicate why in 1986 the MSRB acted to have broker/dealer MAs be responsible for this activity and whether the rationale applies today.

Turning our clocks to 2017, it is unclear what problem this proposal is trying to fix. For instance, is there really a need to apply for CUSIPs on competitive deals at the time the Notice of Sale goes out when there may be no bid awarded or when the structure of the financings may be changed as part of the bidding process, creating either unnecessary CUSIPs or requiring new CUSIPs to be obtained after the formal award? It is our experience that maturity structures are not always set in the Notice of Sale – and therefore the practice promoted in this proposal might result in the need to cancel and re-subscribe the CUSIPs. Instead couldn't the underwriter be responsible for obtaining CUSIPs after the bid is awarded as is the current practice? This would allow the underwriter to maintain control of its obligations rather than having to rely on a municipal advisor to complete one step of what is a multi-step regulatory process for underwriters.

In addition, the regulatory regime for broker/dealers and municipal advisors has changed significantly since 1986. In this current landscape, requiring municipal advisors to apply for CUSIPs raises concerns for MAs that are not registered broker/dealers. This is especially true because CUSIPs are primarily used to facilitate the clearance and settlement process for securities. The proposed amendments would therefore impose a responsibility on MAs that extends beyond their traditional and transactional roles in the issuance process and further blurs the line between MA activity and broker/dealer activity. As the MSRB is aware, Section 3(a)(4)(A) of the *Exchange Act* defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." As we have learned over the past few years, MAs must be very cautious to not engage in activities that would require them to register as brokers. Therefore, we believe that MAs should not be responsible for obtaining CUSIPs in a competitive sale.

In response to the regulatory imbalance question asked on page 10, the point of regulatory balance is not to impose broker responsibilities on municipal advisors or municipal advisor responsibilities on brokers. Thus, the MSRB's claims of regulatory imbalance are inapplicable here. If that were the case, Congress could have chosen to create a single class of regulated entities for the municipal market.

If the MSRB determines to move forward with the amendments, then a revised proposal should address additional concerns, including the following:

- The MSRB should clarify what the process will be for the MA to apply for CUSIPs when no award is made or when the structure of the financing changes as part of the bidding process.
- The MSRB should clarify what the process will be under the proposal for applying for CUSIPs when an issuer engages in a competitive transaction, without using an MA.
- The MSRB should clarify what the process will be under the proposal for an MA to apply for CUSIPs, when an issuer uses multiple MAs on a transaction (e.g., defined in scope of work documentation).
- The MSRB should clarify what the process will be when an MA does not obtain CUSIPs despite being required to do so.

Additionally, in the Proposal's cost benefit analysis, there seems to be an apples to oranges comparison. Again, we have never heard of an instance where there was a lack of demand for any municipal bonds, whether sold in a competitive or negotiated sale, because CUSIP numbers were not assigned before the bonds were actually available. This purported cost-benefit analysis did not analyze this specific provision of the proposal which imposes a cost on municipal advisors without any offsetting benefit. The supposed benefit comes from another provision of the proposal – not this particular provision. This is not an adequate cost benefit analysis and does not comply with the MSRB's own policies for economic analysis. The MSRB should undertake a new cost benefit analysis that looks at the costs and benefits of the amendments to Section (a)(1)(A)(3) which is separate and distinct from other costs and benefits imposed by the amendment. Additionally, as is our position on all MSRB rulemaking, we would ask that the MSRB look not only at the costs associated with complying with this specific rulemaking but the cumulative regulatory burden of this rulemaking in combination with the entire MSRB MA rulebook, paying special attention to small MA firms.

<u>CUSIPs for Private Placement Transaction</u>

The proposal to require dealers to apply for CUSIPs in private placements could adversely impact issuers. The most striking outcome could be negative economic consequences for state and local governments and other tax-exempt borrowers, by dampening interest and engagement by banks or

other investors. Many issuers use private placements to avoid costs associated with going to the open market with a bond issuance. Since the use of CUSIPs could require the bank/investor to have to account for the transaction as a security, the financing institution may not believe that the transaction is attractive for their portfolio. This would reduce demand for the transaction and raise issuer's costs or force issuers to find alternative and more costly ways of placing the debt.

The proposal could also have negative consequences by redefining "underwriter" to include "placement agents" which could prevent the use of a placement agent by an issuer, since the use of a placement agent would trigger the need to obtain a CUSIP. It is also important to point out that including placement agents within the "underwriter" definition may not work well. A placement agent does not acquire the security, like the underwriter, thus the proposed revision of the definition may be confusing and unwarranted, including for proposed use in the DTC system, which again is indicative of a traded security.

Eliminating the CUSIP requirement on private placements altogether may be advisable for the reasons noted in this letter and those submitted by other marketplace participants. If the MSRB proceeds with the proposal, it should allow for an exemption from the proposed requirements when the private placement is executed with a single purchaser (per question on page 7 of the Notice). Additional clarification would also be warranted to have the Amendment require CUSIPs only on "clearly identifiable securities." This would avoid general confusion that exists in the marketplace related to the definitions of bank loans, private placements, direct placements, etc. It may also be prudent for the MSRB to wait and see what, if any, action the SEC takes in this area related to its recent release on amending Rule 15c2-12 (SEC File No. S7-01-17).

Finally, the MSRB should be acutely aware that in a private placement, an issuer could engage in this transaction without using a municipal advisor or a placement agent, and thus would be negotiating directly with the bank on the specifics of the transaction. The proposal could then have an end result, especially in the cases of smaller governments and entities and those that do not have specific debt management staff, that is contrary to the MSRB's mission to protect issuers.

We would welcome the opportunity to further discuss our comments with the MSRB. Please do not hesitate to reach out if that would be useful.

Sincerely,

Susan Gaffney

Susan Gaffney
Executive Director