

2019-08

Publication Date
February 27, 2019

**Retrospective Rule
Review**



Stakeholders
Municipal Advisors

Notice Type
Request for Comment

Comment Deadline
May 28, 2019

Category
Market Transparency

Affected Rules
[Rule G-34](#)

Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales

Overview

In connection with its ongoing retrospective review of its rules and guidance,¹ the Municipal Securities Rulemaking Board (MSRB) is seeking comment on MSRB Rule G-34(a)(i)(A)(3) (the “CUSIP Requirement”), which requires a municipal advisor advising an issuer with respect to a competitive sale of a new issue of municipal securities to apply for the assignment of a CUSIP number or numbers with respect to such issue within a specified time frame, subject to exceptions.

The CUSIP Requirement was approved by the U.S. Securities and Exchange Commission (SEC) in 2017, as part of a package of amendments to MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements (the “2017 G-34 Amendments”) and became effective June 14, 2018.² Prior to the effective date of the 2017 G-34 Amendments, brokers, dealers and municipal securities dealers (collectively, “dealers”) acting as underwriters or as financial advisors³ to an issuer in competitive sales of new issue municipal securities were subject to the CUSIP Requirement, but non-dealer municipal advisors were not.⁴ The 2017 G-34 Amendments extended the CUSIP Requirement to all municipal advisors, whether dealer or non-dealer.

¹ [MSRB Notice 2019-04 \(Feb. 5, 2019\)](#).

² Exchange Act Release No. 82321 (Dec. 14, 2017), 82 FR 60433 (Dec. 20, 2017) (SR-MSRB-2017-06).

³ As used herein, “dealer municipal advisor” means a dealer that is also a municipal advisor when acting in the capacity of a municipal advisor.

⁴ See [MSRB Notice 2017-25 \(Dec. 15, 2017\)](#).



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In light of the market's experience with the rule in operation following its effective date, coupled with the additional stakeholder input that the MSRB has received regarding the utility of the rule, as well as on the burden on municipal advisors in practice, the Board of Directors of the MSRB determined that such comments merited a retrospective review of the operation of the CUSIP Requirement.⁵

Comments should be submitted electronically no later than May 28, 2019 and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.⁶

Questions about this notice should be directed to Lanny Schwartz, Chief Regulatory Officer, at 202-838-1500.

Regulatory History

Rule G-34, on CUSIP numbers, new issue and market information requirements, was originally adopted by the MSRB in 1983⁷ to improve efficiencies in the processing and clearance activities of the municipal securities industry.⁸ As originally adopted, the CUSIP Requirement for competitive issues applied only to "... a dealer, whether acting as agent or principal, that acquires an issuer's securities for the purpose of distributing such new issue."

⁵ *Supra* note 1.

⁶ Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

⁷ Exchange Act Release No. 19743 (May 9, 1983), 48 FR 21690-01 (May 13, 1983) (SR-MSRB-82-11).

⁸ Exchange Act Release No. 18959 (Aug. 13, 1982), 47 FR 36737-03 (Aug. 23, 1982) (SR-MSRB-82-11).

In 1986, the CUSIP Requirement for competitive issues was extended to “a municipal securities broker or dealer acting as a financial advisor.”⁹ The rationale for this extension of the CUSIP Requirement to dealers acting as financial advisors was to allow the dealer financial advisor to obtain a CUSIP number at the earliest possible date to facilitate automated trading in when issued securities.¹⁰ This requirement also avoided potential market inefficiencies such as having each dealer who is planning to submit a bid bear the cost of applying for CUSIP numbers as the date of the award approaches or having the winning underwriter obtain the CUSIP numbers only after the award had been made, thus delaying a dealer’s ability to sell immediately upon award.

After the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹¹ and the SEC’s adoption of its municipal advisor registration rule,¹² certain of the activities traditionally undertaken in the role of a financial advisor generally became defined and regulated as municipal advisory activities, and (absent an applicable exemption or exclusion) financial advisors (both dealer and non-dealer) became regulated as municipal advisors. However, at such point in time, in the case of competitive sales of municipal securities, only dealers acting as underwriters or financial advisors were subject to the CUSIP Requirement, and not non-dealer municipal advisors. To ensure consistency in the application of the CUSIP Requirement and encourage early application for CUSIP numbers, the MSRB expanded the CUSIP number requirements to cover all municipal advisors (dealer and non-dealer) as part of the 2017 G-34 Amendments.¹³

The MSRB expressed the view that the same reasoning regarding the desirability of obligating an advisor to an issuer in a competitive offering to fulfill the CUSIP requirement would apply whether the municipal advisor was a dealer or non-dealer.¹⁴ In extending the CUSIP Requirement to all

⁹ Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985) (SR-MSRB-85-20).

¹⁰ *Id.*

¹¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 78o).

¹² Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

¹³ *Supra* note 2.

¹⁴ *Supra* note 4.

municipal advisors, the MSRB stated its belief that requiring only some municipal advisors in competitive sales to obtain CUSIP numbers creates inconsistencies and inefficiencies in the application of the requirement. Additionally, from a policy standpoint, the MSRB believed the market efficiencies served by the 1986 amendments would also be served by the 2017 G-34 Amendments because a dealer no longer would be the first party to begin the process to obtain the CUSIP number after the award in a competitive sale where a non-dealer municipal advisor had been engaged.¹⁵

As noted above, the 2017 G-34 Amendments addressed a number of additional topics, including, most significantly: (1) clarifying the application of the CUSIP number requirements to dealers in private placements by codifying the MSRB's existing interpretations and clarifying in the text of the rule that dealers acting as placement agents in private placement transactions, including direct purchases of municipal securities, are subject to the CUSIP-related requirements set forth in Rule G-34(a), and (2) providing in Rule G-34(a)(i)(F) an exception from the CUSIP number and certain other requirements in the case of sales of municipal securities to a bank, a non-dealer control affiliate of a bank or a consortium thereof; or to another municipal entity that is purchasing the municipal securities with funds that are, at least in part, proceeds of, or fully or partially securing or paying, the purchasing entity's issue of municipal obligations, and the dealer (or municipal advisor in a competitive sale) reasonably believes that the purchasing entity has the present intent to hold the municipal securities to maturity or earlier redemption or mandatory tender (the "Principles-Based Exception").

As part of the rulemaking process for the 2017 G-34 Amendments, the MSRB published two requests for comment prior to submitting the 2017 G-34 Amendments to the SEC for approval.

On March 1, 2017, the MSRB published "Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP

¹⁵ In addition to extending the CUSIP Requirement to all municipal advisors, the 2017 G-34 Amendments clarified in Rule G-34(a)(i)(A)(3) that a municipal advisor in a competitive sale must make application for a CUSIP number no later than one business day after dissemination of a notice of sale "or other such request for bids." This additional language ensures the timing of the application for a CUSIP number in instances where bids are sought in a competitive sale of municipal securities using documentation other than a traditional notice of sale. Requiring the municipal advisor in a competitive transaction to apply for the CUSIP number no later than one business day after the dissemination of a notice of sale or other request for bids helps ensure that trading in the new issue can begin immediately upon award.

Numbers” (“First RFC”).¹⁶ In the First RFC, the MSRB sought comment on, among other things, the following questions:

1. Is the assumption correct that if non-dealer municipal advisors are not subject to Rule G-34(a), this may create a regulatory imbalance between dealers and non-dealer municipal advisors? Is it accurate that issuers or purchasers desiring to avoid obtaining CUSIP numbers for a private placement currently might forgo working with a dealer and instead work with a non-dealer municipal advisor?
2. Would issuers forgo working with either dealers or municipal advisors in certain circumstances to avoid the CUSIP numbering requirements?
3. Is there another way to achieve the desired requirements of the draft amendments without including non-dealer municipal advisors?

The MSRB received a total of [20 comment letters](#) in response to the First RFC, with seven commenters addressing the extension of the rule to all municipal advisors. Five commenters believed non-dealer municipal advisors should not be required to apply for CUSIP numbers in competitive new issues of municipal securities.¹⁷ Two of these commenters believed that requiring non-dealer municipal advisors to apply for CUSIP numbers would serve no useful purpose and would pose an undue burden on small municipal advisors.¹⁸ One of the commenters suggested that the better approach would be to eliminate the requirement that dealers acting as financial advisors apply for CUSIP numbers in competitive new issues and to instead require the underwriter who wins the bid to obtain the CUSIP numbers.¹⁹

¹⁶ [MSRB Notice 2017-05 \(March 1, 2017\)](#).

¹⁷Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, Acacia Financial Group, Inc, dated March 31, 2017 (“Acacia Letter I”); Letter from Michael Cawley, dated March 21, 2017 (“Cawley Letter I”), E-mail from Dennis Dix, Jr., Principal, Dixworks LLC, dated March 29, 2017 (“Dixworks Letter I”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated March 31, 2017 (“NAMA Letter I”); and Letter from Cheryl Maddox, General Counsel, and Leo Karwejna, Chief Compliance Officer, PFM, dated March 31, 2017 (“PFM Letter I”).

¹⁸ Dixworks Letter I at 1; and NAMA Letter I at 1-2.

¹⁹ Acacia Letter I at 1.

Four commenters supported the draft amendment to apply the requirement equally to non-dealer municipal advisors with respect to competitive transactions.²⁰

On June 1, 2017, the MSRB s published “Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers” (“Second RFC”),²¹ which sought industry comment on, among other things, the application of the proposed Principles-Based Exception. In particular, the Second RFC solicited comments on the following questions:

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

Of the [16 comment letters](#) received, six commenters addressed the application of the proposed amendments to municipal advisors. Four commenters believed Rule G-34 should not apply to any municipal advisors and that the obligation to obtain a CUSIP number should rest solely with the underwriter.²² Acacia and NAMA noted that while not every competitive sale

²⁰ Letter from Guy E. Yandel, EVP & Co-Manager Public Finance, Dana L. Bjornson, EVP, CFO & Chief Compliance Officer, and Andrew F. Sears, EVP & General Counsel, George K. Baum & Company, dated March 31, 2017 (“George K. Baum Letter I”); Letter from Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association, dated March 31, 2017 (“GFOA Letter I”); Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Managing Director, Associate General Counsel, Public Finance & Fixed Income, Piper Jaffray & Co., dated March 31, 2017 (“Piper Jaffray Letter I”); and Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 31, 2017 (“SIFMA Letter I”).

²¹ [MSRB Notice 2017-11 \(June 1, 2017\)](#).

²² Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated June 29, 2017 (“Acacia Letter II”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated June 30, 2017 (“NAMA Letter II”); Letter from Cheryl Maddox, General Counsel, and Leo Karwejna, Chief

has a municipal advisor, they do have an underwriter and thus, for consistency, it makes sense that the underwriter would obtain the CUSIP number. In addition, NAMA stated that a municipal advisor does not have an interface with the investor prior to the completion of the competitive sale process and by making a determination regarding the investor's intentions to hold or sell a security, in addition to considering whether an instrument is in fact a security, the municipal advisor might be stepping into broker-dealer territory. According to NAMA, there is no benefit to municipal advisory clients or municipal advisors by requiring municipal advisors to obtain CUSIP numbers. PFM noted that obtaining a CUSIP number is activity outside the municipal advisor's responsibility and "epitomizes traditional broker-dealer type activity."²³ Similarly, SMA noted that obtaining a CUSIP number is an underwriter's responsibility and the imbalance between dealer municipal advisors and non-dealer municipal advisors is justified by the differing roles they play in the market.²⁴

Two commenters indicated that the costs on non-dealer municipal advisors of complying with the proposed obligations, including creating and implementing policies and procedures, would be problematic and create a new regulatory burden.²⁵

Three commenters supported the MSRB's effort to address any potential regulatory imbalance between dealer and non-dealer municipal advisors.²⁶ SIFMA noted that, if an issuer is being assisted by a non-dealer municipal advisor who is currently not required to obtain a CUSIP number, then each bidding dealer in a competitive sale must obtain a set of CUSIP numbers for

Compliance Officer, PFM, dated March 31, 2017 ("PFM Letter II") and E-mail from Michael C. Cawley, Senior Consultant, Southern Municipal Advisors, Inc., dated June 29, 2017 ("SMA Letter II").

²³ PFM Letter II at 4.

²⁴ SMA Letter II at 1.

²⁵ Acacia Letter II at 2; and NAMA Letter II at 4.

²⁶ Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated June 29, 2017 ("BDA Letter II"); Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Managing Director, Associate General Counsel, Public Finance & Fixed Income, Piper Jaffray & Co., dated June 29, 2017 ("Piper Jaffray Letter II") and Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 30, 2017 ("SIFMA Letter II").

the transaction, in case they are the winning bidder. Obtaining the CUSIP number before a dealer is selected is necessary, according to SIFMA, because of the subsequent timing requirements related to inputting information into the New Issue Information Dissemination Service system. SIFMA believed it was more efficient for a single municipal advisor (whether dealer or non-dealer) to an issuer to obtain CUSIP numbers than for several dealers competing for a sale to obtain CUSIP numbers knowing that all but one dealer will need to cancel the request.

On August 30, 2017, the MSRB filed a proposed rule change with the SEC to amend Rule G-34.²⁷ The rule filing proposed to apply the CUSIP Requirement to all municipal advisors advising on a competitive sale of municipal securities. In the filing, the MSRB noted that Rule G-34(a)(i)(A), as it then existed, may have created inefficiencies in the market where a non-dealer advisor was retained and yet not required to apply for a CUSIP number when advising on a competitive sale of a new issue of municipal securities. The filing stated that this would leave a dealer purchasing securities in the offering to make application only after the notification of award is given, potentially delaying related market activity.

The SEC received [11 comment letters](#) in response to the proposed rule change. Six commenters opposed requiring municipal advisors in competitive sales to apply for CUSIP numbers, and instead suggested dealers, in all instances, should bear the responsibility of obtaining a CUSIP number for new issue municipal securities.²⁸ Commenters indicated that removing the obligation to obtain a CUSIP number from the municipal advisor would result in a more efficient process and consistent expectations since the CUSIP numbers would always be obtained by the dealer in all relevant transactions.²⁹

²⁷ Exchange Act Release No. 81595 (Sept. 13, 2017); 82 FR 43587 (Sept. 18, 2017) (SR-MSRB-2017-04).

²⁸ Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated Oct. 10, 2017 (“Acacia Letter III”); E-mail from Dennis Dix, Jr., Principal, Dixworks LLC, dated Oct. 10, 2017 (“Dixworks Letter III”); Letter from Steve Apfelbacher, President, Ehlers, dated October 10, 2017 (“Ehlers Letter III”); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated Oct. 10, 2017 (“NAMA Letter III”); Letter from Marianne F. Edmonds, Senior Managing Director, Public Resources Advisory Group, dated Oct. 10, 2017 (“PRAG Letter III”) and Letter from Michael G. Sudsina, President, Sudsina & Associates, LLC, dated Oct. 10, 2017 (“Sudsina Letter III”).

²⁹ Acacia Letter III at 1-2; Ehlers Letter III at 1; NAMA Letter III at 1; PRAG Letter III at 1 and Sudsina Letter III at 2.

Some commenters indicated that imposing the CUSIP Requirement on non-dealer municipal advisors would not increase transparency or efficiency or serve a useful purpose and instead would pose an undue burden on non-dealer municipal advisors.³⁰ One commenter stated that the costs to non-dealer municipal advisors to comply with the proposed rule change were not addressed in the MSRB's economic analysis.³¹

On November 7, 2017, the MSRB filed its response to the comments received by the SEC, which raised substantially the same issues that were raised by the comments in response to the Second RFC.³² The MSRB addressed commenters' concerns and ultimately indicated the policy reason for initially adopting a requirement for financial advisors to apply for CUSIP numbers in competitive sales of new issue municipal securities was meant to provide for assignment of a CUSIP number prior to the award date of the sale. The MSRB stated that this policy reason would continue to apply where a municipal advisor is retained because in such a scenario, the winning dealer would no longer be the first party to begin the process of obtaining a CUSIP number after the award has been made in a competitive sale. Because the CUSIP numbers would have been applied for earlier in the process, the MSRB stated that this facilitates the ability to trade in the new issue immediately upon award.

The MSRB further noted that, while it appreciated certain commenters' views that the dealer, in all instances, should be required to apply for the CUSIP number, the MSRB believed this arrangement could have unintended results in the market. The MSRB indicated that under the then-current rule, where an issuer in a competitive sale of municipal securities engaged a non-dealer municipal advisor and did not engage a dealer (e.g., direct purchase), there would be no one responsible for applying for CUSIP numbers. Similarly, if the responsibility to apply for CUSIP numbers were placed only on dealers (solely in their capacity as dealers), as some commenters suggested, issuers choosing to engage only a municipal advisor in a competitive sale would find themselves in a situation where no party would be responsible for applying for CUSIP numbers on the new issue. Across the market, there potentially

³⁰ Acacia Letter III at 2; Dixworks Letter III at 1; NAMA Letter III at 3; PRAG Letter III at 1 and Sudsina Letter III at 2.

³¹ NAMA Letter III at 3.

³² Letter from Margaret R. Blake, Associate General Counsel, Municipal Securities Rulemaking Board, dated Nov. 7, 2017.

would be a universe of new issue municipal securities being issued without CUSIP numbers assigned. The MSRB indicated that by requiring all municipal advisors in a competitive sale to apply for CUSIP numbers and the awarded dealer in a competitive sale to apply for CUSIP numbers where none have been pre-assigned, Rule G-34 ensures that all new issue municipal securities in a competitive sale where a dealer or municipal advisor is engaged, other than those falling within the proposed Principles-Based Exception, have CUSIP numbers assigned as early as possible in the issuance process.³³

The MSRB also noted that it previously considered the impact of the new requirement on non-dealer municipal advisors and concluded that, while non-dealer municipal advisors were likely to incur up-front costs associated with development of regulatory compliance policies and procedures to address the new requirements, the costs would be justified by the likely aggregate benefits of the proposed rule change over time.

The MSRB further stated its belief that expanding the requirements of Rule G-34 to apply to both dealer and non-dealer municipal advisors in competitive sales of new issue municipal securities would encourage uniformity and efficiency in competitive sales of municipal securities by ensuring that CUSIP numbers are obtained consistently and earlier in the process so as to allow for immediate trading upon award.

On December 14, 2017, the SEC issued an order approving the proposed rule change, and, on December 15, 2017, the MSRB issued [Regulatory Notice 2017-25](#) announcing the approval of the 2017 G-34 Amendments. The 2017 G-34 Amendments became effective June 14, 2018.

Post-Effective Date Events

Since the implementation of the 2017 G-34 Amendments, the MSRB has received comments from municipal advisors regarding the application of the CUSIP number requirements to all municipal advisors.³⁴

In addition, the MSRB staff has received informal feedback from municipal advisors that the amendments to Rule G-34 essentially took an underwriter obligation and imposed it on municipal advisors. Commenters also observed

³³ Another exemption is available where “the issuer or a person acting on behalf of an issuer has submitted an application for assignment of a CUSIP number or numbers.” Rule G-34(a)(i)(C).

³⁴ See e.g., Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated September 18, 2018 (“NAMA letter IV”) (Addressing the extension of the CUSIP Requirement).

that while obtaining a CUSIP number may only take a short period of time, developing compliance and supervisory policies to undertake the activity and then follow and document the process takes hours and such burden outweighs any regulatory purpose. CUSIP numbers, according to these municipal advisors, should be obtained by the dealer who wins the award in a competitive sale, and not be required of any municipal advisors, whether dealer or non-dealer.

Request for Comments

The MSRB seeks specific input concerning the following questions:

1. Is it beneficial to the market for either dealer or non-dealer municipal advisors to make application for CUSIP numbers in connection with competitive sales of new issue municipal securities as provided in Rule G-34(a)? Would the elimination of the requirement for all municipal advisors adversely affect the market or investors?
2. What would the impact be on the market if only dealer municipal advisors but not non-dealer municipal advisors were subject to the CUSIP Requirement, or vice versa?
3. Is it less beneficial to the market for non-dealer municipal advisors to be subject to the CUSIP Requirement than it is for dealer municipal advisors, or vice versa?
4. What are the costs and other burdens associated with the CUSIP Requirement for dealer municipal advisors and non-dealer municipal advisors?
5. Are the compliance or other burdens on municipal advisors in complying with the CUSIP Requirement different depending on whether the municipal advisor is a dealer or non-dealer?
6. Is there any available data on the costs and other burdens on municipal advisors pertaining to the CUSIP Requirement?
7. With what frequency does the issuer or its agent (rather than the municipal advisor) make application for CUSIP numbers in competitive issues?³⁵

³⁵ See note 33.

8. If a municipal advisor makes application for a CUSIP number, does that municipal advisor typically bear the cost of the fees associated with the application for a CUSIP number, or do they pass the cost on to the underwriter or the issuer, or arrange for such fees to be billed to others?
9. Is there anything about the CUSIP Requirement that creates a tension with the inherent obligations or role of a municipal advisor?
10. Is there anything about the CUSIP Requirement that is especially problematic for non-dealer municipal advisors based on their general responsibilities, organizations or operations?
11. Is there any other aspect of the application of the CUSIP Requirement to municipal advisors that should be considered in connection with the MSRB's retrospective review of the CUSIP Requirement?
12. Are there alternative ways to achieve the intended benefits of the CUSIP Requirement that the MSRB should consider?

February 27, 2019

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