



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

September 17, 2018

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

**RE: MSRB Regulatory Notice 2018-15
Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices**

Dear Mr. Smith:

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 (“Exchange Act”), the Office of the Investor Advocate¹ at the U.S. Securities and Exchange Commission (“Commission” or “SEC”) is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations (“SROs”).² In furtherance of this objective, we routinely review significant rulemakings of the Municipal Securities Rulemaking Board (“MSRB”). As appropriate, we also make recommendations and utilize the public comment process to help ensure that the interests of investors are given appropriate weight as rules are being considered.

As indicated in our Report on Objectives for Fiscal Year 2018, our Office is currently focused on municipal market reform initiatives that may impact investors, including, but not limited to, rulemakings and amendments relating to “minimum denomination.”³ Accordingly, we appreciate this opportunity to provide comments in regard to proposed amendments to MSRB Rule G-32 as set forth in MSRB Regulatory Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices (“Notice 2018-15”).⁴

We support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the Depository Trust Company’s (“DTC”) New Issue

¹ This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.

² 15 U.S.C. § 78d(g)(4).

³ See Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2018* (June 29, 2017),

<https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2018.pdf>.

⁴ MSRB, Notice 2018-15, Request for Comment on Draft Amendments to MSRB Rules on Primary Offering Practices (July 19, 2018), <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2018-15.ashx??n=1> [hereinafter Notice 2018-15].

Information Dissemination Service (“NIIDS”).⁵ We also support the proposal to create additional required data fields on Form G-32, including a “yes” or “no” indicator as to whether the minimum denomination for a bond is subject to change. As discussed in more detail below, we agree that certain of these proposed data points should be sufficiently useful to investors for the MSRB to begin requiring underwriters to disclose the additional data on Form G-32 even though they are not currently provided to NIIDS.

I. Background

Rule G-32, Disclosure in Connection with Primary Offerings, details the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Rule G-32, among other things, 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 to primary market documents and new issue information.”⁶

Rule G-32 is designed to help ensure that customers who purchase new issue municipal securities are provided with timely access to relevant information relating to their investment decision.⁷ The MSRB adopted Rule G-32 in 1977 and amended it periodically as market practices evolved and regulatory developments occurred.⁸

On September 14, 2017, the MSRB published a concept proposal (“2017 Concept Proposal”) seeking, in part, “input on aspects of Rule G-32 to help inform whether the existing disclosure practices continue to serve the municipal securities market appropriately.”⁹ In response, the MSRB received twelve comment letters, some of which were responsive to the MSRB’s inquiries relating to Rule G-32. The comments received are the foundation for the MSRB’s targeted request for comment on its draft amendments to its rules on primary offering practices.

II. Discussion

As relevant to Rule G-32, Notice 2018-15 seeks comment on four specific issues, two of which are of particular interest to the Office of the Investor Advocate.¹⁰ Those two issues are as follows. First, the MSRB seeks comment on whether to auto-populate into Form G-32 certain information that is submitted to DTC’s NIIDS but is not currently required to be provided on Form G-32. Second, the

⁵ “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.” Notice 2018-15, *supra* note 4, at 9 n.26.

⁶ Notice 2018-15, *supra* note 4, at 9. See also MSRB, Rules and Guidance, Rule G-32, Disclosure in Connection with Primary Offerings, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32.aspx> (last visited August 15, 2018).

⁷ Notice 2018-15, *supra* note 4, at 9.

⁸ *Id.*

⁹ *Id.*

¹⁰ In Notice 2018-15, the MSRB also seeks comment on whether to (A) require disclosure of CUSIP numbers refunded and the percentage thereof to all market participants at the same time, and (B) require non-dealer municipal advisors that prepare official statements to make the official statements available to the underwriter after the issuer approves it for distribution. Notice 2018-15, *supra* note 4, at 9.

MSRB seeks comment on whether to require additional information on Form G-32 that is not currently provided to NIIDS.¹¹ We discuss these two issues in more detail below.

A. Additional Data Fields on Form G-32 Auto-Populated from NIIDS

MSRB Rule G-34 requires underwriters to provide certain information about a new issue of municipal securities that is NIIDS-eligible by submitting the information to NIIDS. MSRB Rule G-32 describes the process for doing so. In 2012, the MSRB amended these rules to streamline the process for underwriters to submit data in connection with primary offerings. By integrating certain data elements to NIIDS with EMMA, the amendments eliminated the need for duplicative submissions in the two systems in NIIDS-eligible primary offerings.¹² As a result, underwriters currently can submit all information to NIIDS as required by Rule G-34 and subsequently, Form G-32 will auto-populate with the data the underwriters have entered into NIIDS.¹³ Additional information required on Form G-32 for which no corresponding data element is available through NIIDS, however, is required to be entered manually through EMMA, and underwriters are required to make any corrections to NIIDS data promptly.¹⁴

Notice 2018-15 seeks comment on whether certain additional information currently submitted to NIIDS but not auto-populated on Form G-32 should now be designated as required data fields on Form G-32. The MSRB proposes adding initial minimum denomination information to Form G-32. Specifically, Appendix A to Notice 2018-15 suggests adding three data fields relating to minimum denomination: Minimum Denomination, Multiples of Denomination, and Par Value.¹⁵

Rule G-32 currently does not require underwriters to disclose minimum denomination information. While this information is available to investors in official statements for the new issue, minimum denomination information is often neither easily located nor explicitly identified on the statements. The MSRB states, and we strongly agree, that “[b]ecause 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.”¹⁶

We believe that including the proposed data fields relating to initial minimum denomination on Form G-32, which would auto-populate with information underwriters already enter in NIIDS, will benefit investors by making hard-to-locate information more accessible without adding any burden to issuers. We also support the continued requirement that information not available to be auto-populated from NIIDS into Form G-32 be manually entered into EMMA.

B. Additional Data Fields on Form G-32 Not Auto-Populated from NIIDS

The MSRB proposes to include eight additional data fields to Form G-32 that could not auto-populate from any information entered by underwriters in NIIDS. Specifically, the MSRB proposes to

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at Appendix A.

¹⁶ *Id.* at 27.

add: 1) a “yes” or “no” indicator as to whether the minimum denomination information can change; 2) the legal entity identifiers (“LEIs”)¹⁷ for credit enhancers and obligated persons; 3) the retail order period by CUSIP number; 4) the percentage of CUSIP numbers refunded; 5) a complete call schedule for the municipal bond; 6) a complete list of the syndicate managers on an underwriting; 7) the name of obligated persons; and 8) the name of the municipal advisor on an issuance.¹⁸

1. “Yes” or “No” Indicator

We support the MSRB’s proposal to include on Form G-32 a “yes” or “no” indicator as to whether the minimum denomination is subject to change; however, we do so with one *caveat*. The MSRB states that the addition of this indicator on Form G-32 would remind market participants to check relevant bond documents for developments that could trigger a change in the minimum denomination. Although we agree that this would trigger a reminder to market participants, we believe this does not go far enough to help ensure that current, accurate information is easily accessible to investors and other market participants. Without an ongoing obligation to update information regarding changes in minimum denomination over the life of the security, the burden shifts onto the investor to decipher the relevancy of events that could trigger a change in the minimum denomination. Additionally, while the “yes” or “no” indicator may serve as a reminder to investors that minimum denomination information may have changed, it does little to direct them to the location of this important information.

The MSRB is not unaware of the importance of changes to minimum denomination information. Indeed, Notice 2018-15 states, “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.”

Given the importance of this information to investors, we encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Doing so could remove an asymmetric burden from investors and ensure that investors have easy access to necessary, relevant investment information.

2. Legal Entity Identifiers

The Office of the Investor Advocate has long encouraged embracing LEIs in financial markets. For example, in a speech in 2016 at the XBRL US Investor Forum, I stated that “I’d like the SEC to embrace the Legal Entity Identifier with the goal of making public company disclosure to the SEC interoperable with disclosure to other reporting regimes.”¹⁹ Consistent with this objective, we strongly support requiring LEI information for credit enhancers and obligated persons²⁰ on Form G-32.

¹⁷ An LEI is a unique, 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. See Notice 2018-15, *supra* note 4, at 17 n.45.

¹⁸ Notice 2018-15, *supra* note 4, at 16-18.

¹⁹ Rick A. Fleming, Investor Advocate, SEC, Speech at XBRL US Investor Forum 2016: Finding Value with Smart Data, *Improving Disclosure with Smart Data*, New York, N.Y. (Oct. 24, 2016), <https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html>.

²⁰ Notice 2018-15 states that “obligated person” has the same meaning as set forth in Rule 15Ba1-1(k) of the Exchange Act, which defines “obligated person” to have the same meaning as the term is defined in section 15B(e)(10) of the Exchange Act, but does not include:

The MSRB argues that “[o]btaining [LEIs], when 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.”²¹ We concur and believe that LEIs may enhance organization and dissemination of data and disclosure information to the public and market participants. The MSRB has already taken steps towards encouraging the use of LEIs in the municipal securities market by amending its registration form, Form A-12, to provide for the collection of LEIs from registered municipal securities dealers and advisors that have obtained one.²² We commend the MSRB for taking this step to promote the importance of LEIs, but also believe more needs to be done to encourage the widespread adoption of LEIs by municipal market participants.

Obtaining an LEI is neither overly burdensome nor complicated. LEIs are issued by Local Operating Units (“LOUs”) of the Global LEI System.²³ Through self-registration, a legal entity seeking an LEI must supply reference data such as business card information (e.g., name of the entity, business address, etc.) and relationship information to its LOU.²⁴ The LOU will then verify the data with local Registration Authority²⁵ and, if appropriate, issue an LEI compliant with the LEI standard.²⁶ LOUs generally charge a fee for issuing the LEI as well as for validating the reference data upon issuance and after each yearly certification.²⁷ While there is a cost associated with obtaining and maintaining an LEI, concerns around costs appear to be diminishing as competition drives down costs.²⁸

Given the declining costs and positive benefits LEIs could bring to the municipal securities market, we encourage the MSRB to take more initiative, as appropriate, in this important, innovative space toward widespread adoption of LEIs. We also encourage the MSRB to continue incorporating LEI into its rulemakings and rule amendments in municipal markets. We further urge the MSRB to

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- (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 security 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) define 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.

Notice 2018-15, *supra* note 4, at 17 n.44.

²¹ *Id.* at 17.

²² See MSRB, Brief, Legal Entity Identifier (2017), <http://www.msrb.org/msrb1/pdfs/MSRB-Brief-Legal-Entity-Identifiers.pdf>.

²³ The list of LOUs accredited by the Global LEI Foundation (“GLEIF”) can be found on the GLEIF website. LOUs operating in the United States include Bloomberg and DTCC’s Global Market Entity Identifier (GMEI) utility. LEI Regulatory Oversight Committee (“LEI ROC”), How to Obtain an LEI, <https://www.leiroc.org/lei/how.htm> (last visited Sept. 6, 2018) [hereinafter LEI ROC].

²⁴ LEI ROC, *supra* note 23.

²⁵ The GLEIF publishes the Registration Authority List. Global Legal Entity Identifier Foundation (“GLEIF”), Get an LEI: Find LEI Issuing Organization, <https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations> (last visited Sept. 6, 2018); LEI ROC, *supra* note 23.

²⁶ LEI ROC, *supra* note 23.

²⁷ *Id.*

²⁸ See Data Foundation, Who is Who and What is What? The Need for Universal Entity Identification in the United States (Sept. 2017), <https://www.datafoundation.org/lei-report-2017>.

engage in industry outreach to educate and inform market participants not only about the importance and benefits of LEIs but the process for obtaining an LEI as well.

3. Retail Order Period

In response to concerns from market participants about orders being entered that may not meet the definition or spirit of the requirements for a retail order period,²⁹ the MSRB proposes requiring underwriters to mark a new issue with a “flag” for the existence of a retail order period for each CUSIP number.

The MSRB suggests a “yes” or “no” flag by the CUSIP number could be helpful in identifying orders that should not have been included in the retail order period. Efforts to highlight the existence of a retail order period and provide transparency to market participants about compliance with the terms of a retail order period are of significant importance. Although retail order period information is non-public, non-compliance with the terms of a retail order period raises serious retail investor protection and fairness concerns.

We believe adding a “yes” or “no” flag by the CUSIP number may benefit investors by helping identify orders that should not have been included in the period, deterring future non-compliance, and protecting the retail investor’s interests and order priority. As such, we support the MSRB’s proposal to include a “yes” or “no” flag by CUSIP number.

4. Percentage of CUSIP Numbers Refunded

The MSRB proposes adding a data field to Form G-32 requiring disclosure of the percentage of each CUSIP number refunded.³⁰ The MSRB argues that such information would “provide all market participants information on material changes to a bond’s structure and value at the same time” and would assist investors in making informed investment decisions.³¹ We believe that providing this information on EMMA to all market participants simultaneously reduces information asymmetry, which may translate to improved fairness and efficiency in the municipal markets. As such, we are generally supportive of this provision.

5. Full Call Schedule

The MSRB proposes adding a data field on Form G-32 to disclose the full call schedule for a municipal bond. The MSRB argues that “[b]y 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.”³² We have not identified any investor concerns pertaining to this proposal and believe

²⁹ The term “retail order period” means an order period during which orders that meet the issuer’s designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders. MSRB, MSRB Rule G-11(a), Primary Offering Practices, Definitions, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-11.aspx> (last visited Aug. 16, 2018).

³⁰ Notice 2018-15, *supra* note 4, at 18. Currently, under Rule G-32(b)(ii), underwriters are required to submit advance refunding documents and information relating to the refunding to EMMA. *Id.*

³¹ Notice 2018-15, *supra* note 4, at 18.

³² *Id.* at 16.

providing this additional information to the market may increase transparency, enhance efficiency, and assist investors in making more informed investment decisions.

6. Syndicate Managers, Municipal Advisor, and Obligated Person

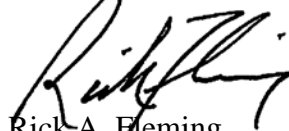
Finally, we support the MSRB's proposal to add data fields to disclose all the syndicate managers (senior and co-managers), the name of municipal advisor on an issuance, and the name of the obligated persons. Providing this additional information may enhance the efficiency of the primary market by providing additional, useful information to issuers. For example, the MSRB believes, and we agree, that requiring the disclosure of all syndicate managers may be beneficial because "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."³³ Further, this additional information may provide additional transparency to the market. For example, the name(s) of the obligated person(s) of a new issue is not always readily available and requiring disclosure of this information may help investors make more informed investment decisions and better understand who is legally committed to support payment of all or some of an issue.

III. Conclusion

We strongly support the proposed amendment to Rule G-32 to auto-populate into Form G-32 minimum denomination information already provided to the NIIDS. We also support creating a "yes" or "no" indicator as to whether the minimum denomination can change and encourage the MSRB to consider facilitating a requirement for ongoing disclosure of minimum denomination information over the life of the security. Finally, we generally support adding the LEIs for credit enhancers and obligated person, the retail order period by CUSIP number, the percentage of CUSIP numbers refunded, a complete call schedule for the municipal bond, a complete list of the syndicate managers on an underwriting, the name of obligated persons, and the name of the municipal advisor on an issuance.

Thank you for the opportunity to submit our comments regarding this important issue. Should you have any questions, please do not hesitate to contact me or Senior Counsel Ashlee Steinnerd at (202) 551-3302.

Sincerely,



Rick A. Fleming
Investor Advocate

cc (electronically): Lynnette Kelly, Executive Director, MSRB
Robert Fippinger, Chief Legal Officer, MSRB
Michael Post, General Counsel – Regulatory Affairs, MSRB

³³ *Id.*

Barbara Vouté, Director – Market Practices, MSRB
Rebecca Olsen, Director, SEC, Office of Municipal Securities