



July 6, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File Number SR-MSRB-2022-05. Release No. 34-95208: Proposed Rule Change Consisting of Amendments to MSRB Rule G-34 to Better Align the CUSIP Requirements for Underwriters and Municipal Advisors with Current Market Practices

Dear Secretary Countryman:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) recent filing to amend Rule G-34 (the "Filing"). NAMA represents independent municipal advisory firms and individual municipal advisors (MA) from across the country and is dedicated to educating and representing its members on regulatory, industry and market issues.

NAMA strongly supports the proposed amendments to Rule G-34 and requests that the SEC approve this Filing at its earliest convenience. The amendments clarify numerous issues that have been outstanding for some time. These changes will help MAs better and more easily comply with the Rule and be able to execute the responsibility of obtaining CUSIP numbers in a manner that reflects actual market practices and needs. We appreciate the MSRB's work on these technical amendments.

Notwithstanding this support for the Rule G-34 amendments, we think it is important to address the process followed by the MSRB as it considered, and reconsidered, amendments to Rule G-34 beginning in 2017.

In 2017, the MSRB had two comment periods on proposed changes to Rule G-34. The final changes were sent to the SEC for approval. These changes required all municipal advisors to obtain CUSIP numbers in competitive sales. In our comment letters¹ we questioned the Board's decision to amend the Rule as the market was functioning efficiently and we were unaware of any systemic problems in the market. The obvious way to achieve the parity that the Board sought between broker-dealer and independent municipal advisors would have been to remove the responsibility from broker-dealer MAs to obtain CUSIPs. This would have avoided undue burdens on all municipal advisors, especially small MA firms.

In February 2019, the Board issued a request for comment on a proposal to withdraw MA responsibilities for obtaining CUSIP numbers (MSRB Notice 2019-08, <https://msrb.org/-/media/Files/Regulatory-Notices/RFCs/2019-08.ashx??n=1>). The MSRB's reasoning for revisiting this obligation was that "*[i]n 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” (ibid, page 2). NAMA and several municipal advisory firms submitted comments at the time supporting these amendments.

In July 2019, the Board approved the changes to Rule G-34 to eliminate the requirement for all municipal advisors to obtain CUSIP numbers in competitive sales. At the time the MSRB Chair stated, *“It is a rare step for the MSRB to rescind a new requirement so soon after adoption, but we learned through the comment process that the requirement imposed burdens on municipal advisors that were not necessary or appropriate in light of the limited benefits to the functioning of the market”* (<https://msrb.org/News-and-Events/Press-Releases/2019/MSRB-Holds-Final-Quarterly-Board-Meeting-of-FY-2019>).

After the July 2019 press release describing the Board’s action described above, there was no further public dissemination of information about the filing status of these approved amendments with the SEC. In the fall of 2019, after the October release of the SEC’s Notice of Proposed Exemptive Order Granting a Conditional Exemption from the Broker Registration of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors (Exchange Act Release No. 87204), MSRB staff indicated that this Exemptive Order, if adopted, could impact the Board’s July 2019 actions regarding Rule G-34. The MSRB’s rationale for this reasoning was never publicly stated and many municipal advisors did not understand how the exemptive order would impact the removal of the requirement for all MAs to obtain CUSIPs in competitive sales.

In April 2021, the MSRB issued a press release reporting that the Board would maintain the duty for all municipal advisors to obtain CUSIPs in competitive sales and not rescind the duty as the Board had voted to do in 2019. The press release stated that *“Also at its meeting, the Board revisited a 2018 provision of MSRB Rule G-34, which was amended to address a regulatory disparity by extending the obligation to apply for CUSIP numbers in a competitive transaction on which they advise from dealer municipal advisors to all municipal advisors. The Board had previously planned to rescind the requirement for all municipal advisors, dealers and non-dealers alike. However, since the rule has been fully implemented in firms’ processes for several years and has proven to enhance market efficiency by ensuring CUSIP numbers are obtained at the earliest stage in a competitive deal, the Board determined to maintain the rule in its current form”* (<https://msrb.org/News-and-Events/Press-Releases/2021/MSRB-Holds-Quarterly-Virtual-Board-Meeting>). The MSRB had not provided any notice that it was revisiting Rule G-34, nor that the MSRB would be reversing its 2019 actions. In fact, the Notice describing topics that would be discussed at its April 2021 Board meeting (<https://www.msrb.org/~media/Files/Resources/MSRB-Board-Meeting-Discussion-Items-April-2021.ashx>) did not mention that the Board would be re-evaluating Rule G-34. Further, the April 2021 announcement following the Board meeting did not include or reconcile the differences between the statements made by the MSRB related to its 2019 and 2021 actions. In its February 2019 statement the MSRB noted that the 2017 amendment *“imposed burdens on municipal advisors that were not necessary or appropriate in light of the limited benefits to the functioning of the market”* – an apparent finding that conflicts with Exchange Act Section 15B(b)(2)(L)(iv). In April 2021 the MSRB stated that the 2017 rulemaking *“has proven to enhance market efficiency by ensuring CUSIP numbers are obtained at the earliest stage in a competitive deal”* and did not discuss the Board’s previous 2019 conclusion that the burdens on MAs are greater than the benefits of the earlier amendments. The current filing also fails to include this information about the history of Rule G-34.

In July 2021, the Board reviewed and approved the technical amendments reflecting previous suggestions by NAMA and others that are included in the current filing made to the SEC in June 2022.

We reiterate our support for these amendments as written and they should be approved as soon as possible. The MSRB's discussion on its web site about Market Regulation and the Rulemaking process states "Upon adoption by the MSRB in final form, rule proposals are filed with the SEC" (<https://msrb.org/About-MSRB/Programs/Market-Regulation>). In this case nearly a year passed before the amendment was sent to the SEC. We are not clear why this rule amendment was not sent to the SEC more expeditiously. Our concern with this delay is exacerbated knowing that earlier in the history of the CUSIP number provisions of Rule G-34 there was nearly a 2-year delay between the vote to rescind the requirement in July 2019 and the Board's subsequent vote not to rescind it in April 2021. These unreasonably long delays in taking formal action to effectuate Board decisions, create inefficiencies that result in compliance and market practice burdens to MA firms, especially small MA firms. The delays create uncertainty for MA firms as they work to maintain their written supervisory procedures and to undertake training of personnel to comply with their obligations under the WSPs.

While we recognize the absurdity of spending so much time on the issue of which regulated entity is responsible for applying for CUSIP numbers, the MSRB's conduct in connection with the amendments to Rule G-34 raises the following questions about the general rulemaking process and the governance thereof:

1. What time-frame requirements, if any, are in place for the MSRB to send to the SEC for approval any rules that its Board has approved?
2. Outside of the formal rulemaking and amendment process which typically includes public notice and comment (except in necessary special and emergency circumstances), what processes and standards are in place for the Board to create, reconsider or make changes to a rule?
3. What responsibilities does the MSRB have to provide public notice that the Board will discuss, consider/reconsider, and vote on its rulemaking?

This description of the rulemaking process relating to Rule G-34 identifies the need for greater transparency and understanding of the MSRB rulemaking process and raises the concerning question of whether the same opaque and confusing process could happen with more consequential rules in the future.

Thank you for the opportunity to comment on this issue.

Sincerely,



Susan Gaffney
Executive Director

i

March 31, 2017: <https://www.msrb.org/RFC/2017-05/Gaffney.pdf>

June 30, 2017: <https://www.msrb.org/RFC/2017-11/NationalAssn.pdf>

October 10, 2017: <https://www.sec.gov/comments/sr-msrb-2017-06/msrb201706-2633563-161209.pdf>

May 28, 2019: <https://www.msrb.org/rfc/2019-08/gaffney.pdf>