

MEMO# 26319

July 20, 2012

MSRB Proposes to Limit Dealers from Providing Consents on Behalf of Bondholders; Comments due August 13

[26319]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 30-12 RE: MSRB PROPOSES TO LIMIT DEALERS FROM PROVIDING CONSENTS ON BEHALF OF BONDHOLDERS; COMMENTS DUE AUGUST 13

The Municipal Securities Rulemaking Board has proposed an amendment to MSRB Rule G-11 that would prohibit brokers, dealers, and municipal securities dealers (“dealers”) from consenting to any amendment to bond authorizing documents for municipal securities except in limited circumstances. [\[1\]](#) Comments are due to the MSRB by Monday, August 13, 2012.

According to the MSRB, the proposal is intended to address the practice of underwriters providing consents to changes in legal documents that set forth key rights of and protections for owners of municipal securities and that state that consents are to be provided by the bond owners. The MSRB is concerned that existing bondholders would not have contemplated that an underwriter, which may hold the bonds only momentarily during the initial distribution process without any prior or future economic or investment interest in the bonds, could provide consent to changes that would affect existing bondholders, who have a vested interest in assessing the potential impact of any amendment to the authorizing documents.

In February, the MSRB requested public comment on a prior proposal that outlined circumstances under which an underwriter’s consent to certain changes to bond authorizing documents would violate a dealer’s MSRB Rule G-17 obligation of “fair dealing.” [\[2\]](#) After reviewing the comments received from market participants, the MSRB decided instead that dealers should be prohibited from providing consent to all types of amendments to bond authorizing documents, subject to limited exceptions.

Under the new proposal, a dealer would be able to provide bondholder consents under three limited exceptions. The exceptions consist of consents given to authorizing

documents (i) for municipal securities owned by the dealer as an investment; (ii) for municipal securities that the dealer holds as a result of a mandatory tender, provided all outstanding securities affected by such amendment had been tendered; and (iii) by the dealer, acting as an underwriter or remarketing agent, in circumstances where the amendment would not become effective until all bondholders affected by the amendment (except those for which the dealer was providing consent) had also consented to the amendment. The proposal would not affect other methods used by issuers to obtain consents from owners of newly issued bonds, such as consents received (in writing or constructively) from bondholders upon initial purchase of the bonds, provided that the Rule G-11 amendment would prohibit the dealer from providing any such constructive or deemed consent for or in lieu of bondholders.

The proposal would apply only in connection with consents that the authorizing documents state are to be provided by bond owners (including beneficial owners of bonds). Consents from dealers solely in their capacity as an underwriter or a remarketing agent required or permitted under authorizing documents, and not as an agent for or in lieu of bondholders, would not be subject to the proposal.

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endnotes

[1] Request for Comment on Draft Amendment to Limit Dealer Consents to Changes in Authorizing Documents for Municipal Securities, MSRB Notice 2012-36 (July 5, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-36.aspx>.

[2] Request for Comment on Draft Interpretive Notice Concerning the Application of MSRB Rule G-17 to Bondholder Consents by Underwriters of Municipal Securities, MSRB Notice 2012-04 (February 7, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-04.aspx>.