

MEMO# 23981

November 25, 2009

MSRB Files Proposal Regarding Priority of Orders in Primary Offerings

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 56-09 RE: MSRB FILES PROPOSAL REGARDING PRIORITY OF ORDERS IN PRIMARY OFFERINGS

The Municipal Securities Rulemaking Board (“MSRB”) has filed with the Securities and Exchange Commission (“SEC”) a proposed rule change regarding the priority of orders in primary offerings. * Specifically, the proposal would modify the scope of MSRB Rule G-11, on new issue syndicate practices, to encompass all primary offerings and amend MSRB Rules G-8 and G-9, on books and records and preservation of records, to reflect the proposed revisions to Rule G-11. The proposal also would set forth an interpretive notice of MSRB Rule G-17, on conduct of municipal securities activities, with respect to the proposed priority provisions.

Proposed Rule Change

In the proposal, the MSRB explains that the rule change is designed to respond to concerns raised by institutional investors, who have experienced no- or partial-fills for their orders during a primary offering, yet the bonds have become available shortly thereafter in the secondary market at higher prices. To limit and, when appropriate, account for these situations, the proposed amendments to MSRB Rule G-11 would:

- apply the rule to all primary offerings, not just those for which a syndicate is formed;
- require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and
- require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to

the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to MSRB Rules G-8 and G-9 would require that records be retained for all primary offerings of: (1) all orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of "retail;" and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G-11 and the specific reasons why it was in the best interests of the syndicate to do so.

Proposed Interpretive Notice

The proposed interpretive notice on MSRB Rule G-17 would provide that violation of these priority provisions would be a violation of MSRB rules. It would clarify that Rule G-17 does not require that customer orders be accorded greater priority than orders from dealers that are not syndicate members or their respective related accounts. In addition, it would explain that a dealer would violate Rule G-17 by allocating securities in a manner that is inconsistent with an issuer's requirements for a retail order period without the issuer's consent. The interpretive notice would supersede the MSRB's 1987 interpretive notice addressing the priority of orders.

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endnotes

* See Rule Amendments and Interpretive Notice Filed Regarding Priority of Orders in Primary Offerings, MSRB Notice 2009-59 (November 18, 2009), available at <http://www.msrb.org/msrb1/whatsnew/2009-59.asp>. The SEC has not published the proposal yet.