submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–12 and should be submitted on or before May 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85551; File No. SR–MSRB–2019–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend Rules G–11 and G–32 and Form G–32 Regarding a Collection of Data Elements Provided in Electronic Format to the EMMA Dataport System in Connection With Primary Offerings

April 8, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2019 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend MSRB Rule G–11, on primary offering practices, MSRB Rule G–32, on disclosures in connection with primary offerings and Form G–32, regarding a collection of data elements provided in electronic format to the Electronic Municipal Market Access Dataport (the ''EMMA Dataport'')[3] system in connection with primary offerings (the ''proposed rule change''). The proposed rule change seeks to update and enhance the general practices undertaken by underwriters and others, as applicable, in a primary offering of municipal securities.

Following the effectiveness of the proposed rule change, assuming all amendments are approved, the MSRB will publish one or more regulatory notices within 180 days of effectiveness, and such notices shall specify the compliance dates for the respective rule changes, which in any case shall be not less than 90 days nor more than one year following the date of the notice establishing each such compliance date. The MSRB will also make both amended Form G–32 as well as the updated EMMA Dataport Manual for Primary Market Submissions and the Specifications for Primary Market Submissions Service document[4] available to underwriters in advance of relevant compliance date(s) to aid them in completing the amended form. The MSRB will announce the availability of amended Form G–32 and the updated manual and specification document by publishing a regulatory notice at a later date.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rule G–11—Primary Offering Practices

Rule G–11 establishes terms and conditions for sales by brokers, dealers and municipal securities dealers (together, ''dealers'') of new issues of municipal securities in primary offerings, including provisions on communications relating to the syndicate and designations and allocations of securities. The rule was first adopted by the MSRB in 1978, and was designed to

> increase the scope of information available to syndicate managers and members, other municipal securities professionals and the investing public, in connection with the distribution of new issues of municipal securities without impinging upon the right of syndicates to establish their own procedures for the allocation of securities and other matters.[5]

The MSRB noted that, in adopting Rule G–11, the Board generally chose to require the disclosure of practices of syndicates rather than dictate what those practices must be.[6]

Because of the evolving nature of the municipal securities market, Rule G–11 has been amended several times over the years. More recently, as part of a retrospective rule review, the MSRB considered how Rule G–11 applies in the current market and whether amendments may be needed to address changing practices in primary offerings of municipal securities. In its review, the MSRB found there were opportunities to enhance regulatory transparency, equalize information dissemination in primary offerings, reinforce aspects of Rule G–11 to selling group members regarding their existing obligations under the rule and align the mandatory time frames for certain payments to syndicate members in order to reduce credit risk.

More specifically, the proposed amendments to Rule G–11 would enhance the information dissemination requirements of Rule G–11 to require the senior syndicate manager to disseminate free-to-trade information to all syndicate and selling group members at the same time, thus eliminating any potential for unfair advantages in secondary market trading that could result from having advance notice that

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EMMA® is a registered trademark of the MSRB. The EMMA Dataport is the submission portal through which information is provided for display to the public on EMMA.

[4] The EMMA Dataport Manual for Primary Market Submissions describes the requirements of MSRB Rule G–32 for underwriters to submit primary offering disclosure documents and information to EMMA and gives instructions for making such submissions. Rule G–32 requires that such submissions be made as set forth in the EMMA Dataport Manual.

The Specifications for Primary Market Submissions Service document provides instructions for making continuous submissions of multiple offerings of securities to the EMMA Dataport and contains figures for making submissions to the EMMA Dataport through a computer-to-computer interface.

[5] MSRB Reports, Vol. 5, No. 6 (Nov. 1985).

[6] *See, e.g.,* MSRB Reports, Vol. 2, No. 5 (Jul. 1982).

an issue is free-to-trade. Additionally, the proposed rule change would require the senior syndicate manager to provide the issuer with information relating to the designations, group net sales credits and allocations of the securities in a primary offering. The MSRB believes this information could assist issuers in their review of the distribution of compensation and compliance with the terms and conditions of the primary offering. The proposed rule change also would codify a selling group member's existing obligation to comply with the issuer terms and conditions, priority provisions and order period requirements, as communicated to them, in a primary offering. Finally, the proposed rule change would further eliminate unnecessary credit risk in the market and ensure the timely payment of sales credits by aligning the timing of the payments of such credits to syndicate members in group net and net designation transactions.

Rule G–32—Disclosures in Connection With Primary Offerings

Rule G–32 sets forth the disclosure requirements applicable to underwriters engaged in primary offerings of municipal securities. Among other things, Rule G–32 requires underwriters in primary offerings to submit electronically to the EMMA Dataport official statements and advance refunding documents, if prepared, and related primary market documents and new issue information, such as that collected on Form G–32. The rule is designed to ensure that an investor that purchases new issue municipal securities is provided with timely access to information relevant to his or her investment decision. Rule G–32 was originally adopted by the Board in 1977,[7] and has been amended periodically since then to help ensure that, as market practices evolved and other regulatory developments occurred, Rule G–32 would remain current and achieve its goal of providing timely access to relevant information about primary offerings.

Again, as part of a retrospective rule review, the MSRB considered the disclosures required pursuant to Rule G–32 and whether revisions were needed to meet current market needs. The proposed changes to Rule G–32 would ensure that access to information regarding CUSIP numbers advance refunded is provided to all market participants at the same time. Additionally, the proposed changes would eliminate the requirement under Rule G–32(c) that when a dealer acting as a financial advisor, prepares the official statement, it must provide the official statement to the underwriter promptly after approval by the issuer.

Form G–32 Information Submission

Pursuant to MSRB Rule G–34, on CUSIP numbers, primary offering, and market information requirements, an underwriter of certain new issues of municipal securities must, as applicable, make the primary offering depository eligible and submit information about the new issue to the Depository Trust Company's (DTC) New Issue Information Dissemination Service (NIIDS).[8] Separately, the underwriter in primary offerings of municipal securities is required, pursuant to Rule G–32, to submit electronically to the EMMA Dataport, in a timely and accurate manner, certain primary offering disclosure documents and related information, including the data elements set forth on Form G–32.[9]

In 2012, the MSRB adopted amendments to Rule G–32 and Rule G–34 to streamline the process by which underwriters submit data in connection with primary offerings. The amendments integrated the submission of certain matching data elements to NIIDS with the EMMA Dataport, obviating the need for duplicative submissions of information in NIIDS-eligible primary offerings.[10]

For a ''NIIDS-eligible primary offering,'' the underwriter must submit all information to NIIDS as required under Rule G–34.[11] Subsequently, Form G–32 is auto-populated by the data the underwriter has input into NIIDS. Information required to be included on Form G–32 and for which no corresponding data element is available through NIIDS must be submitted manually through the EMMA Dataport on Form G–32 (*i.e.,* it would not be auto-populated from NIIDS) pursuant to Rule G–32(b)(i)(A)(1)(a). Any correction to NIIDS data (and thus Form G–32 data) must be made promptly and, to the extent feasible, in the manner originally submitted. For a primary offering ineligible for NIIDS,[12] the underwriter of the offering must submit information required by Form G–32 manually as set forth under Rule G–32(b)(i)(A)(2).

The requirement under Rule G–34(a)(ii)(C) that an underwriter of a primary offering of municipal securities that is NIIDS-eligible submit certain information about the new issue to NIIDS was designed to facilitate timely and accurate trade reporting and confirmation, among other things. Additionally, the submission of this information was meant to address difficulties dealers have in obtaining descriptive information about new issues of municipal securities.[13] While underwriters of issues that are NIIDS-eligible submit a great deal of information about a primary offering to NIIDS, much of this information is not currently auto-populated into Form G–32 because not all of the fields required to be submitted to NIIDS are required fields on Form G–32.[14]

[7] *See* File No. SR–MSRB–77–12 (Sept. 20, 1977). The SEC approved Rule G–32 in Release No. 34–15247 (Oct. 19, 1978), 43 FR 50525 (Oct. 30, 1978).

[8] 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. *See* Rule G–34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information and the exclusion of certain issues as set forth in that subsection.

DTC sets forth the criteria for making a security depository eligible and thus NIIDS eligible. According to DTC, securities that can be made depository eligible include those that have been issued in a transaction that: (i) Has been registered with the SEC pursuant to the Securities Act of 1933, as amended (''Securities Act''); (ii) was exempt from registration pursuant to a Securities Act exemption that does not involve (or, at the time of the request for eligibility, no longer involves) transfer or ownership restrictions; or (iii) permits resale of the securities pursuant to Rule 144A or Regulation S under the Securities Act, and, in all cases, such securities otherwise meet DTC's eligibility criteria. *See* The Depository Trust Company, Operational Arrangements p. 2 (Oct. 2018).

[9] *See* Rule G–32(b)(i)(A), on Form G–32 information submissions, and Rule G–32(b)(vi), on procedures for submitting documents and Form G–32 information. Form G–32 submissions may be made by the underwriter or its designated agent through the EMMA Dataport accessed via MSRB Gateway. The EMMA Dataport is the utility through which submissions of documents and related information are made to the MSRB and its Market Transparency Programs.

[10] *See* MSRB Notice 2012–64 (Dec. 24, 2012).

[11] Non-NIIDS-eligible offerings would include, for example, private placements that are not registered under the Securities Act or issuances that are subject to restrictions on resales.

[12] *See supra* footnote 8 regarding depository eligibility criteria. Additionally, Rule G–34(d) exempts from all Rule G–34 requirements any issue of a municipal security (and for purposes of secondary market municipal securities, any part of an outstanding maturity of an issue) which (i) does not meet the eligibility criteria for CUSIP number assignment or (ii) consists entirely of municipal fund securities.

[13] The requirement to provide this information and the process for doing so are addressed in Rule G–34 and Rule G–32, respectively. While NIIDS provides the system for submitting the information, its use does not obviate the requirement that information submitted pursuant to Rule G–34 be timely, comprehensive and accurate. *See* MSRB Notice 2007–36 (Nov. 27, 2007).

[14] The proposed rule change includes an attachment showing those NIIDS data fields the MSRB is proposing to include on Form G–32. Data fields marked with an ''N'' are not currently auto-populated into Form G–32 because Form G–32 does

Continued

The proposed rule change would add 57 data fields to Form G–32 to capture data that an underwriter already is required to input into NIIDS, as applicable, for NIIDS-eligible offerings.[15] These new Form G–32 data fields would be auto-populated, as applicable, by NIIDS submissions made by the underwriter, pursuant to G–34 or otherwise required for NIIDS eligibility.[16] By adding these data fields to Form G–32, the MSRB ensures its continued access [17] to relevant and accurate new issue information. For non-NIIDS-eligible offerings, the underwriter would be required to manually complete the data field that indicates the original minimum denomination of the offering. The underwriter in a non-NIIDS-eligible offering would not be required to manually complete the other 57 additional fields.

Currently, the MSRB, securities data providers, other regulators and industry participants that have set up a communications link with DTC, have access to NIIDS data in real time. Additionally, the MSRB may disseminate some or all of the information in the future.

In addition to the data fields auto-populated by NIIDS submissions, the proposed rule change also would add nine data fields to Form G–32 for manual completion by underwriters in NIIDS-eligible offerings. Of these nine data fields, underwriters in non-NIIDS-eligible primary offerings would be required to complete two of these nine additional data fields. Specifically, as discussed in more detail below, underwriters in non-NIIDS-eligible offerings would be required to manually complete the data fields that provide a ''yes/no'' flag to indicate whether the minimum denomination for the issue has the ability to change and the ''yes/no'' flag to indicate if the primary offering is being made with restrictions.[18] As previously noted, the MSRB may disseminate some or all of this information, in the future.

Proposed Rule Change

On September 14, 2017, the MSRB published a concept proposal (''Concept Proposal'') requesting comment on possible amendments to the current primary offering practices of dealers.[19] The MSRB received *12 comment letters* in response to the Concept Proposal,[20] which formed the foundation for a subsequent Request for Comment on Draft Rule Changes Related to Primary Offering Practices, published on July 19, 2018 (''Request for Comment'').[21] The MSRB received *10 comment letters* in response to the Request for Comment.[22] Following review of the comments, the MSRB conducted additional outreach with various market participants. The comments received and follow-up conversations formed the basis for the proposed rule change.

Proposed Rule Change Under Rule G–11

Codify That Selling Group Members Have an Existing Obligation To Comply With Communications Relating to the Issuer Terms and Conditions, Priority Provisions and Order Period Requirements

The proposed rule change would amend Rule G–11(f) to codify an existing obligation of selling group members to comply with the written communications they receive from the senior syndicate manager relating to, among other things, issuer requirements, priority provisions and order period requirements. Rule G–11(f) currently states that prior to the first offer of any securities by the syndicate, the senior syndicate manager is required to provide, in writing, to syndicate members and selling group members, if any, ''(i) a written statement of all terms and conditions required by the issuer, (ii) a written statement of all of the issuer's retail order period requirements, if any, [and] (iii) the priority provisions . . .'' The senior syndicate manager must also promptly furnish in writing to the syndicate members and the selling group members any changes in the priority provisions or pricing information.

Additionally, the MSRB has stated that the activities of all dealers should be viewed in light of the basic fair dealing principles of Rule G–17, on conduct of municipal securities and municipal advisor activities.[23] In 2013, the MSRB amended Rule G–11 to, among other things, address concerns related to retail order period practices and required expressly that the senior syndicate manager's written statement of all terms and conditions required by

not have corresponding data fields to receive the information. While the MSRB is currently not aware of any reason NIIDS would become unavailable, the inability to auto-populate information from NIIDS would not negate the requirement that information be provided pursuant to MSRB Rule G–32.

[15] *See* Rule G–34(a)(ii) regarding the application for depository eligibility and dissemination of new issue information. *See also* DTC Important Notice 3349–08 (April 9, 2008); SEC Release No. 34–57768 (May 2, 2008), 90 FR 26181 (May 8, 2008) (File No. SR–OTC–2007–10), regarding NIIDS trade and settlement eligibility requirements.

[16] An underwriter currently completes data fields in NIIDS that are applicable to the particular primary offering. Not all NIIDS data fields are completed in a typical primary offering and thus, the Form G–32 data fields will not all be auto-populated for every offering. Specifically, for a newly issued municipal security an underwriter must input the key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities (''NIIDS Data Elements'') into NIIDS. NIIDS Data Elements are defined as data needed for trade reporting, trade matching and to set up trade confirmations (''Trade Eligible Data''). Additional data elements are also needed for a municipal security to settle at DTC and are settlement eligible data (''Settlement Eligible Data''). *See* The Depository Trust Company Operational Arrangements (June 2018).

[17] As used herein, ''continued access'' means that MSRB would be able to obtain and, if it determines to do so, disseminate information, independent of integrated data from a third-party or utilities.

[18] *See infra* discussion on amending Form G–32 to include nine additional data fields not currently collected by NIIDS.

[19] *MSRB Regulatory Notice 2017–19 (Sept. 14, 2017).*

[20] Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated Nov. 16, 2017 (''BDA Letter I''); Letter from City of San Diego, undated (''City of San Diego Letter I''); Letter from Robert W. Doty, dated Nov. 2, 2017 (''Doty Letter I''); Email from Stephan Wolf, Global Legal Entity Identifier Foundation, dated Nov. 6, 2017 (''GLEIF Letter I''); Letter from Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association, dated Nov. 27, 2017 (''GFOA Letter I''); Letter from Alexandra M. MacLennan, National Association of Bond Lawyers, dated Nov. 17, 2017 (''NABL Letter I''); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated Nov. 13, 2017 (''NAMA Letter I''); Letter from Julie Egan, NFMA Chair 2017 and Lisa Washburn, NFMA Industry Practices & Procedures Chair, National Federation of Municipal Analysts, dated Nov. 9, 2017 (''NFMA Letter I''); Email from Michael Paganini, dated Sept. 15, 2017 (''Paganini Email I''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry Financial Markets Association, dated Nov. 15, 2017 (''SIFMA Letter I''); Letter from John S. Craft, Managing Director, TMC Bonds LLC, dated Nov. 13, 2017 (''TMC Bonds Letter I''); and Letter from Gilbert L. Southwell III, Vice President, Wells Capital Management, Inc., dated Nov. 1, 2017 (''Wells Capital Letter I'').

[21] MSRB Notice 2018–15 (July 19, 2018).

[22] Letter from Noreen P. White, Co-President and Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated Sept. 17, 2018 (''Acacia Letter II''); Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated Sept. 17, 2018 (''BDA Letter II''); Email from Stephen Holstein, CFI, dated Jul. 25, 2018 (''CFI Email II''); Letter from Steve Apfelbacher, Ehlers Associates, Inc., dated Sept. 17, 2018 (''Ehlers Letter II''); Letter from Emily S. Brock, Director, Federal Liaison Center, Government Finance Officers Association, dated Sept. 19, 2018 (''GFOA Letter II''); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated Sept. 18, 2018 (''NAMA Letter II''); Letter from Julie Egan, NFMA Industry Practices & Procedures Chair, and Lisa Washburn, NFMA Industry Practices & Procedures Co-Chair, National Federation of Municipal Analysts, dated Sept. 17, 2018 (''NFMA Letter II''); Letter from Marianne F. Edmonds, Public Resources Advisory Group, dated Sept. 18, 2018 (''PRAG Letter II''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Sept. 17, 2018 (''SIFMA Letter II''); Letter from Rick A. Fleming, Investor Advocate, U.S. Securities and Exchange Commission, Office of the Investor Advocate, dated Sept. 17, 2018 (''SEC Investor Advocate Letter II'').

[23] *See* MSRB Notice 2009–42 (July 14, 2009).

the issuer also be delivered to selling group members.[24] The amendment also added Rule G–11(k) to require that any dealer that submits an order designated as retail during a retail order period must provide certain information that would assist in determining if the order is a bona fide retail order. The 2013 amendments to Rule G–11 coupled with the Rule G–17 guidance indicates selling group members are subject to the issuer requirements in allocating securities to their investors.[25]

By codifying this existing obligation, the amendment would highlight that selling group members must comply with the priority provisions and other issuer terms and conditions when they receive written notification of such from the syndicate manager.

Require That the Senior Syndicate Manager Communicate to All Syndicate and Selling Group Members, at the Same Time, When the Issue Is Free To Trade

The proposed rule change would amend Rule G–11(g) to add new subsection (ii) which would require the senior syndicate manager to notify all members of the syndicate and selling group, at the same time via free-to-trade wire or electronically by other industry-accepted method of communication, that the offering is free to trade at a price other than the initial offering price.[26]

In a primary offering of municipal securities where a syndicate is formed (*i.e.,* not a sole-managed offering), a free-to-trade wire is sent by the senior syndicate manager to syndicate members once all of the municipal securities in the issue or particular maturity (or maturities) are free to trade. That is, the free-to-trade wire communicates to members of the syndicate that they may trade the bonds in the secondary market at market prices which could be the same or different than the initial offering price.[27]

The MSRB believes equal access to information is important to the fair and effective functioning of the market for primary offerings of municipal securities. Therefore, the MSRB believes requiring dissemination of this information for receipt by all syndicate and selling group members at the same time would prevent preferential access to the free-to-trade information (thus, understanding that they are then able to commence selling bonds at market prices) by some while other syndicate and selling group members, who are not aware of the information, are delayed in knowing that they may transact at prices other than the initial offering price.

The MSRB understands that methods of communication evolve and change over time. As a result, the dissemination of free-to-trade information eventually may be made by methods other than the traditional ''free-to-trade wire.'' While the MSRB is not proposing to dictate the timing of when, or the form of how, the free-to-trade communication should be sent, requiring dissemination of this information electronically by an industry-accepted method that ensures all syndicate and selling group members receive the information at the same time would level the playing field.[28]

Require the Senior Syndicate Manager To Provide Information Required Under Rule G–11(g)(ii) and (iii) to Issuers in a Primary Offering

Currently, the senior syndicate manager is not required to provide information to issuers regarding designations and allocations of municipal securities in a primary offering.[29] The proposed rule change would amend Rule G–11(g)(ii) and (iii) [30] to require the senior syndicate manager to comply with the information-dissemination provisions of this rule with respect to issuers in addition to just syndicate members. Rule G–11(g)(ii) requires, in part, the senior syndicate manager, within two business days following the date of sale, to disclose to the syndicate, in writing, a summary by priority category, of all allocations of securities accorded priority over member orders. Rule G–11(g)(iii) requires the senior syndicate manager to disclose, in writing and as set forth in the rule, to each member of the syndicate information on the designations paid to syndicate and non-syndicate members.

The MSRB believes that providing this information to the issuer along with information on group net sales credits, as described more fully below, would better inform all issuers of the orders and allocations of their primary offering. The MSRB believes this information would be valued particularly by those issuers who are not aware this information is available for their review. An issuer who does not wish to receive or review this information need simply delete the communication at its discretion.

Align the Timeframe for the Payment of Group Net Sales Credits With the Payment of Net Designation Sales Credits

The proposed rule change would amend Rule G–11(j) to align the current timeframe for the payment of group net sales credits with the existing timeframe for the payment of net designation sales credits as set forth therein. Currently, Rule G–11(i) states that the final settlement of a syndicate or similar account shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate. Group net sales credits (*i.e.,* those sales credits for orders in which all syndicate members benefit according to their participation in the account) are paid out of the syndicate account when it settles pursuant to Rule G–11(i). As a result, syndicate members may wait 30 calendar days following receipt of the securities by the syndicate before they receive their group net sales credits. By contrast, Rule G–11(j) states that sales credits due to a syndicate member as designated by an investor in connection with the purchase of securities (''net designation payments'') shall be distributed within 10 calendar days following the date the issuer delivers the securities to the syndicate.

The SEC approved amendments to Rule G–11(i) in 2009 to, among other things, shorten the timeframe for settlement of the syndicate account from 60 calendar days to 30 calendar days following the date the issuer delivers the securities to the syndicate. The

[24] *See* Release No. 34–70532 (Sept. 26, 2013), 78 FR 60956 (Oct. 2, 2013) (File No. SR–MSRB–2013–05).

[25] *See also* Rule G–11(b) which requires that every dealer that submits an order to a syndicate or to a member of a syndicate for the purchase of securities must disclose at the time of submission if the order is for its dealer account or a related account of the dealer.

[26] The other provisions of Rule G–11(g) would be renumbered accordingly to account for this addition.

[27] For purposes of reporting transactions after the free-to-trade information has been disseminated, the MSRB has indicated that once a new issue has been released for trading (*i.e.,* is free to trade), normal transaction reporting rules will apply to the syndicate managers, syndicate members and selling group members. *See* Release No. 34–49902; (Jun. 22, 2004), 69 FR 38925 (Jun. 29, 2004) (File No. SR–MSRB–2004–02).

[28] The MSRB reminds dealers that such distributed communication would be subject to the record retention requirements of Rule G–9(b)(viii)(C) which requires the dealer to maintain, among other things, all written and electronic communications received and sent relating to the conduct of the municipal securities activities of such dealer and Exchange Act Rule 17a–4(b)(4) which requires dealers to maintain copes of all communications sent by the dealer relating to its business as such.

[29] ''Designation'' typically refers to the percentage of the takedown or spread that a buyer directs the senior syndicate manager to credit to a particular syndicate member (or members) in a net designated order. ''Allocation'' generally refers to the process of setting securities apart for the purpose of distribution to syndicate and selling group members. *See* MSRB Glossary of Municipal Securities Terms.

[30] Currently, these provisions are Rule G–11(g)(ii) and (iii). However, with the proposed addition of Rule G–11(g)(ii) noted above, these provisions would become Rule G–11(g)(iii) and (iv).

amendments also shortened the timeframe for the payment of net designation orders in Rule G–11(j) from 30 calendar days to 10 calendar days. The MSRB indicated that the shortened timeframes were intended to reduce the exposure of co-managers to the credit risk of the senior manager pending settlement of the accounts.[31]

The proposed amendments would not impact the timing of the settlement of the syndicate account, but rather would merely align the timeframe for the payment of group net and net designation sales credits. The MSRB believes aligning the time frames for the payment and receipt of sales credits would be a minor adjustment that would ensure uniform practice in making and receiving such payments in a timely manner. In addition, this proposed rule change would reduce credit risk by decreasing the exposure of syndicate trading account members to the potential deterioration in the credit of the syndicate or account manager during the pendency of account settlements. The MSRB further believes that the time period of 10 calendar days would provide balance between reducing risk of exposure of co-managers and the credit risk of the senior manager while still providing the senior syndicate manager with the time needed to process and pay the sales credits.

As a result of the alignment of these payments, the information that is currently provided within 30 calendar days of delivery of securities to the syndicate under Rule G–11(h)(ii)(B) would now be provided within 10 business days following the date of sale under revised Rule G–11(g)(iv). Thus, the proposed rule change would delete Rule G–11(h)(ii)(B), and Rule G–11(h)(ii)(C) would be amended to become Rule G–11(h)(ii)(B).

Proposed Rule Change Under Rule G–32

Provide Equal Access To Advance Refunding Documents and Related Information [32]

The proposed rule change would amend Rule G–32(b)(ii) to require that in an advance refunding, where advance refunding documents are prepared, the underwriter must provide access to the documents and certain related information to the entire market at the same time.[33]

Currently, Rule G–32(b)(ii) requires the advance refunding documents and applicable Form G–32 information be submitted to the EMMA Dataport, no later than five business days after the closing date for the primary offering. However, the MSRB understands that in some instances, some market participants may be informed of the advance refunding details before the information is submitted and made public on EMMA.

The MSRB believes that equal access to advance refunding information is important for the efficient functioning of the primary and secondary market for municipal securities. The MSRB also believes requiring underwriters to provide information to the market regarding CUSIP numbers advance refunded in a manner that allows access to the information by the entire market at the same time would support this effort.

Repeal the Requirement That a Dealer Financial Advisor That Prepares the Official Statement Must Make It Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

The proposed rule change would repeal the current requirement under Rule G–32(c) that a dealer financial advisor that prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities make the official statement available to the managing underwriter or sole underwriter in a designated electronic format, promptly after the issuer approves its distribution.

In the Concept Proposal and Request for Comment the MSRB sought comment on whether the requirement under Rule G–32(c) should be extended to require *all* financial advisors (*i.e.,* both dealer and non-dealer) that have prepared the official statement to provide the official statement to the underwriter promptly after approved by the issuer. Upon review of comment letters and discussions with various market participants, the MSRB is proposing to repeal this requirement under Rule G–32(c).

Rule G–32 was adopted in 1977 to ensure that investors purchasing new issue municipal securities are provided with all available information relevant to their investment decision by settlement of the transaction.[34] The Board has recognized that the MSRB cannot prescribe the content, timing, quantity or manner of production of the official statement by the issuer or its agents.[35] Thus, the MSRB crafted Rule G–32(c) to ensure that once the official statement is completed and approved by the issuer, dealers acting as financial advisors would be obligated to begin the dissemination process promptly. The Board further urged that issuers using the services of non-dealer financial advisors hold those financial advisors to the same standards for prompt delivery.[36] The Board noted that the requirement under Rule G–32(c) was not meant to diminish a dealer's obligations under Securities Exchange Act Rule 15c2–12(b)(3).

Exchange Act Rule 15c2–12(b)(3) requires that an underwriter contract with the issuer or its agent to obtain copies of the official statement within the time period mandated by the rule. According to the SEC, the purpose of this provision is to ''facilitate the prompt distribution of disclosure documents so that investors will have a reference document to guard against misrepresentations that may occur in the selling process.'' [37]

In adopting the rule, the SEC recognized the existing delivery requirements under Rule G–32 and noted that

> By adopting paragraph (b)(3), which serves as a foundation for fostering compliance with the requirements of MSRB rule G–32, the Commission wishes to emphasize the importance it places on the prompt distribution of final official statements.[38]

The SEC noted that in adopting Rule 15c2–12(b)(3), it was leaving the determination of the ''precise method and timing of delivery'' of the official statement to the MSRB.[39]

The MSRB understands that several participants in a primary offering may be responsible for preparing the official statement,[40] and while dealers acting as

[31] *See* Release No. 34–60725 (Sept. 28, 2009), 74 FR 50855 (Oct. 1, 2009) (File No. SR–MSRB–2009–12).

[32] In general, advance refunding issues are those municipal bonds issued more than 90 days before the redemption of the refunded bonds. *See* MSRB Interpretive Guidance—Current Refundings (Aug. 8, 1991).

[33] This means underwriters would be precluded from disseminating advance refunding documents and information to any market participant, without first submitting it to the EMMA Dataport; provided that this restriction does not prohibit communication with anyone that may require such information for purposes of facilitating the completion of the transaction.

[34] *See* File No. SR–MSRB–77–12 (Sept. 20, 1977). The SEC approved Rule G–32 in Release No. 34–15247 (Oct. 19, 1978), 43 FR 50525 (1978).

[35] *See* Release No. 34–40230 (July 17, 1998); 63 FR 40148 (July 27, 1998) (File No SR–MSRB–97–14).

[36] *Id.*

[37] *See* Release No. 34–26985 (June 28, 1989); 54 FR 28799 at 28805 (Jul. 10, 1989).

[38] *Id.*

[39] *See* 54 FR 28799 at 28806.

[40] For example, the MSRB understands that bond counsel or underwriter's counsel frequently prepares the official statement on behalf of the issuer and may seek input on various components from the underwriter or the municipal advisor. However, Rule G–32(c) does not apply to bond

financial advisors and non-dealer municipal advisors may be engaged to review and contribute to portions of the document, they are less frequently engaged to ''prepare'' the official statement as they might have been in the past. Therefore, while the goal of Rule G–32(c) is consistent with the overall goal of Rule G–32 and Exchange Act Rule 15c2–12(b)(3), that is, to facilitate the prompt distribution of the official statement to the market and investors, that section of the rule itself is limited in such a way that its usefulness in the current market is questionable. The MSRB understands that Rule G–32(c) requirements apply to a limited universe of market participants (*i.e.,* dealers acting as financial advisors that prepare the official statement). This leaves a gap such that Rule G–32(c) does not extend to parties other than dealers acting as financial advisors who prepare the official statement.

In reviewing Rule G–32(c) and considering whether to expand the section of the rule to include non-dealer municipal advisors, the MSRB considered whether the existing rule and/or the expansion thereof would resolve a harm in the market. After discussions with various market participants and consideration of the actual scope of the impact of the rule, the MSRB believes any harm in the market related to the delivery of official statements would not be resolved by Rule G–32(c) regardless of whether dealers acting as financial advisors and non-dealer municipal advisors are required to comply. The MSRB believes the scope of Rule G–32(c) may be too limited to have any significant impact on the official statement delivery requirements.

The MSRB understands that the obligation under Exchange Act Rule 15c2–12(b)(3) for an underwriter to contract with the issuer or its agent to receive the official statement within a defined period of time already ensures that the underwriter would receive the official statement within a certain period of time regardless of the party preparing it.

counsel or underwriter's counsel, and the MSRB does not have jurisdiction over these parties in any event. Therefore, if these parties were engaged to prepare the official statement for the issuer, they would not be subject to the requirements of Rule G–32(c).

Proposed Changes to Form G–32

Amend Form G–32 To Include 57 Additional Data Points Already Collected by NIIDS

The proposed rule change would amend Form G–32 to include 57 additional data fields that would be auto-populated with datapoints already required to be input into NIIDS, as applicable, for NIIDS-eligible offerings. As previously noted, these data fields are currently available to regulators and certain other industry participants that have access to NIIDS. However, adding the data fields to Form G–32 would ensure the MSRB's continued access to important primary offering information, and enhance its ability to oversee the accuracy and distribution of the information provided.

At this time, however, the MSRB believes requiring the manual completion of all the above data fields for non-NIIDS-eligible issues such as private placements and other restricted offerings that are not intended for secondary market trading would be burdensome on underwriters.[41] Thus, for a non-NIIDS-eligible primary offering, an underwriter would continue to be required to manually complete the same data fields on Form G–32 that it currently completes with the addition of one of the 57 data fields discussed above. The additional data field would indicate the original minimum denomination of the offering, as applicable. As with the other data points currently required on Form G–32, once an underwriter provides the information, it would be available to regulators. Regulators could use this information to determine whether a new issue of municipal securities is trading at the appropriate minimum denomination in the secondary market. Additionally, as with the other NIIDS data points discussed above, the MSRB may disseminate this information in the future.

The MSRB believes that, at this time, requiring this additional information on Form G–32, as applicable, for NIIDS-eligible offerings, and requiring the single additional data point for non-NIIDS-eligible offerings would not only assist the MSRB in ensuring its continued access to new issue information but would enhance MSRB regulatory transparency initiatives.

[41] Non-NIIDS-eligible securities are less likely to trade in the secondary market because they typically are issued with trading restrictions and, therefore, less liquid. They are different from NIIDS-eligible securities, which by their nature are DTC eligible, and are freely tradable in the market. *See supra* footnote 8. The MSRB would continue to monitor the need for specific information with respect to non-NIIDS-eligible offerings to determine whether any other additional data elements may be required at a later time.

Amend Form G–32 To Include Nine Additional Data Fields Not Currently Collected by NIIDS

The proposed rule change would amend Form G–32 to include nine additional data fields, set forth below, for manual completion (*i.e.,* not auto-populated from NIIDS), as applicable, by underwriters in NIIDS-eligible primary offerings of municipal securities. Underwriters in non-NIIDS-eligible primary offerings would be required to manually complete two of these data fields: the ''yes'' or ''no'' indicator regarding whether the original minimum denomination for a new issue has the ability to change, and the ''yes'' or ''no'' indicator regarding whether the new issue has any restrictions. However, underwriters in non-NIIDS-eligible offerings would not be required to complete the other seven data fields.

The MSRB believes that the information collected by these data fields would enhance MSRB regulatory transparency initiatives as all the additional data elements would be immediately available to regulators to perform regulatory oversight of primary offerings and subsequent secondary market trading practices to ensure a fair and efficient market. Additionally, the MSRB may disseminate some or all of this information in the future.

The proposed rule change would amend Form G–32 to add the following data fields:

Ability for original minimum denomination to change—The MSRB believes providing a ''yes'' or ''no'' indicator at the time of issuance as to whether the original minimum denomination for an issue can change, would immediately enhance regulatory transparency and provide useful information to investors, should the MSRB disseminate this information in the future. In some primary offerings, for example, if the official statement or other offering document indicates that a municipal security is non-rated or below investment grade at the time of issuance, but the security achieves an investment grade rating at some point in the future, this could result in a change to the original minimum denomination. Because an underwriter would not be required to update this information over the life of the municipal security, having this indicator would highlight the need to check relevant disclosure documents for developments that could trigger a change in the original minimum denominations.

Additional syndicate managers—The MSRB believes that having a data field

that indicates all the syndicate managers (senior and co-managers) on an underwriting would provide useful information for regulators. For example, regulators would be able to more easily identify where a particular syndicate manager was engaged or seek more information about particular syndicate managers, as needed, in performing oversight. Additionally, should the MSRB disseminate this information in the future, it could be used to evaluate the experience of a syndicate manager for an upcoming offering.

The MSRB believes the complete list of underwriters typically is known at or before the pricing of an issue and, therefore, senior and co-manager information is readily available to the senior underwriter before Form G–32 is due.

Call schedule—Requiring call schedule information on Form G–32 would include, for example, premium call dates and prices, and the par call date. For primary offerings with call prices stated as a percentage of the compound accreted value (CAV) the underwriter would enter the premium call dates and percentage of CAV the new issue can be called at as well as the par call date. All of which would immediately increase regulatory transparency, providing regulators with intermediate premium call dates and prices, and a means to differentiate between a call price represented in dollars as opposed to CAV. Additionally, should the MSRB disseminate this information in the future, access to all the relevant call information could help investors make more informed investment decisions.

Identity of obligated person(s), other than the issuer—The MSRB believes that providing the name(s) of the obligated person(s), other than the issuer, for a primary offering of municipal securities is important because they are responsible for continuing disclosures, and this information is sometimes not easily identifiable for regulatory transparency purposes. Also, having more ways of identifying those legally committed to support payment of all or part of a primary offering would increase transparency, should the MSRB disseminate this information in the future. The MSRB recognizes that there may be confusion in identifying other obligated persons in a manner that is consistent. As a result, the MSRB believes the identity of the other obligated person(s) should be input on Form G–32 the same as it appears on the official statement, or if there is no official statement, in the manner it appears in the applicable offering documents for the issue. This would ensure uniform practice in the identity of the obligated person(s), other than the issuer, with respect to that issue.

LEI for credit enhancers and obligated person(s), other than the issuer,[42] *if readily available*—The LEI provides a method to uniquely identify legally distinct entities that engage in financial transactions. The goal of this global identification system is to precisely identify parties to a financial transaction to assist regulators, policymakers and financial market participants in identifying and better understanding risk exposure in the financial markets and to allow monitoring of areas of concern. The MSRB believes that requiring this information for credit enhancers and obligated persons, other than the issuer, if readily available, would promote the value of obtaining LEIs and encourage industry participants to obtain them as a matter of course. An LEI would be considered ''readily available'' if it were easily obtainable via a general search on the internet (*e.g.,* web pages such as *https://www.gleif.org/en/lei/search*). The MSRB also believes that obtaining this information, when readily available, on credit enhancers and other obligated persons would help advance the goal of having a global identification method for these parties and improve the quality of municipal market financial data and reporting.

Dollar amount of each CUSIP number advance refunded—The MSRB believes requiring information regarding the dollar amount of each CUSIP number advance refunded on Form G–32 would provide regulators important information regarding material changes to a bond's structure and value and should the MSRB disseminate this information in the future, may assist investors in making more informed investment determinations.

In the Request for Comment, the MSRB sought comment on a data field that would show the percentage of each CUSIP number advance refunded. Upon review of comments and discussions with certain market participants, the MSRB believes requiring the dollar amount of each CUSIP number advance refunded instead of the percentage advance refunded would be more useful in understanding the value of the portion of an issue being advance refunded and would be less burdensome for underwriters to calculate.

Retail order period by CUSIP number—Currently, primary offerings are flagged in the EMMA Dataport to indicate whether there is/was a retail order period. However, quite often not every maturity related to the offering is subject to a retail order period. The MSRB believes that requiring underwriters to mark a primary offering with a flag to indicate the existence of a retail order period for each CUSIP number would provide greater regulatory transparency as to the amount and types of bonds being offered in that retail order period. For example, a ''yes'' or ''no'' flag by CUSIP number would help regulators more easily identify orders that may not comply with a retail order period.

Name of municipal advisor—The MSRB believes including this information would enhance regulatory transparency as key market participants would be more easily identifiable to regulators. Additionally, should the MSRB disseminate this information in the future, it could also assist certain market participants in evaluating the experience of the municipal advisor when reviewing primary offerings, especially for similar credits and structures. Finally, the MSRB intends to make this field autofill as the underwriter begins to input the name of the municipal advisor into the applicable text box.

Restrictions on the issue—The MSRB believes adding a ''yes'' or ''no'' flag to Form G–32 for an underwriter to indicate whether the primary offering is being made with restrictions would help regulators and, should the MSRB disseminate this information in the future, it could help certain other market participants more easily identify this information. An explanation would be provided on Form G–32 indicating that ''yes'' should be selected for any offerings made with a restriction on sales, resales or transfers of securities such as, for example, sales only to qualified institutional buyers as defined under Securities Act Rule 144A and sales only to accredited investors as defined under Rule 501 of Regulation D under the Securities Act.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the

[42] An LEI is a 20-digit alpha-numeric code that connects to key reference information providing unique identification of legal entities participating in financial transactions. Only organizations duly accredited by GLEIF are authorized to issue LEIs. The MSRB believes that, at this time, except for credit enhancers and obligated person(s), other than the issuer, the LEI information being sought is not critical in evaluating the financial risks of an issuer, and because issuers typically do not obtain an LEI, the likely time and costs associated with having to conduct a search to determine if LEI information is readily available for an issuer, would exceed any potential benefits.

Act,[43] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by amending Rule G–11 to require the senior syndicate manager to notify all syndicate and selling group members, at the same time via free-to-trade wire or other industry-accepted electronic communication method, that the offering is free to trade in the secondary market. This proposed change would eliminate the potential for an unfair advantage in the secondary sales of municipal securities. Similarly, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by requiring the underwriter in an advance refunding to disclose advance refunding information, so all market participants have access to such information at the same time.

The proposed rule change would promote just and equitable principles of trade by codifying in Rule G–11 the existing obligation of selling group members to comply with the issuer's terms and conditions in a primary offering of municipal securities. The proposed rule change also would promote just and equitable principles of trade by ensuring issuers in a primary offering have information regarding the designations and allocations of their offering. Additionally, providing this information to issuers removes impediments to a free and open market in municipal securities by giving issuers valuable information they otherwise may not realize or know is available.

The proposed rule change would promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in processing information with respect to transactions in municipal securities and municipal financial products by aligning the payment of sales credits in net designation and group net sales transactions. Additionally, aligning these payments would remove impediments to a free and open market in municipal securities and municipal financial products by reducing credit risk in the market and allowing group net sales credit payments to be made to syndicate members on a shortened timeframe.

The inclusion on Form G–32 of additional data fields would foster cooperation with persons engaged in regulating and processing information with respect to transactions in municipal securities and municipal financial products, by providing more transparency with respect to municipal securities offerings. For example, by obtaining this information, the MSRB and other regulators would have access to more fulsome and useful market data to help inform its regulation of the municipal securities markets.

Finally, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market in municipal securities by removing Rule G–32(c). By eliminating a rule that no longer resolves a market harm, the proposed rule change seeks to more appropriately respond to actual market practices, reduce regulatory burdens and thus encourage compliance with a more appropriate and beneficial process by which the underwriter receives the official statement in a primary offering of municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[44] The MSRB has considered the economic impact associated with the proposed amendments to Rule G–11, Rule G–32 and Form G–32 including a comparison to reasonable alternative regulatory approaches, relative to the baseline.[45] The MSRB does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The MSRB believes the proposed rule change is needed to increase regulatory transparency in the primary offering process and secondary market trading. Additionally, the MSRB believes the proposed rule change is necessary to ensure its continued access to important new issue information, address possible information asymmetry that arises from certain market practices and to improve the overall efficiency of the market.

Rule G–11—Primary Offering Practices

The proposed amendments to Rule G–11 would address free-to-trade information dissemination, require information regarding designations, group net sales credits and allocations be provided to the issuer in a primary offering, align the time period for the payment of group net sales credits with the payment of net designation sales credits and explicitly state that selling group members must comply with the issuer's terms and conditions in a primary offering. The need for the proposed amendments arises from the MSRB's oversight of underwriters in primary offerings of municipal bonds. The MSRB believes that by not amending Rule G–11 and instead leaving the rule in its current state, certain market issues would remain unaddressed. For example, market transparency would not be enhanced, and information asymmetry would not be reduced with respect to certain areas.

The MSRB also considered other alternative approaches to the proposed changes to Rule G–11. Regarding the requirement for the senior syndicate manager to provide detailed information regarding designations, group net sales credits and allocations of the securities in a primary offering to the issuer, the MSRB could also require that the information be provided to the issuer, but only upon the issuer's request. However, the MSRB believes this alternative could result in frequent issuers having better access to information than issuers who are unaware that the information is available upon request. The proposed change to this requirement is designed to ensure that all issuers receive the relevant information on designations, group net sales credits and allocations, and the obligation can be met with the existing documents that are sent to syndicate members. A similar alternative would be to require the senior syndicate manager to provide designation, group net sales credit and allocation information to all issuers with an option to opt out of receiving the information. However, the MSRB is not aware of any likely rationale behind an issuer's decision to decline the information other than the fact that the issuer may decide the burden of

[43] 15 U.S.C. 78*o*–4(b)(2)(C).

[44] *Id.*

[45] *See* Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx*. In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

reviewing the information exceeds the benefits of the information itself.[46]

The MSRB has taken into consideration the likely costs and benefits associated with the proposed rule change and provides the following analysis for each specific proposal.[47]

Benefits and Costs—Free-to-Trade Information Dissemination

Requiring senior syndicate managers to disseminate free-to-trade information to all syndicate and selling group members at the same time should ensure timely access to critical information. As is the case for all asymmetric information transactions, when a participant does not have the same information as others in a transaction, they are at a disadvantage. All syndicate and selling group members need to receive the information simultaneously to reduce any risk of unfair practices.

The free-to-trade information is typically issued by the senior syndicate manager to all members of the syndicate. However, the MSRB understands that the timing of receipt of the free-to-trade information can vary such that information is not always received by all syndicate members at the same time. It is the MSRB's understanding that, typically, the free-to-trade information is sent electronically and would be simple to provide to all syndicate and selling group members at the same time. Therefore, above-the-baseline costs [48] to senior syndicate managers associated with this requirement are expected to be insignificant. Syndicate and selling group members currently receiving the free-to-trade information after others in the syndicate have already received it would benefit from being notified earlier that they may trade in the secondary market at market prices equal to or different than the offering price. Thus, the MSRB believes that the likely benefits of this requirement significantly outweigh its likely costs.

Benefits and Costs—Additional Information for the Issuer

The main benefit of providing information regarding designations, group net sales credits and allocations to the issuer is to provide transparency to the issuer by giving them the same information received by the syndicate members. This information is beneficial to the issuer because it provides the issuer with relevant details regarding the issue and assists the issuer in determining whether certain syndicate rules or terms have been followed. Additionally, providing this information, in the aggregate, may help issuers understand the syndicate structures, the distinct responsibility of syndicate managers and members and fees earned by each syndicate participant, which may benefit issuers when they come to market again in the future.

Because the senior syndicate manager is already required to provide these disclosures to each syndicate member and could meet this requirement with the same information that is sent to the syndicate members, the incremental cost of providing this information to the issuers as well should be negligible. The information on net designations, group net sales credits and allocations is typically provided electronically and therefore is easy to disseminate to additional parties.

Benefits and Costs—Alignment of the Timeframe for the Payment of Group Net Sales Credits With the Payment of Net Designation Sales Credits

Aligning the timeframe for the payment of group net sales credits to syndicate members with the timeframe for the payment of net designation sales credits would promote a uniform practice among payments of sales credits for syndicate members and limit the delay in getting paid for group net orders, while reducing syndicate members' exposure to the senior syndicate manager's credit risk.

It is the MSRB's understanding that many firms acting as a senior syndicate manager are already operating on the ten-day deadline for the payment of group net sales credits. For the limited number of firms who are not currently operating on the ten-day deadline, in order to meet the new timeframe for the payment of group net sales credits, those firms initially may need to revise certain internal processes, and thus may incur some upfront costs. However, the MSRB is not proposing to change the timeframe related to settlement of the syndicate or similar account, but rather, the timeframe within which payment of the group net sales credits occurs. Therefore, the associated costs should not be significant once the new process is in place.

Benefits and Costs—Reinforce Selling Group Members' Existing Obligations

Currently, syndicate managers under Rule G–11(f) are required to promptly furnish in writing the issuer's terms and conditions information described in this section to other members of the syndicate and selling group members. The benefit of this proposed rule change would be to reinforce selling group members' existing obligation to comply with the issuer's terms and conditions in a primary offering of municipal securities. Without this change, the issuer has much less certainty that their terms and conditions would be met.

Selling group members presumably have a choice to become a member if they determine that the benefits from the ability to participant in a deal exceeds the compliance costs. This cost increase, however, would not be applicable to selling group members who are already in compliance with Rule G–11(f) when participating in a primary offering of municipal securities. The MSRB is unable to quantify the percentage of selling group members who are presently not in compliance and thus provide an estimate of the material increase of costs. However, the MSRB believes the overall benefits of full compliance by all selling group members should exceed the costs borne by non-compliant selling group members, as this has been the intended application of Rule G–11(f).

Proposed Rule Change Under Rule G–11—Effect on Competition, Efficiency and Capital Formation

Since all four proposed changes to Rule G–11 would apply equally to all primary offerings of municipal securities and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. The proposed changes are meant to improve the fairness and efficiency of the underwriting process and thus should improve capital formation. Specifically, the proposed changes are intended to protect issuers, syndicate members and investors, and thus to increase confidence in the capital markets by enhancing transparency and promoting fairness of the competition in the primary offering process.

Rule G–32—Disclosures in Connection With Primary Offerings

The proposed rule change as it relates to Rule G–32 would provide equal access to market participants regarding CUSIP numbers advance refunded and repeal the requirement for dealers acting as financial advisors that prepare the

[46] Issuers could choose to delete the information to avoid the burden.

[47] In addition to the costs to dealers for compliance with the proposed amendments to Rule G–11, the MSRB believes that there also would be a small one-time cost associated with revising policies and procedures by syndicate managers as a result of these proposals.

[48] For economic evaluation the proposed rule changes, the baseline is the current state under existing MSRB rules.

official statement to make the official statement available to the underwriter promptly after approval by the issuer.

Benefits and Costs—Equal Access to the Disclosure of the CUSIP Numbers Advance Refunded

Currently, Rule G–32 requires underwriters of an advance refunding to provide the advance refunding document, which only includes a list of the advance refunded CUSIPs, to the EMMA Dataport and related information on Form G–32, no later than five business days after the closing date. The proposed change is needed to reduce information asymmetry that may arise in the secondary markets. In the case of advance refundings, information regarding the CUSIPs advance refunded may currently be available to certain market participants before it is available to others. This could result in negative consequences for the less informed market participants by forcing them to make investment decisions with less information than other market participants.

The MSRB has considered the alternative of requiring the advance refunding document to be submitted to the EMMA Dataport sooner than five business days after closing to minimize the chance of discrepancy in the timing of disclosures made to different market participants. However, the MSRB understands that this information sometimes is not available sooner than five days after closing and proposing a requirement that the information be provided in a shorter timeframe may not be feasible at this time.

The main benefit of advance refunding disclosure is reduced information asymmetry in the secondary market, which may in turn improve the market's fairness and efficiency. Data are readily available to the underwriter; therefore, costs above the baseline would be limited to manually entering the amount of bonds advance refunded per CUSIP number, since underwriters are already required to provide advance refunding documents, if prepared, to the EMMA Dataport and related information on Form G–32.

Effect on Competition, Efficiency and Capital Formation

Since the proposed amendments would apply equally to all primary offerings and associated underwriters, they should not impose a burden on competition, efficiency or capital formation. In fact, since the proposed amendments are meant to improve the fairness and efficiency through equal access for all market participants of the underwriting process and thereafter the secondary market trading, the proposed amendments should improve capital formation. Specifically, the proposed amendments protect investors, dealers and other market participants who currently do not have the equal access to the CUSIP number advance refunded information disclosure, and these protections could improve the competitiveness of the primary and the secondary markets, potentially benefiting issuers and investors alike.

Benefits and Costs—Repeal of Requirement for Dealers Acting as Financial Advisors To Make the Official Statement Available to the Underwriters

The official statement contains information that is critical to underwriters and market participants. Rule G–32(c) is limited in scope as it only applies to delivery of the official statement when it has been prepared by a dealer acting as a financial advisor. Exchange Act Rule 15c2–12(b)(3) more broadly applies to the underwriter in contracting with the issuer or its agent for receipt of the official statement in a certain amount of time. By eliminating the requirement for a dealer acting as a financial advisor to promptly deliver the official statement to the underwriters, the proposed rule change would promote the uniform practice of regulatory responsibility between dealer financial advisors and non-dealer municipal advisors with a potentially limited negative impact on the distribution of the official statement to the underwriter. Therefore, eliminating this requirement should not result in delayed information dissemination to market participants or hamper their ability to make more informed investment decisions. It will also reduce a burden for dealers acting as financial advisors that is no longer deemed necessary.

To promote regulatory consistency and uniform practice, the MSRB considered the alternative of keeping the requirement and proposing to expand the requirement to also require non-dealer municipal advisors to make the official statement available to the underwriter after the issuer approves its distribution. However, upon further review, the MSRB believes this regulatory alternative would increase the burden for non-dealer municipal advisors but would provide limited benefits to the market. Based on market participant feedback, the MSRB understands that underwriters and issuers more frequently rely upon the contractual arrangements required by Exchange Act Rule 15c2–12(b)(3) for the delivery of the official statement in a timely manner.

While the MSRB believes the costs of sending an official statement electronically to the underwriter is negligible, this proposed rule change would nevertheless reduce costs for dealers acting as financial advisors since they are no longer required to disseminate the official statement to the underwriter unless required pursuant to Exchange Act 15c2–12(b)(3), regardless of who prepared the official statement.

Effect on Competition, Efficiency and Capital Formation

The proposed rule change to eliminate the requirement for dealer financial advisors that prepare the official statement to disseminate the document to the underwriter is applicable to all dealer financial advisors. The proposed rule change removes an imbalance among financial advisors since currently dealer financial advisors are required to provide the official statement, but non-dealer municipal advisors are not. Therefore, the proposed rule change should not impose a burden on competition, efficiency or capital formation. In fact, because the amendments are meant to improve the fairness and consistency of regulatory responsibility between dealer financial advisors and non-dealer municipal advisors, they should create uniform practice which should improve competition and thus benefit capital formation. Eliminating this requirement should not result in delayed information dissemination to some market participants, hampering their ability to make more informed investment decisions.

Changes to Form G–32

The proposed changes to Form G–32 would require additional data fields that would be auto-populated from NIIDS on Form G–32 as well as submission of additional data fields not currently in NIIDS on Form G–32, as applicable. The economic analysis below discusses the two categories of data fields separately.

Broadly speaking, the need for the two categories of proposed additional data fields on Form G–32 arises from the fact that the existing information not currently on Form G–32, but proposed to be included, would enhance the MSRB's regulatory transparency initiatives and facilitate the MSRB's own usage of data. The two categories of proposed additional data points on Form G–32 should also reduce the MSRB's dependence on third-party data providers and utilities for information disclosure and provide the MSRB greater flexibility in ensuring the accuracy of the data. Additionally, as part of the MSRB's long running

transparency initiatives, the MSRB may disseminate some or all of this information, in the future. The MSRB believes that providing transparency of municipal market information is an important way to reduce information asymmetry in the market and enhance data continuity. If the MSRB chooses to disseminate some or all of the information, in the future, investors would have an additional resource providing access to the information used in their assessment of the market value of the security.

Benefits and Costs—Auto Population of Additional Data Fields on Form G–32 With Information From NIIDS

An underwriter of a new issue that is NIIDS-eligible provides data to NIIDS with respect to that issue, as applicable; however, only some of that information is auto-populated into Form G–32. Therefore, the MSRB may be limited in its long-term flexibility to make the information transparent to the broader market on a sustained basis, as a result of the MSRB not being in full control of the collection of those additional data fields. The proposed changes would reduce the MSRB's dependence on third-party data providers and utilities. These additional data elements comprise pertinent information about the municipal securities and not collecting the data would impede the MSRB's goal of creating an ongoing transparent market for municipal securities. Having these fields on Form G–32 would also ensure that the MSRB would have continued access to vital primary offering information now and in the future. While much of the information contained in the proposed additional data fields is currently available to the public in the official statement for a primary offering, it is often not easily located or explicitly stated therein. Because 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. Therefore, should the MSRB disseminate some or all of this information in the future, having readily-available information, on an ongoing basis is, consistent with the MSRB's mission of market transparency.

Underwriters of non-NIIDS-eligible offerings would be exempt from the requirement to manually complete the data fields on Form G–32 that would be auto-populated from NIIDS for NIIDS-eligible offerings, except for one data field that indicates the original minimum denomination of the offering. The MSRB considered the alternative of requiring underwriters of non-NIIDS-eligible issues to manually input all the applicable information from the 57 data fields onto Form G–32. However, the MSRB believes that, at this time, this alternative would impose an unnecessary burden on regulated entities by requiring them to devote additional time and resources to providing information for issues that are not likely to be traded in the secondary market and are less likely to be traded by retail investors.[49] The MSRB believes that, other than the original minimum denomination information, the additional information being sought in the proposed data fields is not critical in evaluating these offerings at this time, and the likely costs associated with inputting all of the applicable fields manually onto Form G–32 would exceed the limited benefits.

The MSRB considered the alternative of collecting the additional information from a third-party data vendor other than NIIDS, to the extent one exists. However, this would require the third party to obtain the information either from NIIDS, official statements, offering circulars or from the underwriter directly, again requiring unnecessary duplication of information input. Additionally, obtaining information from a third party might limit the MSRB's ability to make the information available, thus hindering the MSRB's goal of increasing market transparency.

The MSRB believes that expanding the number of data fields on Form G–32 would improve the MSRB's flexibility regarding data usage. Specifically, by collecting the NIIDS data for inclusion on Form G–32, the MSRB would have greater control and flexibility for the foreseeable future without depending on third-party data providers or utilities. The effort would also have several long-term benefits for the MSRB, including its ability to increase transparency, improve market information and reduce the likelihood of information asymmetries, should the MSRB disseminate some or all of the information, in the future. In that regard, market participants, such as retail investors, issuers and smaller-sized institutional investors, and municipal advisors could have access to less information than market professionals, possibly resulting in information asymmetry. Information asymmetry could cause market price distortion and/or transaction volume depression resulting in an undesirable impact on the municipal securities market.

[49] *See supra* footnote 39.

Because underwriters are already required to submit this information to NIIDS for NIIDS-eligible offerings, the costs associated with providing these data elements are considered part of the baseline, assuming full compliance with applicable provisions of Rule G–32 and Rule G–34. The additional cost imposed on certain market participants for data to be auto-populated from NIIDS onto Form G–32 should be limited, which may include, for example, additional time to review the pre-populated information for accuracy.[50]

Underwriters of non-NIIDS-eligible primary offerings are already obligated to complete Form G–32 manually pursuant to Rule G–32(b)(i)(A)(2). Because the proposed rule change only requires underwriters of non-NIIDS-eligible offerings to manually complete one of the 57 data fields (*e.g.,* original minimum denomination), the MSRB believes the proposed addition should not impose any significant additional time or burden on those underwriters.

Effect on Competition, Efficiency and Capital Formation

Since the data is already provided to and available through NIIDS from underwriters of primary offering municipal securities that are NIIDS-eligible, the proposed changes would not impose a significant burden on regulated entities. Submitters of Form G–32 would have a continued responsibility to ensure that pre-populated information is complete and accurate. However, this responsibility would not rise to the level of a burden on competition since it would apply equally to all underwriters inputting information for new issues.

Additional Data Fields on Form G–32 Not Auto-Populated With Information From NIIDS

Generally, the MSRB seeks to minimize the burden of rule amendments by, for example, obtaining information from existing sources such as NIIDS. Certain data elements that the

[50] Presently, one firm submits data elements to Form G–32 via a business-to-business connection (''B2B''), which is a computer-to-computer connection that does not require any human intervention and provides underwriters a direct data submission channel to Form G–32. With respect to the proposed changes, this B2B submitter would presumably continue to provide all of the proposed data elements via the same B2B connection, because auto-population from NIIDS is not possible with this format of submission. However, B2B is an automated submission itself; therefore, the burden of providing these additional data elements would be limited to the initial time and cost of coding for the process. Subsequently, there should not be additional burdens associated with providing this information to the MSRB on a periodic basis.

MSRB believes would be useful to regulators, however, are not currently input into NIIDS or collected by the MSRB but once directly input on Form G–32 they will be available to regulators. This information could also be useful to certain market participants, such as investors, issuers and municipal advisors and thus the MSRB may disseminate this information, in the future.

As discussed in detail above with regard to the additional data elements not currently captured by NIIDS (*i.e.,* ability for minimum denomination to change, additional syndicate managers, call schedule, legal entity identifiers for credit enhancers and obligated persons, name of municipal advisor, name of obligated person, the dollar amount of CUSIP advance refunded, restrictions on the issue and retail order period by CUSIP number), the MSRB has considered the need to require each of the proposed data elements individually. The MSRB believes that this information is valuable and would immediately enhance regulatory transparency. The information could also help promote a more efficient secondary market for municipal securities, should the MSRB disseminate some or all of the information, in the future. Not collecting the additional data elements would prevent the benefits that are associated with the proposed changes, including enhanced regulatory transparency, and the option to disseminate the information in the future, from being realized. Therefore, for the proposed changes to Form G–32 that are related to additional data elements that are not currently submitted to NIIDS, the MSRB is proposing to require underwriters of NIIDS-eligible offerings to manually input this information onto Form G–32 and to require underwriters of non-NIIDS-eligible offerings to include the data field related to whether the minimum denomination has the ability to change and whether the offering is being made with restrictions, as described below.

Like the alternative above for auto-population of data from NIIDS, the MSRB has considered the alternative to collect this information from a third-party vendor, to the extent one exists. However, reliance on third-party vendors could limit the MSRB's flexibility and latitude to make the data available to the market, thus hindering the goal of increased regulatory transparency. The MSRB also considered collecting all of the proposed additional data through NIIDS, including the newly proposed data elements that are not currently input into NIIDS. However, those data elements are currently not available from NIIDS; thus, it is more practicable for the MSRB to collect the information directly on Form G–32. If DTC were at some point to change its data collection scope, the MSRB could revisit the approach.

The MSRB believes there would be many benefits associated with collection of the proposed additional data elements not currently collected in NIIDS, as these new data elements are currently not readily available or easily extractable by the MSRB. The proposed changes would ensure the MSRB can provide this information to the market, in the future, as appropriate, which would increase transparency, reduce information asymmetry, enhance market efficiency, and may assist individual investors and other market participants with more informed decision making. Additionally, should the MSRB disseminate some or all of this information, in the future, academic studies support disclosure and have consistently demonstrated that information disclosures on municipal bond issuances have benefited investors, particularly retail investors who have higher information acquisition costs than institutional investors.[51]

Finally, all the additional data elements would be useful for regulators to perform regulatory oversight of the primary offering practices and the secondary market trading practices to ensure a fair and efficient market.

In the context of this proposal, the relevant costs are those associated with providing information for the proposed new data elements. For the most part, this information is readily available to underwriters. However, it is useful to consider each of the below elements individually.

• *Ability for Minimum Denomination to Change*—The proposed rule change would include a ''yes/no'' flag on Form G–32 to indicate whether the minimum denomination for the new issue could change. Since this information is contained in the official statement, which is readily available to underwriters prior to issuance, the MSRB believes the costs associated with providing this information would be negligible.

• *Call Schedule*—The proposed rule change would require additional call information on Form G–32. Like most of the proposed data elements, call information is known to underwriters prior to issuance. Therefore, the costs associated with providing this information on Form G–32 primarily take the form of additional time needed to complete Form G–32. Like other proposed data elements, the MSRB believes that the time required to provide this information (and any subsequent cost) would not be significant.

• *Names of Municipal Advisors, Obligated Persons, Other than the Issuer and Additional Syndicate Managers (Senior and Co-Managers)*—The proposed rule change would require the names of municipal advisors, obligated persons, other than the issuer, and additional syndicate managers (if applicable) on Form G–32. This information is readily available to underwriters and the incremental cost of providing this information takes the form of additional time required to complete Form G–32.

• *Retail Order Period by CUSIP*—The proposed rule change would require more retail order period information on Form G–32. Specifically, underwriters would be required to provide CUSIP-specific retail order period information. Like other of the proposed data elements, this information is well known to the underwriter prior to issuance. Therefore, the burden of providing this proposed additional information is limited to simply inputting it on the form. Thus, the main associated burden would be the additional time required to complete the form. Incrementally, this cost would be minor as it should not require significant time to enter the information.

• *Dollar Amount of Security Advance Refunded by Each CUSIP Number*—The proposed rule change would require the underwriter, in a refunding, to provide the dollar amount of each CUSIP number advance refunded in an issue. The dollar amount of CUSIP numbers being advance refunded is readily available and should not be difficult for underwriters to gather and to provide to the market, as underwrites should already have the information on hand.

• *LEIs for Credit Enhancers and Obligated Person(s), Other than the Issuer, if Available*—The proposed rule change would require the LEI for the obligated person, other than the issuer, and any credit enhancers to be provided, if readily available. In the case of the LEI for credit enhancers, this

[51] *See* Christine Cuny, ''When Knowledge is Power: Evidence from the municipal bond market,'' Journal of Accounting and Economics, 2017, and Komla Dzigbede, ''Regulatory Disclosure Interventions in Municipal Securities Secondary Markets: Market Price Effects and the Relative Impacts on Retail and Institutional Investors,'' Working Paper, State University of New York at Binghamton, July 2017.

information would only be required if credit enhancements were used. LEI information is publicly available through various platforms so the cost of obtaining and providing this information would be limited. Additional costs in the form of search time may be incurred if the underwriter does not have the appropriate LEI(s) on hand.

• *Restrictions on the Issue*—The proposed rule change would add a ''yes'' and ''no'' flag to Form G–32 for an underwriter to indicate whether the offering is being made with restrictions. Because this information should be readily available to underwriters prior to issuance, the MSRB believes the costs associated with providing this information would be negligible.

As noted above, for non-NIIDS-eligible offerings, the underwriter would not be required to manually complete these additional fields, except for the data field that indicates the ability for the minimum denomination of an offering to change, where the underwriter would provide a ''yes/no'' flag to indicate whether the original minimum denomination for the issue has the ability to change, and the data field that indicates whether the offering is being made with any restrictions.

The MSRB believes that the immediate increase in regulatory transparency and enhanced quality control, along with the potential long-term accrued benefits of disseminating the information, in the future, would outweigh the burden imposed on underwriters.[52]

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the proposed rule change may improve the efficiency of the municipal securities market by promoting a uniform practice and consistency and transparency of information. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation. However, the MSRB believes that the benefits would outweigh the costs over the long term. Additionally, in the MSRB's view, the proposed changes would not result in an undue burden on competition since they would apply to all underwriters equally.

[52] For B2B submissions, to provide the above-proposed data elements, this submitter would incur development costs to code for the new submission format since their information is not auto-populated on Form G–32 from NIIDS. The MSRB realizes that this firm would most likely face greater up-front costs in the event of a rule change due to the one-time cost to revise the firm's B2B submission code than firms submitting manually.

Overall, the MSRB believes, in aggregate, the above proposed changes should bring additional benefits to the primary and secondary markets, with relatively limited costs to market participants. The MSRB has assessed the impact of the proposed changes and believes that the likely aggregate benefits should accrue and outweigh the likely costs over the long term.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As previously noted, on September 14, 2017 and July 19, 2018, the MSRB published the Concept Proposal [53] and Request for Comment,[54] respectively, seeking public comments on various aspects of current primary offering practices and setting forth several questions related to Rule G–11 and Rule G–32, as well as Form G–32 data fields. Following its review of the comments, the MSRB also conducted additional outreach with various market participants. The following summarizes the comments received on both the Concept Proposal and the Request for Comment and sets forth the MSRB's responses thereto. With regard to the Concept Proposal, the MSRB only provides responses to comments regarding those items that were not subsequently addressed in the Request for Comment. With respect to the Request for Comment, the MSRB provides responses to comments for each proposed change therein as set forth below.

Summary of Comments Received in Response to the Concept Proposal

The MSRB received 12 comment letters in response to the Concept Proposal. BDA and SIFMA both indicated their belief that current primary offering practices are adequate, and they saw no need for sweeping changes. NABL focused its comments on questions in the Concept Proposal that it believed could result in unintended consequences on dealers in primary offerings. NAMA indicated that its main concern was ''that elements of the Concept Proposal suggest MSRB rule changes that exceed the MSRB's statutory authority.'' Other commenters provided views on various aspects of the Concept Proposal as set forth in the summary below.

[53] MSRB Regulatory Notice 2017–19 (September 14, 2017).

[54] MSRB Notice 2018–15 (July 19, 2018).

Rule G–11—Primary Offering Practices

Bona Fide Public Offering

In the Concept Proposal, the MSRB sought comment on whether there should be a requirement in Rule G–11 that syndicate members must make a ''bona fide public offering'' of municipal securities at the public offering price. The MSRB asked, among other things, how such a requirement would apply, what definition of ''bona fide public offering'' should apply, what documentation would be necessary to document compliance and whether issuing guidance might be a better alternative.

Four commenters provided comments on this issue,[55] with three commenters expressly opposing any rulemaking by the MSRB with respect to ''bona fide public offerings.'' [56] NABL and SIFMA noted that the contract between the issuer and the underwriter dictates whether there is a requirement to make a bona fide public offering at the public offering price and that the MSRB should not inject itself into those negotiations.[57] SIFMA stated its concern that creating a regulatory requirement that offerings must be undertaken in a bona fide public offering would ultimately require a much more extensive set of regulatory changes and line drawing to deal with many situations where a traditional public offering may appropriately not be sought.[58] According to SIFMA, this would raise considerable risk of regulations driving market decisions rather than the intentions of the party or free market forces.[59] Finally, SIFMA noted that it is in the process of reviewing its Master Agreement Among Underwriters (''AAU'') and will consider what, if any, changes could be made to address some of the issues related to a syndicate member's ''bona fide public offering'' obligations.[60]

NABL suggested that the MSRB update its guidance with respect to Rule G–17 to clarify that, if an underwriter is not contractually obligated to conduct a bona fide public offering, the underwriter should be required to indicate this point, as well as any material risks to the issuer of not conducting a bona fide public offering, in its disclosures under Rule G–17.[61] SIFMA suggested that the MSRB could

[55] BDA Letter I, NABL Letter I, TMC Bonds Letter I and SIFMA Letter I.

[56] BDA Letter I, NABL Letter I and SIFMA Letter I.

[57] NABL Letter I at 1; SIFMA Letter I at 4–5.

[58] SIFMA Letter I at 4.

[59] *Id.*

[60] SIFMA Letter I at 5–6.

[61] NABL Letter I at 1.

consider issuing interpretive guidance under Rule G–17 relating to material failures of a syndicate member to adhere to the contractual offering requirements that have a material adverse impact on the syndicate or the issuer.[62]

TMC Bonds stated that it is possible that the closed nature of the traditional syndicate structure has an unintended consequence—instead of assuring that the public has access to new issue municipal securities, only members of the syndicate or participants in a distribution agreement have such access.[63] TMC Bonds suggested that the MSRB could consider that a ''bona fide public offering'' may be accomplished by posting new issues on a ''market center,'' independent of syndicate structure, allowing investors (via a dealer) with no access to the retail order period to enter orders for new issues.[64] TMC Bonds noted that this would allow the ''public'' to have access to new issues in a more transparent manner than in a syndicate retail order period.[65] TMC Bonds suggested that, among other requirements, dealers submitting orders would need to provide an attestation that orders are from ''bona fide'' retail investors, and anonymous orders would not be allowed.[66] Finally, SIFMA noted that the Internal Revenue Service's (IRS) issue price rules should take the lead on matters related to bona fide public offerings and initial offering prices and that the MSRB should wait on any rulemaking in this area until the market has adapted to the IRS requirements.[67]

In response to the comments received, the MSRB agrees with NABL and SIFMA that the contract between the issuer and the underwriter dictates whether there is a requirement to make a bona fide public offering at the public offering price. As a result, the MSRB determined to set aside discussions related to amending Rule G–11 to require syndicate members to make a bona fide public offering of municipal securities.

Free-to-Trade Wire

The MSRB sought comment on whether the senior syndicate manager should issue the free-to-trade wire to all syndicate members at the same time. Two commenters provided input on this issue.[68] BDA believed the MSRB should require all senior syndicate managers to send a free-to-trade wire to all syndicate members once formal award has been assigned and that the wire should be sent on a maturity-by-maturity basis.[69]

Alternatively, SIFMA indicated that no regulatory requirements are needed to address the distribution of the free-to-trade wire.[70] SIFMA, in reviewing and revising its AAU, indicated it will consider whether to include provisions that would make more explicit the method by which free-to-trade information is communicated to syndicate members and other dealers involved in the distribution of a new issue.[71] If the MSRB were to pursue a rulemaking in this area, SIFMA stated it should be limited to ensuring communications occur on a material simultaneous basis and not pursuant to specified timeframes.[72]

Additional Information for the Issuer

The MSRB asked commenters whether the senior syndicate manager should be required to provide information to issuers on designations and allocation of securities in an offering and, if so, whether there would be a preferred method for providing the information. Additionally, the MSRB asked whether there were reasonable alternatives to this potential requirement and what benefits and burdens might be associated therewith.

Four commenters responded to this inquiry.[73] BDA indicated that not all issuers have access to detailed information about their securities (and in fact, according to BDA, frequently even syndicate members do not receive this information).[74] BDA recommended that the MSRB require syndicate managers to send the issuers such information, as well as the underwriting spread breakdown, upon request.[75] Similarly, GFOA noted that an issuer should be made aware of information distributed to the syndicate and that such information should be distributed to the entire syndicate at the same time, so no syndicate member has an advantage over another.[76] The City of San Diego indicated that it actively requests and receives the relevant information from syndicate managers. However, it stated that, if the information is not currently provided to all issuers, the City of San Diego believes that Rule G–11 should be amended to require the senior syndicate manager to provide it unless the issuer opts out of receiving it.[77]

The City of San Diego further indicated that the senior syndicate manager in negotiated sales should be required to obtain the issuer's approval of designations and/or allocations unless otherwise agreed to between the parties.[78] GFOA indicated that it is a best practice to have discussions about the issuer's approval of designations and/or allocations.[79]

SIFMA indicated that it was unaware of any circumstances where a syndicate manager refused to provide information to an issuer or where an issuer complained that such information was withheld.[80] If the MSRB were to undertake rulemaking in this area, SIFMA stated that the senior syndicate manager should only be required to provide the information to the issuer upon request.[81] Finally, SIFMA stated that a senior syndicate member should not be required to obtain the issuer's approval of designations and/or allocations.[82] According to SIFMA, most issuers likely have no interest in approving allocations, and those that do, normally reach agreement with the syndicate manager to do so.[83] SIFMA is unaware of circumstances where a syndicate manager has agreed to allow the issuer to approve of designations/allocations and then has failed to do so.[84]

Alignment of the Payment of Sales Credits for Group Net Orders With the Payment of Sales Credits for Net Designation Orders and Shortened Timeframe

The MSRB asked commenters whether the timing of the payment of sales credits on group net orders should be aligned with the timing of the payment of sales credits on net designated orders. Two commenters responded.[85]

BDA recommended that the MSRB align the time period for the payment of sales credits on both group net and net designated to 10 business days.[86] SIFMA, on the other hand, indicated that absent evidence of significant problems with the current timeframes, the MSRB should make no changes.[87]

[62] SIFMA Letter I at 4–5.
[63] TMC Bonds Letter I at 1.
[64] TMC Bonds Letter I at 2.
[65] *Id.*
[66] *Id.*
[67] SIFMA Letter I at 5.
[68] BDA Letter I and SIFMA Letter I.
[69] BDA Letter I at 2.
[70] SIFMA Letter I at 7.
[71] SIFMA Letter I at 5.
[72] SIFMA Letter I at 7.
[73] BDA Letter I, City of San Diego Letter I, GFOA Letter I and SIFMA Letter I.
[74] BDA Letter I at 2.
[75] *Id.*
[76] GFOA Letter I at 1.
[77] City of San Diego Letter I at 1.
[78] *Id.*
[79] GFOA Letter I at 1.
[80] SIFMA Letter I at 7–8.
[81] SIFMA Letter I at 8.
[82] SIFMA Letter I at 9.
[83] *Id.*
[84] *Id.*
[85] BDA Letter I and SIFMA Letter I.
[86] BDA Letter I at 3.
[87] SIFMA Letter I at 10.

According to SIFMA, the determinations of these two payments are based on different inputs that could drive the time disparity.[88]

Priority of Orders and Allocation of Bonds

Four commenters provided comment on whether Rule G–11 should be amended to explicitly state the process by which orders must be given priority.[89]

BDA and the City of San Diego believed that the rule should be amended to require senior syndicate managers, in negotiated sales, to allocate retail priority orders up to the amount of priority set by the issuer before allocating to lower priority orders, unless the issuer provides otherwise.[90] SIFMA, however, stated that the current priority provisions achieve an appropriate balance of competing legitimate interests in the primary offering distribution process.[91] SIFMA stated that syndicate members are obligated to follow the direction given by the issuer with regard to the priority for filling orders on that issuer's primary offering offerings, and it is critical that MSRB rules not impede this practice.[92] Further, according to SIFMA, existing MSRB guidance under Rule G–17 is adequate to address situations where the syndicate has materially departed from priority requirements.[93] GFOA stated that the issuer's priority of order designations are stated on the pricing wire and, if the issuer has indicated its preference for priority, the senior syndicate manager should abide by the issuer's preference.[94]

In response to the comments received, the MSRB determined not to seek additional comment on the proposed amendment to explicitly define the process by which orders must be given priority in a primary offering. The MSRB believes that the requirements under Rule G–11 regarding priority of orders and the interpretative guidance under Rule G–17 expressly address how orders are given priority. At this time, the MSRB believes that additional rulemaking would not enhance existing priority and allocation related rules and guidance.

Rule G–32—Disclosures in Connection With Primary Offerings

Disclosure of the CUSIPs Advance Refunded and the Percentages Thereof

The MSRB requested comment on whether the MSRB should require underwriters to disclose, within a shorter timeframe than is currently required, and to all market participants at the same time, CUSIPs advance refunded and the percentages thereof. Six commenters provided their views.[95]

The City of San Diego, NFMA and Wells Capital agreed that underwriters should disclose the refunding CUSIPs to all market participants at the same time.[96] Wells Capital noted that incomplete refunding disclosures or selective disclosures can create inequitable trading advantages for those obtaining refunding information prior to it being posted on EMMA.[97] NFMA stated that the most effective and least costly solution to ensure all investors have equal access to advance refunded CUSIP information is the disclosure of information to EMMA at the same time, as soon as practicable.[98] BDA agreed that the MSRB should require the senior syndicate manager or sole manager to disclose the CUSIPs advance refunded and the percentages thereof within a short period following the pricing of the refunding bonds, if available.[99] SIFMA questioned the value of requiring submission of the percentages.[100]

NABL indicated that, while it has no view as to whether such a requirement should be adopted, it does believe it is important that any requirement not serve to indirectly regulate issuers by creating a *de facto* requirement that CUSIPs be identified by the issuer at pricing or any time before the issuer is otherwise obligated to provide such information.[101]

SIFMA believed the deadline for submitting advance refunding documents should remain at the current five business days after closing.[102] SIFMA noted that, while making information about advance refunded bonds available at an earlier timeframe would be beneficial to the marketplace, it cautioned that the MSRB should thoroughly analyze the changes required to be made to Form G–32 and the EMMA primary market submission system.[103] Further, SIFMA stated that, if a municipal advisor participates, the municipal advisor rather than the underwriter should be required to submit the advance refunding document and associated information to EMMA.[104]

Submission of Preliminary Official Statements to EMMA

Nine commenters addressed the question about whether Rule G–32 should require the posting of the preliminary official statement (''POS'') to EMMA.[105] Four commenters believed there should be a requirement that the POS be submitted to EMMA promptly.[106] The City of San Diego noted that there is no valid reason for some market participants to have access to the POS before others.[107] It indicated that the underwriter in a negotiated sale and the municipal advisor in a competitive sale should be required to submit the POS to EMMA concurrently with, or within one business day of, receiving confirmation from the issuer that the POS has been electronically printed/posted.[108] If the information changes, the City of San Diego believed the underwriter or municipal advisor should be required to post a supplement or remove the POS if it becomes stale.[109] Similarly, NFMA supported submission of the POS to EMMA prior to pricing to ensure that all market participants, including holders of parity bonds, have equal access to the latest disclosure documents of an issuer.[110] Paganini and Wells Capital urged the MSRB to require underwriters (and municipal advisors, in the case of Wells Capital) to promptly submit the POS to EMMA so all potential buyers/investors have access to the information at the same time.[111]

Five commenters opposed requiring the mandatory posting of a POS to EMMA.[112] Three commenters believed such a requirement would be outside the MSRB's jurisdiction and would be indirect regulation of issuers by the MSRB in violation of the Exchange

[88] *Id.*

[89] BDA Letter I, City of San Diego Letter I, GFOA Letter I and SIFMA Letter I.

[90] BDA Letter I at 3 and City of San Diego Letter I at 1.

[91] SIFMA Letter I at 10.

[92] *Id.*

[93] SIFMA Letter I at 12.

[94] GFOA Letter I at 1.

[95] BDA Letter I, City of San Diego Letter I, NABL Letter I, NFMA Letter I, SIFMA Letter I and Wells Capital Letter I.

[96] City of San Diego Letter I at 1, NFMA Letter I at 2 and Wells Capital Letter I at 2.

[97] Wells Capital Letter I at 2.

[98] NFMA Letter I at 2.

[99] BDA Letter I at 3.

[100] SIFMA Letter I at 14.

[101] NABL Letter I at 2.

[102] SIFMA Letter I at 13.

[103] *Id.*

[104] SIFMA Letter I at 14.

[105] BDA Letter I, City of San Diego Letter I, GFOA Letter I, NABL Letter I, NAMA Letter I, NFMA Letter I, Paganini Letter I, SIFMA Letter I and Wells Capital Letter I.

[106] City of San Diego Letter I, NFMA Letter I, Paganini Email I and Wells Capital Letter I.

[107] City of San Diego Letter I at 1–2.

[108] *Id.*

[109] City of San Diego Letter I at 2.

[110] NFMA Letter I at 2.

[111] Paganini Email I at 1 and Wells Capital Letter I at 2.

[112] BDA Letter I, GFOA Letter I, NABL Letter I, NAMA Letter I and SIFMA Letter I.

Act.[113] GFOA indicated that the POS should only be posted at the direction of the issuer.[114] NAMA believed that requiring the municipal advisor to post the POS could cause them to be engaging in broker-dealer activity and could possibly force them to violate their fiduciary responsibilities to their municipal issuer clients if posting the information may be counter to the issuer's wishes or benefit.[115] According to SIFMA, the POS as a disclosure document is incomplete, subject to change and quickly replaced by the final official statement; as marketing material, it would transform EMMA from a disclosure and transparency venue to a central marketplace.[116] Additionally, according to SIFMA, any pre-sale posting of the POS would require issuer consent, thus the MSRB would need to work with the issuer community to ensure they would be willing to give such consent. SIFMA also noted that the MSRB previously sought comment on this same issue in 2012 and noted that ''very little has changed since then.'' [117] If the MSRB chooses to pursue rulemaking in this area, SIFMA indicated that the MSRB should carefully consider the points raised by SIFMA and other commenters in response to the 2012 release.[118] Two commenters noted the difficulty in ensuring that updated information is disseminated once a POS has been posted. For example, BDA stated that the MSRB would need to develop a mechanism to ensure that everyone who viewed a POS on EMMA would receive any supplements subsequently provided.[119] Similarly, NAMA asked how updated information would be ''flagged as being revised'' and how a dealer would reach investors who had previously received a POS that was now stale.[120]

The MSRB agrees with the majority of commenters that there should not, at this time, be a requirement to post the preliminary POS to EMMA. Because the POS is more likely to change than the OS, the MSRB agrees that it would be difficult to ensure that the POSs posted were current and not outdated and that posting such documents could lead to confusion and misinformation about a particular issue. In addition, issuers currently are free to upload their preliminary POS to EMMA if they so choose.

Whether Non-Dealer Financial Advisors Should Make the Official Statement Available to the Underwriter After the Issuer Approves It for Distribution

Three commenters provided comment on this question.[121] BDA and SIFMA urged the MSRB to amend Rule G–32(c) to apply to all municipal advisors [122] instead of only to dealer financial advisors.[123] NAMA indicated that the municipal advisor should not have the responsibility to make the official statement available to the underwriter unless tasked to do so by the issuer.[124] NAMA noted that municipal advisors should be removed all together from Rule G–32(c) because Exchange Act Rule 15c2–12 sets forth a process by which an underwriter obtains the official statement.[125]

Whether the MSRB Should Auto-Populate Into Form G–32 Certain Information That Is Submitted to NIIDS But Is Not Currently Required To Be Provided on Form G–32

The MSRB received three comments on the question of whether Form G–32 should be amended to require certain additional data fields that would be auto-populated with information currently submitted to NIIDS.[126] BDA recommended, generally, that the MSRB auto-populate information from NIIDS into Form G–32, and NAMA indicated that this is the type of review the MSRB should be undertaking to reduce the compliance burden on regulated entities.[127] SIFMA suggested that auto-populating Form G–32 with initial minimum denomination information from NIIDS would assist the marketplace overall in better complying with MSRB Rule G–15(f), on minimum denominations.[128] SIFMA also suggested that certain call-related fields in NIIDS might be useful if included on Form G–32, but suggested that the MSRB first should conduct a thorough review of the data to ensure that the structure of the data provided in NIIDS provides an accurate representation of the different call features used in the municipal securities market.[129] In any event, SIFMA suggested that the MSRB should undertake a notice and comment period with respect to any additional data elements it would propose to make public through EMMA.[130]

Whether the MSRB Should Request Additional Information on Form G–32 That Currently Is Not Provided in NIIDS, and If So, What Data

Five commenters provided comments on this issue.[131] All five of the commenters thought certain items would be useful if included on Form G–32, and disseminated, but none believed all of the identified potential items from the Concept Proposal should be included. The City of San Diego and NAMA specifically thought the municipal advisor fee should not be included, and the City of San Diego also believed the management fee should be excluded because of the vast differences in how it is determined between differing transactions.[132] SIFMA indicated that EMMA is not the proper venue for disclosing fees and expenses that are incorporated into the information provided in the official statement.[133] Additionally, BDA indicated that minimum denomination and call information would be useful on Form G–32.[134]

NAMA indicated that additional information would benefit issuers and the marketplace, especially information related to true interest cost and yield to maturity.[135] SIFMA raised concerns regarding the current process for submitting information on commercial paper issues, which are not subject to the NIIDS requirement and, according to SIFMA, ''consistently raise significant operational and compliance difficulties.'' [136] SIFMA asked that the MSRB engage in discussions with SIFMA members to assess the operational issues and develop solutions to enhance efficiency and effectiveness of commercial paper submissions.[137]

Two commenters specifically noted their support for the inclusion of legal entity identifiers (''LEIs'') on Form G–32.[138] GLEIF indicated its belief that

[113] GFOA Letter I, NABL Letter I and NAMA Letter I.

[114] GFOA Letter I at 2.

[115] NAMA Letter I at 2–3.

[116] SIFMA Letter I at 15.

[117] SIFMA Letter I at 16.

[118] *Id. See also* MSRB Notice 2012–61 (Dec. 12, 2012).

[119] BDA Letter I at 4.

[120] NAMA Letter I at 3–4.

[121] BDA Letter I, NAMA Letter I and SIFMA Letter I.

[122] In discussing the Request for Comment, commenters used the terms ''financial advisor'' and ''municipal advisor'' interchangeably for purposes of describing a dealer acting as a financial advisor.

[123] BDA Letter I at 4 and SIFMA Letter I at 19.

[124] NAMA Letter I at 2.

[125] NAMA Letter I at 4.

[126] BDA Letter I, NAMA Letter I and SIFMA Letter I.

[127] BDA Letter I at 4 and NAMA Letter I at 5.

[128] SIFMA Letter I at 19.

[129] *Id.*

[130] *Id.*

[131] BDA Letter I, City of San Diego Letter I, GLEIF Letter I, NAMA Letter I and SIFMA Letter I.

[132] City of San Diego Letter I at 2 and NAMA Letter I at 5.

[133] SIFMA Letter I at 19.

[134] BDA Letter I at 4.

[135] NAMA Letter I at 5.

[136] SIFMA Letter I at 24.

[137] *Id.*

[138] GLEIF Letter I and SIFMA Letter I.

requiring issuers to register for LEIs would help move towards global harmonization for U.S. issuers to be identified by LEIs.[139] SIFMA noted that Form G–34 should have a field for the submission of LEIs, as the LEI system would be useful to the MSRB in terms of enhancing transparency in the issuance of municipal securities.[140] While SIFMA recognized the potential costs to issuers to register for LEIs, it believed the MSRB should strongly promote the value of obtaining LEIs by issuers and obligors as part of the issuance process.[141] Additionally, SIFMA suggested the MSRB provide written materials describing the benefits of and the process for obtaining LEIs to assist the industry in promoting the benefits to issuers and obligors during the issuance process.[142]

Other Questions

Has the IRS's issue price rule impacted any primary offering practices in the municipal securities market, and in what ways? If any MSRB rules are affected, what, if any, amendments should be considered?

BDA, GFOA, NABL and SIFMA each provided comments on this question. BDA believed the IRS's issue price rule has not changed the primary offering practices for municipal securities.[143] NABL stated that no MSRB rule should be adopted if it would undermine, conflict with or make impractical the continued compliance with the issue price rules.[144] GFOA expressly supported NABL's position.[145] Finally, SIFMA noted that the issue price rules should take the lead on matters related to bona fide public offerings and initial offering prices and that the MSRB should wait on any rulemaking in this area until the market has adapted to the IRS requirements.[146] The MSRB determined that the rules being considered in the Concept Proposal did not impact or conflict with the IRS issue price rules, nor did they impact an underwriter's ability to conform with those rules.

Are there any other primary offering practices that the MSRB should consider in its review?

Three commenters provided thoughts on other primary offering practices the MSRB should consider.[147] Doty suggested that the MSRB consider amending Rule G–32(iii)(A) to require disclosure of ''the amount of any compensation received by the broker, dealer or municipal securities dealer at any stage of the offering from an obligated person or any other party, in addition to the governmental issuer, in connection with completion of one or more stages of the offering or completion of the entire offering or both.'' [148] According to Doty, without disclosure, investors would believe that the underwriter/placement agent received only the compensation paid by the governmental issuer, without knowledge of the underwriter's/placement agent's full compensatory motivation to complete the transaction.[149] Doty further suggested that municipal advisors should disclose all of their compensation in both negotiated and competitive offerings and whether their compensation was contingent upon the closing of the transaction or achievement of any other factor, such as the size of the transaction.[150] The MSRB agrees that the issue of compensation paid to the underwriter is an issue of interest, but believes consideration of this issue should be undertaken separately from the primary offering practices rule review.

NAMA suggested that the MSRB should ensure that all references in the MSRB rule book to dealer-municipal advisors, municipal advisors and financial advisors ''correctly reflect the actual duties and responsibilities of [m]unicipal [a]dvisors that are stated in the Exchange Act and the Final Municipal Advisor Rule.'' [151] Additionally, NAMA urged the MSRB to address the impact of rulemaking on small municipal advisory firms.[152] The MSRB agrees that certain terminology and references in its rules could be clarified or modernized as a result of the municipal advisor regulatory regime, but that consideration of such changes should be undertaken separately from the primary offering practices rule review.

Wells Capital asked that the MSRB address in Rule G–32 the current practices related to the ''deemed final'' POS required under SEC Rule 15c2–12 regarding both timing of the pricing and completeness of the deemed final POS.[153] In Wells Capital's experience, pricing of municipal deals usually is not based on a deemed final POS as is required under Rule 15c2–12.[154] Additionally, Wells Capital requested that the MSRB address issues regarding the minimum time needed between the issuance of a deemed final POS and pricing. Wells Capital urged the MSRB to impose a minimum number of business days between the distribution of a deemed final POS and the pricing of that transaction. According to Wells Capital, underwriters attempt to rush final pricing without a deemed final POS in the hopes that the buy-side will not detect all the ''warts'' in the transaction or will not raise questions that have not been adequately addressed in the POS. Finally, Wells Capital urged the MSRB to address current practices by issuers and underwriters related to selective disclosure.[155] For jurisdictional reasons the MSRB is unable to address the issues proposed by Wells Capital.

What are the reasonable alternatives to each of the above proposals? For example, are any of the proposals that would require a rule change better addressed through other means, such as interpretive guidance, compliance resources, additional outreach/education, new MSRB resources, or voluntary industry initiatives? Are there less burdensome or more beneficial alternatives?

The MSRB received no comments related to this set of questions.

After carefully considering commenters' suggestions and concerns regarding the Concept Proposal, the MSRB determined to seek further comment, on certain of the concepts, as discussed in more detail below.

Summary of Comments Received in Response to the Request for Comment

The Request for Comment sought further comment on proposed amendments to Rule G–11 related to (1) simultaneous issuance of the free-to-trade wire; (2) providing additional information to the issuer related to designations and allocations; and (3) alignment of the timeframe for the payment of group net sales credits with the payment of net designation sales credits. Additionally, the Request for Comment sought input on proposed amendments related to Rule G–32 and Form G–32, including (1) disclosures of CUSIP numbers advance refunded and the percentages thereof; (2) whether non-dealer municipal advisors should be required to make the official statement available to the underwriter after the issuer approves it for

[139] GLEIF Letter I at 1.

[140] SIFMA Letter I at 21.

[141] *Id.*

[142] *Id.*

[143] BDA Letter I at 5.

[144] NABL Letter I at 2.

[145] GFOA Letter I at 1.

[146] SIFMA Letter I at 24.

[147] Doty Letter I, NAMA Letter I and Wells Capital Letter I.

[148] Doty Letter I at 1.

[149] Doty Letter I at 2.

[150] *Id.*

[151] NAMA Letter I at 6.

[152] *Id.*

[153] Wells Capital Letter I at 3.

[154] *Id.*

[155] *Id.*

distribution; (3) whether Form G–32 should be auto-populated with additional information from NIIDS; and (4) whether Form G–32 should be amended to request additional information that would not be auto-populated from NIIDS. The MSRB received 10 comments letters in response, which are summarized below.

Rule G–11—Primary Offering Practices

Free-to-Trade Wire

The Request for Comment again sought feedback on proposed amendments to Rule G–11, on primary offering practices, to add a requirement that the senior syndicate manager issue the free-to-trade wire to all syndicate members at the same time. BDA, GFOA and SIFMA supported this proposed change. However, BDA recommended that the rule not prescribe the manner of dissemination of a free-to-trade wire, specifically, because industry customs change and eventually dissemination of such information may be made in another manner.[156] Instead, BDA suggested modifying the proposed language to require notification ''in any reasonable manner accepted and customary'' in the industry.[157] GFOA suggested that the proposed change include language that addresses the Internal Revenue Service (IRS) issue price rules.[158] Specifically, GFOA suggested that language be included that indicates trades may not be allowable at any price if issue price restrictions (such as hold-the-price restrictions) are in place.[159]

As previously noted, the MSRB believes equal access to information is important to the fair and effective functioning of the market for primary offerings of municipal securities. In addition, after consulting with stakeholders, the MSRB added selling groups to the parties that should receive the free-to-trade information as proposed. The MSRB believes requiring dissemination of this information for receipt by all syndicate and selling group members at the same time, would prevent preferential access to the free-to-trade information. In response to commenters, the MSRB is not proposing to dictate the timing of when, or the form of how, the free-to-trade communication should be sent, but that dissemination be electronic by an industry-accepted method. The MSRB does not believe it is prudent or necessary to include a reference to IRS issue price rules in proposed changes to Rule G–11, as syndicate and selling group members have an existing obligation to comply with all other rules and regulations that may apply to primary offerings.

Additional Information for the Issuer

In the Request for Comment, the MSRB asked whether MSRB Rule G–11(g) should be amended to require the senior syndicate manager to provide to the issuer the same information it provides to the syndicate regarding the designations and allocations of securities in an offering. Four commenters generally supported the proposed change.[160] Both BDA and SIFMA indicated that the information should be required to be provided to the issuer only upon request and suggested that additional issuer education regarding the information and its availability should be undertaken.[161] SIFMA also noted that, if Rule G–11 is amended as proposed, it should provide that issuers can opt out of receiving this information.[162] Additionally, SIFMA suggested that the information should be provided in a consistent manner across the industry so that it is useable.[163] GFOA and NAMA supported having the senior syndicate manager provide the issuer, at all times, with the same information it provides the syndicate regarding designations and allocations.[164] GFOA noted that education of issuers cannot replace the actual receipt of the information,[165] and NAMA indicated that it is not helpful to allow issuers to opt out of receiving the information or to direct them to a website to review the official statement.[166]

In response to the comments received, the MSRB has determined to propose requiring the senior syndicate manager to provide issuers the same information it provides to the syndicate regarding both the designations and allocations of securities in an offering. As previously noted, the MSRB believes that, while issuers sometimes may be involved in reviewing and approving allocations or may be able to request information regarding designations and allocations from various sources, including the senior syndicate manager and certain third-party information resources, some issuers are unaware this information is available and can be requested. By making dissemination of this information to issuers a requirement, the MSRB ensures that all issuers, regardless of size, will receive the designation and allocation information relevant to their primary offerings. The MSRB also notes that because underwriters are already required to provide this information to syndicate members, no additional documents should have to be produced to comply with the proposed requirement.

Alignment of the Timeframe for the Payment of Group Net Sales Credits With the Payment of Net Designation Sales Credits

In the Request for Comment, the MSRB sought input on whether Rule G–11 should be amended to align the time period for the payment of group net sales credits (currently, 30 calendar days following delivery of the securities to the syndicate) with the payment of net designation sales credits (10 calendar days following delivery of the securities to the syndicate). BDA supported this change,[167] while SIFMA opposed it.[168] According to SIFMA, the determination of the amounts due and owing to each syndicate member for group orders is based on different information than that needed for the determination of amounts due and owing for net designation orders.[169] SIFMA stated its belief that, absent evidence of significant problems with the current timing of the payments, no changes should be made.[170]

After carefully considering the potential differences in the timing of these payments, the MSRB has proposed amendments to Rule G–11 that would align the payment of net designation and group net sales credits. The MSRB believes that based on current practices there is no reason for the discrepancy in the timing of the payment of these sales credits and that aligning these payments would avoid unnecessary credit risks among syndicate members. If fact, several stakeholders indicated that they are already making group net sales credit payments consistent with the 10-day requirement.

Rule G–32—Disclosures in Connection With Primary Offerings

Equal Access to the Disclosure of the CUSIP Numbers Advance Refunded and the Percentages Thereof

In the Request for Comment, the MSRB asked for comment on proposed amendments to Rule G–32, on disclosures in connection with a

[156] BDA Letter II at 1.

[157] *Id.*

[158] GFOA Letter II at 2.

[159] *Id.*

[160] BDA Letter II; GFOA Letter II; NAMA Letter II; and SIFMA Letter II.

[161] *Id.*

[162] SIFMA Letter at 2.

[163] *Id.*

[164] GFOA Letter II at 1; and NAMA Letter II at 5.

[165] GFOA Letter II at 1.

[166] NAMA Letter II at 5.

[167] BDA Letter II at 2.

[168] SIFMA Letter II at 2.

[169] *Id.*

[170] SIFMA Letter II at 3.

primary offering, to require disclosures of CUSIP numbers advance refunded and percentages thereof to be made to all market participants at the same time. GFOA and NFMA supported this proposed change, with both indicating a preference for a shorter timeframe for disclosure than the current five business days.[171] BDA and SIFMA noted they support access to this information, but in light of recent tax changes that eliminate some advance refundings, they questioned the value of such a requirement.[172]

The MSRB believes that advanced refunding information should be provided to market participants, at the same time, because equal access to advance refunding information is important for the efficient functioning of the primary market for municipal securities.

Additionally, the Request for Comment sought input on whether information on *potential* advance refundings would be useful to the market (*i.e.,* a ''gray list''). The MSRB asked whether there should be a requirement, or a voluntary option, for underwriters to submit to EMMA lists of bonds, by CUSIP number, that the issuer has indicated *may be* advance refunded. NFMA indicated that a list of partial refunding candidates should be made available on EMMA.[173] GFOA and SIFMA objected to the submission of information on potential refundings, indicating that information should be provided only once the information regarding the advance refunded maturities is final.[174]

At this time, given that ''potential refunding'' is not a consistently defined term in the municipal securities market, the MSRB believes that the disclosure of such information could be confusing to investors. Thus, the MSRB has determined not to pursue rulemaking regarding the disclosure of ''potential'' refundings in the market.

Whether Non-Dealer Municipal Advisors Should Make the Official Statement Available to the Managing or Sole Underwriter After the Issuer Approves It for Distribution

In the Request for Comment, the MSRB asked for feedback on proposed amendments to Rule G–32(c) that would extend the requirements of that rule to non-dealer municipal advisors. Acacia, Ehlers, NAMA and PRAG opposed this suggested change,[175] while BDA, NFMA and SIFMA supported it.[176] Acacia, Ehlers, NAMA and PRAG urged the MSRB to eliminate Rule G–32(c) entirely, noting that there is no longer a need for this requirement, even with respect to dealer financial advisors, given that Exchange Act Rule 15c2–12 addresses the delivery of the official statement.[177] Acacia and NAMA indicated that, if the MSRB decides to amend the rule as proposed, further clarification would be needed to understand exactly how it would be applied (*e.g.,* terms should be defined and clarification given to application of the rule).[178] Acacia and NAMA also indicated that requiring the non-dealer municipal advisor to deliver the official statement to the underwriter blurred the lines between municipal advisor and broker-dealer roles.[179] NFMA believed that including non-dealer municipal advisors in this requirement would enhance market transparency and fairness.[180] SIFMA noted that there is no reason for the requirement to apply differently to dealer financial advisors and non-dealer municipal advisors.[181]

In response to commenters, the MSRB engaged in additional outreach on the usefulness of the requirements of Rule G–32(c). As a result of these additional discussions and the written comments received, the MSRB is proposing to eliminate Rule G–32(c) entirely. The MSRB agrees with commenters that there is no longer a need for this requirement because, as noted by commenters, SEC Rule 15c2–12 requires the delivery of the official statement to the underwriter by the issuer or its agent regardless of who prepares the document. This requirement, thus, encompasses those instances where a dealer acting as a financial advisor or non-dealer municipal advisor has prepared the official statement.

Additional Data Fields on Form G–32 Auto-Populated From NIIDS

In the Request for Comment, the MSRB sought public comment on the inclusion of certain additional data fields on Form G–32 that would be auto-populated with information underwriters currently are required to input into NIIDS. The Request for Comment included an appendix of those data elements on which comment was sought.[182]

BDA, SIFMA and the SEC Investor Advocate supported the inclusion of the proposed data fields on Form G–32.[183] SIFMA indicated that while it supports the auto-populating of minimum denomination information from NIIDS onto Form G–32, it does not believe the submitting underwriter should have an obligation to update minimum denomination changes over the life of the security.[184] The SEC Investor Advocate, however, encouraged the MSRB to consider requiring an ongoing disclosure obligation for minimum denomination information.[185]

For those instances where a primary offering is not NIIDS eligible, the MSRB noted in the Request for Comment, that these additional data fields would need to be input manually by the underwriter. SIFMA noted that the requirement to input information into such a large number of fields on a manual basis would create a significant burden on the dealer.[186] SIFMA urged the MSRB to consider exempting private placements and other non-NIIDS-eligible issues from the proposed rule.[187]

The MSRB is proposing to add 57 additional data fields on Form G–32, only one of which (*i.e.,* minimum denomination) would be required to be input manually for primary offerings that are not NIIDS eligible. Commenters agreed that, with respect to NIIDS-eligible offerings, the burden of compliance would be low given that this information is already required to be input into NIIDS. With respect to non-NIIDS-eligible offerings, however, the MSRB believes the benefits associated with requiring the manual entry of all 57 additional data points does not outweigh the burden of requiring the manual entry of this data. Particularly because non-NIIDS-eligible issues such as private placements are less likely to trade in the secondary market where this information would be useful. Therefore, with respect to non-NIIDS-eligible offerings, at this time, the MSRB is not proposing to require the underwriter manually input the remaining 56 proposed additional data fields.

[171] GFOA Letter II at 2; and NFMA Letter II at 2.

[172] BDA Letter II at 2; and SIFMA Letter II at 3.

[173] NFMA Letter II at 2.

[174] GFOA Letter II at 2; and SIFMA Letter II at 4.

[175] Acacia Letter II at 1; Ehlers Letter II at 1; NAMA Letter II at 1; and PRAG Letter II at 1.

[176] BDA Letter II at 2; NFMA Letter II at 2; and SIFMA Letter II at 4.

[177] Acacia Letter II at 1–2; Ehlers Letter II at 1; NAMA Letter II at 2–3; and PRAG Letter II at 1.

[178] Acacia Letter II at 2; and NAMA Letter II at 2–3.

[179] Acacia Letter II at 2; and NAMA Letter II at 3.

[180] NFMA Letter II at 2.

[181] SIFMA Letter II at 4.

[182] *See* Appendix A to MSRB Notice 2018–15 for the complete list of these data fields as originally proposed.

[183] BDA Letter II at 2; SEC Investor Advocate Letter II at 3; and SIFMA Letter II at 4.

[184] SIFMA Letter II at 4.

[185] SEC Investor Advocate Letter II at 5.

[186] SIFMA Letter II at 4.

[187] SIFMA Letter II at 5.

Additional Data Fields on Form G–32 Not Auto-Populated From NIIDS

In the Request for Comment, the MSRB sought comment on the addition of certain data fields on Form G–32 that would not be auto-populated with information from NIIDS and, thus, would require manual completion. Specifically, the MSRB sought comment on the addition of eight data fields on Form G–32.

Ability for minimum denomination to change—BDA, NFMA and the SEC Investor Advocate supported the inclusion of this information on Form G–32.[188] The SEC Investor Advocate indicated he also wants the MSRB to require the updating of minimum denomination information over the life of the security.[189] SIFMA supported adding a field for ''initial minimum denomination'' and suggested that a dealer should not be required to update minimum denomination information over the life of the security.[190]

The MSRB agrees with commenters that the information relating to whether the minimum denomination may change would be useful to regulators. In addition, this information would be useful to investors, should the MSRB disseminate the information in the future. However, the MSRB agrees with SIFMA that requiring an underwriter or dealer to continuously update this information for the life of the municipal security would be burdensome.

Additional syndicate managers—BDA objected to inclusion of this manual data field and stated that the information would not assist market participants and could impose new burdens on underwriters.[191] The SEC Investor Advocate supported including this data field, noting that it may provide additional transparency to the market.[192]

The MSRB believes that including this additional data field would be useful to regulators. The MSRB disagrees that providing this information is burdensome as this information is typically known at or before the pricing of an issue, and therefore, is generally readily available for disclosure by the senior syndicate manager.

Call schedule—BDA and SIFMA opposed including this data field and indicated that including this information would be burdensome for the underwriter.[193] SIFMA suggested that the underwriter be required to provide a link to the official statement instead.[194] NFMA and the SEC Investor Advocate supported the addition of this information and believed it would promote increased transparency and fairness to the market.[195]

The MSRB agrees with NFMA and the SEC Investor Advocate and is proposing to require this information on Form G–32. The MSRB believes requiring this information would immediately increase regulatory transparency, providing regulators with intermediate premium call dates and prices. Additionally, should the MSRB make this information available in the future, access to the relevant call information could help investors make more informed decisions.

LEI for credit enhancers and obligated person(s) if readily available—BDA objected to this data field, stating that this information is not easily obtainable in almost all instances and that the market would not benefit from this information.[196] BDA further noted that any benefits would not outweigh the burden to underwriters.[197] NFMA, the SEC Investor Advocate and SIFMA supported the inclusion of this data field on Form G–32.[198] The SEC Investor Advocate encouraged the MSRB to take more initiative, as appropriate, with respect to the use of LEIs, and encouraged the MSRB to continue incorporating LEIs into its rulemakings and engaging in industry outreach and education on the importance of obtaining LEIs, as well as the process for obtaining them.[199] SIFMA supported this proposed change and urged the MSRB to work with LEI issuers to ensure the most efficient and least burdensome collection methodology.[200]

The MSRB believes requiring this information on Form G–32, if readily available, would further promote the value of obtaining LEIs and encourage industry participants to obtain them as a matter of course. The MSRB also believes that LEI information provides for the more precise identification of parties that are financially responsible to support the payment of some or all of an issue and would further assist regulators and policymakers in identifying and monitoring risk exposure in the financial markets. In response to concerns regarding the potential burden of providing this information, the MSRB is only proposing LEI information be provided for obligated persons, other than the issuer, that is ''readily available.'' An LEI would be considered ''readily available'' if it were easily obtainable via a general search on the internet (*e.g.,* web pages such as *https://www.gleif.org/en/lei/search*).

Name of obligated person(s)—BDA, NFMA and the SEC Investor Advocate supported this proposed change.[201] The SEC Investor Advocate indicated that providing this information may provide additional transparency to the market.[202] They further noted that the name(s) of obligated persons in a primary offering are not always readily available, thus requiring this information on Form G–32 ''may help investors make more informed investment decisions and better understand who is legally committed to support the payment of all or some of an issue.'' [203] SIFMA questioned the value of having to manually key in the name of an obligated person, noting that there is no standard naming convention.[204]

During its stakeholder outreach, the MSRB also received comments regarding the potential burden of manually entering this information for issues in which there are multiple obligated persons, other than the issuer. The MSRB understands that those instances in which there are multiple obligated persons may be relatively infrequent. Thus, the benefit of having the entire financial picture, including the identity of all obligated persons, outweighs the proposed burden that may exist in the rare instances in which there are multiple obligated persons responsible for support payment and continuing disclosures.

The MSRB believes that the proposed data field would allow for easier access to important primary market information and enhance regulatory transparency. The MSRB also agrees with commenters, that should it make this information available in the future, it could help investors make more informed investment decisions.

Percentage of CUSIP numbers advance refunded—NFMA and the SEC Investor Advocate supported this

[188] BDA Letter II at 2–3; NFMA Letter II at 3; and SEC Investor Advocate Letter II at 4.

[189] SEC Investor Advocate Letter II at 5.

[190] SIFMA Letter II at 4.

[191] BDA Letter II at 3.

[192] SEC Investor Advocate Letter II at 7.

[193] BDA Letter II at 3; and SIFMA Letter II at 5.

[194] SIFMA Letter II at 5.

[195] NFMA Letter II at 3; and SEC Investor Advocate Letter II at 6–7.

[196] BDA Letter II at 3.

[197] *Id.*

[198] NFMA Letter II at 3; SEC Investor Advocate Letter II at 4–6; and SIFMA Letter II at 5.

[199] SEC Investor Advocate Letter II at 5.

[200] SIFMA Letter II at 5.

[201] BDA Letter II at 3; NFMA Letter II at 3; and SEC Investor Advocate Letter II at 7.

[202] SEC Investor Advocate Letter II at 7.

[203] *Id.*

[204] SIFMA Letter II at 5.

proposed data field.[205] The SEC Investor Advocate noted that providing this information to all market participants at the same time, would, in his view reduce information asymmetry, which may equate to more fairness and efficiency in the market.[206] BDA objected to this proposed data field noting that it was unnecessary and not meaningful.[207] BDA suggested that for holders of refunded bonds, the more useful information would be the portion of a particular CUSIP number that has been refunded.[208]

As previously noted, the MSRB agrees with commenters that while the proposed data field would be useful, the more useful data element would be the dollar amount of each CUSIP number advance refunded. As a result, the MSRB modified its proposed rule change accordingly.

Retail order period by CUSIP number—The SEC Investor Advocate supported including a ''yes'' or ''no'' flag by CUSIP numbers to identify orders that should not be retail orders, while SIFMA believes more thought should be given to the addition of this field because there are a variety of retail order period structures and the process for defining them can change intra-day.[209] In response, the MSRB determined to limit its request for retail order period information to the proposed ''yes'' or ''no'' flag by CUSIP. The MSRB believes that this information will enhance regulatory transparency. The MSRB also believes that, as currently contemplated, the potential benefits of collecting additional retail order period information by CUSIP are outweighed by the burdens it could impose on the industry.

Name of municipal advisor—NFMA and the SEC Investor Advocate supported this addition.[210] BDA objected and noted that this information is available in the official statement and not valuable information for secondary trading.[211] The MSRB believes including the name of the municipal advisor on Form G–32 would provide useful information to investors and issuers and allow them to evaluate the experience of a municipal advisor, should the MSRB disseminate the information, in the future. The MSRB anticipates making this field autofill as the underwriter begins to input the name of the municipal advisor into the applicable text box.

In addition, the MSRB asked commenters whether there were any other data fields that should be considered for inclusion on Form G–32. For example, the Request for Comment asked whether the MSRB should include a ''yes'' or ''no'' flag data field to indicate when a new issue is issued with restrictions such as being only available to qualified institutional buyers. NFMA supported this suggested additional data field, while SIFMA objected to its inclusion on Form G–32.[212] In response to commenters, the MSRB determined to add to its proposed data fields a ''yes'' or ''no'' flag to indicate whether a primary offering is being made with restrictions. The MSRB believes the additional information would assist regulators in more easily identifying transactions that may involve a restricted issue and should the MSRB disseminate the information in the future, it could enhance dealers' ability to identify issues that may be subject to restrictions during the course of buying and selling.

The MSRB considered the above-noted comments in formulating the proposed rule change herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2019–07 and should be submitted on or before May 3, 2019.

For the Commission, pursuant to delegated authority.[213]

Jill M. Peterson,

Assistant Secretary.

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[205] NFMA Letter II at 2; and SEC Investor Advocate Letter II at 6.

[206] SEC Investor Advocate Letter II at 6.

[207] BDA Letter II at 3.

[208] *Id.*

[209] SEC Investor Advocate Letter II at 6; and SIFMA Letter II at 5.

[210] NFMA Letter II at 3; and SEC Investor Advocate Letter II at 7.

[211] BDA Letter II at 3.

[212] NFMA Letter II at 3; and SIFMA Letter II at 5.

[213] 17 CFR 200.30–3(a)(12).