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## Proposed amendment to MSRB Rule G-34 clarifying CUSIP requirements in private placements

By Rudy S. Salo and Shannon Egan

On March 1, 2017, the Municipal Securities Rulemaking Board (MSRB) published a release (the Release) regarding its proposed amendment (the Amendment) to MSRB Rule G-34 (the Rule). The Rule governs, among other things, CUSIP numbers and other market information requirements. The Amendment is intended to clarify the Rule provisions addressing CUSIP number requirements for municipal bonds and other obligations sold in private placements/direct purchases. This alert will not address the ongoing loan versus security debate or the use of the term “municipal securities” throughout the Amendment.

The Amendment is intended to clarify, among other things, what the MSRB identifies as uncertainty regarding some of the CUSIP requirements contained in the Rule as presently written. Currently, the CUSIP requirements contained in the Rule apply only to a dealer acting as an “underwriter.” Many industry participants believe a CUSIP number is not required with respect to certain municipal transactions. Indeed, many commercial banks require no CUSIP number be issued with respect to bonds and other obligations purchased from municipal issuers that the banks treat as loans for accounting purposes.

In an attempt to define the application of the Rule, the MSRB proposes to amend the definition of “underwriter” to clarify that broker dealers acting as placement agents are subject to the CUSIP number requirements of the Rule. Consequently, the Amendment would require a CUSIP number on bonds and other obligations sold directly to a single purchaser by private placement agent, even if the purchaser has no view to secondary market resales or is purchasing for its own account.

As part of the Release, the MSRB is soliciting commentary regarding the proposed clarification of the application of the Rule to include private placements. The MSRB has specifically asked whether there should be an exception to the Rule for dealers in private placements of bonds or other obligations to a single purchaser. Nixon Peabody believes that creating such an exception is the simplest way to alleviate the confusion and supports the creation of the proposed exception in the Rule. Additionally, the MSRB is requesting feedback regarding the feasibility of obtaining assurances from purchasers, such as commercial banks, that they are purchasing without a view to secondary market resales, which is currently a common practice in private placements/direct purchases.

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We encourage commercial banks, broker dealers and others who may be affected by the Amendment to provide feedback to the MSRB regarding the above-referenced exception. Comments can be submitted directly to the MSRB by [clicking here](#). The MSRB is accepting comments regarding the Amendment until March 31. Additionally, Nixon Peabody will be providing comments on the Amendment and is happy to submit comments on your behalf.

For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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