

others. The MSRB notes that both Securities Act Rule 156(a) and NASD Rule 2210(d)(1)(A) include general standards for advertisements that are substantially the same as the standard set forth in MSRB rule G-21. As a result, the MSRB believes that a dealer advertisement of municipal fund securities that would be compliant with Securities Act Rules 156 and 482 if such securities were registered investment company securities also would be in compliance with MSRB rule G-21. Further, the MSRB believes that a dealer advertisement of municipal fund securities that would be compliant with NASD Rule 2210 and IM-2210-3 if such securities were registered investment company securities also would be in compliance with MSRB rule G-21.

Submission of Official Statements to the MSRB

Dealers selling municipal fund securities are subject to the requirement under rule G-36 that they submit copies of the official statement, together with completed Form G-36(OS), to the MSRB. In some cases, a dealer that has been engaged by an issuer of municipal fund securities to serve as its primary distributor (“primary distributor”) has in turn entered into relationships with one or more other dealers to provide further channels for distribution. These other dealers may include dealers that effect transactions directly with customers (“selling dealers”) or dealers that provide “wholesale” distribution services but do not effect transactions directly with customers (“intermediary dealers”).

The MSRB believes that, regardless of whether a formal syndicate or similar account has been formed among a primary distributor, the selling dealers and any intermediary dealers in a multi-tiered distribution system for a particular offering of municipal fund securities, the primary distributor for such offering has the responsibility set forth in rule G-36(f) to undertake all actions required under the provisions of rule G-36 and the corresponding recordkeeping requirements under rule G-8(a)(xv). These obligations include, but are not limited to, the submission of official statements (including amendments and updates) and completed Form G-36(OS) to the MSRB on a timely basis. The MSRB further believes that any selling or intermediary dealers for such offering that might be considered underwriters of the securities may rely upon the primary distributor to undertake these actions to the same extent as if they had in fact formed an underwriting syndicate as described in rule G-36(f).

¹ Section 529 college savings plans are higher education savings plan trusts established by states under section 529(b) of the Internal Revenue Code as “qualified state tuition programs” through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries.

² Municipal fund securities are exempt from the registration and other provisions of the Investment Company Act.

³ Rule G-21 defines advertisement as any material (other than listings of offerings) published or designed for use in the public, including electronic, media or any promotional literature designed for dissemination to the public, such as notices, circulars, reports, market letters, form letters, tele-marketing scripts or reprints or excerpts of the foregoing. The term does

not apply to official statements but does apply to abstracts or summaries of official statements, offering circulars and other similar documents prepared by dealers.

See also:

- Rule G-15 Interpretive Notice — Confirmation Disclosures and Prevailing Market Price Guidance: Frequently Asked Questions**, March 19, 2018 (first published July 12, 2017)
- Rule G-17 Interpretive Notices — Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features**, March 6, 1984.
- **Notice Concerning the Application of Board Rules to Put Option Bonds**, September 30, 1985.
- **Bond Insurance Ratings — Application of MSRB Rules**, January 22, 2008.
- **Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities**, July 14, 2009.
- **MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market**, September 20, 2010.
- **Rule G-43 Interpretations — Notice to Dealers That Use the Services of Broker’s Brokers**, December 22, 2012.

Interpretive Letters

Differential re-offering prices. This is in response to your letter in which you ask us to provide interpretive guidance on MSRB rules G-21, G-30 and G-32 in the context of a proposed new system (the “System”) to be established by your client (the “Company”) for pricing and distribution of primary market municipal securities to retail investors. You provide a description of the System, including a discussion of incremental changes through various versions of the System. We have included below a brief summary of the MSRB’s understanding of certain key features of the System that may be relevant in responding to your questions. **This should not be construed as meaning that the MSRB has “approved” the System, or even reviewed the System description which you provided, except for the limited purpose of addressing your specific questions on the three rules noted above. The MSRB expresses no views and has not considered whether the System as you describe it, or whether a broker-dealer using the System, would be in compliance with MSRB rules or other applicable law, rules or regulations, beyond the specific statements set forth herein on these three rules.**

As you describe it, the System consists of an internet-based electronic primary market order matching process that will provide (1) electronic notices (“Electronic Notices”) to registered representatives at subscribing broker-dealer firms and (2) an ability to establish a range of acceptable reoffering prices for each order of primary market municipal securities. Registered representatives will provide to the System profiles (“Retail Inquiries”) that describe the features of municipal securities that the registered representative’s customers wish

to purchase. The System will then automatically advise the registered representatives of the availability for purchase of a new municipal security issue that matches the Retail Inquiry by sending an Electronic Notice by fax or e-mail. The Company intends to register with the Securities and Exchange Commission as a broker-dealer prior to charging subscription fees for the services provided by the System. We understand that, for purposes of the System, a retail investor is characterized solely by the size of the order, rather than by the identity of an investor as a retail or institutional customer.

Municipal securities available for purchase through the System will be sold using a structure that establishes a range of acceptable retail reoffering prices. For each new issue, the underwriter and the issuer will establish a maximum and minimum yield and a maximum and minimum price to be entered into the System. For all Retail Inquiries that match the basic parameters of the issue (*e.g.*, maturity, rating, state of issuer), the System will send an Electronic Notice to each registered representative that adjusts the price to include the least of the registered representative's desired mark-up, the maximum mark up established by the registered representative's broker-dealer firm, or the maximum issue mark-up established by the underwriter. In the System's initial stages, a registered representative may place an order for amounts up to \$500,000 to purchase the securities upon receiving an Electronic Notice. You note that use of the System will permit sales of municipal securities of the same maturity and order size to different buyers at different prices.

You state that you believe that the business and operating plan for the System will be in compliance with all published MSRB rules and that broker-dealers subscribing to the System will not violate any MSRB rules by virtue of their use of the System. You request clarification regarding the applicability of certain provisions of rules G-21, G-30 and G-32 to brokerdealers using the System. As noted above, the MSRB cannot provide an "approval" of a proposed system or of its use by brokerdealers. We can, however, provide some guidance regarding your specific rule-related interpretive requests. Since the application of rules to particular factual situations is, by its nature, fundamentally dependent upon the specific facts and circumstances, you should be cognizant of the precise nature of our guidance and of the potential for seemingly small factual variances resulting in different conclusions regarding compliance with our rules.

Rule G-30, on Prices and Commissions

You ask us whether we view use of the System by broker-dealers to establish a range of reoffering prices (instead of a single reoffering price) as compliant with the requirement under rule G-30, on prices and commissions, that municipal securities prices be fair and reasonable. We cannot provide you with assurance that under all circumstances prices charged to customers by broker-dealers using the System will comply with

rule G-30. However, the following discussion should provide some guidance in assessing whether broker-dealers using the System will be able to comply with rule G-30.

Rule G-30(a) provides that no broker-dealer shall sell municipal securities to a customer in a principal transaction except at a price that is fair and reasonable, taking into consideration all relevant factors.¹ The rule cites, as relevant factors, the best judgment of the broker-dealer as to the fair market value of the securities at the time of the transaction, the expense involved in effecting the transaction, the fact that the broker-dealer is entitled to a profit, and the total dollar amount of the transaction.² In addition, the MSRB has identified a number of other factors which might be relevant in determining the fairness and reasonableness of prices in municipal securities transactions. These additional factors include, but are not limited to, the availability of the security in the market, the price or yield of the security, the maturity of the security, and the nature of the professional's business.³ The MSRB firmly believes that the resulting yield to the customer is the most important factor in determining the fairness and reasonableness of a price in any given transaction. The MSRB previously has stated that such yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.

Although a comparative yield assessment is the most important factor in determining whether a transaction price is fair and reasonable, rule G-30 states that other facts and circumstances of a specific transaction may also enter into the final determination of whether the transaction price is fair and reasonable. Thus, rule G-30 clearly contemplates the possibility that, depending upon the facts and circumstances of two contemporaneous transactions in identical securities, both transactions may be priced in compliance with rule G-30 even though the prices are not identical. It is not possible to state a specific percentage of variance between prices on contemporaneous transactions that would create a presumption of a violation of rule G-30 with respect to the higher priced transaction since a number of different factors may be relevant to the individual transactions.⁴ However, the degree to which price variances may occur without raising the presumption of a rule G-30 violation generally would parallel the level of variance in the relevant factors under rule G-30 from transaction to transaction in the same security. For example, a large difference in the par value of two transactions could potentially justify a larger price difference than would a small difference in the par value of the two transactions.

The MSRB has stated that, although rule G-30 does not specifically mention new issue offering prices which may be set by the syndicate or the issuer, compliance with rule G-30 in this context also is determined by whether the price of a municipal security is fair and reasonable, taking into account all relevant factors.⁵ As noted above, a comparative yield assessment is the most important factor in determining the fairness and reasonableness of a transaction price. Although it is the ultimate responsibility of the broker-dealer effecting a transaction with

a customer to ensure that the price is in compliance with rule G-30, the issuer and underwriter may help broker-dealers using the System to avoid possible violations of rule G-30 by carefully reviewing the ranges of yields and prices entered by the underwriter into the System to ensure that the net yield to customers⁶ would be comparable to that of similar securities regardless of where within the established ranges a transaction is executed by a broker-dealer using the System.

Rule G-32, on Disclosures in Connection with New Issues

You provide us with a sample of proposed language to be included in the official statement for new issue municipal securities to be sold using the System. This language indicates the lowest price at which any of the securities in the new issue are offered and also indicates a range of maximum prices at which the securities are offered based on various lot sizes of the securities sold in a particular transaction. The language further states that, subject to the practices of each broker-dealer firm in the selling group, investors may have purchased the securities at prices lower than those shown in the range of maximum prices included in the official statement. Finally, the language provides a specific dollar amount representing the total compensation paid to the underwriter as representative of the selling group. You ask us whether inclusion of such language in the official statement by issuers using the System complies with rule G-32.

Rule G-32(a)(ii) provides that, in connection with new issue municipal securities purchased by the underwriter in a negotiated sale, any broker-dealer selling such securities to a customer must deliver to the customer by no later than settlement information regarding, among other things, the underwriting spread and the initial offering price for each maturity in the issue, including maturities that are not reoffered.⁷ The MSRB has stated that the obligation to disclose the underwriting spread requires that the broker-dealer disclose the difference between the initial offering price of the new issue and the amount paid by the underwriter to the issuer, expressed either in dollars or points per bond.⁸ The MSRB has prohibited broker-dealers from merely disclosing to customers the offering prices and amount paid to the issuer and describing how the underwriting spread can be calculated from these figures.⁹ The MSRB has stated that initial offering prices may be expressed either in terms of dollar price or yield.¹⁰

The MSRB recognizes that disclosure of initial offering prices and underwriting spread is more complicated in circumstances where securities of the same maturity may be offered at a number of different prices, as compared to the typical situation where each maturity is stated to be offered at a single price. The MSRB believes that, under these circumstances, the initial offering prices and underwriting spread may be expressed as a range of values.

In expressing the initial offering prices as a range of values, broker-dealers must ensure that the prices at which the securities are initially offered to customers will fall within the expressed range. At the same time, the MSRB believes that the disclosure of a range of prices must not be misleading to customers. For example, a range that implies that a market may exist at prices where in fact no transactions are likely to occur could be misleading. In addition, a range that includes prices that are not fair and reasonable for purposes of rule G-30 could mislead customers with regard to what would in fact constitute a fair and reasonable price. These and other practices arising in connection with the disclosure of a range of initial offering prices could constitute violations of rule G-17¹¹ and would not satisfy the disclosure obligation under rule G-32. Broker-dealers are cautioned, when using a range to disclose initial offering prices, to make such range as narrow as reasonably possible in order to avoid violations of rules G-17 and G-32. For example, if broker-dealers have established discrete price ranges for specific securities within the issue (*e.g.*, separate maturities) or for specific types of transactions (*e.g.*, different lot sizes), they should include such discrete ranges in the disclosure made to customers. The initial offering price range must be expressed either in terms of dollar prices or yields.

In expressing the underwriting spread as a range of values, the range must be no broader than would be obtained by calculating the lowest possible spread based on all of the lowest initial offering price values and the highest possible spread based on all of the highest initial offering price values. This range should be further refined based on specific information available to the broker-dealer (*e.g.*, minimum or maximum spreads agreed to between the issuer and the underwriter, fixed components of the gross spread, known levels of transactions at particular prices, etc.).¹² Broker-dealers may show this spread range either as a range of a total amount or as a listing of the components of the spread range. If components of the spread range are listed, that portion of the range which represents compensation to the underwriter must be clearly identified as such. The spread range must be expressed either in dollars or points per bond.

Rule G-21, on Advertising

You state that you do not believe that Electronic Notices constitute advertisements within the meaning of rule G-21, which sets forth certain requirements with respect to advertisements of municipal securities. An advertisement is defined as any material (other than listings of offerings) published or designed for use in the public, including electronic, media or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the foregoing. The rule covers communications that are intended to reach a broad segment of the public rather than individually tailored communications between two specific parties and communications between broker-dealers. Thus, if the use of Electronic Notices is limited in the manner you describe in

your letter, it appears that such Electronic Notices would not constitute advertisements within the meaning of rule G-21. However, we express no opinion as to whether Electronic Notices might constitute advertisements if they were to be disseminated to investors.

* * *

I must emphasize once again that the guidance provided in this letter cannot be considered an “approval” of the System. Further, this guidance cannot be considered to provide or imply that broker-dealers using the System will, under all circumstances, be in compliance with the rules discussed herein. Nor can this guidance be considered to provide or imply that the operation of the System or the use of the System by broker-dealers is in compliance with any other rules of the MSRB or the laws, rules or regulations of any other entity. *MSRB interpretation of December 11, 2001.*

¹ In the case of an agency transaction, rule G-30 prohibits a broker-dealer from selling a municipal security to a customer for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors. In addition, rule G-18, on execution of transactions, requires that a broker-dealer in an agency transaction make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Since we understand that broker-dealers that use the System ultimately will effect transactions with their customers on a principal basis, we do not address potential compliance issues with respect to agency transactions arising under rules G-18 and G-30.

² With respect to total dollar amount of a transaction, the MSRB has stated that, to the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions. See Rule G-30 Interpretive Letter — Factors in pricing, November 29, 1993, *MSRB Rule Book* (July 1, 2001) at 163 (the “Pricing Letter”).

³ See Rule G-30 Interpretation — Republication of September 1980 Report on Pricing, *MSRB Rule Book* (July 1, 2001) at 161 (the “Pricing Report”).

⁴ Of course, the existence of a variance in the prices of two contemporaneous sale transactions in the same security would be less likely to raise a presumption that the higher priced transaction violates rule G-30 if the yields for both transactions are generally higher than for most other comparable securities in the market.

⁵ See Pricing Letter. It is worth noting that the rules of the National Association of Securities Dealers regarding fixed-price offerings do not apply to transactions in municipal securities. The MSRB is not aware of any law or regulation which purports to require fixed-price offerings for new issue municipal securities. See Rule G-11 Interpretive Letter — Fixed-price offerings, March 16, 1984, *MSRB Rule Book* (July 1, 2001) at 60.

⁶ The net yield to a customer is based on actual money paid by the customer, including the effect of any remuneration paid to the broker-dealer, other than certain miscellaneous transaction fees. See Rule G-15 Interpretation — Notice Concerning Flat Transaction Fees, June 13, 2001, *MSRB Rule Book* (July 1, 2001) at 114; Rule G-15 Interpretation — Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges, May 14, 1990, *MSRB Rule Book* (July 1, 2001) at 113.

⁷ This information may be disclosed in the official statement if it is delivered to the customer in a timely manner at or prior to settlement. This information may also be provided in a separate written statement.

⁸ Spread may be shown as a single figure or as a listing of the components of the spread. If components are listed, the portion of the proceeds representing compensation to the underwriter must be clearly identified as such. See Rule G-32 Interpretation — Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with

New Issue Municipal Securities Under Rule G-32, *MSRB Rule Book* (July 1, 2001) at 166 (the “Disclosure Notice”); Rule G-32 Interpretive Letter — Disclosure of underwriting spread, March 9, 1981, *MSRB Rule Book* (July 1, 2001) at 173.

⁹ See Disclosure Requirements for New Issue Securities: Rule G-32, *MSRB Reports*, Vol. 7, No. 2 (March 1987) at 11.

¹⁰ See Disclosure Notice; Rule G-32 Interpretive Letter — Disclosures in connection with new issues, December 22, 1993, *MSRB Rule Book* (July 1, 2001) at 174.

¹¹ Rule G-17 requires broker-dealers to deal fairly with all persons and not to engage in any deceptive, dishonest or unfair practice.

¹² Of course, if the new issue has been fully sold and all initial offering prices are known at the time the disclosure information is prepared, an exact amount rather than a range should be used in disclosing the underwriting spread.

See also:

Rule G-8 Interpretive Letter — Time of receipt and execution of orders, *MSRB interpretation of April 20, 1987.*

Rule G-11 Interpretive Letter — Fixed-price offerings, *MSRB interpretation of March 16, 1984.*

Rule G-15 Interpretive Letter — Callable securities: pricing to mandatory sinking fund calls, *MSRB interpretation of April 30, 1986.*

- Disclosure of pricing: calculating the dollar price of partially prerefunded bonds, *MSRB interpretation of May 15, 1986.*

Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing, *MSRB interpretation of February 18, 1983.*

Rule G-21 Interpretive Letter — Disclosure obligations, *MSRB interpretation of May 21, 1998.*

Rule G-25 Interpretive Letter — Retroactive price adjustment for early redemption, *MSRB interpretation of January 31, 1986.*

Rule G-30 Amendment History (since 2003)

[Release No. 34-79347 \(November 17, 2016\), 81 FR 84637 \(November 23, 2016\); MSRB Notice 2016-28 \(November 29, 2016\)](#)

[Release No. 34-72129 \(May 8, 2014\), 79 FR 27662 \(May 14, 2014\); MSRB Notice 2014-11 \(May 12, 2014\)](#)

Rule G-31

Reciprocal Dealings with Municipal Securities
Investment Companies

No broker, dealer, or municipal securities dealer shall solicit transactions in municipal securities with or for the account of an investment company as defined in the Investment Company Act of 1940, as compensation or in return for sales by such broker, dealer, or municipal securities dealer of participations, shares, or units in such investment company.

Rule G-32

Disclosures in Connection with Primary Offerings

(a) *Customer Disclosure Requirements.*

(i) No broker, dealer or municipal securities dealer shall sell, whether as an underwriter or otherwise, any offered municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer by no later than the settlement of the transaction a copy of the official statement or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any.

(ii) Notwithstanding the provisions of subsection (a) (i) of this rule, the delivery obligation thereunder shall be deemed satisfied if the following conditions are met:

(A) the offered municipal securities being sold are not municipal fund securities; and

(B) the underwriter has made the submissions to EMMA required under paragraph (b)(i)(A) or (b)(i)(B) (1) of this rule; provided that the condition in this paragraph (B) shall apply solely to sales to customers by brokers, dealers and municipal securities dealers acting as underwriters in respect of the offered municipal securities being sold.

(iii) Any broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer with respect to which the delivery obligation under subsection (a) (i) of this rule is deemed satisfied pursuant to subsection (a) (ii) of this rule shall provide or send to the customer, by no later than the settlement of such transaction, either:

(A) a copy of the official statement (or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any), and, in connection with offered municipal securities sold by the issuer on a negotiated basis to the extent not included in the official statement, (1) the underwriting spread, if any, (2) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; and (3) the initial offering price for each maturity in the offering, including maturities that are not reoffered; or

(B) a notice advising the customer:

(1) how to obtain the official statement from EMMA, which notice may be combined, at the election of the broker, dealer or municipal securities dealer, with notice of the availability of the official statement from a qualified portal; and

(2) that a copy of the official statement will be provided by the broker, dealer or municipal securities dealer upon request.

If a broker, dealer or municipal securities dealer provides notice to a customer pursuant to paragraph (a)(iii)(B), such broker, dealer or municipal securities dealer shall, upon request from the customer, send a copy of the official statement to the customer, together with the information required pursuant to paragraph (a)(iii)(A) in connection with a negotiated offering to the extent not included in the official statement, within one business day of request by first class mail or other equally prompt means.

(iv) In the case of a sale by a broker, dealer or municipal securities dealer of municipal fund securities to a customer, the following additional provisions shall apply:

(A) notwithstanding the provisions of subsection (a) (i) of this rule, if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in connection with the purchase of municipal fund securities under such plan or program, a broker, dealer or municipal securities dealer that sells additional shares or units of the municipal fund securities under such plan or program to the customer will be deemed to have satisfied the delivery obligation under subsection (a)(i) of this rule if such broker, dealer or municipal securities dealer sends to the customer a copy of any new, supplemented, amended or “stickered” official statement, by first class mail or other equally prompt means, promptly upon receipt thereof; provided that, if the broker, dealer or municipal securities dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement, such broker, dealer or municipal securities dealer includes a written statement describing which documents constitute the complete official statement and stating that the complete official statement is available upon request; and

(B) the broker, dealer or municipal securities dealer shall provide to the customer, by no later than the settlement of the transaction, written disclosure of the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the municipal fund securities; provided, however, that if a broker, dealer or municipal securities dealer selling municipal fund securities provides periodic statements to the customer pursuant to Rule G-15(a)(viii) in lieu of individual transaction confirmations, this paragraph (iv) (B) shall be deemed to be satisfied if the broker, dealer or municipal securities dealer provides this information to the customer at least annually and provides information regarding any change in such fee on or prior to the sending of the next succeeding periodic statement to the customer.

(v) If two or more customers share the same address, a broker, dealer or municipal securities dealer may satisfy the delivery obligations set forth in this section (a) by complying with the requirements set forth in Rule 154 of the Securities Act of 1933, on delivery of prospectuses to investors at the

same address. In addition, any such broker, dealer or municipal securities dealer shall comply with section (c) of Rule 154, on revocation of consent, to the extent that the provisions of paragraph (a)(iv)(A) relating to a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program apply.

(b) *Underwriter Submissions to EMMA.*

(i) *Official Statements, Preliminary Official Statements, and Information Concerning Exempt Offerings.*

(A) *Form G-32 Information Submission.* Except as otherwise provided in paragraph (F) of this subsection (i), the underwriter of a primary offering of municipal securities shall submit, in addition to any applicable documents and information required to be submitted pursuant to paragraphs (B) through (E) of this subsection (i), Form G-32 information relating to the offering in a timely and accurate manner as follows:

(1) *NIIDS-Eligible Primary Offerings.* For any primary offering of municipal securities that is a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C), the underwriter of such offering shall submit all information required to be submitted under this paragraph (A) on Form G-32 relating to such offering at such times and in such manner as required under Rule G-34(a)(ii)(C), and the submission of such information under Rule G-34(a)(ii)(C) in a full and timely manner shall be deemed to be in compliance with the submission requirement of this subparagraph (b)(i)(A)(1); *provided, however, that:*

(a) Any items of information required to be included on Form G-32 but for which no corresponding data element then is available through NIIDS shall be submitted through EMMA on Form G-32 at such times and in such manner as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual; and

(b) Any corrections to data submitted pursuant to Rule G-34(a)(ii)(C) shall be made promptly and, to the extent feasible, in the manner originally submitted.

(2) *Primary Offerings Ineligible for NIIDS.* For any primary offering of municipal securities that is not a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C) or is exempt from such submission requirement under Rule G-34(d), the underwriter of such offering shall initiate the submission of Form G-32 information relating to the offering on or prior to the date of first execution, and shall complete the submission of all information required to be submitted by Form G-32 relating to

such offering at such times and in such manner as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(B) *Official Statement Submission.*

(1) Except as otherwise provided in paragraph (C), (E) or (F) of this subsection (i), the underwriter of a primary offering of municipal securities shall submit the official statement for such offering to EMMA within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date.

(2) If for any reason the official statement for a primary offering of municipal securities subject to this paragraph (B) is not submitted by the underwriter to EMMA by the closing date, the underwriter shall submit to EMMA:

(a) by no later than the closing date, notice to the effect that the official statement has not been submitted by the underwriter to EMMA by the closing date and that the official statement will be submitted to EMMA when it becomes available;

(b) within one business day after receipt from the issuer or its designee, the official statement; and

(c) the preliminary official statement or notice required pursuant to paragraph (D) of this subsection (i);

provided, however, that compliance with the requirements of this subparagraph (2) will not cure the failure to comply with subparagraph (1) of this paragraph (B).

(C) *No Official Statement Prepared for Offering Exempt from Exchange Act Rule 15c2-12.* If an official statement will not be prepared for a primary offering of municipal securities exempt from Securities Exchange Act Rule 15c2-12, the underwriter shall submit to EMMA, by no later than the closing date:

(1) notice to the effect that no official statement will be prepared; and

(2) the preliminary official statement or notice required pursuant to paragraph (D) of this subsection (i).

(D) *Preliminary Official Statement Submission.* The underwriter of a primary offering of municipal securities to which subparagraph (B)(2) or paragraph (C) of this subsection (i) applies shall submit to EMMA, by no later than the closing date, either:

(1) the preliminary official statement for such offering; or

(2) if no preliminary official statement has been prepared for such offering, notice that no preliminary official statement has been prepared.

(E) *Exemption for Certain Limited Offerings.* The underwriter of a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(i) thereof for which an official statement has been prepared shall not be required to submit the official statement or any preliminary official statement to EMMA if the underwriter:

(1) complies with the requirements of paragraph (A) of this subsection (i);

(2) submits to EMMA, by no later than the closing date:

(a) notice that such primary offering is not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(i) thereof and that an official statement has been prepared but is not being submitted to EMMA; and

(b) contact information, including mailing address, telephone number, e-mail address and name of an associated person of the underwriter from whom customers may request the official statement; and

(3) delivers the official statement to each customer purchasing the offered municipal securities from the underwriter or from any other broker, dealer or municipal securities dealer, upon request, by the later of one business day after request or the settlement of the customer's transaction.

(F) *Exemption for Certain Commercial Paper Offerings or Remarketings.* The underwriter of a primary offering of municipal securities that consists of commercial paper not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(ii) thereof or of a remarketing of municipal securities not subject to paragraphs (b)(1) through (b)(4) of Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(5) thereof shall not be required to comply with the requirements of paragraph (A) of this subsection (i) or to submit the official statement or any preliminary official statement to EMMA if:

(1) no official statement is prepared for the offering; or

(2) the official statement used in connection with such offering:

(a) has previously been properly submitted to EMMA in connection with a prior primary offering; and

(b) has not been supplemented or amended subsequent to such prior submission.

(ii) *Advance Refunding Documents.* If a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in such offering shall, by no later than five business days after the closing date, submit:

(A) the advance refunding document to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the advance refunding document as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iii) *Amendments to Official Statements, Preliminary Official Statements and Advance Refunding Documents.* In the event the underwriter for a primary offering has previously submitted to EMMA an official statement, preliminary official statement or advance refunding document and such document is amended by the issuer during the primary offering disclosure period, the underwriter for such primary offering must, within one business day after receipt of the amendment from the issuer or an agent of the issuer, submit:

(A) the amendment to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the amendment as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iv) *Cancellation of All or Part of Primary Offering.* In the event an underwriter provides to EMMA the documents and information referred to in subsection (i), (ii) or (iii) above, but the primary offering is later cancelled, the underwriter shall notify EMMA of this fact promptly through Form G-32. If only a portion of a primary offering is cancelled, the underwriter shall amend or supplement information submitted to EMMA to reflect such partial cancellation by no later than the closing date.

(v) *Underwriting Syndicate.* In the event a syndicate or similar account has been formed for the underwriting of a primary offering, the managing underwriter shall take the actions required under the provisions of this rule.

(vi) *Procedures for Submitting Documents and Form G-32 Information.*

(A) All official statements, preliminary official statements, advance refunding documents and amendments thereto submitted to EMMA under this rule shall be in a designated electronic format.

(B) All submissions of information required under this rule shall be made by means of Form G-32 submitted electronically to EMMA in such format and manner, and including such items of information provided at such times, as specified herein, in Form G-32 and in the EMMA Dataport Manual.

(C) The underwriter in any primary offering of municipal securities for which a document or information is required to be submitted to EMMA under this section (b) shall submit such information in a timely and accurate manner as follows:

(1) Form G-32 information submissions pursuant to paragraph (b)(i)(A) hereof with respect to a primary offering shall be:

(a) initiated on or prior to the date of first execution with the submission of CUSIP numbers (except if such CUSIP numbers are not required under Rule G-34 and have not been assigned), initial offering prices or yields (including prices or yields for maturities designated as not reoffered), if applicable, the expected closing date, whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12, and if there was a retail order period (as defined in Rule G-11(a)(vii)) as part of a primary offering, information indicating whether a retail order period was conducted, each date and each time (beginning and end) it was conducted, together with such other items of information as set forth in Form G-32 and the EMMA Dataport Manual; and

(b) completed by no later than the closing date, except to the extent that the provisions of subsection (b)(i) otherwise require a submission after the closing date.

Specific items of information required by Form G-32 shall be submitted at such times and in such manners as set forth in the EMMA Dataport Manual.

(2) Form G-32 information submissions pursuant to paragraph (b)(ii)(B) hereof with respect to an advance refunding shall be completed by no later than five business days after the closing date with the submission of CUSIP numbers, if any, of the advance refunded municipal securities (including any CUSIP numbers newly assigned to some or all of the advance refunded municipal securities), together with such other items of information as set forth in Form G-32 and the EMMA Dataport Manual.

(3) Form G-32 information submissions pursuant to paragraph (b)(iii)(B) hereof with respect to an amendment to a previously submitted document shall be completed by no later than one business day after receipt of such amendment from the issuer or an agent of the issuer with the submission of such items of information as set forth in Form G-32 and the EMMA Dataport Manual.

(4) Form G-32 information submissions pursuant to subsection (b)(iv) hereof with respect to a cancellation of a primary offering shall be completed:

(a) in the case of a partial cancellation, by no later than the closing date for the remaining portion of such primary offering; and

(b) in the case of a cancellation of the entire primary offering, promptly after a final determination by the issuer that such offering is cancelled, provided that such information shall be deemed to have been submitted on a timely basis if submitted within five business days after cancellation by the underwriter of its transactions with customers or other brokers, dealers and municipal securities dealers in connection with such cancelled offering.

(D) Form G-32 and any related documents shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to procedures set forth in the EMMA Dataport Manual. The failure of a submission agent designated by an underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) *Preparation of Official Statements By Financial Advisors.* A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares an official statement on behalf of an issuer with respect to a primary offering of municipal securities shall make the official statement available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution.

(d) *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i) The term “advance refunding document” shall mean the refunding escrow trust agreement or its equivalent prepared by or on behalf of the issuer.

(ii) The term “closing date” shall mean the date of first delivery by the issuer to or through the underwriter of municipal securities sold in a primary offering.

(iii) The term “designated electronic format” shall mean portable document format, with files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. For files submitted to EMMA on or after

January 1, 2010, documents in designated electronic format must be word-searchable (without regard to diagrams, images and other non-textual elements).

(iv) The term “EMMA” shall mean the Board’s Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the Board for collecting and disseminating primary offering documents and information.

(v) The term “EMMA Dataport Manual” shall mean the document(s) designated as such published by the Board from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriters under Rule G-32(b).

(vi) The term “offered municipal securities” shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the securities’ primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered.

(vii) The term “official statement” shall mean (A) for an offering subject to Securities Exchange Act Rule 15c2-12, a document or documents defined in Securities Exchange Act Rule 15c2-12(f)(3), or (B) for an offering not subject to Securities Exchange Act Rule 15c2-12, a document or documents prepared by or on behalf of the issuer that is complete as of the date delivered to the underwriter and that sets forth information concerning the terms of the proposed offering of securities. A notice of sale shall not be deemed to be an “official statement” for purposes of this rule.

(viii) The term “primary offering” shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7), including but not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

(ix) The term “primary offering disclosure period” shall mean, with respect to any primary offering, the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter.

(x) The term “qualified portal” shall mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes

available from EMMA and ending no earlier than 30 calendar days after the end of the primary offering disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

(xi) The term “date of first execution” shall mean the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G-34(a)(ii)(C), “date of first execution” shall mean the date corresponding to the Time of First Execution as defined in Rule G-34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date.

(xii) The term “underwriter” shall mean a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering.

(xiii) The term “commercial paper” shall mean municipal securities having a maturity of nine months or less issued pursuant to a commercial paper program permitting such municipal securities to be rolled over upon maturity into new commercial paper.

(xiv) The term “obligated person” shall mean an obligated person defined in Securities Exchange Act Rule 15c2-12(f)(10).

(xv) The term “NIIDS” shall have the meaning set forth in Rule G-34(a)(ii)(C)(3)(b).

Rule G-32 Interpretations

Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32

November 19, 1998

In July 1998, the Securities and Exchange Commission (“SEC”) approved two sets of amendments to rule G-32, on disclosures in connection with new issues. The first set of amendments permits brokers, dealers and municipal securities dealers (“dealers”) that sell new issue variable rate demand obligations qualifying for the exemption provided under subparagraph (d)(1)(iii) of Securities Exchange Act Rule 15c2-12 to deliver the preliminary official statement, rather than the final official statement, to customers by settlement.¹ The second set of amendments strengthens the rule’s existing requirements regarding dissemination of official statements to dealers purchasing new issue municipal securities and