Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

(xii) the authorization required by rule G-8(a)(xix)(B); however, this provision shall not require maintenance of copies of negotiable instruments signed by customers;

(xiii) each advertisement from the date of each use;

(xiv) the records required to be maintained pursuant to rule G-8(a)(xx);

(xv) the records to be maintained pursuant to rule G-8(a)(xxi);

(xvi) the records to be maintained pursuant to rule G-8(a)(xxii); and

(xvii) the records to be maintained pursuant to Rule G-8(a)(xxiii).

(c) *Records to be Preserved for Life of Enterprise*. Every broker, dealer and municipal securities dealer other than a bank dealer shall preserve during the life of such broker, dealer or municipal securities dealer and of any successor broker, dealer or municipal securities dealer all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(d) *Accessibility and Availability of Records*. All books and records required to be preserved pursuant to this rule shall be available for ready inspection by each regulatory authority having jurisdiction under the Act to inspect such records, shall be maintained and preserved in an easily accessible place for a period of at least two years and thereafter shall be maintained and preserved in such manner as to be accessible to each such regulatory authority within a reasonable period of time, taking into consideration the nature of the record and the amount of time expired since the record was made.

(e) *Method of Record Retention*. Whenever a record is required to be preserved by this rule, such record may be retained either as an original or as a copy or other reproduction thereof, or on microfilm, magnetic tape, electronic storage media, or by the other similar medium of record retention, provided that such broker, dealer, municipal securities dealer, or municipal advisor shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, magnetic tape, electronic storage media, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

(f) *Effect of Lapse of Registration*. The requirements of this rule shall continue to apply, for the periods of time specified, to any broker, dealer, municipal securities dealer, or municipal advisor which ceases to be registered with the Commission, except in the event a successor registrant shall undertake to maintain and preserve the books and records described herein for the required periods of time.

(g) *Compliance with Rules 17a-3 and 17a-4*. Brokers, dealers and municipal securities dealers other than bank dealers that are in compliance with rules 17a-3 and 17a-4 under the Act will be deemed to be in compliance with the requirements of this rule, provided that the records enumerated in section (f) of Rule G-8 of the Board and section (b) of this rule shall in any event be preserved for the applicable time periods specified in this rule.

(h) *Municipal Advisor Records*.

(i) Subject to subsections (ii) and (iii) of this section, every municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) The records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(iii) The records described in Rule G-8(h)(iii) and (vi) shall be preserved for at least six years; provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

(i) *Municipal Advisor Records Related to Formation and Cessation of its Business*. Every municipal advisor shall comply with the provisions of Rule 15Ba1-8(b)(2) and (c) under the Act.

(j) *Records of Non-Resident Municipal Advisors*. Every non-resident municipal advisor shall comply with the provisions of Rule 15Ba1-8(f) under the Act.

(k) *Electronic Storage of Municipal Advisor Records Permitted*. Whenever a record is required to be preserved by this rule by a municipal advisor, such record may be preserved on electronic storage media in accordance with section (e). Electronic preservation of any record in a manner that complies with Rule 15Ba1-8(d) under the Act will be deemed to be in compliance with the requirements of this rule.

Rule G-9 Interpretations

Interpretation on the Application of Rules G-8 and G-9 to Electronic Recordkeeping

March 26, 2001

The Municipal Securities Rulemaking Board (the "MSRB") has received requests for interpretive guidance regarding the maintenance in electronic form of records under rule G-8, on books and records, and rule G-9, on preservation of records. As the MSRB has previously noted, rules G-8 and G-9 provide significant flexibility to brokers, dealers and municipal securities dealers ("dealers") concerning the manner in which their records are to be maintained, recognizing that various recordkeeping systems could provide a complete and accurate record of a dealer's municipal securities activities.[1] Part of the reason for providing this flexibility was that a variety of

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

enforcement agencies, including the Securities and Exchange Commission, NASD Regulation, Inc. and the banking regulatory agencies, all may inspect dealer records.

Rule G-8(b) does not specify that a dealer is required to maintain its books and records in a specific manner so long as the information required to be shown by the rule is clearly and accurately reflected and provides an adequate basis for the audit of such information. Further, rule G-9(e) allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.

The MSRB previously has recognized that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and stated that it generally allows records to be retained in that form.[2] In noting that increased automation would likely lead to elimination of most physical records, the MSRB has stated that electronic trading tickets and automated customer account information satisfy the recordkeeping requirements of rule G-8 so long as such information is maintained in compliance with rule G-9(e). The MSRB believes that this position also applies with respect to the other recordkeeping requirements of rule G-8 so long as such information is maintained in compliance with rule G-9(e) and the appropriate enforcement agency is satisfied that such manner of record creation and retention provides an adequate basis for the audit of the information to be maintained. In particular, the MSRB believes that a dealer that meets the requirements of rule 17a-4(f) under the Securities Exchange Act of 1934 with respect to maintenance and preservation of required books and records in the formats described therein would presumptively meet the requirements of rule G-9(e).

[1] See Rule G-8 Interpretation — Interpretive Notice on Recordkeeping, July 29, 1977, reprinted in *MSRB Rule Book* (January 1, 2001) at 42.

[2] See Rule G-8 Interpretive Letters — Use of electronic signatures, MSRB interpretation of February 27, 1989, reprinted in *MSRB Rule Book* (January 1, 2001) at 47.

See also:

Rule G-8 Interpretations — Interpretive Notice on Recordkeeping, July 29, 1977

- **Notice of Interpretation Concerning Records of Certificate Numbers of Securities Cleared by Clearing Agents,** October 10, 1986

Rule G-27 Interpretation — Supervisory Procedures for the Review of Correspondence with the Public, March 24, 2000

Interpretive Letters

Syndicate records. I am writing in response to your letters of October 2 and October 19, 1981 concerning a particular recordkeeping arrangement used by an NASD-member firm in connection with its underwriting activities. In your letters you indicate that the firm conducts its underwriting activities from its main office and four regional branch office "commitment centers," with the committing branch offices authorized to commit to underwriting new issues on the firm's behalf. You inquire whether the firm is in compliance with the Board's recordkeeping and record retention rules if it maintains only part of the records on its underwritings in the main office. Correspondence from a field examiner attached to your letters indicates that the committing branch office originating a particular underwriting maintains all of the records with respect to such underwriting. The majority of these records are the original copies; the copies of confirmations, good faith checks, and syndicate settlement checks maintained at the committing branch office are duplicates of original records maintained at the firm's main office.

Rule G-9(d) requires that books and records shall be maintained and preserved in an easily accessible place for two years and shall be available for ready inspection by the proper regulatory authorities. The fact that the member firm does not maintain all records with respect to all of its underwriting activities in a single location does not contravene these provisions of Board rule G-9. Rule G-9 would permit the arrangement described in your letters, whereby a firm maintains copies of all of the records pertaining to a particular underwriting in the office responsible for that underwriting. *MSRB interpretation of October 21, 1981.*

Microfilming of records. I am writing in response to your letter of May 20, 1983 regarding our previous conversations about the requirements of Board rules G-1 and G-9 as they would apply to the bank's retention of dealer department records on microfilm. In your letter and our previous conversations you indicated that the bank wishes to retain all of the records required to be maintained by its municipal securities dealer department on microfilm, with the hard copy of each record destroyed immediately after it has been microfilmed. You inquired as to the circumstances under which this method of record retention could be used. You also inquired about the extent to which municipal securities dealer department records could be commingled with records of other departments on the same strips of microfilm.

As you are aware, Board rule G-9(e) provides that

> a record...required to be preserved by this rule...may be retained...on microfilm, electronic or magnetic tape, or by the other similar medium of record retention, provided that [the] municipal securities broker or municipal securities dealer shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, electronic or magnetic tape, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

Therefore, the following three conditions must be met, if records are to be retained on microfilm:

(1) facilities for ready retrieval and inspection of the records (such as a microfilm reader or other similar piece of equipment) must be available;

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

(2) facilities for the reproduction of a hard copy facsimile of a particular record must also be available; and

(3) duplicate copies of the microfilm must be made and stored separately for the necessary time periods.

If these conditions are met, the retention of records by means of microfilm is satisfactory for purposes of the Board's rules, and hard copy records need not be retained after the microfilming is completed.

With respect to the establishment of a separately identifiable municipal securities dealer department of a bank, Board rule G-1 provides that all of the records relating to the municipal securities activities of such department must be

> separately maintained in or separately extractable from such [department's] own facilities or the facilities of the bank...[and must be] so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder and the rules of the Board.

These requirements would not preclude you from maintaining the required records on microfilm which also contained other bank records, as long as the required records were "separately extractable." The course of action you propose, maintaining all municipal securities dealer department records together as the first items on a roll of microfilm, would seem to be an appropriate way of complying with these requirements. *MSRB interpretation of June 6, 1983*.

See also:

Rule G-8 Interpretive Letters — Contract sheets, *MSRB interpretation of June 25, 1987*

- **Use of electronic signatures,** *MSRB interpretation of February 27, 1989*

Rule G-9 Amendment History (since 2003)

Release No. 34-79801 (January 13, 2016), 82 FR 7898 (January 23, 2017); MSRB Notice 2017-03 (January 18, 2017)

Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014); MSRB Notice 2014-19 (October 24, 2014)

Release No. 71598 (February 21, 2014), 79 FR 11161 (February 27, 2014); MSRB Notice 2014-03 (February 24, 2014)

Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

Release No. 34-65992 (December 16, 2011), 76 FR 79738 (December 22, 2011); MSRB Notice 2011-69 (December 19, 2011)

Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-57750 (May 1, 2008), 73 FR 25815 (May 7, 2008); MSRB Notice 2008-22 (May 2, 2008)

Release No. 34-55792 (May 22, 2007), 72 FR 29564 (May 29, 2007); MSRB Notice 2007-16 (May 25, 2007)

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

Rule G-10
Investor and Municipal Advisory Client Education and Protection

(a) Each broker, dealer and municipal securities dealer (collectively, a "dealer") shall, once every calendar year, provide in writing (which may be electronic) to each customer the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board; and

(iii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(b) Each municipal advisor shall promptly, after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), and no less than once each calendar year thereafter during the course of that municipal advisory relationship, or promptly, after entering into an agreement to undertake a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and no less than once each calendar year thereafter during the course of that agreement, provide in writing (which may be electronic) to the municipal advisory client, the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board; and

(iii) a statement as to the availability to the municipal advisory client of a municipal advisory client brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(c) For the purposes of this rule, a municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

Rule G-10 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998

Rule G-10 Amendment History (since 2003)

Release No. 34-79801 (January 13, 2016), 82 FR 7898 (January 23, 2017); MSRB Notice 2017-03 (January 18, 2017)

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

Rule G-11
Primary Offering Practices

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

(i) The term "accumulation account" means an account established in connection with a municipal securities investment trust to hold securities pending their deposit in such trust.

(ii) The term "date of sale" means, in the case of competitive sales, the date on which all bids for the purchase of securities must be submitted to an issuer, and, in the case of negotiated sales, the date on which the contract to purchase securities from an issuer is executed.

(iii) The term "group order" means an order for securities held in syndicate, which order is for the account of all members of the syndicate on a pro rata basis in proportion to their respective participations in the syndicate. Any such order submitted directly to the senior syndicate manager will, for purposes of this rule, be deemed to be the submission of such order by such manager to the syndicate.

(iv) The term "municipal securities investment trust" means a unit investment trust, as defined in the Investment Company Act of 1940, the portfolio of which consists in whole or in part of municipal securities.

(v) The term "order period" means the period of time, if any, announced by a syndicate or, when no syndicate has been formed, a sole underwriter during which orders will be solicited for the purchase of securities in a primary offering.

(vi) The term "priority provisions" means the provisions adopted by a syndicate governing the allocation of securities to different categories of orders.

(vii) The term "retail order period" means an order period during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders.

(viii) The term "syndicate" means an account formed by two or more persons for the purpose of purchasing, directly or indirectly, all or any part of a new issue of municipal securities from the issuer, and making a distribution thereof.

(ix) The term "qualified note syndicate" means any syndicate formed for the purpose of purchasing and distributing a new issue of municipal securities that matures in less than two years where:

(A) the new issue is to be purchased by the syndicate on other than an "all or none" basis; or

(B) the syndicate has provided that:

(1) there is to be no order period;

(2) only group orders will be accepted; and,

(3) the syndicate may purchase and sell the municipal securities for its own account.

(x) The term "affiliate" means a person controlling, controlled by, or under common control with a syndicate member or, when no syndicate has been formed, a sole underwriter.

(xi) In the case of a primary offering for which a syndicate is formed for the purchase of municipal securities, the term "related account" includes a municipal securities investment portfolio of a syndicate member or an affiliate, an arbitrage account of a syndicate member or an affiliate, a municipal securities investment trust sponsored by a syndicate member or an affiliate, or an accumulation account established in connection with such a municipal securities investment trust. In the case of a primary offering for which a syndicate has not been formed, the term "related account" includes a municipal securities investment portfolio of the sole underwriter or an affiliate, an arbitrage account of the sole underwriter or an affiliate, a municipal securities investment trust sponsored by the sole underwriter or an affiliate, or an accumulation account established in connection with such a municipal securities investment trust.

(xii) The term "selling group" means a group of brokers, dealers, or municipal securities dealers formed for the purpose of assisting in the distribution of a new issue of municipal securities for the issuer other than members of the syndicate.

(b) *Disclosure of Capacity*. Every broker, dealer or municipal securities dealer that submits an order to a syndicate or to a member of a syndicate for the purchase of municipal securities held by the syndicate shall disclose at the time of submission of such order if the securities are being purchased for its dealer account or for a related account of such broker, dealer or municipal securities dealer.

(c) *Confirmations of Sale*. Sales of securities held by a syndicate to a related account shall be confirmed by the syndicate manager directly to such related account or for the account of such related account submitting the order. Nothing herein contained shall be construed to require that sales of municipal securities to a related account be made for the benefit of the syndicate.

(d) *Disclosure of Group Orders*. Every broker, dealer or municipal securities dealer that submits a group order to a syndicate or to a member of a syndicate shall disclose at the time of submission of such order the identity of the person for whom the order is submitted. This section shall not apply to a qualified note syndicate as defined in subsection (a)(ix) above.

(e) *Priority Provisions*.

(i) In the case of a primary offering for which a syndicate has been formed, the syndicate shall establish priority provisions and, if such priority provisions may be changed, the procedure for making changes. For purposes of this rule, the

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

requirement to establish priority provisions shall not be satisfied if a syndicate provides only that the syndicate manager or managers may determine in the manager's or managers' discretion the priority to be accorded different types of orders. Unless otherwise agreed to with the issuer, such priority provisions shall give priority to customer orders over orders by members of the syndicate for their own accounts or orders for their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering. Notwithstanding the preceding sentence, a syndicate may include a provision permitting the syndicate manager or managers on a case-by-case basis to allocate securities in a manner other than in accordance with the priority provisions, if the syndicate manager or managers determine in its or their discretion that it is in the best interests of the syndicate. In the event any such allocation is made, the syndicate manager or managers shall have the burden of justifying that such allocation was in the best interests of the syndicate.

(ii) In the case of a primary offering for which a syndicate has not been formed, unless otherwise agreed to with the issuer, the sole underwriter shall give priority to customer orders over orders for its own account or orders for its related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering.

(f) *Communications Relating to Issuer Requirements, Priority Provisions and Order Period*. Prior to the first offer of any securities by a syndicate, the senior syndicate manager shall furnish in writing to the other members of the syndicate and to members of the selling group, 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, (iii) the priority provisions, (iv) the procedure, if any, by which such priority provisions may be changed, (v) if the senior syndicate manager or managers are to be permitted on a case-by-case basis to allocate securities in a manner other than in accordance with the priority provisions, the fact that they are to be permitted to do so, (vi) if there is to be an order period, whether orders may be confirmed prior to the end of the order period, and (vii) all pricing information. Any change in the priority provisions or pricing information shall be promptly furnished in writing by the senior syndicate manager to the other members of the syndicate and the selling group, if any. Syndicate and selling group members shall promptly furnish in writing the information described in this section to others, upon request. If the senior syndicate manager, rather than the issuer, prepares the written statement of all terms and conditions required by the issuer, such statement shall be provided to the issuer for its approval. An underwriter shall promptly furnish in writing to any other broker, dealer, or municipal securities dealer with which such underwriter has an arrangement to market municipal securities that includes the issuer's new issue, all of the information provided to it from the senior syndicate manager as required by this section.

(g) *Designations and Allocations of Securities*. The senior syndicate manager shall:

(i) within 24 hours of the sending of the commitment wire, complete the allocation of securities; provided however, that, if at the time allocations are made the purchase contract in a negotiated sale is not yet signed or the award in a competitive sale is not yet made, such allocations shall be made subject to the signing of the purchase contract or the awarding of the securities, as appropriate, and the purchaser must be informed of this fact;

(ii) within two business days following the date of sale, disclose to the other members of the syndicate, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated, including any allocation to an order confirmed at a price other than the original list price. The summary shall include allocations of securities to orders submitted through the end of the order period or, if the syndicate does not have an order period, through the first business day following the date of sale;

(iii) disclose, in writing, to each member of the syndicate all available information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts within 10 business days following the date of sale and all information about designations paid to syndicate and non-syndicate members expressed in total dollar amounts with the sending of the designation checks pursuant to section (j) below; and

(iv) disclose to the members of the syndicate, in writing, the amount of any portion of the take-down directed to each member by the issuer. Such disclosure is to be made by the later of 15 business days following the date of sale or three business days following receipt by the senior syndicate manager of notification of such set asides of the take-down.

(h) *Disclosure of Syndicate Expenses and Other Information*. At or before the final settlement of a syndicate account, the senior syndicate manager shall furnish to the other members of the syndicate:

(i) an itemized statement setting forth the nature and amounts of all actual expenses incurred on behalf of the syndicate. Notwithstanding the foregoing, any such statement may include an item for miscellaneous expenses, provided that the amount shown under such item is not disproportionately large in relation to other items of expense shown on the statement and includes only minor items of expense which cannot be easily categorized elsewhere in the statement. The amount of discretionary fees for clearance costs, if any, to be imposed by a syndicate manager and the amount of management fees, if any, shall be disclosed to syndicate members prior to the submission of a bid, in the case of a competitive sale, or prior to the execution of a purchase contract with the issuer, in the case of a negotiated sale. For purposes of this section, the term "management fees" shall include, in addition to amounts

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

categorized as management fees by the syndicate manager, any amount to be realized by a syndicate manager, and not shared with the other members of the syndicate, which is attributable to the difference in price to be paid to an issuer for the purchase of a new issue of municipal securities and the price at which such securities are to be delivered by the syndicate manager to the members of the syndicate; and

(ii) a summary statement showing:

(A) the identity of each related account submitting an order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated;

(B) the identity of each person submitting a group order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated except that this subparagraph shall not apply to the senior syndicate manager of a qualified note syndicate as defined in subsection (a)(ix) above; and

(C) the aggregate par values and prices (expressed in terms of dollar prices or yields) of all securities sold from the syndicate account. This subparagraph shall not apply to a qualified note syndicate as defined in subsection (a)(ix) above.

(i) *Settlement of Syndicate or Similar Account*. Final settlement of a syndicate or similar account formed for the purchase of securities shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate.

(j) *Payments of Designations*. All syndicate or similar account members shall submit the allocations of their designations according to the rules of the syndicate or similar account to the syndicate or account manager within two business days following the date the issuer delivers the securities to the syndicate. Any credit designated by a customer in connection with the purchase of securities as due to a member of a syndicate or similar account shall be distributed to such member by the broker, dealer or municipal securities dealer handling such order within 10 calendar days following the date the issuer delivers the securities to the syndicate.

(k) *Retail Order Period Representations and Required Disclosures*. From the end of the retail order period but no later than the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)), each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide, in writing, which may be electronic (including, but not limited to, an electronic order entry system), the following information relating to each order designated as retail submitted during a retail order period:

(i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period;

(ii) whether the order is one for which a customer is already conditionally committed;

(iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned;

(iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and

(v) the par amount of the order.

The senior syndicate manager may rely on the information furnished by each broker, dealer, or municipal securities dealer that provided the information required by (i)-(v) unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete.

(l) *(i) Prohibitions on Consents by Brokers, Dealers, and Municipal Securities Dealers*. No broker, dealer, or municipal securities dealer shall provide bond owner consent to amendments to authorizing documents for municipal securities, either in its capacity as an underwriter or remarketing agent, or as agent for or in lieu of bond owners, provided that this prohibition shall not apply in the following circumstances:

(A) the authorizing document expressly allows an underwriter to provide bond owner consent and the offering documents for the existing securities expressly disclosed that bond owner consents could be provided by underwriters of other securities issued under the authorizing document;

(B) such securities are owned by such broker, dealer, or municipal securities dealer other than in its capacity as underwriter or remarketing agent;

(C) all securities affected by such amendments (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent to such amendment), are held by the broker, dealer, or municipal securities dealer acting as remarketing agent, as a result of a mandatory tender of such securities;

(D) the broker, dealer or municipal securities dealer provides consent solely as agent for and on behalf of bond owners delivering written consent to such amendments; or

(E) such consent provided by a broker, dealer or municipal securities dealer, in its capacity as an underwriter on behalf of prospective purchasers, would not become effective until all bond owners of securities affected by the proposed amendments (other than the prospective purchasers for whom the underwriter had provided consent) had also consented to such amendments.

(ii) For purposes of this section, the term "authorizing document" shall mean the trust indenture, resolution, ordinance, or other document under which the securities are issued. The term "bond owner" shall mean the owner of municipal securities issued under the applicable authorizing

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

document. The term "bond owner consent" shall mean any consent specified in an authorizing document that may be or is required to be given by a bond owner pursuant to such authorizing document.

Rule G-11 Interpretations

Syndicate Settlement Practice Violations Noted

July 1981

The Board continues to be concerned about industry compliance with certain of the requirements of Board rules G-11, "Sales of New Issue Municipal Securities During the Underwriting Period," and G-12, "Uniform Practice," with respect to the settlement of syndicate accounts. Board rule G-11(g) [*] requires, among other matters, that syndicate managers provide to members at the time of settlement of a syndicate account a detailed statement of the expenses incurred by the syndicate.[1] Rule G-12(j) requires that settlement of a syndicate account and distribution of any profit due to members be made within 60 days of delivery of the syndicate's securities. In addition, rule G-12(i) requires that good faith deposits be returned within two business days of settlement with an issuer, and rule G-12(k) requires that sales credits designated by a customer be distributed within 30 days following delivery of the securities [by the issuer to the syndicate].

The Board has from time to time received complaints from industry members concerning certain managers' non-compliance with these requirements. These persons allege that certain managers unduly delay the sending of syndicate settlement checks and other disbursements, and furnish settlement statements that provide little or no detail about the nature of the expenses incurred by the syndicate. These persons have also, on occasion, furnished to the Board copies of syndicate statements which illustrate clearly these managers' failure to provide the requisite information and to meet the time requirement for these disbursements. The Board has referred each of these complaints to the appropriate regulatory agency for investigation and appropriate action.

The Board wishes to emphasize strongly the need for compliance with these provisions. The Board continues to be of the view that the time periods and other requirements of the rules, which were arrived at after considerable deliberation, are fair and reasonable. The Board believes that failure to comply with these provisions is inexcusable. The Board does not accept the rationale offered by some, that the difficulties in obtaining bills for syndicate expenses justify these undue delays; the Board believes that it is incumbent upon managers to assure that such bills are received and processed in timely fashion, to permit compliance with the rule. The Board strongly urges syndicate managers who have failed to comply with these requirements to bring their practices into compliance with the requirements of the rules.

The Board also is communicating these views to the enforcement organizations and stressing its concern with respect to compliance with these provisions. It strongly urges all syndicate members to notify the appropriate enforcement organization of any violations by managers of these provisions.

---

[1] The rule contemplates that the statement will set forth a detailed breakdown of expenses into specified categories, such as advertising, printing, legal, computer services, packaging and handling, etc. The statement may include an item for miscellaneous expenses, provided that the amount shown under such an item is not disproportionately large in relation to other items of expense shown and includes only items of expense which cannot be easily categorized elsewhere in the statement.

[*] [Currently codified at rule G-11(h).]

NOTE: Revised to reflect subsequent amendments.

Notice Concerning Syndicate Expenses

November 14, 1991

Board rule G-11, concerning syndicate practices, among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members which are intended to assure that allocations are made in accordance with those priorities. Rule G-11(h)(i) requires that a senior syndicate manager, at or before final settlement of a syndicate account, furnish to syndicate members "an itemized statement setting forth the nature and amount of all actual expenses incurred on behalf of the syndicate." One of the purposes of this section is to render managers accountable for their handling of syndicate funds.

Over the years, the Board, pursuant to rule G-11 and rule G-17, on fair dealing, has urged syndicate managers to provide members with a clear and accurate itemized statement of all actual expenses incurred in the underwriting of each issue. In a 1984 notice, the Board stated that expense items must be sufficiently described to make the expenditures readily understandable by syndicate members, and that generalized categories of expenses are not sufficient if they do not portray the specific nature of the expenses.[1] In 1985, the Board issued a notice specifically warning managers to take care in determining actual syndicate expenses, and noting that managers may violate rule G-17 if the expenses charged to syndicate members bear no relation to, or otherwise overstate, the actual expenses incurred.[2] And in 1987, in response to industry complaints concerning the amount of syndicate expenses charged by managers, the Board issued another notice reiterating that Board rules prohibit managers from overstating actual syndicate expenses.[3]

The Board wishes to reiterate its interpretation of rules G-11 and G-17 that syndicate expenses charged to members must be clearly identified and must be the actual expenses incurred on behalf of the syndicate.[4] The Board continues to be concerned over the number of complaints about syndicate managers who may be charging expenses that are overstated or excessive,

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

particularly with respect to clearance fees for designated sales and computer expenses. Board rules specifically prohibit managers from overstating actual syndicate expenses.

The Board urges syndicate members to report possible overstatements of syndicate expenses and other problems in compli-ance with rule G-11(h)(i). The Board will continue to monitor this situation, and will refer any complaints it receives in this area to the appropriate enforcement agencies. In addition, the NASD has alerted the Board that it will accept telephone complaints or information from syndicate members who do not wish to reveal their identities.

[1] Notice Concerning Disclosure of Syndicate Expenses (January 12, 1984), [re-printed in *MSRB Reports*, Vol. 4, No. 1 (February 1984) at 9].

[2] Notice Concerning Syndicate Managers Charging Excessive Fees for Designated Sales (July 29, 1985), [reprinted in *MSRB Reports*, Vol. 5, No. 5 (August 1985) at 17].

[3] Notice Concerning Syndicate Expenses that Appear Excessive (March 3, 1987), [reprinted in *MSRB Reports*, Vol. 7, No. 2 (March 1987) at 5].

[4] See *MSRB Reports*, Vol. 5, No. 6 (November 1985) [at 5], and Vol. 5, No. 5 (August 1985) [at 5].

Syndicate Expenses: Per Bond Fee for Bookrunning Expenses

June 14, 1995

Board rule G-11, concerning syndicate practices, among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members which are intended to assure that allocations are made in accordance with those priorities. In addition, the rule requires that the manager provide certain accounting information to syndicate members. In particular, rule G-11(h)(i) provides that: "Discretionary fees for clearance costs to be imposed by a syndicate manager and management fees shall be disclosed to syndicate members prior to the submission of a bid, in the case of a competitive sale, or prior to the execution of a purchase contract with the issuer, in the case of a negotiated sale."[1] The purpose of this provision is to provide information useful to syndicate members in determining whether to participate in a syndicate account. The rule also requires that the senior syndicate manager, at or before final settlement of a syndicate account, furnish to the syndicate members "an itemized statement setting for the nature and amount of all actual expenses incurred on behalf of the syndicate." One of the purposes of this section is to render managers accountable for their handling of syndicate funds.

The Board has received inquiries regarding the appropriateness of a per-bond fee for the bookrunning expenses or management fees of the senior syndicate manager. Discretionary fees for clearance costs and management fees may be expressed as a perbond charge. These expenses, however, must be disclosed to members prior to the submission of a bid or prior to the execution of a purchase contract with the issuer; for example, in the Agreement Among Underwriters. The itemized statement setting forth a detailed breakdown of actual expenses incurred on behalf of the syndicate, such as advertising, printing, legal, computer services, etc., must be disclosed to syndicate members at or before final settlement of the syndicate account. With respect to these fees, the Board has previously noted that managers who assess a per-bond charge for designated sales may be acting in violation of rule G-17 if the expenses charged to members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.[2] The Board believes a per-bond fee creates the appearance that it is not an actual expense related to and incurred on behalf of the syndicate.

The Board is concerned about the charging of syndicate expenses and compliance with rule G-11. Managers should exercise care in accounting for syndicate funds, and any charge that has not been disclosed to members prior to the submission of a bid or prior to the execution of a purchase contract may be charged to syndicate members only if it is an actual expense incurred on behalf of the syndicate. The Board will continue to monitor syndicate practices and will notify the appropriate enforcement agency of any complaints it receives in this area. Syndicate members are encouraged to notify directly the appropriate enforcement agency of any violations of these provisions.

[1] The rule defines management fees to include, "in addition to amounts categorized as management fees by the syndicate manager, any amount to be realized by a syndicate manager, and not shared with the other members of the syndicate, which is attributable to the difference in price to be paid to an issuer for the purchase of a new issue of municipal securities and the price at which such securities are to be delivered by the syndicate manager to the members of the syndicate."

[2] Syndicate Managers Charging Excessive Fees for Designated Sales (July 29, 1985), [reprinted in *MSRB Reports,* Vol. 7, No. 2 (March 1987) at 5].

See also:

Rule G-17 Interpretation — Notice of Interpretation Concerning Priority of Orders for New Issue Securities: Rule G-17, December 22, 1987.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letters

Communication of information. I refer to your letter dated October 23, 1978 in which you request advice concerning the application of certain provisions of rule G-11. In your letter, you state that it is your understanding that the requirement in the rule for a syndicate manager to communicate information regarding the priority to be accorded to different orders could be satisfied if an agreement among underwriters provides for the managing underwriters, in their discretion, to establish the priorities to be accorded to different types of orders for the purchase of bonds from the syndicate so long as information as to the priorities so established is furnished to the members of the syndicate prior to the beginning of the order period.

Accessed from http://www.msrb.org. ©2020 Municipal Securities Rulemaking Board. All rights reserved.
MSRB is a registered trademark of the Municipal Securities Rulemaking Board.
Reprinted with permission of MSRB. Version date October 1, 2019.

Rule G-11 would permit the inclusion of a provision delegating to the managing underwriters the authority to establish the priority provisions under which the syndicate would operate. However, under section (f) of rule G-11, such information must be provided by the senior syndicate manager in writing to other members of a syndicate "prior to the first offer of any securities by a syndicate." Accordingly, if there is a presale period, the required disclosure must be made prior to the commencement of such period, and not prior to "the beginning of the order period." The procedures outlined in your letter would be permissible under the rule only if no securities are offered by a syndicate prior to the order period. *MSRB interpretation of November 9, 1978.*

Fixed-price offerings. This responds to your letter of February 17, 1984, requesting our view on the applicability of the Board's rules to the following situation:

[Name deleted] the ("Dealer") is an underwriter of industrial revenue bonds. It underwrites on average three or four issues per month and sells them almost entirely on a retail basis to individual investors. The coupon rates are fixed at current market levels. The bonds are then offered to the public at par. Official statements are provided to investors, fully disclosing all pertinent information and making clear note of the fact that the initial offering price of par may be changed without prior notice.

Recently, interest rates dropped significantly during the two or three-week time period needed for the Dealer to sell out a bond issue. This caused the offering price of the fixed rate municipal bonds to rise above the initial offering price stated in the official statement. All of this occurred before the closing of the syndicate account. You ask specifically whether, under the Board's rules, it is permissible to raise the offering price of municipal bonds which are part of a new issue above the initial price before the close of the underwriting period.

Board rule G-11 generally requires syndicates to establish priorities for different categories of orders and requires that certain disclosures be made to syndicate members which are intended to assure that allocations are made in accordance with those priorities. The rule also requires that the manager provide account information to syndicate members in writing. The Board has described rule G-11 as a "disclosure rule" designed to provide information to new issue participants so that they can understand and evaluate syndicate practices. The rule does not, however, dictate what those practices must be. Thus, rule G-11 does not require that the offering price of new issue municipal securities remain fixed through the underwriting period. The Board considered the issue of fixed-price offerings when it formulated rule G-11 and again when the Public Securities Association, in 1981, asked the Board to consider the adoption of rules governing the granting of concessions in new issues of municipal securities. Since the kind of fixed price offering system developed for corporate securities has not been the primary means of distributing municipal securities and in light of industry concerns that any such proposed regulations could unnecessarily restrict prices and increase the borrowing costs for municipal issues, the Board determined not to adopt any rules addressing the issue.[1]

Finally, we know of no laws or regulations which purport to require fixed-price offerings for new issue municipal securities, and the NASD's rules in this area do not apply to transactions in municipal securities.[2] Of course, Board rule G-30, on prices and commissions, prohibits a dealer from buying municipal securities for its own account from a customer or selling municipal securities for its own account to a customer at an aggregate price unless that price is reasonable taking into consideration all relevant factors. *MSRB interpretation of March 16, 1984.*

[1] For a fuller explanation of the Board's review of G-11 in this area, *See Notice Concerning Board Determination Not to Adopt Concession Rules,* [*MSRB Reports*, Vol. 2, No. 5 (July 1982) at 7].

[2] See NASD Rules of Fair Practice, Article II, Section 1, subsection (m) [currently codified as NASD Rule 114].

Concessions and discounts. This is in response to your October 13, 1986 letter asking if the Board's rules prohibit a dealer from granting a price concession on a new issue security to a customer. The Board's rules do not address the granting of concessions or price discounts to customers on new issue offerings; however, the terms of the applicable syndicate agreement may address this issue. *MSRB interpretation of October 22, 1986.*

See also:

Rule G-8 Interpretive Letter — Syndicate records: sole underwriter, *MSRB interpretation of May 12, 1989.*

Rule G-11 Amendment History (since 2003)

Release No. 34-86219 (June 27, 2019), 84 FR 31961 (July 3, 2019); MSRB Notice 2019-15 (June 28, 2019)

Release No. 34-70990 (December 5, 2013), 78 FR 75398 (December 11, 2013); MSRB Notice 2013-21 (December 10, 2013)

Release No. 34-70532 (September 26, 2013), 78 FR 60956 (October 2, 2013); MSRB Notice 2013-20 (September 27, 2013)

Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-60725 (September 28, 2009), 74 FR 50855 (October 1, 2009); MSRB Notice 2009-55 (September 30, 2009)

Release No. 34-58154 (July 15, 2008), 73 FR 42388 (July 21, 2008); MSRB Notice 2008-32 (July 22, 2008)

Release No. 34-52333 (August 25, 2005), 70 FR 51857 (August 31, 2005); MSRB Notice 2005-47 (August 30, 2005)