

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2010 - 02
Amendment No.

Proposed Rule Change by Municipal Securities Rulemaking Board
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>	Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Amendments to Rule G-34 to Enhance the Interest Rate and Descriptive Information Currently Collected and Made Transparent by the MSRB on Municipal Auction Rate Securities and Variable Rate Demand Obligations

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By

(Name)

Corporate Secretary

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information

Add

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change to enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities (“ARS”) and Variable Rate Demand Obligations (“VRDOs”). The proposed rule change would: (i) amend Rules G-8, books and records, and G-34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively “dealers”) to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs (“short-term obligation document disclosure rule change”); (b) ARS bidding information (“ARS bidding information rule change”); and (c) additional VRDO information (“VRDO information rule change”) (collectively, the “rule change proposal”); (ii) amend the MSRB Short-term Obligation Rate Transparency (“SHORT”) System Facility to collect and disseminate information identified in the ARS bidding information rule change and the VRDO information rule change and documents identified in the short-term obligation document disclosure rule change (the “SHORT System Facility amendment proposal”); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB’s Electronic Municipal Market Access (EMMA) web site (the “EMMA Short-term Obligation Rate Transparency Service amendment”).

The MSRB requests that the proposed rule change, which may be implemented in phases, be made effective on such date or dates as would be announced by the MSRB in notices published on the MSRB Web site, which dates would be no later than nine months after Commission approval of the proposed rule change and would be announced no later than sixty (60) days prior to the effective dates.

The text of the proposed rule change is set forth below.¹

* * *

SHORT SYSTEM FACILITY AMENDMENT PROPOSAL

MUNICIPAL SECURITIES RULEMAKING BOARD SHORT-TERM OBLIGATION RATE TRANSPARENCY SYSTEM

The Short-term Obligation Rate Transparency (“SHORT”) System is a facility of the Municipal Securities Rulemaking Board (“MSRB”) for the collection and dissemination of information and documents about securities bearing interest at short-

¹ Underlining indicates additions; brackets indicate deletions.

term rates and making such information and documents publicly available through a dissemination service.

Submissions to the SHORT System

The SHORT System receives submissions of information and documents about securities bearing interest at short-term rates under MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements.

Information and Documents to be Submitted. The basic items of information and documents required to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under MSRB Rule G-34(c). Submitters of documents shall provide to the SHORT System related indexing information with respect to each document submitted, including an indication of the document type, date such document became available to the broker, dealer or municipal securities dealer, and CUSIP number(s) of the municipal securities to which such document relates. A submitter required to submit a document that is already available in its entirety in the SHORT System may, in lieu of submitting a duplicate document, identify the document already submitted and provide such items of related indexing information as are required by MSRB rules or the SHORT System input specifications and system procedures. A submitter required to submit a document that is not able to be obtained through best efforts as provided in Rule G-34(c) must provide an affirmative indication that a document required to be submitted is not available for submission notwithstanding the submitter's best efforts to obtain such document. The complete list of data elements that are required on a submission to the SHORT System is available in input specifications and system procedures made available on www.msrb.org. Submitters shall be responsible for the accuracy and completeness of all information submitted to the SHORT System.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-protected accounts in the MSRB's user authentication system, MSRB Gateway. MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System are required to obtain an account in MSRB Gateway in order to submit information to the SHORT System. Through MSRB Gateway, submitters also have the ability to designate third-party agents to submit information to the SHORT System on the submitter's behalf.

Submissions may be made by the following classes of submitters:

- Auction Rate Security ("ARS") Program Dealer;
- Variable Rate Demand Obligation ("VRDO") Remarketing Agent;
- ARS Auction Agent; and
- Designated Agent, which may submit any information otherwise permitted to be submitted by another class of submitter which has designated such agent, as provided below.

All ARS Auction Agents are allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. Dealers optionally may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. All actions taken by a Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

Timing of Submissions. Submitters are required to make submissions to the SHORT System within the timeframes set forth in MSRB Rule G-34(c) and related MSRB procedures. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G-14 RTRS Procedures, from at least the hours of 6:00 A.M. to 9:00 P.M. Eastern Time, subject to the right of the MSRB to make such processes unavailable at times as needed to ensure the integrity of the SHORT System and any related systems. Submissions of documents may be made throughout any day, subject to the right of the MSRB to make such processes unavailable between the hours of 3:00 A.M. and 6:00 A.M. each day, Eastern Time, for required maintenance, upgrades or other purposes, or at other times as needed to ensure the integrity of MSRB systems. The MSRB shall provide advance notice of any planned periods of unavailability and shall endeavor to provide information to submitters as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Method of Submission. Information and documents may be submitted to the SHORT System through a secure, password-protected, web-based electronic submitter interface or through a secure, authenticated computer-to-computer data connection, at the election of the submitter. When making submissions using the web-based interface, related information is entered manually into an on-line form and documents are uploaded as portable document format (PDF) files. Computer-to-computer submissions utilize XML files for data and PDF files for documents. Appropriate schemas and procedures for web-based and computer-to-computer submissions are available in input specifications and system procedures made available on www.msrb.org.

Designated Electronic Format for Documents. All documents submitted to the SHORT System must be in portable document format (PDF), configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. Documents submitted to the SHORT System created on or after [insert effective date of SHORT System Facility amendment] shall be word-searchable (without regard to diagrams, images and other non-textual elements).

SHORT System Processing

The SHORT System provides a single portal for the submission of information and documents. The SHORT System, as well as other MSRB systems and services, performs various data checks to ensure that information and documents are submitted [is]

in the correct format. In addition, data checks are performed to monitor dealer compliance with MSRB Rule G-34(c) as well as to identify information submitted in correct formats that may contain errors due to information not falling within reasonable ranges of expected values for a given item of information. All submissions generate an acknowledgement or error message, and all dealers that have information or documents submitted on their behalf by either an ARS Auction Agent or a Designated Agent are able to monitor such [information] submissions.

SHORT System [Data] Information and Document Dissemination

Information and documents submitted to the SHORT System that pass[es] the format and data checks described above [is] are processed and disseminated on a real-time basis. Any changes to submissions also are processed upon receipt and updated information and documents [is] are disseminated in real-time. Information submitted to the SHORT System is, in general, disseminated to the EMMA short-term obligation rate transparency service within 15 minutes of acceptance, although during peak traffic periods dissemination may occur within one hour of acceptance. Submissions of documents to the SHORT System accepted during the hours of 8:30 A.M. to 6:00 P.M. Eastern Time on an MSRB business day are, in general, disseminated to the EMMA short-term obligation transparency service within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often are posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. SHORT System information and documents, along with related indexing information, shall be made available to the public through the EMMA portal for the life of the related securities.

The MSRB plans to offer subscriptions to the information and documents submitted to the SHORT System in the future.

* * *

EMMA SHORT-TERM OBLIGATION RATE TRANSPARENCY SERVICE AMENDMENT PROPOSAL

EMMA SHORT-TERM OBLIGATION RATE TRANSPARENCY SERVICE

The EMMA short-term obligation rate transparency service, established as a service of EMMA, makes information and documents disseminated from the MSRB's Short-term Obligation Rate Transparency ("SHORT") System available to the public, at no charge, on the EMMA portal.

Public Availability of Short-term Obligation Rate Transparency Information

EMMA Portal. Short-term obligation rate transparency information is posted on the EMMA portal within 5 minutes of receipt from the SHORT System, although during

peak traffic periods posting may occur within 15 minutes of receipt. Submissions of documents to the SHORT System accepted during the hours of 8:30 A.M. to 6:00 P.M. Eastern Time on an MSRB business day are, in general, disseminated to the EMMA short-term obligation rate transparency service within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often are posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. The short-term obligation rate transparency information available through the EMMA short-term obligation rate transparency service represents information provided to EMMA since the inception of the SHORT System in January 2009. SHORT System information and documents, along with related indexing information, shall be made available to the public through the EMMA portal for the life of the related securities.

The EMMA portal provides on-line search functions utilizing available indexing information to allow users of the EMMA portal to readily access short-term obligation rate transparency information and documents. Basic identifying information relating to specific municipal securities and/or specific issues accompanies the display of short-term obligation rate transparency information and documents. The EMMA portal permits users to request periodic alerts, at no charge, regarding whether short-term obligation rate transparency information and documents for a specific security [has] have been posted.

The EMMA portal is available without charge to all members of the public. The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB will monitor usage levels in order to assure continued capacity in the future.

The MSRB reserves the right to restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. The MSRB is not responsible for the content of the information or documents submitted by submitters to the SHORT System displayed on the EMMA portal.

Subscriptions. The MSRB plans to offer subscriptions to the information and documents submitted to the SHORT System in the future. Under a subscription to the information and documents submitted to the SHORT System, users would be able to obtain the [short-term obligation rate transparency] information and documents provided through the EMMA short-term obligation rate transparency service other than by viewing on and downloading from the EMMA portal.

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RULE CHANGE PROPOSAL

Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) through (xxi) No change.

(xxii) Records Concerning Compliance with Rule G-34(c).

(A) A broker, dealer or municipal securities dealer that acts as a Program Dealer, as defined in Rule G-34(c)(i)(A)(1), for an Auction Rate Security shall maintain:

(1) through (2) No change.

(3) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(i).

(B) A broker, dealer or municipal securities dealer that acts as a Remarketing Agent, as defined in Rule G-34(c)(ii), for a Variable Rate Demand Obligation shall maintain:

(1) No change.

(2) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(ii); and[.]

(3) a record of all best efforts undertaken to obtain documents detailing provisions of liquidity facilities identified in Rule G-34(c)(ii)(B)(1) associated with the Variable Rate Demand Obligation for which the broker, dealer or municipal securities dealer acts as a Remarketing Agent.

(xxiii) Records Concerning Compliance with Rule G-34(a)(ii)(C). A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Rule G-34(a)(ii)(C)(1) shall maintain:

(A) through (C) No change.

(b) through (g) No change.

Rule G-34: CUSIP Numbers, New Issue, and Market Information Requirements

(a) - (b) No change.

(c) *Variable Rate Security Market Information.* The Board operates a facility for the collection and public dissemination of information and documents about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System).

(i) *Auction Rate Securities.* Auction Rate Securities are municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an agent responsible for conducting the auction process on behalf of the issuer or other obligated person with respect to such Auction Rate Securities (“Auction Agent”) that receives orders from brokers, dealers and municipal securities dealers.

(A) Auction Rate Securities Data.

[(A)] (1) Each broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process (“Program Dealer”) shall report, or ensure the reporting of, the following information about the Auction Rate Security and concerning the results of the auction to the Board:

[(1)] (a) CUSIP number;

[(2)] (b) Interest rate produced by the auction process and designation of whether the interest rate is a maximum rate, all hold rate, or rate set by auction;

[(3)] (c) Identity of all Program Dealers that submitted orders, including but not limited to hold orders;

[(4)] (d) Date and time of the auction;

[(5)] Date and time the interest rate determined as a result of the auction process was communicated to Program Dealers;]

[(6)] (e) Length of time, in days, that the interest rate produced by the auction process is applicable;

[(7)] (f) Minimum denomination;

[(8)] Par amount auctioned, not including hold orders effective at any rate; and]

[(9)] (g) Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable.

(h) Date and time the interest rate determined as a result of the auction process was communicated to Program Dealers;

(i) Interest rate(s) and aggregate par amount(s) of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;

(j) Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;

(k) Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;

(l) Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;

(m) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and

(n) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

[(B)] (2) Information identified in subparagraph (c)(i)(A) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an auction occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(i)(A)(1) is not available by the deadline in this subparagraph (c)(i)[(B)](A)(2), such item shall be provided to the

Board as soon as it is available. In the event that an auction occurs on a non-RTRS Business Day, the information identified in subparagraph (c)(i)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day.

[(C)] (3) A Program Dealer may designate an agent to report the information identified in subparagraph (c)(i)(A)(1) to the Board, provided that an Auction Agent may submit information on behalf of a Program Dealer absent such designation by the Program Dealer. The failure of a designated agent to comply with any requirement of this paragraph (c)(i) shall be considered a failure by such Program Dealer to so comply; provided that if an Auction Agent has, within the time periods required under subparagraph (c)(i)(B)(A)(2), reported the information required under subparagraph (c)(i)(A)(1), the Program Dealer may rely on the accuracy of such information if the Program Dealer makes a good faith and reasonable effort to cause the Auction Agent to correct any inaccuracies known to the Program Dealer.

(4) For Auction Rate Securities in which there are multiple Program Dealers, each Program Dealer must only report for items (i) through (n) of the items of information identified in subparagraph (c)(i)(A)(1) information reflective of the Program Dealer's involvement in the auction. A designated agent as described in subparagraph (c)(i)(A)(3) reporting results of an auction on behalf of multiple Program Dealers must report for items (i) through (n) of the items information identified in subparagraph (c)(i)(A)(1) information reflective of the aggregate of all such Program Dealers' involvement in the auction for which the designated agent is making a report. A Program Dealer may rely on the reporting of information by an Auction Agent as provided in subparagraph (c)(i)(A)(3) if the Auction Agent has undertaken to report, and the Program Dealer does not have reason to believe that the Auction Agent is not accurately reporting, all items of information identified in subparagraph (c)(i)(A)(1), to the extent applicable, for an auction that is reflective of all Program Dealers that were involved in the auction.

[(D)] (5) Information items (a) through (h) of the items of information identified in subparagraph (c)(i)(A)(1) reported to the Board pursuant to this section (c)(i) shall be submitted in the manner described in the written procedures for SHORT System users and changes to submitted information must be made as soon as possible. Information items (i) through (n) of the items of information identified in subparagraph (c)(i)(A)(1) reported to the Board pursuant to this section (c)(i) shall be submitted as a

document, in a designated electronic format (as defined in Rule G-32), at such time and in such manner as specified herein and in the SHORT System Users Manual published by the Board setting forth the processes and procedures with respect to submissions to be made to the SHORT System.

(B) Auction Rate Securities Documents.

(1) Each Program Dealer shall submit to the Board current documents setting forth auction procedures and interest rate setting mechanisms associated with an outstanding Auction Rate Security for which it acts as a Program Dealer by no later than [insert date ninety business days after rule effectiveness] and shall submit to the Board any future, subsequently amended or new versions of such documents no later than one business day after they are made available to the Program Dealer.

(2) All submissions of documents required under subparagraph (c)(i)(B)(1) shall be made by electronic submissions to the SHORT System in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(ii) Variable Rate Demand Obligations. Variable Rate Demand Obligations are securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically with specified advance notice (“Notification Period”), and a broker, dealer or municipal security dealer acts as a remarketing agent (“Remarketing Agent”) responsible for reselling to new investors securities that have been tendered for purchase by a holder.

(A) Variable Rate Demand Obligations Data.

(1) Each Remarketing Agent for a Variable Rate Demand Obligation shall report the following information to the Board about the Variable Rate Demand Obligation [and] applicable at the time of and concerning the results of an interest rate reset [to the Board]:

[(1)] (a) CUSIP number;

[(2)] (b) Interest rate and designation of whether the interest rate is a maximum rate, set by formula or set by the remarketing agent;

[(3)] (c) Identity of the Remarketing Agent;

[(4)] (d) Date and time of the interest rate reset;

[(5)] (e) Effective date and [L] length of time, in days, that the interest rate is applicable;

[(6)] (f) Minimum denomination;

[(7)] (g) Length of Notification Period;

[(8)] (h) Minimum and maximum rates, if any, applicable at time of the interest rate reset or, if not calculable as of the time of interest rate reset, indication that such rate or rates are not calculable; [and]

[(9)] (i) Identity of liquidity provider, [T] type and expiration date of each liquidity facility applicable to the Variable Rate Demand Obligation;[.]

[(10)] (j) Identity of the agent of the issuer to which bondholders may tender their security (“Tender Agent”); and

[(11)] (k) Aggregate par amount, if any, of the Variable Rate Demand Obligation held by a liquidity provider(s) (par amount held as “Bank Bonds”), and aggregate par amount, if any, of the Variable Rate Demand Obligation held by parties other than a liquidity provider(s), including the par amounts held by the Remarketing Agent and by investors.

[(B)] (2) Information identified in subparagraph (c)(ii)(A)(1) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an interest rate reset occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(ii)(A)(1) is not available by the deadline in this subparagraph (c)(ii)[(B)](A)(2), such item shall be provided to the Board as soon as it is available provided that the information identified in subparagraph (c)(ii)(A)(1)(k) shall reflect the information available to the Remarketing Agent as of the date and time of the interest rate reset. In the event that an interest rate reset occurs on a non-RTRS Business Day, the information identified in subparagraph (c)(ii)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day.

~~[(C)]~~ (3) A Remarketing Agent may designate an agent to report the information identified in subparagraph (c)(ii)(A)(1) to the Board. The failure of a designated agent to comply with any requirement of this paragraph (c)(ii) shall be considered a failure by such Remarketing Agent to so comply.

~~[(D)]~~ (4) Information reported to the Board pursuant to this section (c)(ii) shall be submitted in the manner described in the written procedures for SHORT System users and changes to submitted information must be made as soon as possible.

(B) Variable Rate Demand Obligations Documents.

(1) Each Remarketing Agent shall use best efforts to obtain and shall submit to the SHORT System the current versions of the following documents detailing provisions of liquidity facilities associated with the Variable Rate Demand Obligation for which it acts as a Remarketing Agent by no later than [insert date ninety business days after rule effectiveness] and shall submit to the SHORT System any future, subsequently amended or new versions of such documents no later than one business day after they are made available to the Remarketing Agent:

(a) Stand-By Bond Purchase Agreement;

(b) Letter of Credit Agreement; and

(c) any other document that establishes an obligation to provide liquidity.

(2) All submissions of documents required under this rule shall be made by electronic submissions to the SHORT System in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(3) In the event that a document described in subparagraph (c)(ii)(B)(1) is not able to be obtained through the best efforts of the Remarketing Agent, the Remarketing Agent shall submit notice to the SHORT System that such document will not be provided at such times as specified herein and in the SHORT System Users Manual.

~~[(c)]~~ (d) No change.

~~[(d)]~~ (e) No change.

* * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its December 10, 2009 meeting. Questions concerning this filing may be directed to Justin R. Pica, Director, Uniform Practice Policy, at 703-797-6716.

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

(a) Purpose

The proposed rule change would enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change would: (i) amend MSRB Rules G-8, books and records, and G-34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively "dealers") to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs; (b) ARS bidding information; and (c) additional VRDO information (collectively "rule change proposal"); (ii) amend the MSRB Short-term Obligation Rate Transparency ("SHORT") System Facility to collect and disseminate the documents identified in the rule change proposal ("SHORT System Facility amendment proposal"); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB's Electronic Municipal Market Access (EMMA) web site (the "EMMA Short-term Obligation Rate Transparency Service amendment").

SHORT and EMMA are components of an integrated suite of programs, services and systems ("MSRB market information programs") for the collection of municipal securities market data and documents from dealers and other market participants and the dissemination of such data and documents to the public. The MSRB market information programs leverage the components of the various individual programs, services and systems to enhance the overall efficiency and effectiveness of the MSRB market information programs. In particular, processes, software, hardware or other components initially placed into service for a particular program, service or system may be utilized by other programs, services and systems within the MSRB market information programs to

optimize the effectiveness of the MSRB market information programs and the individual components thereof.²

BACKGROUND

Since January 30, 2009 for ARS and April 1, 2009 for VRDOs, MSRB Rule G-34(c), on variable rate security market information, has required dealers that act as Program Dealers³ for ARS or Remarketing Agents for VRDOs to report (either directly or through an agent) certain information following an ARS auction or VRDO interest rate reset to the SHORT System.⁴ Information generally is required to be reported to the SHORT System by no later than 6:30 P.M. Eastern Time on the day that an ARS auction or VRDO interest rate reset occurs and all collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") web site.⁵ The specific items of interest rate and descriptive information about ARS and VRDOs currently required to be reported to the SHORT System are listed below.

The following is a list of the information currently required to be reported to the SHORT System by an ARS Program Dealer following an ARS auction:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;

² For example, certain elements of the SHORT System Facility amendment proposal would rely on components previously placed into service pursuant to the EMMA primary market or continuing disclosure services for purposes of processing submissions made to the MSRB.

³ An ARS Program Dealer is defined in Rule G-34(c) as a dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell ARS through the auction process.

⁴ See Securities Exchange Act Release No. 34-59212, January 7, 2009 (File No. SR-MSRB-2008-07).

⁵ The 6:30 P.M. Eastern Time deadline only applies to those ARS auctions and VRDO interest rate resets that occur during an "RTRS Business Day," as defined in Rule G-14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur outside of the hours of an "RTRS Business Day" is required to be submitted to the SHORT System by no later than 6:30 P.M. Eastern Time on the next "RTRS Business Day."

- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the interest rate represents a “maximum rate,” an “all hold rate,” or a rate that was “set by auction;”
- Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable;⁶ and
- Par amount auctioned, not including hold orders effective at any rate.

The following is a list of the information currently required to be reported to the SHORT System by a VRDO Remarketing Agent following a VRDO interest rate reset:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Remarketing Agent;
- Date of interest rate reset;
- Length of the interest rate reset period;
- Length of Notification Period;
- Indication of whether interest rate is “set by formula,” “set by Remarketing Agent” or a “maximum rate;”
- Minimum and maximum rates, if any, applicable at the time of the interest rate reset or, if not calculable as of the time of the interest rate reset, indication that such rate or rates are not calculable;⁷
- Minimum denomination;
- Type of liquidity facility(ies);⁸ and
- Expiration date of each liquidity facility.

DESCRIPTION OF THE RULE CHANGE PROPOSAL

The proposed rule change would enhance the interest rate and descriptive information currently made available to market participants about ARS and VRDOs. The proposed rule change would require dealers to report to the MSRB documents that set

⁶ Some ARS and VRDOs have minimum and maximum rates that are set pursuant to formulas that are unable to be calculated at the time a submission to the SHORT System is required. In these cases, a value of “NC” is required to be included in a submission to the SHORT System to show that the minimum and maximum rates are “not calculable.” This exception does not apply to minimum and maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such rates are required to be computed and the resulting values included on a submission to the SHORT System.

⁷ *Id.*

⁸ Dealers are required to submit to the SHORT System whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement.

forth auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs, as well as ARS bidding information and additional VRDO information. All collected documents and information would be made available in real-time on EMMA.⁹ The documents and information about ARS and VRDOs that would be required to be provided to the MSRB under the proposed rule change are described below.

ARS Bidding Information

The proposed rule change would require each ARS Program Dealer to report to the SHORT System an electronic document containing “ARS bidding information,” which would include information about all orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction. This information would augment the interest rate and descriptive information currently provided to market participants by also providing information that would show, for example, how the interest rate was determined for a successful auction. The specific items of ARS bidding information an ARS Program Dealer would be required to report to the SHORT System are listed below. All items would be required to be reported within the same timeframe as the ARS interest rate and descriptive information currently required to be reported under Rule G-34(c). The ARS bidding information document would be required to be submitted to the SHORT System as a word-searchable portable document format (“PDF”) file.

- Interest rate(s) and aggregate par amount(s) of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;
- Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;
- Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;
- Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

Additional VRDO Information

The proposed rule change would require VRDO Remarketing Agents to submit additional items of VRDO information to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported under Rule G-34(c). This information would provide additional details concerning the interest rate set for a VRDO, such as the effective date of the interest rate, and would facilitate

⁹ In the future, the MSRB also plans to make all information collected under the rule change proposal available on a subscription basis.

the tendering of a position in a VRDO by investors by requiring VRDO Remarketing Agents to report the identity of the agent of the issuer of the VRDOs to which a holder may tender their security (“Tender Agent”).

The additional VRDO information would also provide transparency related to the current holders of the VRDO. Information about current holders of a VRDO would indicate, for example, that interest rate set represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely by a liquidity provider (as a “Bank Bond”) and that the interest rate set is therefore not set by market demand. A complete list of the specific items of additional VRDO information a VRDO Remarketing Agent would be required to report to the SHORT System under the proposed rule change are listed below.

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider(s) including a indication of those VRDOs for which an issuer provides “self liquidity” and the identity of the party providing such self-liquidity;¹⁰
- Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the par amount of the VRDO, if any, held as a Bank Bond; and
- Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the aggregate par amount of the VRDO, if any, held by parties other than a liquidity provider, which includes the par amounts held by a VRDO Remarketing Agent and by investors.

ARS and VRDO Documents

The proposed rule change would require ARS Program Dealers and VRDO Remarketing Agents to submit certain documents to the SHORT System to ensure that market participants have centralized access to critical documents about ARS programs and VRDO issues. For existing ARS programs, dealers would be required to submit the current versions of ARS documents defining current auction procedures and interest rate setting mechanisms to the SHORT System within ninety days after the effective date of the proposed rule change. For existing VRDO issues, dealers would be required to undertake and document¹¹ best efforts to obtain current versions of VRDO liquidity

¹⁰ Some VRDOs have liquidity provisions under which the liquidity is provided by the issuer, conduit borrower or affiliate instead of by a third-party. Rule G-34(c) currently requires Remarketing Agents to report the type of liquidity facility applicable to a VRDO. Currently, SHORT System specifications only provide two options for this data element – letter of credit and standby bond purchase agreement – and in conjunction with proposed rule change the MSRB would revise the specifications to also capture VRDOs that have “self liquidity.”

¹¹ The proposed rule change would require dealers to keep records for a period of three years of all best efforts undertaken to obtain documents for existing VRDO

facility documents, including Letters of Credit, Stand-by Bond Purchase Agreements and any other document that establishes an obligation to provide liquidity, and submit such documents to the SHORT System within ninety days after the effective date of the proposed rule change. On an ongoing basis, dealers would be required to submit any new or amended versions of these documents within one business day of receipt.

The MSRB recognizes that for some ARS programs, documents defining current auction procedures and interest rate setting mechanisms may already be available in the SHORT System. This may occur in the case of an ARS with multiple Program Dealers in which one Program Dealer has already submitted to the SHORT System the required document. In these cases, in lieu of submitting duplicate documents, dealers would be provided the capability to signify that a document required to be submitted has already been submitted to the SHORT System by identifying the relevant document.

Since January 1, 2010, all documents submitted to EMMA have been required to be word-searchable PDF files. While this same requirement would apply to the submission of ARS and VRDO documents to the SHORT System, MSRB acknowledges that some of these documents for outstanding ARS and VRDOs are likely to be older documents that may not be available in electronic format or a format that would easily permit a dealer to produce a word-searchable PDF file of the document. Accordingly, the proposed rule change would only require ARS and VRDO documents submitted to EMMA to be word-searchable for new or amended versions of documents produced after the effective date of the proposed rule change.

DESCRIPTION OF THE SHORT SYSTEM FACILITY AMENDMENT PROPOSAL

The SHORT System is an MSRB Facility for the collection and public dissemination of information about ARS and VRDO. The amendment to this facility would provide for the collection and public dissemination of documents identified in the rule change proposal.

Submissions to the SHORT System

The SHORT System receives submissions of information and documents about securities bearing interest at short-term rates under MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements.

Information and Documents to be Submitted. The basic items of information and documents that would be required to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under MSRB Rule G-34(c). Submitters of documents would be required to provide to the SHORT System related indexing information with respect to each document submitted, including an indication of

issues. Such records of best efforts would include, for example, all written requests for documents to and any responses from an issuer or liquidity provider.

the document type, date such document became available to the dealer, and CUSIP number(s) of the municipal securities to which such document relates. A submitter required to submit a document that is already available in its entirety in the SHORT System would be permitted to, in lieu of submitting a duplicate document, identify the document already submitted and provide such items of related indexing information as are required by MSRB rules or the SHORT System input specifications and system procedures. A submitter required to submit a document that is not able to be obtained through best efforts as provided in the proposed rule change would be required to provide an affirmative indication that a document required to be submitted is not available for submission notwithstanding the submitter's best efforts to obtain such document. The complete list of data elements that would be required on a submission to the SHORT System would be available in input specifications and system procedures made available on www.msrb.org. Submitters would be responsible for the accuracy and completeness of all information submitted to the SHORT System.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-protected accounts in the MSRB's user authentication system, MSRB Gateway. MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System are required to obtain an account in MSRB Gateway in order to submit information to the SHORT System. Through MSRB Gateway, submitters also have the ability to designate third-party agents to submit information to the SHORT System on the submitter's behalf.

Submissions may be made by the following classes of submitters:

- ARS Program Dealer;
- VRDO Remarketing Agent;
- ARS Auction Agent; and
- Designated Agent, which may submit any information otherwise permitted to be submitted by another class of submitter which has designated such agent, as provided below.

All ARS Auction Agents are allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. Dealers optionally may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. All actions taken by a Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

Timing of Submissions. Submitters are required to make submissions to the SHORT System within the timeframes set forth in MSRB Rule G-34(c) and related MSRB procedures. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G-14 RTRS Procedures, from at least the hours of 6:00 A.M. to 9:00 P.M. Eastern Time, subject to the right of the MSRB to make such processes unavailable at times as needed to ensure the integrity of the

SHORT System and any related systems. Submissions of documents would be able to be made throughout any day, subject to the right of the MSRB to make such processes unavailable between the hours of 3:00 A.M. and 6:00 A.M. each day, Eastern Time, for required maintenance, upgrades or other purposes, or at other times as needed to ensure the integrity of MSRB systems. The MSRB provides advance notice of any planned periods of unavailability and shall endeavor to provide information to submitters as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Method of Submission. Information and documents may be submitted to the SHORT System through a secure, password-protected, web-based electronic submitter interface or through a secure, authenticated computer-to-computer data connection, at the election of the submitter. When making submissions using the web-based interface, related information is entered manually into an on-line form and documents would be required to be uploaded as portable document format (PDF) files. Computer-to-computer submissions utilize XML files for data and PDF files for documents. Appropriate schemas and procedures for web-based and computer-to-computer submissions would be available in input specifications and system procedures made available on www.msrb.org.

Designated Electronic Format for Documents. All documents submitted to the SHORT System would be required to be in portable document format (PDF), configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. Documents submitted to the SHORT System created on or after the effective date of the proposed rule change would be required to be word-searchable (without regard to diagrams, images and other non-textual elements).

SHORT System Processing

The SHORT System provides a single portal for the submission of information and documents. The SHORT System, as well as other MSRB systems and services, performs various data checks to ensure that information and documents are submitted in the correct format. In addition, data checks are performed to monitor dealer compliance with MSRB Rule G-34(c) as well as to identify information submitted in correct formats that may contain errors due to information not falling within reasonable ranges of expected values for a given item of information. All submissions generate an acknowledgement or error message, and all dealers that have information or documents submitted on their behalf by either an ARS Auction Agent or a Designated Agent are able to monitor such submissions.

SHORT System Information and Document Dissemination

Information and documents submitted to the SHORT System that pass the format and data checks described above are processed and disseminated on a real-time basis.

Any changes to submissions also are processed upon receipt and updated information and documents are disseminated in real-time. Information submitted to the SHORT System is, in general, disseminated to the EMMA short-term obligation rate transparency service within 15 minutes of acceptance, although during peak traffic periods dissemination may occur within one hour of acceptance. Submissions of documents to the SHORT System accepted during the hours of 8:30 AM to 6:00 PM Eastern Time on an MSRB business day would generally be disseminated to the EMMA short-term obligation transparency service within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often would be posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. SHORT System information and documents, along with related indexing information, would be made available to the public through the EMMA portal for the life of the related securities.

The MSRB plans to offer subscriptions to the information and documents submitted to the SHORT System in the future.

DESCRIPTION OF THE EMMA SHORT-TERM OBLIGATION RATE TRANSPARENCY SERVICE AMENDMENT PROPOSAL

The EMMA short-term obligation rate transparency service currently makes the information collected by the SHORT System available to the public, at no charge, on the EMMA portal. The amendment to this service would add the documents identified in the rule change proposal to this service so that such documents would also be available to the public, at no charge, on the EMMA portal.

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (the "Act"), which provides that the MSRB's rules shall:

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

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to information about and documents relating to ARS and VRDO. The proposed rule change would provide greater access to information about and documents

relating to ARS and VRDO to all participants in the municipal securities market on an equal basis thereby removing potential barriers to obtaining such information. These factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to dealers in municipal securities.

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

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS ("March 2008 ARS Notice"),¹² on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDOs ("May 2008 VRDO Notice"),¹³ and on July 14, 2009 the MSRB requested comment on the draft amendments to Rule G-34(c) ("July 2009 Notice").¹⁴ These notices, the comments received, and the MSRB's responses are discussed below.

March 2008 ARS Notice

The March 2008 ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The March 2008 ARS Notice proposed the collection and dissemination of the current interest rate and certain descriptive information for ARS programs, bidding information detailing the orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction ("ARS bidding information") and documents concerning ARS that were not required to be filed with the MSRB under former Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD).

May 2008 VRDO Notice

The May 2008 VRDO Notice proposed a plan to collect and disseminate critical market information about VRDO using the same system proposed in the March 2008 ARS Notice for ARS. The May 2008 VRDO Notice proposed collecting and disseminating the current interest rate and certain descriptive information for VRDOs and documents concerning VRDOs that were not required to be filed with the MSRB under former Rule G-36, such as the letter of credit or standby bond purchase agreement.

¹² See MSRB Notice 2008-15 (March 17, 2008).

¹³ See MSRB Notice 2008-24 (May 23, 2008).

¹⁴ See MSRB Notice 2009-43 (July 14, 2009).

July 2009 Notice

The July 2009 Notice requested comment on draft amendments to Rule G-34(c). The draft amendments would require ARS Program Dealers to report ARS bidding information and VRDO Remarketing Agents to report additional descriptive information about VRDOs to the MSRB Short-term Obligation Rate Transparency (“SHORT”) System. The draft amendments also would require ARS Program Dealers and VRDO Remarketing Agents to submit ARS documents defining current auction procedures and interest rate setting mechanisms and VRDO liquidity facility documents, including current Letters of Credit and Stand-by Bond Purchase Agreements (collectively “short-term obligation documents”). For existing ARS and VRDOs, the draft amendments would require dealers to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft amendments and on an ongoing basis dealers would be required to provide any new or amended versions of these documents within one business day of receipt.

DISCUSSION OF COMMENTS

The MSRB received comments on the March 2008 ARS Notice from seven commentators,¹⁵ on the May 2008 VRDO Notice from nine commentators,¹⁶ and on the

¹⁵ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC (“DAC”) to Justin Pica, dated April 21, 2008; Jack B. McPherson to Mr. Pica, dated March 27, 2008; Mikag@cox.net to Mr. Pica, e-mail dated April 23, 2008; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, Regional Bond Dealers Association (“RBDA”) to Mr. Pica, dated April 21, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners, LLC (“Saber Partners”) to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) to Mr. Pica, dated April 21, 2008; and, Jeff Yankauer to Mr. Pica, e-mail dated April 17, 2008.

¹⁶ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC (“DAC”) to Mr. Pica, dated July 1, 2008; Daniel Thieke, Vice President, Depository Trust and Clearing Corporation (“DTCC”) to Mr. Pica, dated June 26, 2008; Christine Walsh, Managing Director, Merrill Lynch to Mr. Pica, dated June 26, 2008; S. Lauren Heyne, Chief Compliance Officer, RW Smith and Associates, Inc. (“RW Smith”) to Mr. Pica, dated June 30, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated June 30, 2008; Dara L. Smith, Managing Director, SunTrust Robinson Humphrey (“SunTrust”) to Mr. Pica, dated June 27, 2008; Joseph A. Whitehead, Thornton Farish Inc. (“Thornton Farish”) to Mr. Pica, dated June 30, 2008; and, Belle Walker, Senior Vice President, W.R. Taylor and Company, LLC (“W.R. Taylor”) to Mr. Pica, dated August 7, 2008.

July 2009 Notice from five commentators.¹⁷ After reviewing the comments on the March 2008 ARS Notice and May 2008 VRDO Notice, the MSRB approved a phased-in approach to the collection and dissemination of ARS and VRDO information and documents. The first phase of this approach included changes to MSRB Rule G-34 to require dealers to report ARS and VRDO interest rate and descriptive information to the MSRB and implementation of the SHORT System, which became effective on January 30, 2009 for ARS and April 1, 2009 for VRDOs.¹⁸ The principal comments of the March 2008 ARS Notice, May 2008 VRDO Notice and July 2009 Notice concerning the collection of ARS bidding information, additional VRDO descriptive information and short-term obligation disclosure documents are discussed below.

Additional VRDO Data

The draft amendments in the July 2009 Notice identified items of information that a VRDO Remarketing Agent would be required to report to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported on the day that an interest rate reset occurs. The specific items of information proposed included:

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider;
- Par amount, if any, held by VRDO Remarketing Agent, at time of interest rate reset;
- Par amount, if any, held by a liquidity facility (“Bank Bond”) at time of interest rate reset and interest rate paid to the liquidity provider; and
- Par amount, if any, held by a party other than the Remarketing Agent or as a Bank Bond.

¹⁷ See letters from Patricia W. Wilson, Senior Managing Director Global Alternatives, Allstate Investments, LLC (“Allstate”) to Mr. Pica, dated September 1, 2009; Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc. to Mr. Pica, dated September 1, 2009; Carl Giles, Managing Director Capital Markets, First Southwest Company (“First Southwest”) to Mr. Pica, dated August 31, 2009; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, RBDA to Mr. Pica, dated September 1, 2009; and Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated September 1, 2009.

¹⁸ See Securities Exchange Act Release No. 59212, January 7, 2009 (File No. SR-MSRB-2008-07). The principal comments of the March ARS Notice and May VRDO Notice concerning the collection of ARS and VRDO interest rate and descriptive information as well as the implementation of the SHORT System were discussed in File No. SR-MSRB-2008-07.

In response to July 2009 Notice, First Southwest and SIFMA stated concerns relating to the draft amendment's requirement to report the additional VRDO information to the SHORT System, which are primarily focused on whether a VRDO Remarketing Agent would be able to obtain and report accurate information for several of the additional items of VRDO information. For example, with respect to reporting the identity of the Tender Agent and liquidity provider, First Southwest stated that it would be "difficult and burdensome to be required to be continually updating [this] information, which can and does change frequently, between two parties where [the VRDO Remarketing Agent] has no legal standing and should be the responsibility of the bank or tender agent that is party to those transactions." However, RBDA generally supported the additional items of VRDO information and stated that "the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments" but acknowledged that "Remarketing Agents may not have ready access to all of the information ... proposed to be submitted ... [and] would support other reasonable initiatives to achieve the ends outlined in the [July 2009 Notice]...."

The MSRB believes that information concerning the identity of the Tender Agent and liquidity provider is material to market participants and, in particular, investors of VRDOs. With respect to Tender Agents, the July 2009 Notice also solicited comment on whether a VRDO Remarketing Agent could also provide the contact information for the Tender Agent and the MSRB believes some of the concerns stated by SIFMA about providing the identity of the Tender Agent were focused on challenges in obtaining and keeping current contact information for the Tender Agent. MSRB acknowledges that it may be difficult to obtain and keep current contact information for a Tender Agent, particularly for smaller Tender Agents that use the name and contact information for an individual instead of a division within a company for submitting tender requests, but the MSRB believes that a basic requirement to provide the identity of the Tender Agent is reasonable and that it is important that investors be able to have access to the identity of the Tender Agent to facilitate an investor tendering its position in VRDOs.

In response to the July 2009 Notice proposal to require reporting of the par amounts of a VRDO held as a Bank Bond, by the VRDO Remarketing Agent and by investors at the time of the interest rate reset, SIFMA stated that making such information transparent "would be detrimental to the municipal securities market by giving competitors a trading advantage against one another." MSRB is sensitive to SIFMA's concerns related to reporting and making transparent the individual par amounts of the VRDO held as a Bank Bond,¹⁹ by the VRDO Remarketing Agent and by investors. One of the purposes of requiring this information to be reported is to provide market participants with an indication that the interest rate set by the VRDO Remarketing Agent

¹⁹ The July 2009 Notice also proposed collecting the interest rate paid to a liquidity provider for VRDOs held as a Bank Bond. SIFMA noted that many VRDO Remarketing Agents are not made aware of the interest rate paid on Bank Bonds. The MSRB acknowledges that this requirement may present significant compliance challenges for dealers and has accordingly decided not to proceed with it at this time.

represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely as a Bank Bond and that the interest rate set is therefore not set by market demand.²⁰ As an alternative to the requirement in the July 2009 Notice, the proposed rule change includes a requirement for a VRDO Remarketing Agent to report the “par amount remarketed,” which would be the aggregate of VRDOs held by the VRDO Remarketing Agent and investors, but not Bank Bonds, and separately report the par amount held as Bank Bonds. This should provide a sufficient indication that the interest rate set reflects a market interest rate paid to holders of the VRDO while preventing individual par amounts held by VRDO Remarketing Agents from being disclosed to the public.

ARS Bidding Information

The July 2009 Notice identified ARS Bidding Information that an ARS Program Dealer would be required to submit to the SHORT System as individual data elements in connection with a report of the ARS interest rate and descriptive information currently required to be reported following an auction. In response to the July 2009 Notice, First Southwest and SIFMA both noted that reporting ARS Bidding Information to the SHORT System as individual data elements would be costly and time consuming, particularly, as SIFMA noted, “for a product that is winding down.” SIFMA further noted that “there have not been any new ARS issues in over a year and a half, and none are expected.” Instead of submitting information as individual data elements, SIFMA suggested that “the disclosure of this information to [the MSRB] by way of document, instead of breaking out each data element, would help minimize the burden.”

The MSRB acknowledges that reporting ARS Bidding Information to the SHORT System as individual data elements would result in ARS Program Dealers incurring programming expenses as well as increasing the ongoing cost of compliance with reporting information to the SHORT System. Further, current interest rate information from the SHORT System indicates that approximately 80% of all ARS continue to experience failed auctions,²¹ so one of the purposes of having ARS Bidding Information

²⁰ This information also is intended to provide a centralized source of information about holdings of VRDOs. SIFMA notes that information collected by the SEC in its Financial and Operational Combined Uniform Single (“FOCUS”) Reports, while not an identical requirement, provides such a centralized source of information about the holdings of VRDOs by Remarketing Agents.

²¹ In light of the high number of failed auctions, Allstate suggests requiring ARS Program Dealers to provide the formula used to compute the maximum rate, including the “net loan rate.” MSRB does not believe that this information is readily available to ARS Program Dealers but notes that a separate requirement for certain ARS documents to be submitted to the MSRB and made available publicly should aid in determining how maximum rates are set.

as individual data elements, to compute a “bid-to-cover ratio”²² that would show the demand for the ARS, may not at this time justify the expense incurred by ARS Program Dealers to report such information as individual data elements to the SHORT System. Nonetheless, the MSRB believes that having a centralized source of ARS Bidding Information, even if such information is only available as a document, would be of benefit to market participants as it would further the MSRB’s investor protection mission. This document-based approach would provide for indexing of each such submission to the appropriate security so that the information would be easy to find, even if the information contained within such documents could not easily be exported to a data file or otherwise manipulated.

In response to specific items of ARS Bidding information identified in the July 2009 Notice, SIFMA noted that when an ARS Program Dealer receives orders to buy from other dealers for submission to an ARS auction, such orders may be aggregated by the other dealer making it impossible for the ARS Program Dealer to provide accurate information on the number of unique bidders other than the Program Dealer bidding for its own account. MSRB acknowledges that orders submitted to an ARS Program Dealer may be aggregated by the submitting party and believes that disclosing such aggregated orders may be misleading to market participants. Thus, the MSRB has not included this requirement in the proposed rule change. SIFMA also noted that separately requiring an ARS Program Dealer to report bidding information for orders submitted by an issuer or conduit borrower would be unnecessary since issuers and ARS Program Dealers have made such information available on public web sites. The MSRB notes that while the EMMA Continuing Disclosure Service provides a document category for issuers to voluntarily disclose an intent to bid on its ARS, this does not provide for a centralized source of all orders submitted by an issuer or conduit borrower, which would be provided by the proposed rule change.²³

Short-term Obligation Documents

The draft amendments in the July 2009 Notice proposed requiring ARS Program Dealers and VRDO Remarketing Agents to submit to the MSRB current and any new or amended versions of the following documents:

- ARS documents defining auction procedures and interest rate setting mechanisms;
- VRDO documents consisting of liquidity facilities, including Letter of Credit Agreements and Stand-by Bond Purchase Agreements.

²² In response to the April 2008 ARS Notice, Saber Partners identified this statistic as one that “can give great insight into the liquidity of an auction.”

²³ MSRB notes that issuers or conduit borrowers may instruct a third party, such as an investment adviser, to submit orders to an ARS Program Dealer on their behalf. In these cases, MSRB acknowledges that the ARS Program Dealer would not know that such orders are on behalf of issuers or conduit borrowers and would not be able to include this fact when making submissions of ARS Bidding Information to the SHORT System.

In response to the July 2009 Notice First Southwest and SIFMA both stated concerns with the requirement to submit ARS and VRDO documents for outstanding issues to the MSRB. First Southwest noted that to obtain some of these documents, dealers “would need to go back to the creators of those documents to comply with the rule” but nevertheless noted that “in general, the requested documents are available.”²⁴ SIFMA also stated a concern that some documents for outstanding VRDOs may contain information that was not intended to be made public. In response to the May 2008 VRDO Notice DAC also noted that dealers “may not always be a party to or have control over all of the documents.” MSRB recognizes that dealers’ ability to comply with the requirement proposed in the July 2009 Notice for VRDOs would, in some cases, be subject to the ability of the dealer to obtain a document from a third party. Therefore, MSRB has incorporated into the proposed rule change a “best efforts” provision coupled with a recordkeeping requirement that would require dealers to make and document all efforts to obtain a VRDO document for which the dealer does not already have access.

First Southwest and SIFMA also stated concerns with the timeframes proposed for submitting ARS and VRDO documents to the MSRB due to the high number of ARS and VRDO issues, which SIFMA states is approximately 16,500 VRDOs and 1,750 ARS, and the fact that dealers may not have such documents in a format that would allow for easy electronic submission of the document to the MSRB. Given the high numbers of these securities, First Southwest and SIFMA both stated that 180 days, instead of the 30 days proposed in the July 2009 Notice, would be a more appropriate amount of time to submit the documents to the MSRB. MSRB recognizes that there are a large number of documents that would need to be obtained, converted into an electronic format and submitted to the MSRB. However, MSRB believes that it is important for investors and other market participants to have centralized access to these documents. Acknowledging the large number of documents and the fact that, for outstanding issues, dealers may need time to request documents from third parties, MSRB has provided 90 days from the date of effectiveness of a rule in the proposed rule change for dealers to submit outstanding ARS and VRDO documents to the MSRB. However, MSRB notes that dealers should not wait until a rule is in effect to begin the process of requesting documents and converting them into the appropriate electronic format.²⁵

²⁴ Both First Southwest and SIFMA also noted that Official Statements typically contain summaries of the information contained in the documents identified in the draft amendments and note that if an investor wanted to obtain the actual document, they could request the documents identified in the draft amendments from either the issuer or a dealer. In particular, SIFMA noted in response to the April 2008 ARS Notice that ARS Official Statements generally already contain much of the information. MSRB notes that the proposed rule change would permit dealers to reference documents already submitted in lieu of submitting duplicate documents.

²⁵ As previously described, the MSRB has requested flexibility with respect to the setting of effective dates for the proposed rule change. The MSRB notes that it

In response to the July 2009 Notice proposal that any new or amended versions of documents be submitted to the MSRB within one day of receipt, SIFMA suggested that dealers be required to submit a document within 5-days of receipt so that the deadline would be consistent with the deadline for submitting advance refunding documents to the MSRB. MSRB believes that it is important that market participants have access to documents that are current and therefore has retained in the proposed rule change the timeframe for an ARS Program Dealer or VRDO Remarketing Agent to provide such new or amended versions of documents to the MSRB no later than one business day after receipt by the dealer.²⁶

Public Availability of Collected Information and Documents

In response to the April 2008 ARS Notice, Mr. Yankauer recommended that the MSRB make information collected about ARS available “to the general public without any fee to view the information.” MSRB agrees with Mr. Yankauer’s recommendation and notes that the interest rate and descriptive information currently collected by the SHORT System is available at no charge on the EMMA web site. MSRB also notes that it plans to make all information and documents collected under the proposed rule change available at no charge on the EMMA web site.

6. Extension of Time Period of Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

would be prudent for dealers to use the time between the approval date of the proposed rule change and the effective date to begin collecting such required documents and converting them into electronic format.

²⁶ RBDA also suggested that MSRB look into utilizing optical character recognition technology to facilitate performing word searches on EMMA of documents that are scanned and not “native” PDFs. MSRB notes that all documents submitted to EMMA since January 1, 2010 are required to be word-searchable and that the proposed rule change would require documents created after the effective date of the proposed rule change to also be word-searchable.

9. Exhibits

1. Federal Register Notice
2. Notices requesting comment and comment letters

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. **SR-MSRB-2010-02**]

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, to Enhance the Interest Rate and Descriptive Information Currently Collected and Made Transparent by the MSRB on Municipal Auction Rate Securities and Variable Rate Demand Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78s(b)(1), and Rule 19b-4, 17 C.F.R. 240.19b-4, notice is hereby given that on March 10, 2010, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in items I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB is filing with the Commission a proposed rule change to enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities (“ARS”) and Variable Rate Demand

Obligations (“VRDOs”). The proposed rule change would: (i) amend Rules G-8, books and records, and G-34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively “dealers”) to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs (“short-term obligation document disclosure rule change”); (b) ARS bidding information (“ARS bidding information rule change”); and (c) additional VRDO information (“VRDO information rule change”) (collectively, the “rule change proposal”); (ii) amend the MSRB Short-term Obligation Rate Transparency (“SHORT”) System Facility to collect and disseminate information identified in the ARS bidding information rule change and the VRDO information rule change and documents identified in the short-term obligation document disclosure rule change (the “SHORT System Facility amendment proposal”); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB’s Electronic Municipal Market Access (EMMA) web site (the “EMMA Short-term Obligation Rate Transparency Service amendment”).

The MSRB has requested that the proposed rule change, which may be implemented in phases, be made effective on such date or dates as would be announced by the MSRB in notices published on the MSRB Web site, which dates would be no later than nine months after Commission approval of the proposed rule change and would be announced no later than sixty (60) days prior to the effective dates.

The text of the proposed rule change is available on the MSRB’s Web site (<http://www.msrb.org>), at the MSRB’s principal office, and at the Commission’s Public

Reference Room. If approved, the rule text for the Short-term Obligation Rate Transparency System, as well as for the EMMA Short-Term Obligation Rate Transparency Service, would be available on the MSRB website at www.msrb.org/msrb1/rulesandforms under the heading Information Facilities.

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

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

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

1. Purpose

The proposed rule change would enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change would: (i) amend MSRB Rules G-8, books and records, and G-34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively "dealers") to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity

facilities for VRDOs; (b) ARS bidding information; and (c) additional VRDO information (collectively “rule change proposal”); (ii) amend the MSRB Short-term Obligation Rate Transparency (“SHORT”) System Facility to collect and disseminate the documents identified in the rule change proposal (“SHORT System Facility amendment proposal”); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB’s Electronic Municipal Market Access (EMMA) web site (the “EMMA Short-term Obligation Rate Transparency Service amendment”).

SHORT and EMMA are components of an integrated suite of programs, services and systems (“MSRB market information programs”) for the collection of municipal securities market data and documents from dealers and other market participants and the dissemination of such data and documents to the public. The MSRB market information programs leverage the components of the various individual programs, services and systems to enhance the overall efficiency and effectiveness of the MSRB market information programs. In particular, processes, software, hardware or other components initially placed into service for a particular program, service or system may be utilized by other programs, services and systems within the MSRB market information programs to optimize the effectiveness of the MSRB market information programs and the individual components thereof.¹

¹ For example, certain elements of the SHORT System Facility amendment proposal would rely on components previously placed into service pursuant to the EMMA primary market or continuing disclosure services for purposes of processing submissions made to the MSRB.

BACKGROUND

Since January 30, 2009 for ARS and April 1, 2009 for VRDOs, MSRB Rule G-34(c), on variable rate security market information, has required dealers that act as Program Dealers² for ARS or Remarketing Agents for VRDOs to report (either directly or through an agent) certain information following an ARS auction or VRDO interest rate reset to the SHORT System.³ Information generally is required to be reported to the SHORT System by no later than 6:30 P.M. Eastern Time on the day that an ARS auction or VRDO interest rate reset occurs and all collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") web site.⁴ The specific items of interest rate and descriptive information about ARS and VRDOs currently required to be reported to the SHORT System are listed below.

The following is a list of the information currently required to be reported to the SHORT System by an ARS Program Dealer following an ARS auction:

- CUSIP number;

² An ARS Program Dealer is defined in Rule G-34(c) as a dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell ARS through the auction process.

³ See Securities Exchange Act Release No. 34-59212, January 7, 2009 (File No. SR-MSRB-2008-07).

⁴ The 6:30 P.M. Eastern Time deadline only applies to those ARS auctions and VRDO interest rate resets that occur during an "RTRS Business Day," as defined in Rule G-14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur outside of the hours of an "RTRS Business Day" is required to be submitted to the SHORT System by no later than 6:30 P.M. Eastern Time on the next "RTRS Business Day."

- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;
- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the interest rate represents a “maximum rate,” an “all hold rate,” or a rate that was “set by auction;”
- Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable;⁵ and
- Par amount auctioned, not including hold orders effective at any rate.

The following is a list of the information currently required to be reported to the SHORT System by a VRDO Remarketing Agent following a VRDO interest rate reset:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Remarketing Agent;
- Date of interest rate reset;

⁵ Some ARS and VRDOs have minimum and maximum rates that are set pursuant to formulas that are unable to be calculated at the time a submission to the SHORT System is required. In these cases, a value of “NC” is required to be included in a submission to the SHORT System to show that the minimum and maximum rates are “not calculable.” This exception does not apply to minimum and maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such rates are required to be computed and the resulting values included on a submission to the SHORT System.

- Length of the interest rate reset period;
- Length of Notification Period;
- Indication of whether interest rate is “set by formula,” “set by Remarketing Agent” or a “maximum rate;”
- Minimum and maximum rates, if any, applicable at the time of the interest rate reset or, if not calculable as of the time of the interest rate reset, indication that such rate or rates are not calculable;⁶
- Minimum denomination;
- Type of liquidity facility(ies);⁷ and
- Expiration date of each liquidity facility.

DESCRIPTION OF THE RULE CHANGE PROPOSAL

The proposed rule change would enhance the interest rate and descriptive information currently made available to market participants about ARS and VRDOs. The proposed rule change would require dealers to report to the MSRB documents that set forth auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs, as well as ARS bidding information and additional VRDO information. All collected documents and information would be made available in real-

⁶ *Id.*

⁷ Dealers are required to submit to the SHORT System whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement.

time on EMMA.⁸ The documents and information about ARS and VRDOs that would be required to be provided to the MSRB under the proposed rule change are described below.

ARS Bidding Information

The proposed rule change would require each ARS Program Dealer to report to the SHORT System an electronic document containing “ARS bidding information,” which would include information about all orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction. This information would augment the interest rate and descriptive information currently provided to market participants by also providing information that would show, for example, how the interest rate was determined for a successful auction. The specific items of ARS bidding information an ARS Program Dealer would be required to report to the SHORT System are listed below. All items would be required to be reported within the same timeframe as the ARS interest rate and descriptive information currently required to be reported under Rule G-34(c). The ARS bidding information document would be required to be submitted to the SHORT System as a word-searchable portable document format (“PDF”) file.

- Interest rate(s) and aggregate par amount(s) of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;
- Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;

⁸ In the future, the MSRB also plans to make all information collected under the rule change proposal available on a subscription basis.

- Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;
- Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

Additional VRDO Information

The proposed rule change would require VRDO Remarketing Agents to submit additional items of VRDO information to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported under Rule G-34(c). This information would provide additional details concerning the interest rate set for a VRDO, such as the effective date of the interest rate, and would facilitate the tendering of a position in a VRDO by investors by requiring VRDO Remarketing Agents to report the identity of the agent of the issuer of the VRDOs to which a holder may tender their security (“Tender Agent”).

The additional VRDO information would also provide transparency related to the current holders of the VRDO. Information about current holders of a VRDO would indicate, for example, that interest rate set represents an interest rate paid to holders of the

VRDO instead of instances when the VRDO is held entirely by a liquidity provider (as a “Bank Bond”) and that the interest rate set is therefore not set by market demand. A complete list of the specific items of additional VRDO information a VRDO Remarketing Agent would be required to report to the SHORT System under the proposed rule change are listed below.

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider(s) including a indication of those VRDOs for which an issuer provides “self liquidity” and the identity of the party providing such self-liquidity;⁹
- Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the par amount of the VRDO, if any, held as a Bank Bond; and
- Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the aggregate par amount of the VRDO, if any, held by parties other than a liquidity provider, which includes the par amounts held by a VRDO Remarketing Agent and by investors.

⁹ Some VRDOs have liquidity provisions under which the liquidity is provided by the issuer, conduit borrower or affiliate instead of by a third-party. Rule G-34(c) currently requires Remarketing Agents to report the type of liquidity facility applicable to a VRDO. Currently, SHORT System specifications only provide two options for this data element – letter of credit and standby bond purchase agreement – and in conjunction with proposed rule change the MSRB would revise the specifications to also capture VRDOs that have “self liquidity.”

ARS and VRDO Documents

The proposed rule change would require ARS Program Dealers and VRDO Remarketing Agents to submit certain documents to the SHORT System to ensure that market participants have centralized access to critical documents about ARS programs and VRDO issues. For existing ARS programs, dealers would be required to submit the current versions of ARS documents defining current auction procedures and interest rate setting mechanisms to the SHORT System within ninety days after the effective date of the proposed rule change. For existing VRDO issues, dealers would be required to undertake and document¹⁰ best efforts to obtain current versions of VRDO liquidity facility documents, including Letters of Credit, Stand-by Bond Purchase Agreements and any other document that establishes an obligation to provide liquidity, and submit such documents to the SHORT System within ninety days after the effective date of the proposed rule change. On an ongoing basis, dealers would be required to submit any new or amended versions of these documents within one business day of receipt.

The MSRB recognizes that for some ARS programs, documents defining current auction procedures and interest rate setting mechanisms may already be available in the SHORT System. This may occur in the case of an ARS with multiple Program Dealers in which one Program Dealer has already submitted to the SHORT System the required document. In these cases, in lieu of submitting duplicate documents, dealers would be provided the capability to signify that a document required to be submitted has already been submitted to the SHORT System by identifying the relevant document.

¹⁰ The proposed rule change would require dealers to keep records for a period of three years of all best efforts undertaken to obtain documents for existing VRDO issues. Such records of best efforts would include, for example, all written requests for documents to and any responses from an issuer or liquidity provider.

Since January 1, 2010, all documents submitted to EMMA have been required to be word-searchable PDF files. While this same requirement would apply to the submission of ARS and VRDO documents to the SHORT System, MSRB acknowledges that some of these documents for outstanding ARS and VRDOs are likely to be older documents that may not be available in electronic format or a format that would easily permit a dealer to produce a word-searchable PDF file of the document. Accordingly, the proposed rule change would only require ARS and VRDO documents submitted to EMMA to be word-searchable for new or amended versions of documents produced after the effective date of the proposed rule change.

DESCRIPTION OF THE SHORT SYSTEM FACILITY AMENDMENT PROPOSAL

The SHORT System is an MSRB Facility for the collection and public dissemination of information about ARS and VRDO. The amendment to this facility would provide for the collection and public dissemination of documents identified in the rule change proposal.

Submissions to the SHORT System

The SHORT System receives submissions of information and documents about securities bearing interest at short-term rates under MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements.

Information and Documents to be Submitted. The basic items of information and documents that would be required to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under MSRB Rule G-34(c). Submitters of documents would be required to provide to the SHORT System related indexing information with respect to each document submitted, including an indication of the document type, date such document became available to the dealer, and CUSIP number(s) of the municipal securities to which such document relates. A submitter required to submit a document that is already available in its entirety in the SHORT System would be permitted to, in lieu of submitting a duplicate document, identify the document already submitted and provide such items of related indexing information as are required by MSRB rules or the SHORT System input specifications and system procedures. A submitter required to submit a document that is not able to be obtained through best efforts as provided in the proposed rule change would be required to provide an affirmative indication that a document required to be submitted is not available for submission notwithstanding the submitter's best efforts to obtain such document. The complete list of data elements that would be required on a submission to the SHORT System would be available in input specifications and system procedures made available on www.msrb.org. Submitters would be responsible for the accuracy and completeness of all information submitted to the SHORT System.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-protected accounts in the MSRB's user

authentication system, MSRB Gateway. MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System are required to obtain an account in MSRB Gateway in order to submit information to the SHORT System. Through MSRB Gateway, submitters also have the ability to designate third-party agents to submit information to the SHORT System on the submitter's behalf.

Submissions may be made by the following classes of submitters:

- ARS Program Dealer;
- VRDO Remarketing Agent;
- ARS Auction Agent; and
- Designated Agent, which may submit any information otherwise permitted to be submitted by another class of submitter which has designated such agent, as provided below.

All ARS Auction Agents are allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. Dealers optionally may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. All actions taken by a Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

Timing of Submissions. Submitters are required to make submissions to the SHORT System within the timeframes set forth in MSRB Rule G-34(c) and related MSRB procedures. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G-14 RTRS Procedures, from at least the hours of 6:00 A.M. to 9:00 P.M. Eastern Time, subject to the right of the MSRB to make such processes unavailable at times as needed to ensure the integrity of the SHORT System and any related systems. Submissions of documents would be able to be made throughout any day, subject to the right of the MSRB to make such processes unavailable between the hours of 3:00 A.M. and 6:00 A.M. each day, Eastern Time, for required maintenance, upgrades or other purposes, or at other times as needed to ensure the integrity of MSRB systems. The MSRB provides advance notice of any planned periods of unavailability and shall endeavor to provide information to submitters as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Method of Submission. Information and documents may be submitted to the SHORT System through a secure, password-protected, web-based electronic submitter interface or through a secure, authenticated computer-to-computer data connection, at the election of the submitter. When making submissions using the web-based interface, related information is entered manually into an on-line form and documents would be required to be uploaded as portable document format (PDF) files. Computer-to-computer submissions utilize XML files for data and PDF files for documents. Appropriate schemas and procedures for web-based and computer-to-computer submissions would be

available in input specifications and system procedures made available on www.msrb.org.

Designated Electronic Format for Documents. All documents submitted to the SHORT System would be required to be in portable document format (PDF), configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. Documents submitted to the SHORT System created on or after the effective date of the proposed rule change would be required to be word-searchable (without regard to diagrams, images and other non-textual elements).

SHORT System Processing

The SHORT System provides a single portal for the submission of information and documents. The SHORT System, as well as other MSRB systems and services, performs various data checks to ensure that information and documents are submitted in the correct format. In addition, data checks are performed to monitor dealer compliance with MSRB Rule G-34(c) as well as to identify information submitted in correct formats that may contain errors due to information not falling within reasonable ranges of expected values for a given item of information. All submissions generate an acknowledgement or error message, and all dealers that have information or documents submitted on their behalf by either an ARS Auction Agent or a Designated Agent are able to monitor such submissions.

SHORT System Information and Document Dissemination

Information and documents submitted to the SHORT System that pass the format and data checks described above are processed and disseminated on a real-time basis. Any changes to submissions also are processed upon receipt and updated information and documents are disseminated in real-time. Information submitted to the SHORT System is, in general, disseminated to the EMMA short-term obligation rate transparency service within 15 minutes of acceptance, although during peak traffic periods dissemination may occur within one hour of acceptance. Submissions of documents to the SHORT System accepted during the hours of 8:30 AM to 6:00 PM Eastern Time on an MSRB business day would generally be disseminated to the EMMA short-term obligation transparency service within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often would be posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. SHORT System information and documents, along with related indexing information, would be made available to the public through the EMMA portal for the life of the related securities.

The MSRB plans to offer subscriptions to the information and documents submitted to the SHORT System in the future.

DESCRIPTION OF THE EMMA SHORT-TERM OBLIGATION RATE TRANSPARENCY SERVICE AMENDMENT PROPOSAL

The EMMA short-term obligation rate transparency service currently makes the information collected by the SHORT System available to the public, at no charge, on the EMMA portal. The amendment to this service would add the documents identified in the rule change proposal to this service so that such documents would also be available to the public, at no charge, on the EMMA portal.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

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

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to information about and documents relating to ARS and VRDO. The proposed rule change would provide greater access to information about and documents relating to ARS and VRDO to all participants in the municipal securities market on an equal basis thereby removing potential barriers to obtaining such information. These factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to dealers in municipal securities.

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

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS ("March 2008 ARS Notice"),¹¹ on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDOs ("May 2008 VRDO Notice"),¹² and on July 14, 2009 the MSRB requested comment on the draft amendments to Rule G-34(c) ("July 2009 Notice").¹³ These notices, the comments received, and the MSRB's responses are discussed below.

March 2008 ARS Notice

The March 2008 ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The March 2008 ARS Notice proposed the collection and dissemination of the current interest rate and certain descriptive information for ARS programs, bidding information detailing the orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an

¹¹ See MSRB Notice 2008-15 (March 17, 2008).

¹² See MSRB Notice 2008-24 (May 23, 2008).

¹³ See MSRB Notice 2009-43 (July 14, 2009).

auction (“ARS bidding information”) and documents concerning ARS that were not required to be filed with the MSRB under former Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD).

May 2008 VRDO Notice

The May 2008 VRDO Notice proposed a plan to collect and disseminate critical market information about VRDO using the same system proposed in the March 2008 ARS Notice for ARS. The May 2008 VRDO Notice proposed collecting and disseminating the current interest rate and certain descriptive information for VRDOs and documents concerning VRDOs that were not required to be filed with the MSRB under former Rule G-36, such as the letter of credit or standby bond purchase agreement.

July 2009 Notice

The July 2009 Notice requested comment on draft amendments to Rule G-34(c). The draft amendments would require ARS Program Dealers to report ARS bidding information and VRDO Remarketing Agents to report additional descriptive information about VRDOs to the MSRB Short-term Obligation Rate Transparency (“SHORT”) System. The draft amendments also would require ARS Program Dealers and VRDO Remarketing Agents to submit ARS documents defining current auction procedures and interest rate setting mechanisms and VRDO liquidity facility documents, including current Letters of Credit and Stand-by Bond Purchase Agreements (collectively “short-term obligation documents”). For existing ARS and VRDOs, the draft amendments would require dealers to provide the current versions of documents to the MSRB within

thirty days after the effective date of the draft amendments and on an ongoing basis dealers would be required to provide any new or amended versions of these documents within one business day of receipt.

DISCUSSION OF COMMENTS

The MSRB received comments on the March 2008 ARS Notice from seven commentators,¹⁴ on the May 2008 VRDO Notice from nine commentators,¹⁵ and on the July 2009 Notice from five commentators.¹⁶ After reviewing the comments on the March

¹⁴ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC (“DAC”) to Justin Pica, dated April 21, 2008; Jack B. McPherson to Mr. Pica, dated March 27, 2008; Mikag@cox.net to Mr. Pica, e-mail dated April 23, 2008; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, Regional Bond Dealers Association (“RBDA”) to Mr. Pica, dated April 21, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners, LLC (“Saber Partners”) to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) to Mr. Pica, dated April 21, 2008; and, Jeff Yankauer to Mr. Pica, e-mail dated April 17, 2008.

¹⁵ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC (“DAC”) to Mr. Pica, dated July 1, 2008; Daniel Thieke, Vice President, Depository Trust and Clearing Corporation (“DTCC”) to Mr. Pica, dated June 26, 2008; Christine Walsh, Managing Director, Merrill Lynch to Mr. Pica, dated June 26, 2008; S. Lauren Heyne, Chief Compliance Officer, RW Smith and Associates, Inc. (“RW Smith”) to Mr. Pica, dated June 30, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated June 30, 2008; Dara L. Smith, Managing Director, SunTrust Robinson Humphrey (“SunTrust”) to Mr. Pica, dated June 27, 2008; Joseph A. Whitehead, Thornton Farish Inc. (“Thornton Farish”) to Mr. Pica, dated June 30, 2008; and, Belle Walker, Senior Vice President, W.R. Taylor and Company, LLC (“W.R. Taylor”) to Mr. Pica, dated August 7, 2008.

¹⁶ See letters from Patricia W. Wilson, Senior Managing Director Global Alternatives, Allstate Investments, LLC (“Allstate”) to Mr. Pica, dated September

2008 ARS Notice and May 2008 VRDO Notice, the MSRB approved a phased-in approach to the collection and dissemination of ARS and VRDO information and documents. The first phase of this approach included changes to MSRB Rule G-34 to require dealers to report ARS and VRDO interest rate and descriptive information to the MSRB and implementation of the SHORT System, which became effective on January 30, 2009 for ARS and April 1, 2009 for VRDOs.¹⁷ The principal comments of the March 2008 ARS Notice, May 2008 VRDO Notice and July 2009 Notice concerning the collection of ARS bidding information, additional VRDO descriptive information and short-term obligation disclosure documents are discussed below.

Additional VRDO Data

The draft amendments in the July 2009 Notice identified items of information that a VRDO Remarketing Agent would be required to report to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported on the day that an interest rate reset occurs. The specific items of information proposed included:

1, 2009; Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc. to Mr. Pica, dated September 1, 2009; Carl Giles, Managing Director Capital Markets, First Southwest Company (“First Southwest”) to Mr. Pica, dated August 31, 2009; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, RBDA to Mr. Pica, dated September 1, 2009; and Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated September 1, 2009.

¹⁷ See Securities Exchange Act Release No. 59212, January 7, 2009 (File No. SR-MSRB-2008-07). The principal comments of the March ARS Notice and May VRDO Notice concerning the collection of ARS and VRDO interest rate and descriptive information as well as the implementation of the SHORT System were discussed in File No. SR-MSRB-2008-07.

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider;
- Par amount, if any, held by VRDO Remarketing Agent, at time of interest rate reset;
- Par amount, if any, held by a liquidity facility (“Bank Bond”) at time of interest rate reset and interest rate paid to the liquidity provider; and
- Par amount, if any, held by a party other than the Remarketing Agent or as a Bank Bond.

In response to July 2009 Notice, First Southwest and SIFMA stated concerns relating to the draft amendment’s requirement to report the additional VRDO information to the SHORT System, which are primarily focused on whether a VRDO Remarketing Agent would be able to obtain and report accurate information for several of the additional items of VRDO information. For example, with respect to reporting the identity of the Tender Agent and liquidity provider, First Southwest stated that it would be “difficult and burdensome to be required to be continually updating [this] information, which can and does change frequently, between two parties where [the VRDO Remarketing Agent] has no legal standing and should be the responsibility of the bank or tender agent that is party to those transactions.” However, RBDA generally supported the additional items of VRDO information and stated that “the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments” but acknowledged that “Remarketing Agents may not have ready access to all of the information ...

proposed to be submitted ... [and] would support other reasonable initiatives to achieve the ends outlined in the [July 2009 Notice]....”

The MSRB believes that information concerning the identity of the Tender Agent and liquidity provider is material to market participants and, in particular, investors of VRDOs. With respect to Tender Agents, the July 2009 Notice also solicited comment on whether a VRDO Remarketing Agent could also provide the contact information for the Tender Agent and the MSRB believes some of the concerns stated by SIFMA about providing the identity of the Tender Agent were focused on challenges in obtaining and keeping current contact information for the Tender Agent. MSRB acknowledges that it may be difficult to obtain and keep current contact information for a Tender Agent, particularly for smaller Tender Agents that use the name and contact information for an individual instead of a division within a company for submitting tender requests, but the MSRB believes that a basic requirement to provide the identity of the Tender Agent is reasonable and that it is important that investors be able to have access to the identity of the Tender Agent to facilitate an investor tendering its position in VRDOs.

In response to the July 2009 Notice proposal to require reporting of the par amounts of a VRDO held as a Bank Bond, by the VRDO Remarketing Agent and by investors at the time of the interest rate reset, SIFMA stated that making such information transparent “would be detrimental to the municipal securities market by giving competitors a trading advantage against one another.” MSRB is sensitive to SIFMA’s concerns related to reporting and making transparent the individual par amounts of the

VRDO held as a Bank Bond,¹⁸ by the VRDO Remarketing Agent and by investors. One of the purposes of requiring this information to be reported is to provide market participants with an indication that the interest rate set by the VRDO Remarketing Agent represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely as a Bank Bond and that the interest rate set is therefore not set by market demand.¹⁹ As an alternative to the requirement in the July 2009 Notice, the proposed rule change includes a requirement for a VRDO Remarketing Agent to report the “par amount remarketed,” which would be the aggregate of VRDOs held by the VRDO Remarketing Agent and investors, but not Bank Bonds, and separately report the par amount held as Bank Bonds. This should provide a sufficient indication that the interest rate set reflects a market interest rate paid to holders of the VRDO while preventing individual par amounts held by VRDO Remarketing Agents from being disclosed to the public.

ARS Bidding Information

The July 2009 Notice identified ARS Bidding Information that an ARS Program Dealer would be required to submit to the SHORT System as individual data elements in

¹⁸ The July 2009 Notice also proposed collecting the interest rate paid to a liquidity provider for VRDOs held as a Bank Bond. SIFMA noted that many VRDO Remarketing Agents are not made aware of the interest rate paid on Bank Bonds. The MSRB acknowledges that this requirement may present significant compliance challenges for dealers and has accordingly decided not to proceed with it at this time.

¹⁹ This information also is intended to provide a centralized source of information about holdings of VRDOs. SIFMA notes that information collected by the SEC in its Financial and Operational Combined Uniform Single (“FOCUS”) Reports, while not an identical requirement, provides such a centralized source of information about the holdings of VRDOs by Remarketing Agents.

connection with a report of the ARS interest rate and descriptive information currently required to be reported following an auction. In response to the July 2009 Notice, First Southwest and SIFMA both noted that reporting ARS Bidding Information to the SHORT System as individual data elements would be costly and time consuming, particularly, as SIFMA noted, “for a product that is winding down.” SIFMA further noted that “there have not been any new ARS issues in over a year and a half, and none are expected.” Instead of submitting information as individual data elements, SIFMA suggested that “the disclosure of this information to [the MSRB] by way of document, instead of breaking out each data element, would help minimize the burden.”

The MSRB acknowledges that reporting ARS Bidding Information to the SHORT System as individual data elements would result in ARS Program Dealers incurring programming expenses as well as increasing the ongoing cost of compliance with reporting information to the SHORT System. Further, current interest rate information from the SHORT System indicates that approximately 80% of all ARS continue to experience failed auctions,²⁰ so one of the purposes of having ARS Bidding Information as individual data elements, to compute a “bid-to-cover ratio”²¹ that would show the demand for the ARS, may not at this time justify the expense incurred by ARS Program Dealers to report such information as individual data elements to the SHORT System.

²⁰ In light of the high number of failed auctions, Allstate suggests requiring ARS Program Dealers to provide the formula used to compute the maximum rate, including the “net loan rate.” MSRB does not believe that this information is readily available to ARS Program Dealers but notes that a separate requirement for certain ARS documents to be submitted to the MSRB and made available publicly should aid in determining how maximum rates are set.

²¹ In response to the April 2008 ARS Notice, Saber Partners identified this statistic as one that “can give great insight into the liquidity of an auction.”

Nonetheless, the MSRB believes that having a centralized source of ARS Bidding Information, even if such information is only available as a document, would be of benefit to market participants as it would further the MSRB's investor protection mission. This document-based approach would provide for indexing of each such submission to the appropriate security so that the information would be easy to find, even if the information contained within such documents could not easily be exported to a data file or otherwise manipulated.

In response to specific items of ARS Bidding information identified in the July 2009 Notice, SIFMA noted that when an ARS Program Dealer receives orders to buy from other dealers for submission to an ARS auction, such orders may be aggregated by the other dealer making it impossible for the ARS Program Dealer to provide accurate information on the number of unique bidders other than the Program Dealer bidding for its own account. MSRB acknowledges that orders submitted to an ARS Program Dealer may be aggregated by the submitting party and believes that disclosing such aggregated orders may be misleading to market participants. Thus, the MSRB has not included this requirement in the proposed rule change. SIFMA also noted that separately requiring an ARS Program Dealer to report bidding information for orders submitted by an issuer or conduit borrower would be unnecessary since issuers and ARS Program Dealers have made such information available on public web sites. The MSRB notes that while the EMMA Continuing Disclosure Service provides a document category for issuers to voluntarily disclose an intent to bid on its ARS, this does not provide for a centralized

source of all orders submitted by an issuer or conduit borrower, which would be provided by the proposed rule change.²²

Short-term Obligation Documents

The draft amendments in the July 2009 Notice proposed requiring ARS Program Dealers and VRDO Remarketing Agents to submit to the MSRB current and any new or amended versions of the following documents:

- ARS documents defining auction procedures and interest rate setting mechanisms;
- VRDO documents consisting of liquidity facilities, including Letter of Credit Agreements and Stand-by Bond Purchase Agreements.

In response to the July 2009 Notice First Southwest and SIFMA both stated concerns with the requirement to submit ARS and VRDO documents for outstanding issues to the MSRB. First Southwest noted that to obtain some of these documents, dealers “would need to go back to the creators of those documents to comply with the rule” but nevertheless noted that “in general, the requested documents are available.”²³

²² MSRB notes that issuers or conduit borrowers may instruct a third party, such as an investment adviser, to submit orders to an ARS Program Dealer on their behalf. In these cases, MSRB acknowledges that the ARS Program Dealer would not know that such orders are on behalf of issuers or conduit borrowers and would not be able to include this fact when making submissions of ARS Bidding Information to the SHORT System.

²³ Both First Southwest and SIFMA also noted that Official Statements typically contain summaries of the information contained in the documents identified in the draft amendments and note that if an investor wanted to obtain the actual document, they could request the documents identified in the draft amendments from either the issuer or a dealer. In particular, SIFMA noted in response to the April 2008 ARS Notice that ARS Official Statements generally already contain much of the information. MSRB notes that the proposed rule change would

SIFMA also stated a concern that some documents for outstanding VRDOs may contain information that was not intended to be made public. In response to the May 2008 VRDO Notice DAC also noted that dealers “may not always be a party to or have control over all of the documents.” MSRB recognizes that dealers’ ability to comply with the requirement proposed in the July 2009 Notice for VRDOs would, in some cases, be subject to the ability of the dealer to obtain a document from a third party. Therefore, MSRB has incorporated into the proposed rule change a “best efforts” provision coupled with a recordkeeping requirement that would require dealers to make and document all efforts to obtain a VRDO document for which the dealer does not already have access.

First Southwest and SIFMA also stated concerns with the timeframes proposed for submitting ARS and VRDO documents to the MSRB due to the high number of ARS and VRDO issues, which SIFMA states is approximately 16,500 VRDOs and 1,750 ARS, and the fact that dealers may not have such documents in a format that would allow for easy electronic submission of the document to the MSRB. Given the high numbers of these securities, First Southwest and SIFMA both stated that 180 days, instead of the 30 days proposed in the July 2009 Notice, would be a more appropriate amount of time to submit the documents to the MSRB. MSRB recognizes that there are a large number of documents that would need to be obtained, converted into an electronic format and submitted to the MSRB. However, MSRB believes that it is important for investors and other market participants to have centralized access to these documents. Acknowledging the large number of documents and the fact that, for outstanding issues, dealers may need

permit dealers to reference documents already submitted in lieu of submitting duplicate documents.

time to request documents from third parties, MSRB has provided 90 days from the date of effectiveness of a rule in the proposed rule change for dealers to submit outstanding ARS and VRDO documents to the MSRB. However, MSRB notes that dealers should not wait until a rule is in effect to begin the process of requesting documents and converting them into the appropriate electronic format.²⁴

In response to the July 2009 Notice proposal that any new or amended versions of documents be submitted to the MSRB within one day of receipt, SIFMA suggested that dealers be required to submit a document within 5-days of receipt so that the deadline would be consistent with the deadline for submitting advance refunding documents to the MSRB. MSRB believes that it is important that market participants have access to documents that are current and therefore has retained in the proposed rule change the timeframe for an ARS Program Dealer or VRDO Remarketing Agent to provide such new or amended versions of documents to the MSRB no later than one business day after receipt by the dealer.²⁵

Public Availability of Collected Information and Documents

²⁴ As previously described, the MSRB has requested flexibility with respect to the setting of effective dates for the proposed rule change. The MSRB notes that it would be prudent for dealers to use the time between the approval date of the proposed rule change and the effective date to begin collecting such required documents and converting them into electronic format.

²⁵ RBDA also suggested that MSRB look into utilizing optical character recognition technology to facilitate performing word searches on EMMA of documents that are scanned and not “native” PDFs. MSRB notes that all documents submitted to EMMA since January 1, 2010 are required to be word-searchable and that the proposed rule change would require documents created after the effective date of the proposed rule change to also be word-searchable.

In response to the April 2008 ARS Notice, Mr. Yankauer recommended that the MSRB make information collected about ARS available “to the general public without any fee to view the information.” MSRB agrees with Mr. Yankauer’s recommendation and notes that the interest rate and descriptive information currently collected by the SHORT System is available at no charge on the EMMA web site. MSRB also notes that it plans to make all information and documents collected under the proposed rule change available at no charge on the EMMA web site.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number **SR-MSRB-2010-02** on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number **SR-MSRB-2010-02**. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number **SR-MSRB-2010-02** and should be submitted on or before within [insert date twenty-one days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Elizabeth M. Murphy

Secretary

²⁶ 17 CFR 200.30-3(a)(12).

**MSRB NOTICE 2008-15 (MARCH 17, 2008)****REQUEST FOR COMMENT: PLAN FOR
INCREASING INFORMATION AVAILABLE FOR
MUNICIPAL AUCTION RATE SECURITIES**[Home Page](#) | [Back](#)

The MSRB continues to monitor the recent downgrades of municipal bond insurers and other short-term liquidity concerns that have created extreme volatility in the market for municipal Auction Rate Securities and an unprecedented number of "failed auctions." Further, the MSRB is monitoring whether there are any effects from the volatility in the market for Auction Rate Securities to the broader market for short-term municipal securities. In a recent notice, the MSRB reminded brokers, dealers and municipal securities dealers ("dealers") of the application of MSRB disclosure and suitability requirements that apply to all customer transactions in municipal Auction Rate Securities whether in primary offerings, at subsequent auctions, or in non-auction transactions.[1]

The MSRB remains concerned about the lack of information available to market participants regarding municipal Auction Rate Securities. Currently, there is no source of comprehensive same-day information about Auction Rate Securities available to non-market professionals, even information as basic as the clearing rates set through the auction process. To increase the amount of information available to market participants, the MSRB is requesting comment on a plan to create a centralized system for the collection and dissemination of critical market information about Auction Rate Securities. The plan would require dealers that operate auction rate programs to report auction information to a central system operated by the MSRB. Auction results would be required to be reported by no later than 5:00 P.M. Eastern on the day that an auction occurs. The proposed system would display this information immediately on a web site.

Comments on the proposed plan should be submitted no later than April 21, 2008 and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection.

BACKGROUND

In recent years, there has been a growing market in municipal securities with long-term maturity dates and short-term (nine months or under) interest rate reset periods. The number of transactions in this sector reported to the MSRB Transaction Reporting Program has increased from approximately 32,000 transactions per month in 2000, or about 6% of all transactions, to approximately 190,000 trades per month in 2007, or about 25% of all transactions.[2] Securities commonly referred to as Auction Rate Securities[3] and Variable Rate Demand Obligations (VRDO) comprise most of the securities in this sector. Auction Rate Securities and VRDOs are similar in that they are long-term securities with short-term interest rates. In both types of securities, interest rates are reset periodically through programs operated by dealers on behalf of the issuers of the securities. There are, however, several differences.

VRDOs are distinguished by the existence of a "put" or "tender" feature that allows holders to tender their securities back to an issuer-appointed representative, at par, on a periodic basis. VRDOs normally operate with a letter of credit or stand-by bond purchase agreement designed to ensure liquidity. Interest rates typically are reset by a dealer serving as the "remarketing agent" for the issue at a rate that allows the securities to be sold at par. Auction Rate Securities are distinguished by the auction process that is used to reset interest rates. Auction Rate Securities are not characterized by, and generally do not have, put features or liquidity facilities. Although the auction process is designed to allow holders normally to sell their positions at par

value during any auction, it is possible for auctions to fail, in which case holders are not able to liquidate their positions at par.

Auction Process

The auction methodology used in Auction Rate Securities is a type generally referred to as a "Dutch auction." An auction program employs one or more dealers ("Program Dealers")^[4] that solicit orders from investors who wish to own the securities over the next interest rate reset period. Typical interest rate reset periods are 7, 28, and 35 days. The programs require one "Auction Agent" – typically a bank – that receives orders from the Program Dealer(s) and conducts auctions in accordance with the method described in program documents. The Auction Agent provides the results of the auction to the Program Dealer(s), which then inform their bidders of the auction results and the securities, if any, that have been allocated to them as a result of the auction.

The auction method specified in program documents for Auction Rate Securities takes into consideration the total quantity of orders received in each order category specified in Auction Rate Security documents. Typical order categories include:

- Existing holders that want to hold at any rate decided by the auction;
- Potential investors bidding for the securities by stating minimum acceptable interest rates;
- Existing holders that want to hold, but only if the auction produces a rate equal to or greater than one that the existing holder specifies; and
- Existing holders that want to sell.

Using order information that must be submitted by a Program Dealer(s) before the auction deadline, the Auction Agent employs an algorithm to determine the lowest interest rate at which all of the securities that have been offered for sale by current holders of the securities will clear the market (the "clearing rate"). The clearing rate then becomes the interest rate for all of the securities in the issue for the next interest rate reset period.

Auction Rate Securities also have provisions that address situations that may occur if no clearing rate can be determined through the normal auction process. For example, if all existing holders want to hold at any rate, then an "all hold rate" is used. The all hold rate is usually a multiple of a market index and is designed to be lower than the rate that normally would be expected as a clearing rate. Conversely, auctions also can "fail" if the auction agent does not receive enough bids to cover the aggregate amount of securities that need to be sold, or if the clearing rate is above a "maximum rate" set in the program documents. In a failed auction, all existing holders hold their securities and the rate for the next interest rate reset period is set to the "maximum rate." Like the all hold rate, the maximum rate may be a multiple of a specified index. However, it is normally designed to be a rate higher than the rate that would normally be expected in a successful auction.

Existing Price Transparency Issues

As "short-term" securities under Rule G-14 on transaction reporting, both Auction Rate Securities and VRDOs are subject to slightly different reporting requirements than other securities. In 2003, the MSRB proposed rules for a Real-Time Transaction Reporting System (RTRS), including a requirement to report trades no later than fifteen minutes after the time of trade execution, and, for customer transactions, a requirement that the trade report include both a dollar price and yield.^[5] In response, the MSRB received comments from dealers that, because of the special trade processing methodologies for short-term variable rate securities, it would be difficult or impossible to meet these requirements for such securities. Based on these concerns, the MSRB included special provisions that provide dealers with an end-of-day

exception from the fifteen-minute reporting deadline and allows dealers to report customer transactions in variable rate securities without yield.

Since transactions in short-term variable rate securities are executed at a dollar price of par, the lack of yield means that RTRS provides little useful price information on these securities. The MSRB was aware of this in 2003 when it decided to provide the special provisions, noting:

The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for short-term rates that are being set...in variable rate and auction products. [6]

The MSRB is not aware of any ready source of interest rate reset information available to retail investors or, in some cases, to market participants in general. The MSRB is considering what price transparency improvements may be necessary for both Auction Rate Securities and VRDOs, but has decided to start with a plan for Auction Rate Securities in part because of the lack of liquidity guarantees for these securities and the recent volatility in the Auction Rate Securities market which has been associated with credit rating downgrades of "monoline" insurers. In addition, the MSRB understands that Auction Rate Securities frequently are sold directly to retail investors, who may not be as sophisticated as the institutions that are the typical VRDO purchasers.[7] While the MSRB has decided to start with a plan for Auction Rate Securities, it is also committed to improving price transparency for VRDOs and expects to propose a plan to increase the information available to market participants on VRDOs.

PLAN TO INCREASE AUCTION RATE SECURITY TRANSPARENCY

To improve transparency of Auction Rate Securities, the MSRB plans to create a system for collection and dissemination of information about Auction Rate Securities. Under this plan, Program Dealers would report to the MSRB results of an auction in an Auction Rate Security by no later than 5:00 P.M. Eastern on the day that auction results are provided by an Auction Agent. In the event that auction results have not been provided by 5:00 P.M. to a Program Dealer, the Program Dealer would be required to report auction results as soon as possible after they are provided by an Auction Agent. Information received from Program Dealers would be posted to an MSRB web site immediately after receipt. To facilitate discussion and comment on the plan, this notice separates information about Auction Rate Securities into two categories: (i) "reset rate information"; and (ii) "bidding information."

Reset Rate Information

Auction Rate Securities reset rate information describes auction results and would provide investors with information about the clearing rate, identity of the Program Dealer(s) and several other items of information. This information would allow market participants to have same-day access to clearing rates and provide a mechanism to compare clearing rates of various Auction Rate Securities.

The specific items of reset rate information about an Auction Rate Security proposed to be collected and disseminated are:

- CUSIP Number
- Name of Program Dealer(s)
- Number of days of the reset period
- Minimum denomination
- Date and time of the auction
- Interest rate for the next reset period
- Indication of whether the clearing rate is a "maximum rate," an "all hold rate," or "set by auction"
- Dollar amount of securities auctioned

Bidding Information

In addition to reset rate information, the MSRB requests comment on whether additional information that may be useful to price transparency should be collected and disseminated by the system ("bidding information"). The specific bidding information may include:

- Number of bidders
- Par amount of securities for sale in the auction
- Number and aggregate dollar amount of bids made
- Number of bidders other than the Program Dealer(s), issuer or conduit borrower
- Number, interest rate(s) and amount of bids by a Program Dealer for its own account
- Number, interest rate(s) and amount of bids by issuer or conduit borrower
- Par amount of securities allocated to bids at clearing rate
- High bid
- Low bid
- Median bid

Information Collection and Dissemination Methodology

The proposed collection of information about Auction Rate Securities would be accomplished through (i) a secure, password-protected Internet web site; and (ii) computer-to-computer data connections[8]. Because of the nature of Auction Rate Securities programs, the MSRB expects that Program Dealer(s) would form agreements with third parties, such as the Auction Agent for the issue, or designate a vendor to provide information to the MSRB on the Program Dealer(s)'s behalf and would allow for this under MSRB rules requiring submission of the data. However, the responsibility to ensure timely and accurate reporting of information to the MSRB would remain with the Program Dealer(s).

Each Program Dealer and submitter would be required to complete and keep current an electronic registration form.[9] This form would provide the MSRB with contact information for purposes of sending electronic records of submissions and to allow for follow-up by MSRB staff should any submission prove to be incomplete or incorrect. In addition, Program Dealers would identify intended methods of submitting information and identify third-party submitters that would submit information to the MSRB on their behalf.

Information about an Auction Rate Security submitted by or on behalf of a Program Dealer (s) would be displayed immediately after receipt on an MSRB web site. In addition to the information submitted, users of the MSRB web site would be able to access any additional documents on file in the MSRB's Municipal Securities Information Library® (MSIL®) associated with the Auction Rate Security, such as the Official Statement, as well as trade reports disseminated from RTRS.

REQUEST FOR COMMENT

Comment is requested on all aspects of the proposed plan for increasing transparency of Auction Rate Securities. The MSRB acknowledges that the market for Auction Rate Securities continues to experience extreme volatility and would appreciate commentators to consider the current and future state of the Auction Rate Securities market when providing comments on this notice. Consideration of the following questions may be helpful in providing comments:

- The MSRB proposes that Program Dealers would be required to provide information about an Auction Rate Security to the MSRB by no later than 5:00 P.M. Eastern on the day that an auction occurs. Would 5:00 P.M. Eastern allow for a sufficient amount of time for Program Dealers to receive auction results from Auction Agents and provide the information to the MSRB?
- Are the items of information proposed to be collected and disseminated about

Auction Rate Securities appropriate? Are there additional items of information that should be added to this list of information?

- The MSRB anticipates that most or all of the information listed as "reset rate information" is currently provided to Program Dealers from auction agents or is otherwise easily obtainable. Do Program Dealers anticipate difficulty in being able to collect such reset rate information for purposes of providing it to the MSRB?
- The MSRB understands that information listed as "bidding information" may not always be provided to Program Dealers. Do Program Dealers currently receive or have access to this information or are there other challenges to providing this information to the MSRB? If there are challenges associated with providing bidding information to the MSRB, should these items of information be subject to a different deadline than the 5:00 P.M. Eastern deadline for providing reset rate information?
- The MSRB would like to be able to collect and disseminate information about Auction Rate Securities as soon as possible. Are there standardized formats used to transmit auction information to Program Dealers from Auction Agents that the MSRB could use to minimize the number of changes needed in connection with Program Dealers submitting information to the MSRB?
- Are there documents concerning Auction Rate Securities that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), that should be filed with the MSRB and made publicly available?

* * *

Comments should be submitted no later than April 21, 2008, and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection at the MSRB's public access facility and also will be posted on the MSRB web site.[10]

March 17, 2008

[1] See Application of MSRB Rules to Transactions in Auction Rate Securities, MSRB Notice 2008-08 (February 19, 2008).

[2] See Statistical Patterns in the Municipal Securities Market at www.msrb.org.

[3] Auction Rate Securities are municipal securities with a variable interest rate that is set periodically through an auction. A description of the auction process is provided herein.

[4] The Program Dealer(s) is so designated through an agreement with an auction agent and the issuer of the Auction Rate Security.

[5] Inter-dealer trade reports, in general, are not required to include yield.

[6] See Real-Time Transaction Reporting: Revised Schedule and Operational Plan, MSRB Notice 2003-44 (December 11, 2003).

[7] For example, most VRDOs have a minimum denomination of \$100,000, thus they are primarily marketed to an institutional customer base, such as tax-exempt money market and bond funds as well as corporations and trust departments. Auction Rate Securities, on the other hand, typically only have a \$25,000 minimum denomination, which suggests that these securities are marketed to retail investors. In fact, transaction information in RTRS shows that approximately one third of transactions in Auction Rate Securities are in par amounts below \$100,000.

[8] One example of a computer-to-computer data connection would be an FTP portal with standardized file formats. The MSRB would have the goal of ensuring an efficient process for submission of information and would work with Program Dealers and other submitters to determine appropriate system specifications.

[9] This form would be similar to Form RTRS which dealers as well as non-dealer service bureaus that report trades on behalf of dealers are required to complete prior to submitting trade reports to RTRS.

[10] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

Alphabetical List of Comment Letters on MSRB Notice 2008-15 (March 17, 2008)

1. Digital Assurance Certification, LLC: Letter from Paula Stuart, Chief Executive Officer, dated April 21, 2008
2. McPherson, Jack B: Letter dated March 27, 2008
3. Mikag@cox.net: E-mail dated April 23, 2008
4. Regional Bond Dealers Association: Letter from Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, dated April 21, 2008
5. Saber Partners, LLC: Letter from Joseph S. Fichera, Senior Managing Director and CEO, dated July 9, 2008
6. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated April 21, 2008
7. Yankauer, Jeff: E-mail dated April 17, 2008



Digital Assurance Certification LLC

390 North Orange Avenue, Suite 1750
Orlando, FL 32801-1674
www.dacbond.com
Phone: 407.515.1100

April 21, 2008

Mr. Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board

Arlington, Virginia.

Dear Mr. Pica:

Digital Assurance Certification, LLC ("DAC") is pleased to respond to the request by the Municipal Securities Rulemaking Board (the "MSRB") for comment on a plan to create a centralized system for the collection and dissemination of critical market information about Auction Rate Securities. As described by the Board, the plan would require dealers that operate auction rate programs to report auction information to a central system operated by the MSRB. Auction results would be required to be reported by no later than 5:00 P.M. Eastern on the day that an auction occurs. The proposed system would display this information immediately on a web site.

DAC initiated its support of the municipal Auction Rate Securities market when the market needed it most. Within four business days of the release of the SEC's March 14, 2008 no-action letter (the "SEC ARS Letter"), issuers and obligated persons were able to post required information called for under the SEC ARS Letter on the DAC system where it may be viewed by all without charge. As of today, information on 268 auctions has been posted on the DAC site and 15 brokerage firms have established links to the site. DAC's ability to provide vital support to the municipal Auction Rate Securities Market in such short time is solid proof of the robust nature of the DAC system.

DAC has over 6 years of experience providing continuing disclosure information for issuers and obligated persons of municipal securities to the public at no charge on a "real-time" basis on the DAC website. Since January 31, 2005, DAC has provided MSRB RTRS secondary market trade data to the municipal market, combining both current disclosure and trade data for DAC Bonds in one location free of charge. DAC has developed a robust system of proven reliability with demonstrated ability to serve in implementing the Board's proposal for collection and dissemination of market information for Auction Rate Securities.

In the request for comment, the Board notes its expectation that Program Dealer(s) would form agreements with third parties, such as the Auction Agent for the issue, or designate a vendor to provide information to the MSRB on the Program Dealer(s)'s behalf and would allow for this under MSRB rules requiring submission of the data. However, the responsibility to ensure timely and accurate reporting of information to the MSRB would remain with the Program Dealer(s). DAC notes that it currently serves as a vendor designated by issuers and



obligated persons providing municipal ARS as called for under the SEC ARS Letter¹ and will easily provide the same service to Program Dealers.

You have asked whether 5:00 P.M. Eastern allow for a sufficient amount of time for Program Dealers to receive auction results from Auction Agents and provide the information to the MSRB. We observe that operating under the SEC ARS Letter, with little notice to develop uniform protocols, Issuers and Obligated Persons have been able to gather and post information similar to what you characterize as "reset rate information" and "bidding information" by the following morning, and in some circumstances, by day's end. With an ability to develop uniform protocols in advance, Program Dealer provision of information by 5:00 P.M. Eastern on the same day may be achievable. We note that we are not in a position to offer observations on the burdens placed, if any, on Program Dealers under such arrangements.

You have also asked whether there are additional items of information that should be added to "reset rate information" and "bidding information." We note that under the SEC ARS Letter, the guidance provided calls for, at least two business days before an auction, disclosure of:

- the intention of a Municipal Issuer's or Conduit Borrower's intention to bid in that auction,
- the intention of the participating dealers to bid on the Municipal Issuer's or Conduit Borrower's behalf, and
- the interest rate(s) and amount(s) of municipal auction rate securities that will be bid for.

In addition, the SEC ARS Letter calls for disclosure of whether the Municipal Issuer or Conduit Borrower intend to bid, directly or through participating dealers, for "nearly all (for example, 90% or more) of the outstanding principal amount of an issue of municipal auction rate securities, and if so, calls for disclosure of the steps the Municipal Issuer or Conduit Borrower intends to take to allow remaining holders to sell their securities to the Municipal Issuer or Conduit Borrower following the auction.

From our inception, DAC has delivered direct, immediate, secure, and verifiable disclosure on a "real time" basis for DAC Bonds at no cost to investors and the municipal market. We welcome this opportunity to provide comment to the Board and look forward to opportunities to work with the Board to improve real time access to disclosure in the municipal securities market, including with respect to municipal ARS securities.

Sincerely,

A handwritten signature in cursive script that reads "Paula Stuart".

Paula Stuart,
Chief Executive Officer

¹ See Clarification Memo Regarding SEC No-Action Letter of March 14, 2008: "We pointed out that complying with (i) through (vi) [of the SEC ARS Letter] may require a significant effort over an extended period of time. *We asked who the SEC thought should be responsible for this and were told that this is an issuer responsibility*" (emphasis added). SIFMA April 8, 2008, available at: http://www.sifma.org/capital_markets/docs/SIFMA-SECMemo-ARS.pdf.

Jack B. McPherson
P.O. Box 515
New Port Richey, FL 34656-0515
March 27, 2008
Telephone: 727-842-1760
Fax No: 727-842-1761
E-Mail: jmcpherson2@tampabay.rr.com

MSRB
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Attention: Justin R. Pica, Uniform Practice Policy Advisor

Re: MSRB Notice 2008-15

Dear Mr. Pica:

Pursuant to MSRB Notice 2008-15 (March 17, 2008) requesting comments on the plan to increase information on Municipal Auction Rate Securities, I enclose a letter that I wrote to MSRB on March 11, 2008 which summarizes my observations regarding Auction Rate Securities.

RECOMMENDATIONS FOR INCREASED INFORMATION

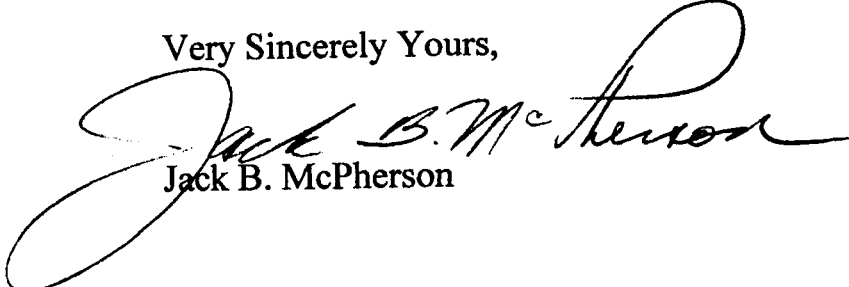
The individual investors should be provided with an information form written in plain language alerting them that their ability to liquidate these securities (1) is dependent on the continuing participation of the banks, brokers-dealers and financial institutions in the auction process, and (2) that if the institutions decided of their own volition to abandon the market, the auctions would fail, and the investors would be left holding long term bonds which would be inconsistent with the concept that these securities were intended to provide a temporary repository on a short term basis for the investors to place their money until they decided how they should invest these funds in accordance with their long term financial goals.

An information form is necessary for the following reasons: (1) the prospectuses are very voluminous, thick booklets couched in language not

easily understood by anyone who does not have specialized knowledge of the unique, technical aspects and dynamics of the auction rate securities market; (2) that by virtue of their superior knowledge on precisely how this uniquely specialized market actually functions, the banks, financial institutions and brokers-dealers knew that the auctions would succeed only if they continued to participate in the auction process by providing the liquidity necessary for successful auctions; (3) the banks, financial institutions and brokers-dealers were well aware that if they abandoned participation in the process, the individual investors would be left stranded and saddled with these bonds for an indefinite term which is contrary to the very intention and purpose for which the auction rate securities market was created in the first instance; (4) the success of these auctions over the years owing to participation in the market process by the financial institutions created an atmosphere which induced individual investors to purchase these securities on the good faith belief that they would be able to liquidate their bonds in 7, twenty eight, or 35 day cycles.

The most perplexing aspect of these auction rate failures is the fact that most private persons who purchase municipal bonds are conservative investors who believe that they are investing in public utility systems, schools, hospitals and similar projects. That was the case when these folks invested in Municipal Auction Rate Securities. They were certainly not interested in purchasing securities that were backed by high risk sub-prime mortgages. However, unbeknownst to the individual investors, these very same financial institutions were investing in securities that were backed by high risk sub-prime mortgages which, quite predictably, went into default. As a result of this debacle, the financial institutions abandoned the auction rate securities market thereby resulting in a lack of the necessary liquidity to assure that the auctions will succeed. As a consequence, there has been a succession of failed auctions, thereby depriving the individual investors of their ability to liquidate these securities in a prompt and timely manner as contemplated when the same were purchased by them.

Very Sincerely Yours,



Jack B. McPherson

Jack B. McPherson
P.O. Box 515
New Port Richey, Fl 34656-0515
March 11, 2008
Telephone: 727-842-1760
Fax No: 727-842-1761
E-Mail: jmcpherson2@tampabay.rr.com

MSRB
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: Florida Municipal Power Agency (Municipal Auction Rate Securities).

Dear Folks:

I purchased a substantial amount of seven day Municipal Auction Rate Securities that were issued by the Florida Municipal Power Agency in reliance on the representations that, if I was willing to accept below market interest rates, I would be able to sell these securities at par at my option. However, I am recently advised that, due to an absence of liquidity in the auction process, auctions have failed thereby leaving investors of these securities in the lurch.

I am further advised that these auctions have failed because banks, investment institutions, and brokers-dealers, who were instrumental in creating and fostering these auction rate securities for their financial advantage in the first place, have suddenly and without warning discontinued participation in the process which has resulted in the absence of liquidity thereby causing these auctions to fail.

Moreover, a great deal of these bonds have been downgraded from the AAA Rating where they stood, when I purchased them, down to an A1 rating which further serves to prejudice my position as an investor. Based on the history of these ARS bonds, it is apparent that the banks, financial institutions and brokers-dealers used their considerable wealth to create and participate in these auctions as a method by which to lure individual

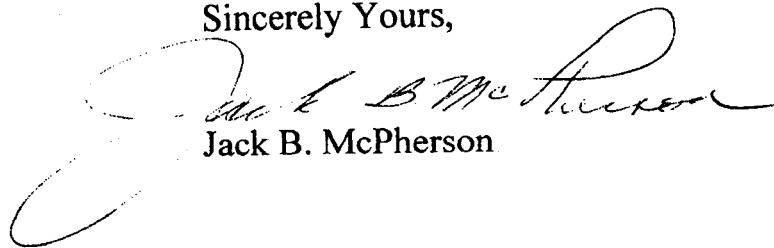
investors to enter the ARS market and then, after it became less lucrative for them to remain in that market, these very same banks, financial institutions and brokers- dealers peremptorily discontinued participating in the auction process thereby leaving the individual investors adrift and on the shoals.

This is the very type of conduct that warrants regulatory scrutiny and sanctions in order to induce these banks, financial institutions, and brokers-dealers to re-enter the ARS auction process, restore its stability, and thereby inspire them to formulate a plan in concert with the issuing authorities which will allow them to work through the fiscal aspects to their mutual benefit without requiring the individual investors to carry this burden over a protracted duration of time and be incapacitated by the ensuing damages.

I have also heard that a plan is under consideration that would allow the issuing authorities to become participants in the auction process in order to restore liquidity which, under the circumstances, would possibly afford some relief for the individual investors.

I would appreciate any information that you can provide on the measures that are being taken to resolve this problem. If relief and stability is not forthcoming, I doubt that the investing public will ever consider the municipal bond market as a safe, reliable and credible place to place their hard earned money in the future.

Sincerely Yours,

A handwritten signature in dark ink, appearing to read "Jack B. McPherson". The signature is fluid and cursive, with a large loop at the beginning and end. It is positioned above the printed name "Jack B. McPherson".

Jack B. McPherson

Justin Pica

From: mikag@cox.net
Sent: Wednesday, April 23, 2008 1:44 AM
To: Justin Pica
Subject: RE: REQUEST FOR COMMENT

Sorry for the late reply. I was out of town. I agree with the statements already made. The more information available the better. Although I feel the auction rate securities market will not exist in the future because it is flawed and after this debacle no one will trust the market when there is a possibility of becoming illiquid.



REGIONAL
BOND DEALERS
ASSOCIATION

1940 Duke Street
Second Floor
Alexandria, VA 22314
703-486-5672

April 21, 2008

Mr. Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Comment on MSRB Notice 2008-15

Dear Mr. Pica,

The Regional Bond Dealers Association (RBDA) is pleased to comment on the Municipal Securities Rulemaking Board's (MSRB's) Notice 2008-15, the proposed Plan for Increasing Information Available for Municipal Auction Rate Securities. The RBDA is the association of regional securities firms active in the U.S. bond markets. Many regional bond dealers participate in various ways in the market for municipal auction rate securities (MARS).

Clearly, the market for MARS has experienced considerable stress and disruption over the past several months. This disruption was sparked by concerns over the standing of certain monoline bond insurers, but it has its roots in the overall credit markets correction that set in in 2007. Many hundreds of MARS auctions have failed, and liquidity for MARS has all but dried up. Many investors who want to sell MARS are unable to do so due to lack of liquidity, and many issuers have been forced to pay onerous penalty rates due to failed auctions. Dealers who would like to provide liquidity to the MARS market are prevented by an inability to finance positions in MARS.

Since the downturn in MARS, the market for MARS has shrunk significantly. Tens of billions of dollars of MARS have been taken out of the market as states and localities and conduit borrowers have refinanced their debt into more stable products.

The MSRB's proposal outlined in Notice 2008-15 represents a reasonable response to the problem of a lack of transparency regarding the conduct of auctions in the MARS market. We believe a system like the one outlined in Notice 2008-15 would have helped issuers, investors, dealers and regulators better understand the downturn experienced by the MARS market over the last several months. In the current environment, however, we question whether a system like that outlined in Notice 2008-15 is warranted.

Many but not all our members believe the disruptions experienced in the MARS market this year have exposed fundamental weaknesses in the structure of auction-rate securities that will make the product unattractive to both issuers and investors going forward. Many firms believe that the MARS market will continue to shrink in size and that MARS will disappear over time. These firms also believe that few or no new MARS issues will be sold in the future. This view is also held by a number of active participants in the MARS market.¹

This fundamental weakness in the MARS product is not a result of a lack of transparency in the auction process and cannot be cured by enhancing transparency. Rather, the weakness in the product stems from a lack of a hard liquidity facility for MARS investors. As recognized in Notice 2008-15, MARS are designed so that the periodic auction process provides the principal means for investors to sell MARS in the secondary market. Failed auctions represent a loss of liquidity. While in some cases dealers try to provide "last resort" liquidity to MARS investors, they have no obligation to do so. Unlike other products designed to behave like money market securities such as variable-rate demand notes and tender-option bonds, MARS generally do not have a "hard put" facility attached to them. The lack of a put facility means that investors are dependent on market demand to sell their securities. Given the experience of recent months, the lack of a liquidity facility means that the product will no longer be an attractive choice for issuers or investors. Another factor contributing to the market's waning interest in MARS is the fact that many issuers hedge their floating rate exposure on MARS transactions using interest rate swaps based on the SIFMA Municipal Swap Index. However, that index is based on yields on variable rate demand notes, and those yields have diverged significantly from yields on MARS over the past several months. This divergence makes it difficult for municipal issuers to effectively hedge their MARS floating rate exposure.

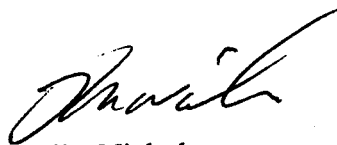
Given that the MARS market is shrinking and will eventually disappear, we believe an investment by the MSRB and market participants in a system to enhance transparency for this product is not warranted. While the system outlined in Notice 2008-15 likely would have smoothed disruptions in the MARS market over the last several months, it simply does not make sense to invest resources in a system dedicated to a disappearing product sector. If we are wrong and there is a resurgence in MARS issuance, we would be supportive of a system like the one outlined in Notice 2008-15. If the MARS market continues to shrink, however, we believe the MSRB's and dealers' resources would be more productively directed to other initiatives.

We appreciate the opportunity to present our views. Please do not hesitate to contact us if you have any questions.

Sincerely,



Michael Decker
Co-Chief Executive Officer



Mike Nicholas
Co-Chief Executive Officer

¹ See, for example, Martin Z. Braun, "Auction-Rate Market Will 'Cease to Exist,' Citi Says," Bloomberg.com, April 15, 2008.



44 Wall Street
New York, New York 10005
212 461-2370
FAX: 212 461-2371

Joseph S. Fichera
Senior Managing Director & CEO

July 9, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Dear Mr. Pica:

It was President Kennedy who said, "Our task is not to fix the blame for the past but to fix the course for the future." Fixing the course for the future is the position the Municipal Services Rulemaking Board (MSRB) is in at its upcoming July meeting in the floating rate securities market and in particular auction rate securities (ARS). Clear, decisive and substantive action is needed to restore investor confidence and allow liquidity to return to this market. If the MSRB acts in an ambiguous or indecisive way, it will only add to the damage to investor and issuer confidence that has occurred. If the MSRB responds with excessive requirements that purport to be "full disclosure" but that lead to further confusion and obfuscation, the damage will worsen and an important opportunity will have been missed.

Some have suggested that the MSRB should simply permit the demise of the ARS market that is shrinking, a market that has been declared "dead" by some of those who have created it. This will just burden issuers who struck a fully disclosed bargain with investors with additional costs and expenses to restructure and refinance - without ever addressing the problems that have been uncovered by the crisis. Neither taxpayers nor the customers of colleges, universities, and hospitals should be burdened with higher costs even if they decide to transition away from this market. And investors should not be forced to languish in illiquidity when there are practical steps that could be taken to improve the process.

Rather, the MSRB should take actions that level the playing field and allow auctions to be true auctions and not managed bidding systems. Markets should be allowed to work based on transparency and competition. There is nothing wrong with an auction if it is an auction. The private reality must match the public face of the use of the term "auction". An "auction" has a meaning and what the MSRB should do is ensure that the meaning of an auction is its reality as well. This is the essence of integrity and confidence in markets and the mission of the MSRB.

Through the MSRB's leadership if one can establish a transparent fair and competitive system with full disclosure, then market participants can make the decision as whether this is a cost-effective financing alternative for issuers and investors. Investors coming together in a true investor auction can determine the appropriate liquidity premium (increase in the interest rate compared to a benchmark) for that auction. No one should try to impose a solution on the market. In the absence of this leadership, a bad situation will be made only worse and the damage to integrity and confidence will be profound. There is no one size fits all solution and to suggest one is a disservice to the clients both issuers and investors we serve.

Let us focus on two key items for the MSRB: 1) Transparency to Restore Investor Confidence and 2) Liquidity

Transparency to Restore Investor Confidence

First, the MSRB should require fundamental economic transparency in all auctions.

Give simple and understandable information to let investors judge their liquidity risks and make their own decisions as to whether to participate in an auction. If they do participate, let them determine how much they want to be compensated within the terms of the structure to absorb the liquidity risks of each auction. The single most common complaint has been, it appears from published reports and anecdotal evidence, that no one knew what the liquidity was in the auctions. Were there 4 investors or 400? Did the broker step in some times or all the time?

But to be effective, transparency needs to be *simple, accessible and understandable*.¹ Using the EMMA platform, it should be easy to devise a simple matrix of key data on each auction that allows investors to know and understand the liquidity issues.

We suggest that the model for transparency should be the straightforward and clear disclosure found in the US Treasury auctions. It is what investors require from the Department of the Treasury to promote investor confidence. The Treasury Department conducts Dutch auctions using the same mechanism as in ARS.

The process is two step. First there is an announcement of the auction and then an announcement of the auction results. Each auction has a press release and web access for the results.

The auction results are summarized with some specific details so that market participants can evaluate the “success” of the auction. Success is defined not just by raising the amount required --- that’s only part of the story.

The Treasury Department releases the following information on each auction compared to the information available in corporate and municipal auctions:

Information Released	US Treasury	Corporate/Municipal Auctions ARS ²
Winning Yield	✓	✓
Amount of Competitive Bids ³	✓	
Amount of Competitive Bids Accepted	✓	
Amount of Non-Competitive Bids ⁴	✓	
Amount of Non-Competitive Bids Accepted	✓	
Amount of Bids at the Winning Yield	✓	
Median Yield	✓	
Lowest Yield	✓	
Amount of Competitive Tenders at or below Median Yield	✓	
Amount of Tenders at Lowest Yield	✓	
Bid to Cover Ratio	✓	

¹ One state issuer experimented with releasing all the data that was provided by an auction agent to the issuer. This amounted to a confusing situation known among market participants as a “data dump” which is not the essence of good disclosure.

² Released to investor not to market

³ Competitive Bids are bids that specify a rate similar to a Hold at or Buy at rate in ARS.

⁴ Non-Competitive Bids are bids that do not specify a rate only an amount and indicates the investor is willing to accept whatever the winning rate of the auction is similar to a Hold Order in ARS.

In giving this transparency one needs to require the terminology to be used be consistent. Some auction agents interchange the use of “shares” and “bonds”. Some talk about bids by numbers which are then defined by bond or share denominations as opposed to the dollar amounts. This confusion needs to be eliminated. The transparency proposed should be by the dollar amount bid by *unique* investors.

The one addition to the US Treasury model is that is necessary is the separation of the broker-dealer’s amount bid for its own account from other investors.

The role of the broker-dealer as a market maker bidding in the auction is completely legitimate and should be accepted by all market participants as the broker’s complete discretionary option, not a requirement. Their discretion to bid or not to bid and how they wish to use their capital is solely their business. If this is to continue as a pure secondary market activity, the principle that a broker’s participation in the auction is completely at their discretion, must be preserved and protected. These are not remarketings or underwritings and the distinction must be clear.

The MSRB should consider adding the key term of a “bid to cover ratio” which has been missing from previous discussions as opposed to “failed” or “successful” auctions, terms that give limited and possibly misleading connotations. This one statistic, for example, can give great insight into the liquidity of any auction. This ratio represents the amount of bonds that were bid (either competitively or noncompetitively (hold orders)) for the amount of securities in the particular series otherwise known as “coverage”. A bid to cover ratio of 0.8 clearly indicates an auction that did not succeed in clearing the entire issue. A bid to cover ratio of 1.1, shows marginal coverage but all securities placed. A bid to cover ratio of 2.3 would show robust demand. Indeed, this is how the market interprets data presented in other auctions like the Treasury Department. When this one statistic is combined with other simple and understandable disclosures such as the low, high and median rate bid, a more complete understanding of the auction is made available for investors to consider and to price this information in when evaluating subsequent auctions or secondary market activity.

Finally, how this information is presented is as important as the information itself. Much of what discussed above, is already required for those issuers bidding in their own auctions in accordance with the safe harbor guidance by the SEC released in March. Yet, how this information has been released to the market has been in an awkward and a less than useful format. The MSRB should show leadership in providing the basic electronic, accessible information without providing so much information that it becomes useless to investors. The experience of one state issuer showed the uselessness of a “data dump” in multiple pages and links of confusing data and terminology.

Liquidity

The essence of liquidity is competition with minimal barriers to that competition. The liquidity crisis for many auction issuers is based not on credit but lack of confidence as noted above. It is made worse because of an inability by other investors to access the securities directly, even if they are not customers of the designated broker-dealer.

Unfortunately, a large part of the municipal auction securities market has auctions with only a single broker-dealer or market maker permitted in the auction. This severely limits the number of investors bidding in the auction. If the Treasury Department required all bids in their auctions to go through a single broker-dealer, most would question whether that was really an “auction” by what we all consider that term to mean.

Besides limiting the number of investors competing for the securities, this sole broker-dealer system creates confusion with variable rate demand bonds (VRDBs) that reprice through a remarketing agreement. The two are substantively different but have been merged in common practice. A broker’s

legal responsibilities and relationships are different in a broker-dealer agreement compared to a remarketing agent agreement. To blur the use of the word "remarketing" to apply to both remarketings *and* auctions creates confusion and expectations among investors which only complicate the functioning of the market.

As further support for this confusion, the role of the auction agent versus the broker-dealer has routinely been confused. Reference to the broker-dealer as "running the auction" or "managing the auction" are inappropriate from the structure of the security though the practice may have deviated from the structure. Hence, there is created misunderstanding and consternation among issuers and investors.

These distinctions do matter, and while they may be technical in a discussion among members of our profession, the confusion it presents to issuers and investors is real and should not be denied.

To think innovatively as to how to address this problem, we might consider what the common market practice is for "competitive bidding in an auction". Generally speaking, market participants would agree that three independent bidding channels would create a "competitive" pricing. This would be similar to the IRS safe harbor for determining fair value and to how competitive "auctions" for new issues are thought of. Liquidity means investors competing for investments. Anything that limits competition limits liquidity and therefore the more barriers that are eliminated, the better potential liquidity for investors.

Consequently, the MSRB might consider limiting the use of the word "auction" to describe situations that clearly meet investor perception, expectation and definition of an "auction". Only those securities that have at least three independent broker-dealers and market makers should be considered "auctions." (We would strongly prefer that as many broker-dealers be allowed to bid in as many auctions as possible.) This means that the MSRB should encourage broker-dealers to give up the proprietary model of approach to ARS, which confuses the role of a broker-dealer in an auction with the completely different and independent role of a remarketing agent in variable rate demand obligations.

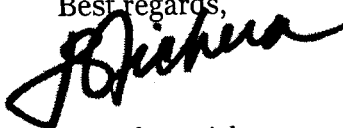
Clearly, broker-dealers do not control how many other broker-dealers are in an auction. That is the issuer's decision. Nevertheless, the broker has a great deal of influence with issuers. And the MSRB could encourage the dramatic expansion of auction distribution channels to assist in the liquidity crisis for investors in auction rate securities. This would benefit issuers and investors.

Conclusion

The market is looking for leadership now, not further litigation. The MSRB could help provide that leadership and help fix the course for the future. The MSRB has the opportunity and we hope it will use it to make markets work effectively and efficiently.

Thank you for your consideration of this material and for your concern in this matter. It is unfortunate that we could not discuss these matters last Fall when we first contacted you. Please do not hesitate to call us with questions or requests for clarifications now.

Best regards,



Joseph S. Fichera
Senior Managing Director and CEO

April 21, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2008-15: Plan for Increasing Information
Available for Municipal Auction Rate Securities

Dear Mr. Pica,

The Securities Industry and Financial Markets Association ("Association")¹ appreciates this opportunity to respond to Notice 2008-15 issued by the Municipal Securities Rulemaking Board ("MSRB") on March 17, 2008 ("Notice") in which the MSRB requests comment on its proposal to create a centralized system for the collection and dissemination of market information about Auction Rate Securities ("ARS") that would increase the amount of information available to market participants.

The Association fully supports the development by the MSRB of a system to display auction information on a website. Under the proposal of the MSRB, Program Dealers would report to the MSRB results of an auction in an Auction Rate Security by no later than 5:00 P.M. Eastern on the day that the auction results are provided by an Auction Agent. In the event that auction results have not been provided by 5:00 P.M. to a Program Dealer, the Program Dealer would be required to report auction results as soon as possible after they are provided by an Auction Agent. Information received from Program Dealers would be posted to an MSRB web site immediately after receipt.

The Notice divides the information into two categories, Reset Rate Information and Bidding Information, but information under both categories would be submitted at the same time.

¹ The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Justin R. Pica
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The Reset Rate Information would include:

- CUSIP Number
- Name of Program Dealer(s)
- Number of days of the reset period
- Minimum denomination
- Date and time of the auction
- Interest rate for the next reset period
- Indication of whether the clearing rate is a "maximum rate," an "all hold rate," or "set by auction"
- Dollar amount of securities auctioned

The Bidding Information would include:

- Number of bidders
- Par amount of securities for sale in the auction
- Number and aggregate dollar amount of bids made
- Number of bidders other than the Program Dealer(s), issuer or conduit borrower
- Number, interest rate(s) and amount of bids by a Program Dealer for its own account
- Number, interest rate(s) and amount of bids by issuer or conduit borrower
- Par amount of securities allocated to bids at clearing rate
- High bid
- Low bid
- Median bid

The proposed collection of information about Auction Rate Securities would be accomplished through (i) a secure, password-protected Internet web site; and (ii) computer-to-computer data connections. Proposed rules would allow submission of data on behalf of Program Dealers by third parties, including Auction Agents or vendors, pursuant to an agreement with the Program Dealers, but responsibility for rule compliance would be on the Program Dealers.

The following are general comments as well as the specific requests in the Notice.

1. Allocation of Responsibilities Among Program Dealers

The Notice recognizes that an auction program employs one or more Program Dealers. The Program Dealers are designated in a broker-dealer agreement entered into

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by the issuer or obligors of the Auction Rate Securities and the Program Dealers. Unlike a bond purchase agreement for the underwriting of a new issue of municipal securities, which is executed by the lead underwriter on behalf of all the underwriters, there is generally no "lead" Program Dealer specifically designated as such in programs involving multiple Program Dealers. The lead underwriter when the Auction Rate Securities are originally issued does not necessarily have a lead position in the conduct of auctions, since the administration of the auction is assigned to Auction Agents.

Existing MSRB rules related to underwriting new issues of municipal securities, such as Rule G-36, provide that, in the case of distributions by underwriting syndicates, certain responsibilities are to be performed by the managing underwriter. As these provisions are drafted, a failure of the managing underwriter to comply with the rule would not result in a rule violation by syndicate members.

The Notice states that submission of Reset Rate Information and Bidding Information may be contractually assigned to an Auction Agent or vendor, but rule compliance is with the Program Dealers because the MSRB lacks jurisdiction over persons who are not broker-dealers. The Association believes the Program Dealers should be able to designate one Program Dealer to act as a "manager" for all Program Dealers for purposes of compliance with the proposed rule, to the extent the rule requires compliance by Program Dealers. Broker-dealers are reluctant to rely on persons who are not subject to MSRB jurisdiction for compliance with a rule of the MSRB if the broker dealers are subject to an enforcement action by the failure of a non-regulated persons, but if one broker-dealer could be designated to file the required auction information with the MSRB, the rule could be drafted to place sole responsibility on the "managing" Program Dealer. Like certain provisions of Rule G-32, Rule G-36 and Rule G-8, this approach would avoid the incentive for all Program Dealers to file duplicative information in order to be assured of rule compliance. A useful approach would be to require the "managing" Program Dealer to submit information that is required to be submitted by Program Dealers, while making it optional for other Program Dealers to submit information. As discussed below, the Association believes certain Reset Rate Information should be a Program Dealer obligation, but Bidding Information should not be an enforceable obligation of Program Dealers subject to compliance actions.

2. Setting Up a Template

One reason to allow the Program Dealers the option to assign compliance responsibility for dealer information to a single Program Dealer is that the Association believes the website location for a specific auction rate program could contain certain information set-up at the commencement of the program that would not have to be resubmitted on the date of each auction because it is relatively static information. This

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conclusion applies to items in the proposed list of Reset Rate Information. CUSIP numbers are static but should probably be resubmitted with each auction. The names of the Program Dealers, the reset period, minimum denominations, and dollar amount of the securities are relatively static and could be initially entered on the template by the "managing" Program Dealer to be revised only when necessary. For example, the dollar amount of the securities auctioned would be reduced if there were a redemption, but should not have to be resubmitted after each auction unless there is a change.

3. The MSRB seeks comment on whether the items of information proposed to be collected and disseminated are appropriate

The Association believes it is important to provide information to the market on the outcome of auctions as soon as it is feasible for the MSRB to establish a website. At the outset, the information to be submitted should be limited to the information that is readily available to the Program Dealers and would not involve information that would require time-consuming developments in technology. A significant problem is the location of information at the Auction Agent, and the inability for Program Dealers to verify bidding information for which they could have compliance responsibility under the MSRB proposal. The Association recommends that initially the information to be submitted by Program Dealers be limited to the Reset Rate Information and, within the Reset Rate Information list, not include a determination that a rate is a maximum rate, an all hold rate or a rate set by auction.

The reasoning for this suggestion is analogous to the lengthy efforts of the MSRB and market participants to implement procedures for rule changes to Rule G-34 and the efficiency criteria that were then employed to initiate through-put processing of information from sources, other than broker-dealers, notably the DTCC. The transmission of auction bidding information begins with the Auction Agents, and efficiency again suggests there be through-put capability, but the technology is not currently in place, and the MSRB website should not be delayed while systems are created.

In the meanwhile, there are other noteworthy developments. Issuers are proceeding to refinance Auction Rate Securities that have previously resulted in liquidity problems caused by programs with low maximum rates, and the importance of same day verification by Program Dealers of a reset at the maximum rate may not be as imperative after the refinancings take place. Issuers are also developing systems in response to the No-Action Letter of the Securities and Exchange Commission (SEC) staff, dated March 14, 2008, that requires disclosure by issuers of specified bidding information if issuers intend to bid in their own auctions. The information listed in the Notice under Bidding Information may be more appropriately derived from the issuers as the issuers

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continue to develop their disclosure systems. The accommodation of the MSRB website to issuer information is discussed below under item 7.

4. The MSRB requests comment on the proposed 5:00 P.M. Eastern deadline for the submission of information

Members of the Association have recommended that the deadline for submission of same-day information be changed to 6:00 P.M. Eastern to accommodate auctions based on other time zones.

It is important to note that the broker dealers do not have control over the accuracy of the rates they receive or when they actually receive the auction information. There have been instances recently of broker dealers not receiving auction information until after 6:00 P.M. from auction agents, or receiving corrected information after this time. Pursuant to the SIFMA Model Auction Documentation, auction agents have until 3:00 P.M. of the day after the auction to make any necessary corrections. It is critical that the broker dealer not be held responsible for these delays or releases of corrected information that are out of their control.

5. The MSRB requests comment on the accessibility of "Bidding Information" to the Program Dealers and whether the Bidding Information should be subject to the 5:00 P.M. Eastern deadline for providing Reset Rate Information

As discussed under item 3 above, the Bidding Information is derived from the Auction Agents, and the technology is currently not in place for the Program Dealers to redirect information in the form it is received from Auction Agents to the MSRB in the form proposed for submission to the MSRB.

6. The MSRB requests comment on whether there are auction program documents that should be filed with the MSRB in addition to the official statement filed pursuant to Rule G-36

Official statements, prepared in connection with new issue offerings of Auction Rate Securities, generally contain extensive summaries of the underlying program documents. The Association, as part of its project to develop best practices for the conduct of auctions has also prepared for market participants, recommendations for disclosure of the auction procedures. We do not believe it would be useful to add program documents to the official statement for Rule G-36 filing with the MSRB.

Justin R. Pica
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7. Compliance Responsibility and MSRB Jurisdictional Issues

Broker-dealers are understandably reluctant to accept compliance responsibility for the accuracy of information they do not control. There are, in fact, circumstances under the MSRB rules in which broker-dealers act as conduits of information provided by others without being subject to an enforcement action if there is an error in the information received. For example, under Rule G-34 on CUSIP numbers, the rule relieves broker-dealers from responsibility for obtaining CUSIP numbers if the CUSIPs are obtained by the issuer or a non-broker-dealer financial advisor. Under the rule, broker-dealers are required to transmit the assigned CUSIP numbers to the market. The information has come from the issuer or a non-broker-dealer financial advisor, but nothing in the rule would make the broker-dealer subject to an enforcement action if the issuer sent the broker-dealer the wrong CUSIP number or inadvertently obtained a corporate number for a municipal security.

Section 15B of the Securities and Exchange Act of 1934 (1934 Act) provides that the MSRB is to adopt rules to effect the purposes of the 1934 Act, but section 15B(b)(2) does not require that all rules be accompanied by enforcement procedures against broker-dealers, or that all rules exclude possible submission of information to the MSRB by persons other than regulated broker-dealers. Section 15B(b)(2) requires that MSRB rules be designed, among other purposes, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The statutory language does not require that simply because the MSRB is to act by rules, the rules must carry potential compliance penalties if broker-dealers are transmitting information prepared by others.

Section 15B(d)(2) of the 1934 Act prohibits the MSRB from requiring issuers, indirectly through broker-dealers, to furnish the MSRB any report, document or information. As it is well-known from the history of MSRB Rule G-36 and SEC Rule 15c2-12, the MSRB cannot require issuers to prepare disclosure documents, but the 1934 Act restriction does not prohibit MSRB rulemaking for broker-dealer filing of information it receives from issuers, whether as a result of SEC rules, or otherwise. Thus Rule G-34 does not require issuers to obtain CUSIP numbers, but it allows broker-dealers to use CUSIP numbers that have been provided by issuers.

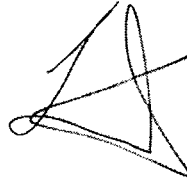
For the same reasons, the 1934 Act should not preclude the MSRB from having a website for the receipt of information from issuers, or processed through broker-dealers where technologically feasible, and should not be interpreted to make the broker-dealers legally responsible for an error of calculation by issuers. The Association recommends that the proposed website be developed to receive information directly from issuers or

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Auction Agents. Alternatively, if information is to be submitted by Program Dealers that is derived from issuers or Auction Agents, and is not information easily verifiable by Program Dealers, the Program Dealers should not be legally accountable for the accuracy of the information.

We appreciate this opportunity to comment on this proposal. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, stylized triangular graphic.

Leslie M. Norwood,
Managing Director
and Associate General Counsel

Justin Pica

From: jeff2333@aim.com
Sent: Thursday, April 17, 2008 3:58 PM
To: Justin Pica
Subject: Comments regarding Auction Rate Securities

I own some ARS, and I am in agreement that all of the proposed items for Reset Rate Information, and Bidding Information mentioned mentioned at <http://www.msrb.org/MSRB1/whatsnew/2008-15.asp> should be disclosed.

Further, I believe it would be useful to disclose:

- 1) whether or not a specific security has EVER failed, and the date of the most recent failure.
- 2) exactly how the penalty rate is calculated. (i.e. does it use a formula, and if so, what exactly is the formula)
- 3) please disclose somewhere exactly and precisely how sell orders are fulfilled. Are they filled at random, or filled in some other manner? If they are random, is there something in place to ensure the orders are truly filled at random? If they are not random, then exactly how are the orders filled.
- 4) Make all the disclosures available to the general public without any fee to view the information.

I don't know if the following is yours to decide but, a suggestion I have with regard to filling sell orders would be to partially fill as many sell orders as possible. For example, if there are 10 sell orders, and only 250K worth of buy orders, give all 10 sellers a partial execution of 25K. If there are 11 sell orders, pick 10 sell orders at random (assuming that the minimum block size is 25k).

If the CURRENT system is random, then it seems to me that 1 person selling 250K might get the full execution if his/her order were the 1st to be randomly selected. The rest of the orders would get no execution, even if, say 9 other people had tried to sell their position multiple times before. That isn't a very good system unless you're the 1 lucky person who got to sell their whole position (in my example). I'd like to see a system implemented like the one I just described in the previous paragraph. More people would be able to get SOME of their money back during the current auction, in the case of a failed auction were some purchases.

Another suggestion would be to give preference to those who attempted to sell their position during the previous auction but were unable to do so because the auction failed.

Thanks for considering my comments.

Jeff Yankauer

**MSRB NOTICE 2008-24 (MAY 23, 2008)****REQUEST FOR COMMENT: PLAN FOR
INCREASING INFORMATION AVAILABLE FOR
MUNICIPAL VARIABLE RATE DEMAND
OBLIGATIONS**[Home Page](#) | [Back](#)

The MSRB continues to monitor the market for municipal Auction Rate Securities and remains concerned about the lack of comprehensive information available to market participants. In a recent notice, the MSRB requested comment on a plan for increasing information available on municipal Auction Rate Securities ("March 2008 Notice").^[1] Comments received on the March 2008 Notice generally were supportive of the creation of a system to collect and disseminate critical market information about Auction Rate Securities. However, some commentators noted that, as a result of the extreme volatility in the market for Auction Rate Securities, many Auction Rate Securities have been redeemed by issuers or converted into other types of municipal securities thus reducing the amount of information that would be collected by such a system. As the MSRB reviews those comments, the question of increased transparency for municipal Variable Rate Demand Obligations (VRDOs) has surfaced.

VRDOs are long-term securities with short-term interest rate periods. There has been increased interest in the market for VRDOs by both issuers and investors as a result of the volatility in the market for Auction Rate Securities. Given this increased interest in the market for VRDOs and the likelihood that more individual investors may purchase VRDOs, the MSRB is concerned about the lack of information available to market participants on these securities. The MSRB is requesting comment on a proposal to collect and disseminate critical market information about VRDOs using the same system proposed in the March 2008 Notice for Auction Rate Securities.

The proposed plan for increasing information available on VRDOs is described below and is the same as the plan proposed for collection and dissemination for Auction Rate Securities described in the March 2008 Notice. Under the plan, dealers that act as remarketing agents would be required to report information about a VRDO by the end of the day that an interest rate reset occurs. Comments on the proposed plan should be submitted no later than June 30, 2008 and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection.

BACKGROUND

VRDOs are long-term securities with short-term interest rates. Interest rates are reset periodically through programs operated by dealers ("Remarketing Agents") on behalf of the issuers of the securities. The interest rate is set to allow the securities to be sold at par. Interest on a VRDO typically is paid on a monthly or semiannual basis.

A distinguishing characteristic of VRDOs is the existence of a "put" or "tender" feature that allows holders to liquidate a position in a VRDO, at par, on a periodic basis. Through the put or tender feature, holders seeking to liquidate a position can put the securities back to the issuer through the Remarketing Agent. A specified amount of notice is required to be provided to the Remarketing Agent and during that notification period, the Remarketing Agent seeks to find a purchaser for the securities that have been tendered ("Notification Period"). If the Remarketing Agent is unable to find a purchaser for the securities during the Notification Period, a liquidity facility, such as a letter of credit (LOC) or standby bond purchase agreement (SBPA), provides a guarantee against a failed remarketing to ensure that the holder of a VRDO is able to liquidate its position at a price of par.

Existing Price Transparency Issues

As "short-term" securities under Rule G-14 on transaction reporting, VRDOs are subject to different reporting requirements than other securities. In 2003, the MSRB proposed rules for a Real-Time Transaction Reporting System (RTRS), including a requirement to report trades no later than fifteen minutes after the time of trade execution, and, for customer transactions, a requirement that the trade report include both a dollar price and yield.[2] In response, the MSRB received comments from dealers that, because of the special trade processing methodologies for short-term variable rate securities, it would be difficult or impossible to meet these requirements for such securities. Based on these concerns, the MSRB included special provisions in the final rule that provide dealers with an end-of-day exception from the fifteen-minute reporting deadline and allow dealers to report customer transactions in variable rate securities without yield.

Since transactions in short-term variable rate securities are executed at a dollar price of par, the lack of yield means that RTRS provides little useful price information on these securities. The MSRB was aware of this in 2003 when it decided to provide the special provisions, noting:

The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for short-term rates that are being set...in variable rate and auction products. [3]

VRDO Market

Most VRDOs have a minimum denomination of \$100,000, thus they have primarily been marketed to an institutional customer base, such as tax-exempt money market and bond funds as well as corporations and trust departments. Information reported to RTRS indicates that most transactions in VRDOs are in large par amounts, reflecting the primarily institutional customer base.

Given the volatility in the market for Auction Rate Securities, the MSRB is concerned that individual investors may begin to have a greater presence in the market for VRDOs. The MSRB is not aware of any ready source of information available to retail investors or to the marketplace in general on VRDOs. Accordingly, many of the concerns the MSRB expressed in the March 2008 Notice with respect to the limited amount of information available to investors on Auction Rate Securities also apply to the market for VRDOs.

PLAN TO INCREASE VRDO TRANSPARENCY

To improve transparency of VRDOs, the MSRB proposes to require Remarketing Agents to report information about VRDOs to the MSRB by the end of the day that an interest rate is reset. Information received from Remarketing Agents would be posted to an MSRB web site immediately after receipt.

The information proposed to be collected on VRDOs would provide an investor with the ability to determine the current interest rate for the security and compare the current interest rate to other VRDOs. In addition, the MSRB proposes to collect information about the terms of the liquidity facilities attached to VRDOs. This would allow current and prospective investors to determine whether the VRDO is backed in full or only in part by a LOC or SBPA and inform investors of the expiration dates of the liquidity facilities.

The specific items of information about VRDOs proposed to be collected and disseminated include:

- CUSIP Number

- Name of Remarketing Agent
- Date of interest rate reset
- Interest rate for the next reset period
- Length of the interest rate reset period
- Length of Notification Period
- Whether interest rate is "set by formula" or "set by Remarketing Agent"
- Minimum and maximum rates, if any
- Minimum denomination
- Type of liquidity facility(ies)
- Expiration date of each liquidity facility

In addition to the specific items of information listed above, the MSRB also proposes to receive notification of interest rate conversions, including the date of the conversion and the new interest rate mode. The MSRB proposes to require receipt of such information about interest rate conversions by the end of the day on which an interest rate conversion occurs.

Information Collection and Dissemination Methodology

The proposed collection of information about VRDOs would be accomplished through (i) a secure, password-protected Internet web site; and (ii) computer-to-computer data connections. [4] The MSRB would allow Remarketing Agents to designate third parties, such as information vendors, to provide information to the MSRB on the Remarketing Agent's behalf. However, the responsibility to ensure timely and accurate reporting of information to the MSRB would remain with the Remarketing Agent.

Each Remarketing Agent and submitter would be required to complete and keep current an electronic registration form.[5] This form would provide the MSRB with contact information for purposes of sending electronic records of submissions and to allow for follow-up by MSRB staff should any submission prove to be incomplete or incorrect. In addition, Remarketing Agents would identify intended methods of submitting information and identify third-party submitters that would submit information to the MSRB on their behalf.

Information about VRDOs submitted by or on behalf of a Remarketing Agent would be displayed immediately after receipt on an MSRB web site. In addition to the information submitted, users of the MSRB web site would be able to access any additional documents on file with the MSRB associated with the VRDO, such as the Official Statement, as well as trade reports disseminated from RTRS.

REQUEST FOR COMMENT

Comment is requested on all aspects of the proposed plan for increasing transparency of VRDOs. Consideration of the following questions may be helpful in providing comments:

- Are the items of information proposed to be collected and disseminated about VRDOs appropriate? Are there additional items of information that should be added to this list of information?
- What is the current and anticipated volume of VRDOs that are bought by retail customers?
- The MSRB proposes that Remarketing Agents would be required to provide information about VRDOs to the MSRB by the end of the day on which an interest rate is reset. What time would the information proposed to be collected about VRDOs be available on the day an interest rate is reset? What deadline would allow for a sufficient amount of time for Remarketing Agents to provide the information to the MSRB?
- Do Remarketing Agents anticipate difficulty in being able to collect such information

about VRDOs for purposes of providing it to the MSRB? Are there technical or operational difficulties associated with providing information about VRDOs to the MSRB?

- Are there documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), such as the LOC or SBPA for a VRDO, that should be filed with the MSRB and made publicly available?

* * *

Comments should be submitted no later than June 30, 2008, and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection at the MSRB's public access facility and also will be posted on the MSRB web site.[6]

May 23, 2008

[1] See Request for Comment: Plan for Increasing Information Available for Municipal Auction Rate Securities, MSRB Notice 2008-15 (March 17, 2008).

[2] Inter-dealer trade reports, in general, are not required to include yield.

[3] See Real-Time Transaction Reporting: Revised Schedule and Operational Plan, MSRB Notice 2003-44 (December 11, 2003).

[4] One example of a computer-to-computer data connection would be web service through which dealers would transmit information using standardized file formats. The MSRB would have the goal of ensuring an efficient process for submission of information and would work with Remarketing Agents and other submitters to determine appropriate system specifications.

[5] This form would be similar to Form RTRS which dealers as well as non-dealer service bureaus that report trades on behalf of dealers are required to complete prior to submitting trade reports to RTRS.

[6] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

Alphabetical List of Comment Letters on MSRB Notice 2008-24 (May 23, 2008)

1. Depository Trust and Clearing Corporation: Letter from Daniel Thieke, Vice President, dated June 26, 2008
2. Digital Assurance Certification LLC: Letter from Paula Stuart, Chief Executive Officer, dated July 1, 2008
3. Merrill Lynch: Letter from Christine Walsh, Managing Director, dated June 26, 2008
4. RW Smith and Associates, Inc.: Letter from S. Lauren Heyne, Chief Compliance Officer, dated June 30, 2008
5. Saber Partners, LLC: Letter from Joseph S. Fichera, Senior Managing Director and CEO, dated July 9, 2008
6. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated June 30, 2008
7. SunTrust Robinson Humphrey: Letter from Dara L. Smith, Managing Director, dated June 27, 2008
8. Thornton Farish Inc.: Letter from Joseph A. Whitehead, dated June 30, 2008
9. W.R. Taylor and Company, LLC: Letter from Belle Walker, Senior Vice President, dated August 7, 2008



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July 1, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2008-24 (May 23, 2008) Request for Comment: Plan for
Increasing Information Available for Municipal Variable Rate Obligations

Dear Mr. Pica:

Digital Assurance Certification, L.L.C. ("DAC") is pleased to provide its comments on the proposed Municipal Securities Rulemaking Board (the "Board") Plan for Increasing Information Available for Municipal Variable Rate Obligations. DAC has provided information on variable rate obligations as an additional service to certain of its issuer and investor clients since 2005. DAC stores and provides issuers the ability to share liquidity documents, including contracts, counsel opinions, extensions and substitution agreements. DAC has provided this service since 2005. The following year, DAC added additional tools for auction rate securities ("ARS") and transaction reporting and monitoring. The DAC system provides issuers the tools to enter reset rates by date, for a specific period, identified by Series, CUSIP, issue description, borrower, remarketing agent, liquidity provider and expiration date of facility. DAC also provides reminders to its issuers of upcoming expiration dates and provides a link to the SIFMA (BMA) index in an excel spreadsheet format, to allow issuers the ability to compare rates. DAC recently moved this information to its home page to provide for broader sharing of data throughout the municipal market. DAC has also added an audit trail function that records conversion dates and the new rate mode for any VRDO transaction.

As part of its request for comments, the Board has asked: "Are the items of information proposed to be collected and disseminated about VRDOs appropriate? Are there additional items of information that should be added to this list of information?"

In response to this question, we suggest that the Board consider adding the number of days in the year used for computational matters under the documents governing the transaction to the existing list of information proposed to be collected and disseminated about VRDOs. For example, in some transactions, the computations may be based upon a year of 360 days, in others, a year of 365/366 days.

As part of its request for comments, the Board has also asked: “Are there documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), such as the LOC or SBPA for a VRDO, that should be filed with the MSRB and made publicly available?”

In response to this question, we observe that a broker, dealer, or municipal securities dealer subject to the Board’s jurisdiction may not always be a party to or have control over all of the documents listed. In some circumstances, one or more parties to such documents may regard the content to be non-public. We suggest that the Board may need to consider means by which it might encourage issuers of municipal securities, as well as other parties over whom the Board may not have jurisdiction, to voluntarily provide copies of such agreements, including extensions, amendments, substitutions, and replacements thereof, to the Remarketing Agent for filing with the Board.

From our inception, DAC has delivered direct, immediate, secure, and verifiable disclosure on a “real time” basis for DAC Bonds at no cost to investors and the municipal market. We welcome this opportunity to provide comment to the Board and look forward to opportunities to work with the Board to improve real time access to disclosure in the municipal securities market, including with respect to municipal ARS and VRDO securities.

Sincerely,



Paula Stuart

Chief Executive Officer

June 26th, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2008-24: Plan for Increasing Information Available for Municipal Variable Rate Demand Obligations

Dear Mr. Pica,

In response to Notice 2008-24, the Depository Trust & Clearing Corporation supports the MSRB's plan to improve the transparency of critical market data on VRDO's and proposes the use of the New Issue Information and Dissemination System (NIIDS) for the capture and dissemination of this information.

In support of the MSRB's rule changes to improve new issue trade reporting, DTCC developed NIIDS to facilitate the distribution of new municipal issuance information prior to trade executions in the new issue. The front-end component of the new system, UW SOURCE, has been made available to all municipal underwriters and consists of a web front-end as well as an autofeed messaging facility. Since UW SOURCE contains many of the sought-after data elements for these issues, there would be a limited amount of system modifications needed to support this initiative.

To best facilitate the collection and dissemination of VRDO rate reset information, UW SOURCE could serve as the access point for collecting this information from the underwriting community. Once the data is submitted and the underwriter chooses to disseminate the information, NIIDS will produce an automated message that the MSRB can capture and use to populate its Electronic Municipal Market Access system "EMMA" for investors to view. As it is today for new issuance information, any firm interested in subscribing to the outbound autofeed messages from NIIDS, can do so by establishing a connection with DTCC.

In closing, DTCC appreciates the opportunity to comment on this proposal and would appreciate consideration as a solutions provider if this initiative proceeds. If you have any questions or concerns with regards to these comments, please contact me at (212) 855-4162.

Sincerely,

Daniel Thieke,
Vice President

Christine Walsh
Managing Director

Office of General Counsel

4 World Financial Center
New York, New York 10080
212 449 6991 Office
FAX 212 449 9856
christine_walsh@ml.com



June 26, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2008-24: Plan for Increasing Information
Available for Municipal Variable Rate Demand Obligations

Dear Mr. Pica:

Merrill Lynch & Co. appreciates this opportunity to respond to the request by the Municipal Securities Rulemaking Board (the "MSRB") for comments concerning a plan to increase information available for municipal variable rate demand obligations ("VRDOs"), as described in MSRB Notice 2008-24 (the "Notice").

The MSRB proposes to require Remarketing Agents to report information about VRDOs (including the interest rate) to the MSRB by the end of the day that an interest rate is reset. Information received from Remarketing Agents would be posted to a MSRB website immediately after receipt. This information is intended by the MSRB to provide an investor with current interest rates for a particular security and to provide investors with an opportunity to compare this interest rate with the interest rates for other VRDOs.

A Remarketing Agent is retained by the Issuer or the Conduit Borrower to set an interest rate which in his or judgment is the lowest interest rate that would permit the VRDOs to be sold at par. The Remarketing Agent is engaged by the Issuer/Conduit Borrower and is paid by the Issuer/Conduit Borrower to perform this service. We believe an Issuer's/Conduit Borrower's funding costs for its VRDO program is the Issuer's/Conduit Borrower's information. We respectfully request that you contact the Issuer/Conduit Borrower community to discuss this proposal with them as well.

We appreciate this opportunity to comment on this proposal. If you have any questions, please feel free to contact me at (212) 449-6991 or send an e-mail to christine_walsh@ml.com

Respectfully,
A handwritten signature in black ink, appearing to read 'Christine Walsh', with a long horizontal line extending to the right.



44 Wall Street
New York, New York 10005
212 461-2370
FAX: 212 461-2371

Joseph S. Fichera
Senior Managing Director & CEO

July 9, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Dear Mr. Pica:

It was President Kennedy who said, "Our task is not to fix the blame for the past but to fix the course for the future." Fixing the course for the future is the position the Municipal Services Rulemaking Board (MSRB) is in at its upcoming July meeting in the floating rate securities market and in particular auction rate securities (ARS). Clear, decisive and substantive action is needed to restore investor confidence and allow liquidity to return to this market. If the MSRB acts in an ambiguous or indecisive way, it will only add to the damage to investor and issuer confidence that has occurred. If the MSRB responds with excessive requirements that purport to be "full disclosure" but that lead to further confusion and obfuscation, the damage will worsen and an important opportunity will have been missed.

Some have suggested that the MSRB should simply permit the demise of the ARS market that is shrinking, a market that has been declared "dead" by some of those who have created it. This will just burden issuers who struck a fully disclosed bargain with investors with additional costs and expenses to restructure and refinance - without ever addressing the problems that have been uncovered by the crisis. Neither taxpayers nor the customers of colleges, universities, and hospitals should be burdened with higher costs even if they decide to transition away from this market. And investors should not be forced to languish in illiquidity when there are practical steps that could be taken to improve the process.

Rather, the MSRB should take actions that level the playing field and allow auctions to be true auctions and not managed bidding systems. Markets should be allowed to work based on transparency and competition. There is nothing wrong with an auction if it is an auction. The private reality must match the public face of the use of the term "auction". An "auction" has a meaning and what the MSRB should do is ensure that the meaning of an auction is its reality as well. This is the essence of integrity and confidence in markets and the mission of the MSRB.

Through the MSRB's leadership if one can establish a transparent fair and competitive system with full disclosure, then market participants can make the decision as whether this is a cost-effective financing alternative for issuers and investors. Investors coming together in a true investor auction can determine the appropriate liquidity premium (increase in the interest rate compared to a benchmark) for that auction. No one should try to impose a solution on the market. In the absence of this leadership, a bad situation will be made only worse and the damage to integrity and confidence will be profound. There is no one size fits all solution and to suggest one is a disservice to the clients both issuers and investors we serve.

Let us focus on two key items for the MSRB: 1) Transparency to Restore Investor Confidence and 2) Liquidity

Transparency to Restore Investor Confidence

First, the MSRB should require fundamental economic transparency in all auctions.

Give simple and understandable information to let investors judge their liquidity risks and make their own decisions as to whether to participate in an auction. If they do participate, let them determine how much they want to be compensated within the terms of the structure to absorb the liquidity risks of each auction. The single most common complaint has been, it appears from published reports and anecdotal evidence, that no one knew what the liquidity was in the auctions. Were there 4 investors or 400? Did the broker step in some times or all the time?

But to be effective, transparency needs to be *simple, accessible and understandable*.¹ Using the EMMA platform, it should be easy to devise a simple matrix of key data on each auction that allows investors to know and understand the liquidity issues.

We suggest that the model for transparency should be the straightforward and clear disclosure found in the US Treasury auctions. It is what investors require from the Department of the Treasury to promote investor confidence. The Treasury Department conducts Dutch auctions using the same mechanism as in ARS.

The process is two step. First there is an announcement of the auction and then an announcement of the auction results. Each auction has a press release and web access for the results.

The auction results are summarized with some specific details so that market participants can evaluate the “success” of the auction. Success is defined not just by raising the amount required --- that’s only part of the story.

The Treasury Department releases the following information on each auction compared to the information available in corporate and municipal auctions:

Information Released	US Treasury	Corporate/Municipal Auctions ARS ²
Winning Yield	✓	✓
Amount of Competitive Bids ³	✓	
Amount of Competitive Bids Accepted	✓	
Amount of Non-Competitive Bids ⁴	✓	
Amount of Non-Competitive Bids Accepted	✓	
Amount of Bids at the Winning Yield	✓	
Median Yield	✓	
Lowest Yield	✓	
Amount of Competitive Tenders at or below Median Yield	✓	
Amount of Tenders at Lowest Yield	✓	
Bid to Cover Ratio	✓	

¹ One state issuer experimented with releasing all the data that was provided by an auction agent to the issuer. This amounted to a confusing situation known among market participants as a “data dump” which is not the essence of good disclosure.

² Released to investor not to market

³ Competitive Bids are bids that specify a rate similar to a Hold at or Buy at rate in ARS.

⁴ Non-Competitive Bids are bids that do not specify a rate only an amount and indicates the investor is willing to accept whatever the winning rate of the auction is similar to a Hold Order in ARS.

In giving this transparency one needs to require the terminology to be used be consistent. Some auction agents interchange the use of “shares” and “bonds”. Some talk about bids by numbers which are then defined by bond or share denominations as opposed to the dollar amounts. This confusion needs to be eliminated. The transparency proposed should be by the dollar amount bid by *unique* investors.

The one addition to the US Treasury model is that is necessary is the separation of the broker-dealer’s amount bid for its own account from other investors.

The role of the broker-dealer as a market maker bidding in the auction is completely legitimate and should be accepted by all market participants as the broker’s complete discretionary option, not a requirement. Their discretion to bid or not to bid and how they wish to use their capital is solely their business. If this is to continue as a pure secondary market activity, the principle that a broker’s participation in the auction is completely at their discretion, must be preserved and protected. These are not remarketings or underwritings and the distinction must be clear.

The MSRB should consider adding the key term of a “bid to cover ratio” which has been missing from previous discussions as opposed to “failed” or “successful” auctions, terms that give limited and possibly misleading connotations. This one statistic, for example, can give great insight into the liquidity of any auction. This ratio represents the amount of bonds that were bid (either competitively or noncompetitively (hold orders)) for the amount of securities in the particular series otherwise known as “coverage”. A bid to cover ratio of 0.8 clearly indicates an auction that did not succeed in clearing the entire issue. A bid to cover ratio of 1.1, shows marginal coverage but all securities placed. A bid to cover ratio of 2.3 would show robust demand. Indeed, this is how the market interprets data presented in other auctions like the Treasury Department. When this one statistic is combined with other simple and understandable disclosures such as the low, high and median rate bid, a more complete understanding of the auction is made available for investors to consider and to price this information in when evaluating subsequent auctions or secondary market activity.

Finally, how this information is presented is as important as the information itself. Much of what discussed above, is already required for those issuers bidding in their own auctions in accordance with the safe harbor guidance by the SEC released in March. Yet, how this information has been released to the market has been in an awkward and a less than useful format. The MSRB should show leadership in providing the basic electronic, accessible information without providing so much information that it becomes useless to investors. The experience of one state issuer showed the uselessness of a “data dump” in multiple pages and links of confusing data and terminology.

Liquidity

The essence of liquidity is competition with minimal barriers to that competition. The liquidity crisis for many auction issuers is based not on credit but lack of confidence as noted above. It is made worse because of an inability by other investors to access the securities directly, even if they are not customers of the designated broker-dealer.

Unfortunately, a large part of the municipal auction securities market has auctions with only a single broker-dealer or market maker permitted in the auction. This severely limits the number of investors bidding in the auction. If the Treasury Department required all bids in their auctions to go through a single broker-dealer, most would question whether that was really an “auction” by what we all consider that term to mean.

Besides limiting the number of investors competing for the securities, this sole broker-dealer system creates confusion with variable rate demand bonds (VRDBs) that reprice through a remarketing agreement. The two are substantively different but have been merged in common practice. A broker’s

legal responsibilities and relationships are different in a broker-dealer agreement compared to a remarketing agent agreement. To blur the use of the word "remarketing" to apply to both remarketings *and* auctions creates confusion and expectations among investors which only complicate the functioning of the market.

As further support for this confusion, the role of the auction agent versus the broker-dealer has routinely been confused. Reference to the broker-dealer as "running the auction" or "managing the auction" are inappropriate from the structure of the security though the practice may have deviated from the structure. Hence, there is created misunderstanding and consternation among issuers and investors.

These distinctions do matter, and while they may be technical in a discussion among members of our profession, the confusion it presents to issuers and investors is real and should not be denied.

To think innovatively as to how to address this problem, we might consider what the common market practice is for "competitive bidding in an auction". Generally speaking, market participants would agree that three independent bidding channels would create a "competitive" pricing. This would be similar to the IRS safe harbor for determining fair value and to how competitive "auctions" for new issues are thought of. Liquidity means investors competing for investments. Anything that limits competition limits liquidity and therefore the more barriers that are eliminated, the better potential liquidity for investors.

Consequently, the MSRB might consider limiting the use of the word "auction" to describe situations that clearly meet investor perception, expectation and definition of an "auction". Only those securities that have at least three independent broker-dealers and market makers should be considered "auctions." (We would strongly prefer that as many broker-dealers be allowed to bid in as many auctions as possible.) This means that the MSRB should encourage broker-dealers to give up the proprietary model of approach to ARS, which confuses the role of a broker-dealer in an auction with the completely different and independent role of a remarketing agent in variable rate demand obligations.

Clearly, broker-dealers do not control how many other broker-dealers are in an auction. That is the issuer's decision. Nevertheless, the broker has a great deal of influence with issuers. And the MSRB could encourage the dramatic expansion of auction distribution channels to assist in the liquidity crisis for investors in auction rate securities. This would benefit issuers and investors.

Conclusion

The market is looking for leadership now, not further litigation. The MSRB could help provide that leadership and help fix the course for the future. The MSRB has the opportunity and we hope it will use it to make markets work effectively and efficiently.

Thank you for your consideration of this material and for your concern in this matter. It is unfortunate that we could not discuss these matters last Fall when we first contacted you. Please do not hesitate to call us with questions or requests for clarifications now.

Best regards,



Joseph S. Fichera
Senior Managing Director and CEO

June 30, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street, Ste 600
Alexandria, VA 22314

Sent via email to jpica@msrb.org

RE: MSRB Notice 2008-24

Dear Mr. Pica:

We would like to take this opportunity to respond to the MSRB's Notice 2008-24 requesting comment on its proposal to create a centralized system for collection and dissemination of Variable Rate Demand Obligations ("VRDOs") market information.

RWS firmly supports transparency in the secondary market as we believe it is essential to maintaining liquid and efficient markets. In keeping with this overriding belief we consider it to be in the best interest of the investing public to subject VRDOs to the same 15-minute reporting time frame as other municipal securities.

The remarketing agent sets the VRDO reset rate the morning of remarketing. The reset rate is communicated to purchasers of the securities and specific market vendors (such as Bloomberg); the latter typically receive the data electronically. Remarketing agents permission customers to view their reset rates via Bloomberg, however, the overall market does not have access to individual remarketing agent reset data. In today's electronic environment, pertinent security and price information can be relayed easily and quickly. As remarketing agents have the ability to report their resets to purchasers, Bloomberg, etc., it follows they should necessarily report the rates with the corresponding transactions to MSRB to facilitate information flow, market transparency and fair pricing.

The municipal market has experienced firsthand this year in the auction rate securities market the effect of allowing market participants to restrict the flow of information to reporting agencies and the overall market. Liquidity as a right, not a privilege, should exist for all municipal market participants. RW Smith believes the most effective way to ensure efficient, liquid markets is through timely distribution of security data, market pricing and transaction information.

RW Smith supports the MSRB proposal concerning reporting requirements for the collection and dissemination of VRDO data.

Sincerely,



S. Lauren Heyne
Chief Compliance Officer



June 30, 2008

Justin R. Pica
Uniform Practice Policy Advisor
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2008-24: Plan for Increasing Information Available for
Municipal Variable Rate Demand Obligations

Dear Mr. Pica:

The Securities Industry and Financial Markets Association ("Association")¹ appreciates this opportunity to respond to Notice 2008-24 issued by the Municipal Securities Rulemaking Board ("MSRB") on March 23, 2008 ("Notice") in which the MSRB requests comment on its proposal to create a centralized system for the collection and dissemination of market information about Variable Rate Demand Obligations ("VRDOs") that would increase the amount of information available to market participants.

The Association fully supports the development by the MSRB of a system to display remarketing information on a website. Under the proposal of the MSRB, dealers, who act as Remarketing Agents, would report to the MSRB results of interest rate resets on VRDOs by no later than the end of the day that the interest rate is reset. Information about VRDOs submitted by or on behalf of a Remarketing Agent would be displayed immediately after receipt on an MSRB web site.

The specific Reset Information about VRDOs proposed to be collected and disseminated includes:

- CUSIP Number
- Name of Remarketing Agent

¹ The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Justin R. Pica
June 30, 2008
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- Date of interest rate reset
- Interest rate for the next reset period
- Length of the interest rate reset period
- Length of Notification Period
- Whether interest rate is “set by formula” or “set by Remarketing Agent”
- Minimum and maximum rates, if any
- Minimum denomination
- Type of liquidity facility(ies)
- Expiration date of each liquidity facility

In addition to the Reset Information listed above, the MSRB also proposes to receive notification of interest rate conversions, including the date of the conversion and the new interest rate mode. The MSRB proposes to require receipt of such Conversion Information by the end of the day on which an interest rate conversion occurs.

1. **The MSRB requests comments on whether the items of information proposed to be collected and disseminated about VRDOs is appropriate and if there are additional items of information that should be added to this list of information.**

The Association considers the Reset Information proposed to be collected and disseminated to be appropriate. In Notice 2008-15,² the MSRB recently proposed collection and dissemination of Reset Rate Information and Bidding Information in connection with auction rate securities. We commented that the Bidding Information part of that proposal involves certain information obtained by auction agents rather than by broker-dealers.³ In the current Notice, the Reset Information proposed for submission to the MSRB for VRDOs should be known by the Remarketing Agent. As we commented in respect of the Reset Rate Information for auction rate securities, most of the Reset Information set forth in the Notice for VRDOs does not change on each reset date. Therefore, we again recommend that the Remarketing Agent be allowed to establish a template at the time of a new issue, when interest rates are first reset, to set-up the Reset Information that is relatively static. At the time of each interest rate reset, the Remarketing Agent would submit the CUSIP number, date of interest rate reset, and the

² MSRB Notice 2008-15 (March 17, 2008): Request for Comment: Plan for Increasing Information Available for Municipal Auction Rate Securities.

³ SIFMA Comment Letter on Notice 2008-15, dated April 21, 2008.

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interest rate for the next period. At the time of a conversion to a new mode, the Remarketing Agent would then amend the template with the Conversion Information proposed in the Notice.

We do note, however, that reporting the interest rate for the next reset period is a departure from the current practice under Rule G-14 of price reporting VRDOs in dollar amounts. It is our understanding that a number of issuers prefer dollar amount publication of VRDO transactions rather than interest rate reporting, and we therefore recommend that you discuss this issue with representatives of issuers.

2. The MSRB requests comments on the current and anticipated volume of VRDOs that are bought by retail customers.

Estimating the volume of VRDOs bought by retail customers is problematic because there is no generally accepted understanding of the meaning of a "retail" customer and because there may be significant differences in the market for VRDOs based on the terms of the issue. A natural person may be considered a retail customer by many firms regardless of the person's net worth. Thus, a highly sophisticated individual may be considered a retail customer, while a less sophisticated institution will be an institutional customer. Broker-dealers usually consider bond funds, unit investment trusts and ordinary trusts to be institutional accounts, regardless of the underlying beneficiary or investor. The terms of an offering may affect the configuration of customers. An issue specifically designed for money market funds, which meets the requirements of SEC Rule 2a-7, will probably have fewer retail buyers than a variable rate obligation of a well-known issuer in, for example, a yearly rate mode.

Nevertheless, the Association has asked a number of member firms to apply their own definitional criteria for a retail customer and estimate the likely percent of retail customers for an ordinary \$500,000 issue in a weekly rate mode. The firms have reported that, in general, less than 2% of primary market sales of VRDOs are to retail customers.

3. The MSRB requests comments on whether the end of the day would be the appropriate time to require submission of Reset Information and Conversion Information.

The Association agrees that the end of the day on which interest rates are reset, or there is a conversion, is the appropriate time for submission of Reset Information and Conversion Information to the MSRB. End of day submission would coincide with end of day trade reporting under MSRB Rule G-14 for short term securities.

4. The MSRB asks whether Remarketing Agents anticipate difficulty in being able to collect such information about VRDOs for purposes of providing it to the MSRB, and whether there are technical or

Justin R. Pica
June 30, 2008
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operational difficulties associated with providing information about VRDOs to the MSRB.

Remarketing Agents contacted by the Association do not anticipate difficulty in being able to collect the Reset Information and Conversion Information. Since new systems always present technical and operational challenges, the Association recommends that staff of the MSRB meet with a task force of operational personnel representing a number of Remarketing Agents to discuss details of implementation.

- 5. The MSRB asks whether there are documents concerning VRDOs that are not currently required to be filed with the MSRB that should be filed with the MSRB and made publicly available.**

Rule G-36 requires filing an official statement, and amendments to an official statement, with the MSRB. The official statement should contain an adequate summary of the liquidity facility, if any, and the credit facility, if any, that are in place at the time of a primary offering. During the life of a bond issue, these facilities are likely to expire and be renegotiated, and liquidity facilities may be amended apart from the expiration date. These contracts are between the issuer and the provider of the facility, and the Remarketing Agent may not be apprised of changes if there is no impact on the mechanics of the remarketing or no material changes in the rights of bondholders. The Remarketing Agent should not be responsible for filing a document with the MSRB when it is not a party to the document or the document is not otherwise required to be delivered to the Remarketing Agent.

At the time of conversion of VRDOs, the remarketing may result in a “primary offering” within the meaning of SEC Rule 15c2-12 (e.g. the converted securities are in a yearly mode), and a new official statement will be prepared and filed with the MSRB.⁴ Separately, the issuer and remarketing agent will consider whether a conversion constitutes an underwriting of securities pursuant to interpretation of Rule 10b-5 under the Securities Exchange Act of 1934. If there is an underwriting, a new disclosure document is likely to be prepared describing new material information, including any changes to the liquidity facility or credit facility. Unless there is a limited placement, the new disclosure document will be filed with the MSRB, even if the securities are exempt under Rule 15c2-12 as securities in \$100,000 denominations and subject to a tender option at least every nine months. It is also the case that issuers will often prepare a new disclosure document to describe a new liquidity facility or new credit facility regardless of any Rule 15c2-12 or Rule 10b-5 requirement because they are guided by the material event notice requirements of Rule 15c2-12 (listing “substitution of credit or liquidity providers, or their failure to perform” and “modifications to rights of security holders” as material events) despite the securities being exempted securities under Rule 15c2-12.

⁴ MSRB Notice 2008-17 (March 25, 2008): Submission of Official Statements to the MSRB under Rule G-36 in Connection with Certain Remarketings of Outstanding Issues.

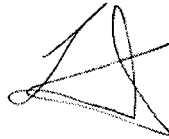
Justin R. Pica
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These disclosures are currently filed with the nationally recognized municipal securities information repositories and presumably would be filed with the MSRB and displayed on EMMA when the EMMA continuing disclosure facility becomes effective.

For all the above reasons, the Association does not recommend a new document filing requirement pursuant to the proposed rule change.

We appreciate this opportunity to comment on the proposal. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, stylized outline of a triangle.

Leslie M. Norwood
Managing Director and
Associate General Counsel

Justin R. Pica
June 30, 2008
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cc: ***Securities Industry and Financial Markets Association***

Municipal Executive Committee

Municipal Legal Advisory Committee

Municipal Operations Committee

Municipal Credit Research, Strategy and Analysis Committee

Regional Dealers Fixed Income Committee



June 27, 2008

Mr. Justin R. Pica
Uniform Practice Policy Advisor
MSRB
1900 Duke Street
Alexandria, VA 22314-3412

Re: Comments on May 23, 2008-24 MSRB VRDO Notice

Dear Mr. Pica:

SunTrust Robinson Humphrey appreciates the opportunity to comment on MSRB Notice 2008-24 relating to the plan to increase information to be made available for municipal variable rate demand obligations. We have been and continue to be an active participant in this market. We realize that all municipal businesses are moving toward more transparency, but are concerned with the additional stress and costs involved with our systems and workforce. With this in mind we would request a reasonable roll out period.

In line with increased transparency, we believe SIFMA rates should be provided to all VRDN market participants including dealers and investors at "no cost" immediately after they are set.

- Are the items of information proposed to be collected and disseminated about VRDOs appropriate? *Yes*
- Are there additional items of information that should be added to this list of information? *No*
- What is the current and anticipated volume of VRDOs that are bought by retail customers? *Approximately 5% of our multi billion program is in retail hands. At this time we do not expect a change.*
- The MSRB proposes that Remarketing Agents would be required to provide information about VRDOs to the MSRB by the end of the day on which an interest rate is reset. What time would the information proposed to be collected about VRDOs be available on the day an interest rate is reset? What deadline would allow for a sufficient amount of time for Remarketing Agents to provide the information to the MSRB? *Given the large number of individual cusips which must be updated, we believe the interest rate resets should be submitted to the MSRB by the end of day of reset.*
- Do Remarketing Agents anticipate difficulty in being able to collect such information about VRDOs for purposes of providing it to the MSRB? *Yes, due to the nature of this product and the 2A-7 regulation of it, a great deal of scrutiny goes into each trade. As an active remarketing agent, STRH already prepares the*



information for dissemination to both issuers and investors via Bloomberg and other information systems. If the MSRB intends to accept data from an existing data provider such as Bloomberg, then the impact to the remarketing agent will be minimal.

- Are there technical or operational difficulties associated with providing information about VRDOs to the MSRB? *We do not anticipate any major problems. It will be helpful to allow a reasonable period of time for the roll out in case any arise.*
- Are there documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), such as the LOC or SBPA for a VRDO, that should be filed with the MSRB and made publicly available? *No*

We would request a reasonable "roll out" period if this proposal is passed. There will be costs and changes in "in-house" systems that will occur from this action. Thank you for the opportunity to comment on the proposal.

Dara L. Smith
Managing Director
Municipal Finance
SunTrust Robinson Humphrey

Page 116 of 147

THORNTON FARISH INC.
Investment Bankers

June 30, 2008

Via Facsimile: (703) 797-6706

Mr. Justin R. Pica
Uniform Practice Policy Advisor
MSRB
1900 Duke Street
Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2008 -24 (Muni VRDO's)

Dear Justin:

The transparency and communication of appropriate information for variable rate securities should be a priority of MSRB. Remarketing Agents that sell and remarket solely to Institutional Investors, provide an Official Statement, basic finance documents, LOC documents and directly confirm interest rate resets to DTC, Investors and Corporate Trustees should be exempt from the suggested transparency rules, as this function is already a procedure. Can there be any more effective transparency than this?

Please give serious consideration to such an exemption based upon; full disclosure, timely reporting and competitive factors of pricing disclosure to a national repository.

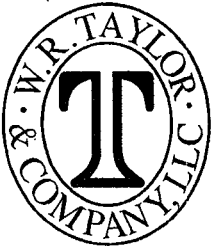
Please do not hesitate to call for additional clarification.

Sincerely,

THORNTON FARISH INC.

Joseph A. Whitehead

JAW/ksb



W.R. TAYLOR & COMPANY, LLC

Investment Bankers • Financial Advisors

4740 Woodmere Blvd., Montgomery, AL 36106

Phone: 334-395-6000

Fax: 334-395-6200

August 7, 2008

via Federal Express

Mr. Justin R. Pica, Uniform Policy Advisor
Municipal Securities Rulemaking Board
Suite 600
1900 Duke Street
Alexandria, Virginia 22314

**Re: MSRB Notice 2008-24 Plan for Increasing Information Available for
Municipal Variable Rate Demand Obligations ("VRDOs")**

Dear Mr. Pica:

In response to the request for comments which the MSRB has solicited with respect to the above-referenced notice, we would suggest to you that the proposed rule changes, and in particular changes to the nature and timing of reporting requirements of weekly reset VRDOs, are both unnecessary and unduly burdensome to remarketing agents of municipal bond issues.

The fact that the market has recently experienced problems with respect to Auction Rate Securities ("ARSs"), or the fact that numerous ARSs may have been converted to VRDOs, does not justify imposing additional, meaningless requirements on broker/dealers with respect to VRDOs. No inherent market problem exists with regard to VRDOs, and nothing in our experience leads us to believe that the additional reporting requirements will be of service to either the issuers of, or the purchasers of, VRDOs.

Unlike ARSs, where the market *must come to the security* (creating the possibility of a failed auction leaving a security holder with a fixed rate instrument for which there is no market), with VRDOs the security *goes to the market* (with virtually no chance that a security holder will be left holding an unwanted debt instrument). Unlike ARSs, VRDOs have a "put" feature that allows the security holder to put the VRDOs back to a remarketing agent on short notice (usually 7 days). The security holder who puts the VRDO is paid, and, rather than wait for someone to bid on the VRDO, the remarketing agent proactively seeks a new buyer for the VRDO, with the new rate for the VRDO being determined by a variety of market factors, such as supply and demand, cash availability, competing investments, and liquidity requirements.

Even if a put by a security holder were to result in a "failed remarketing" (an occurrence which has never occurred within the scope or knowledge of this firm's remarketing activities), since VRDOs are almost always backed by a letter or letters of credit from highly-rated banks or other similar financial institutions, the security holder who has put its VRDOs is paid in full by a draw on the letter of credit, and the VRDOs then belong to the letter of credit provider which holds them as "pledged bonds" until such time as the VRDO market has stabilized and the VRDOs can, again, be remarketed to sophisticated investors.

In short, unlike ARSs, there is virtually no chance that the holder of a VRDO will not be able to liquidate its interest in the VRDO in a timely fashion and exactly upon the terms to which the VRDO security holder initially agreed and understood to be the case.

In addition to being unnecessary, the proposed MSRB VRDO information reporting requirement is unreasonably burdensome—particularly so for relatively-small brokers/dealers—and would operate to put smaller broker/dealers at a competitive disadvantage.

For these and other reasons, we believe that the MSRB should reconsider its proposal regarding VRDOs, or alternatively, should exempt from any reporting requirement VRDOs which are backed by letters of credit issued by rated banks or financial institutions.

Very truly yours,

W.R. Taylor & Company, LLC



Belle Walker
Senior Vice President

**MSRB NOTICE 2009-43 (JULY 13, 2009)****REQUEST FOR COMMENT ON ADDITIONAL
INCREASES IN TRANSPARENCY OF MUNICIPAL
AUCTION RATE SECURITIES AND VARIABLE
RATE DEMAND OBLIGATIONS**[Home Page](#) | [Back](#)

The Municipal Securities Rulemaking Board (the "MSRB") is requesting comment on draft amendments to Rule G-34(c), on variable rate security market information, that would enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). To provide a greater level of transparency about the municipal short-term market, the draft amendments would add documents to the information currently collected and publicly disseminated that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs, as well as ARS bidding information and additional VRDO information.

BACKGROUND

Since January 30, 2009 for ARS and April 1, 2009 for VRDOs, Rule G-34(c) has required brokers, dealers and municipal securities dealers (collectively, "dealers") that act as Program Dealers^[1] for ARS or Remarketing Agents for VRDOs to report (either directly or through an agent) certain information following an ARS auction or VRDO interest rate reset to the MSRB Short-term Obligation Rate Transparency ("SHORT") System.^[2] Information generally is required to be reported to the SHORT System by no later than 6:30 P.M. Eastern Time on the day that an ARS auction or VRDO interest rate reset occurs and all collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") web site.^[3] The specific items of interest rate and descriptive information about ARS and VRDOs currently required to be reported to the SHORT System are listed below.

The following is a list of the information currently required to be reported to the SHORT System by an ARS Program Dealer following an ARS auction:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;
- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the interest rate represents a "maximum rate," an "all hold rate," or a rate that was "set by auction;"
- Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable;^[4] and
- Par amount auctioned, not including hold orders effective at any rate.

The following is a list of the information currently required to be reported to the SHORT System by a VRDO Remarketing Agent following a VRDO interest rate reset:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Remarketing Agent;
- Date of interest rate reset;

- Length of the interest rate reset period;
- Length of Notification Period;
- Indication of whether interest rate is "set by formula," "set by Remarketing Agent" or a "maximum rate;"
- Minimum and maximum rates, if any, applicable at the time of the interest rate reset or, if not calculable as of the time of the interest rate reset, indication that such rate or rates are not calculable;[5]
- Minimum denomination;
- Type of liquidity facility(ies);[6] and
- Expiration date of each liquidity facility.

DESCRIPTION OF DRAFT AMENDMENTS

The draft amendments to Rule G-34(c) would enhance the interest rate and descriptive information currently made available to market participants about ARS and VRDOs. Collection and dissemination of the information identified in the draft amendments would be accomplished using existing MSRB systems. Documents would be submitted directly to EMMA using the EMMA Dataport and information items would be reported to the SHORT System. All collected documents and information would be made available in real-time on EMMA.[7] The documents and information about ARS and VRDOs that would be required to be provided to the MSRB are described below.

ARS and VRDO Documents

The draft amendments would require ARS Program Dealers and VRDO Remarketing Agents to submit certain ARS and VRDO documents to the MSRB to ensure that market participants have centralized access to critical documents about ARS programs and VRDO issues. For existing ARS and VRDOs, dealers would be required to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft amendments. On an ongoing basis, dealers would be required to provide any new or amended versions of these documents within one business day of receipt. The specific documents that would be required to be provided to the MSRB include:

- ARS documents defining current auction procedures and interest rate setting mechanisms; and
- VRDO liquidity facility documents, including current Letters of Credit and Stand-by Bond Purchase Agreements.

ARS Bidding Information

The draft amendments would require each ARS Program Dealer to report to the SHORT System "ARS bidding information" that would include information about all orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction. This information would augment the interest rate and descriptive information currently provided to market participants by also providing information that would show, for example, how the interest rate was determined for a successful auction. In addition, ARS bidding information would allow market participants and the MSRB to compute statistics about an auction similar to those available for U.S. Treasury auctions including a "bid-to-cover ratio" that would serve as an indication of liquidity of an ARS in a specific auction. The specific items of ARS bidding information an ARS Program Dealer would be required to report to the SHORT System are listed below and all items would be required to be reported in conjunction with the ARS interest rate and descriptive information currently required to be reported under Rule G-34(c).

- Interest rate(s) and aggregate par amount(s) of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;
- Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;
- Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;
- Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that

- were executed;
- Number of unique bidders submitting orders to buy, other than the Program Dealer bidding for its own account;
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and
- Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – by an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

Additional VRDO Information

Since the April 1, 2009 effective date of Rule G-34(c) for VRDOs, the MSRB has received suggestions for additional items of information that would add value to the VRDO interest rate and descriptive information currently collected and made transparent. The draft amendments would require that the identity of and contact information for the agent of the issuer of the VRDOs to whom a holder may tender their security ("Tender Agent") be reported in order to facilitate the tender of VRDOs by investors. In addition, the draft amendments would require that the identity of all liquidity providers be reported along with information that would allow market participants to determine whether a VRDO Remarketing Agent or liquidity provider holds a position in the VRDO at the time of the interest rate reset. The specific items of additional VRDO information a VRDO Remarketing Agent would be required to report to the SHORT System are listed below and all items would be required to be reported in conjunction with the VRDO interest rate and descriptive information currently required to be reported under Rule G-34(c).

- Effective date that the interest rate reset is applicable;
- Identity of and contact information for the Tender Agent;
- Identity of the liquidity provider(s) including a indication of those VRDOs for which an issuer provides "self liquidity" and the identity of the party providing such self-liquidity;[8]
- Par amount of the VRDO, if any, held by the VRDO Remarketing Agent, a liquidity provider ("Bank Bond") for the VRDO, and a party other than the Remarketing Agent or as a Bank Bond; and
- Interest rate paid to a liquidity provider that holds Bank Bonds.

REQUEST FOR COMMENT

Comment is requested on all aspects of the draft amendments. Consideration of the following questions may be helpful in providing comments:

- Are there additional documents concerning ARS or VRDOs that should be filed with the MSRB and made publicly available? The MSRB proposes a thirty-day time period from the date of SEC approval for ARS Program Dealers and VRDO Remarketing Agents to provide documents for existing ARS and VRDOs to the MSRB. Would dealers anticipate difficulty in being able to collect, if not already held by a dealer, as well as submit to the MSRB the documents identified in the draft amendments in a thirty-day time period?
- Are there cases in which dealers do not have ready access to the documents described in the draft amendments for existing ARS and VRDOs? If so, how is the dealer able to professionally exercise the duties of an ARS Program Dealer or VRDO Remarketing Agent if it does not have access to such documents? Would dealers be able to provide a summary of the material terms of any such documents not available for submission to the MSRB?
- Are the items of information proposed to be collected and disseminated about ARS and VRDOs appropriate? Are there additional items of information that should be added to these lists of information? Do ARS Program Dealers or VRDO Remarketing Agents anticipate difficulty in being able to collect and report the information in the draft amendments to the MSRB?
- One of the items of information about VRDOs proposed to be collected would be contact information for the Tender Agent and the draft amendments include the telephone number as a means of contacting a Tender Agent. Would this be the appropriate means of contacting a Tender Agent or is there another means of

contact (for example, a uniform resource locator (URL) link to an internet-based resource) that should be provided in lieu of or in addition to the telephone number for the Tender Agent that would assist holders of VRDOs in directly contacting a Tender Agent?

- The MSRB would appreciate comments on the current and future state of the ARS market. With the current and future state of the ARS market in mind, comments would be welcomed on what the level of effort would be for dealers to comply with the requirement to report ARS bidding information to the SHORT System. Would this level of effort be reduced if ARS bidding information was provided to the MSRB in the form of a document instead of as individual items of data?

* * *

Comments should be submitted no later than September 1, 2009, and may be directed to Justin R. Pica, Director, Uniform Practice Policy. Written comments will be available for public inspection upon request and also will be posted on the MSRB web site.[9]

July 13, 2009

* * *

TEXT OF DRAFT AMENDMENTS[10]

Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) through (xxi) No change.

(xxii) Records Concerning Compliance with Rule G-34(c).

(A) A broker, dealer or municipal securities dealer that acts as a Program Dealer, as defined in Rule G-34(c)(i)(A)(1), for an Auction Rate Security shall maintain:

(1) through (2) No change.

(3) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(i).

(B) A broker, dealer or municipal securities dealer that acts as a Remarketing Agent, as defined in Rule G-34(c)(ii), for a Variable Rate Demand Obligation shall maintain:

(1) No change.

(2) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(ii).

(xxiii) Records Concerning Compliance with Rule G-34(a)(ii)(C). A broker, dealer or

municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Rule G-34(a)(ii)(C)(1) shall maintain:

(A) through (C) No change.

(b) through (g) No change.

Rule G-34: CUSIP Numbers, New Issue, and Market Information Requirements

(a) - (b) No change.

(c) *Variable Rate Security Market Information.* The Board operates a facility for the collection and public dissemination of [information] data about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System) as well as a facility for the collection and dissemination of documents (the Electronic Municipal Market Access system, or EMMA).

(i) Auction Rate Securities. Auction Rate Securities are municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an agent responsible for conducting the auction process on behalf of the issuer or other obligated person with respect to such Auction Rate Securities ("Auction Agent") that receives orders from brokers, dealers and municipal securities dealers.

(A) Auction Rate Securities Data.

[(A)] (1) Each broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process ("Program Dealer") shall report, or ensure the reporting of, the following information about the Auction Rate Security and concerning the results of the auction to the Board:

[(1)] (a) CUSIP number;

[(2)] (b) Interest rate produced by the auction process and designation of whether the interest rate is a maximum rate, all hold rate, or rate set by auction;

[(3)] (c) Identity of all Program Dealers that submitted orders, including but not limited to hold orders;

[(4)] (d) Date and time of the auction;

[(6)] (e) Length of time, in days, that the interest rate produced by the auction process is applicable;

[(7)] (f) Minimum denomination;

[(9)] (g) Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable.

[(5)] (h) Date and time the interest rate determined as a result of the auction process was communicated to Program Dealers;

[(8)] (i) Interest rate(s) and aggregate [P] par amount(s) [auctioned] of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed; [, not including hold orders effective at any rate; and]

(j) Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;

(k) Interest rate(s) and aggregate par amount (s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;

(l) Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;

(m) Number of unique bidders other than the Program Dealer bidding for its own account;

(n) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and

(o) Interest rate(s), aggregate par amount(s), and type of order – either buy, sell or hold – for an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

[(B)] (2) Information identified in subparagraph (c)(i)(A) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an auction occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(i)(A)(1) is not available by the deadline in this subparagraph (c)(i)[(B)](A)(2), such item shall be provided to the Board as soon as it is available. In the event that an auction occurs on a non-RTRS Business Day, the information identified in subparagraph (c)(i)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day.

[(C)] (3) A Program Dealer may designate an agent to report the information identified in subparagraph (c)(i)(A)(1) to the Board, provided that an Auction Agent may submit information on behalf of all Program Dealers involved in an auction absent such designation by the Program Dealer. The failure of a designated agent to comply with any

requirement of this paragraph (c)(i) shall be considered a failure by such Program Dealer to so comply; provided that if an Auction Agent has, within the time periods required under subparagraph (c)(i)[(B)](A)(2), reported the information required under subparagraph (c)(i)(A)(1), the Program Dealer may rely on the accuracy of such information if the Program Dealer makes a good faith and reasonable effort to cause the Auction Agent to correct any inaccuracies known to the Program Dealer.

(4) For Auction Rate Securities in which there are multiple Program Dealers, each Program Dealer must only report for items (i) through (o) in subparagraph (c)(i)(A)(1) information reflective of the Program Dealer's involvement in the auction unless designated by another Program Dealer pursuant to subparagraph (c)(i)(A)(3).

[(D)] (5) Information reported to the Board pursuant to this section (c)(i) shall be submitted in the manner described in the written procedures for SHORT System users and changes to submitted information must be made as soon as possible.

(B) Auction Rate Securities Documents.

(1) Each broker, dealer and municipal securities dealer shall submit to EMMA current documents, including amendments thereto, defining auction procedures and interest rate setting mechanisms associated with an outstanding Auction Rate Security for which the broker, dealer or municipal securities dealer acts as a Program Dealer as defined in subparagraph (c)(i)(A)(1) by no later than one business day after they are made available to the Program Dealer; provided that any documents or amendments thereto in effect as of [insert date of SEC approval] submitted by no later than [insert date thirty business days from date of SEC approval] shall be deemed to be submitted on a timely basis.

(2) All submissions of documents required under this rule shall be made by electronic submissions to EMMA in such format and manner, and including such items of information provided at such times, as specified herein, and in the EMMA Dataport Manual defined in Rule G-32.

(ii) Variable Rate Demand Obligations. Variable Rate Demand Obligations are securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically with specified advance notice ("Notification Period"), and a broker, dealer or municipal security dealer acts as a remarketing agent ("Remarketing Agent") responsible for reselling to new investors securities that have been tendered

for purchase by a holder.

(A) Variable Rate Demand Obligations Data.

(1) Each Remarketing Agent for a Variable Rate Demand Obligation shall report the following information to the Board about the Variable Rate Demand Obligation [and] applicable at the time of and concerning the results of an interest rate reset [to the Board]:

[(1)] (a) CUSIP number;

[(2)] (b) Interest rate and designation of whether the interest rate is a maximum rate, set by formula or set by the remarketing agent;

[(3)] (c) Identity of the Remarketing Agent;

[(4)] (d) Date and time of the interest rate reset;

[(5)] (e) Effective date and [L] length of time, in days, that the interest rate is applicable;

[(6)] (f) Minimum denomination;

[(7)] (g) Length of Notification Period;

[(8)] (h) Minimum and maximum rates, if any, applicable at time of the interest rate reset or, if not calculable as of the time of interest rate reset, indication that such rate or rates are not calculable; [and]

[(9)] (i) Identity of liquidity provider. [T] type and expiration date of each liquidity facility applicable to the Variable Rate Demand Obligation;[.]

[(10)] (j) Identity of and contact information for the agent of the issuer to whom bondholders may tender their security ("Tender Agent");

[(11)] (k) Par amount, if any, of the Variable Rate Demand Obligation held by the Remarketing Agent;

[(12)] (l) Par amount, if any, of the Variable Rate Demand Obligation held by a liquidity facility applicable to the Variable Rate Demand Obligation ("Bank Bond") and interest rate paid to the liquidity facility; and

[(13)] (m) Par amount, if any, of the Variable Rate Demand Obligation held by a party other than the Remarketing Agent or as a Bank Bond.

[(B)] (2) Information identified in subparagraph (c)(ii)(A)(1)

shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an interest rate reset occurs if such date is an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii). In the event that any item of information identified in subparagraph (c)(ii)(A)(1) is not available by the deadline in this subparagraph (c)(ii)(B)(A)(2), such item shall be provided to the Board as soon as it is available. In the event that an interest rate reset occurs on a non-RTRS Business Day, the information identified in subparagraph (c)(ii)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day.

[(C)] (3) A Remarketing Agent may designate an agent to report the information identified in subparagraph (c)(ii)(A)(1) to the Board. The failure of a designated agent to comply with any requirement of this paragraph (c)(ii) shall be considered a failure by such Remarketing Agent to so comply.

[(D)] (4) Information reported to the Board pursuant to this section (c)(ii) shall be submitted in the manner described in the written procedures for SHORT System users and changes to submitted information must be made as soon as possible.

(B) Variable Rate Demand Obligations Documents.

(1) Each broker, dealer or municipal securities dealer shall submit to EMMA, as applicable, the current versions of the following documents, including amendments thereto, detailing provisions of liquidity facilities associated with the Variable Rate Demand Obligation for which the broker, dealer or municipal securities dealer acts as a Remarketing Agent as defined in subparagraph (c)(ii) by no later than one business day after they are made available to the Remarketing Agent; provided that any documents or amendments thereto in effect as of [insert date of SEC approval] submitted by no later than [insert date thirty business days from date of SEC approval] shall be deemed to be submitted on a timely basis:

(a) Stand-By Bond Purchase Agreement;

(b) Letter of Credit; and

(c) Any other document detailing the provisions of a liquidity facility.

(2) All submissions of documents required under this rule shall be made by electronic submissions to EMMA in such format and manner, and including such items of information provided at such times, as specified herein, and in the EMMA Dataport Manual defined in Rule G-32.

[(c)] (d) No change.

[(d)] (e) No change.

[1] An ARS Program Dealer is defined in Rule G-34(c) as a dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell ARS through the auction process.

[2] See MSRB Notice 2009-04 (January 9, 2009).

[3] The 6:30 P.M. Eastern Time deadline only applies to those ARS auctions and VRDO interest rate resets that occur during an "RTRS Business Day," as defined in Rule G-14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur outside of the hours of an "RTRS Business Day" is required to be submitted to the SHORT System by no later than 6:30 P.M. Eastern Time on the next "RTRS Business Day."

[4] Some ARS and VRDOs have minimum and maximum rates that are set pursuant to formulas that are unable to be calculated at the time a submission to the SHORT System is required. In these cases, a value of "NC" is required to be included in a submission to the SHORT System to show that the minimum and maximum rates are "not calculable." This exception does not apply to minimum and maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such rates are required to be computed and the resulting values included on a submission to the SHORT System.

[5] *Id.*

[6] An indication of whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement is required to be submitted to the SHORT System.

[7] In addition, all information and documents would be included in future subscription products offered by the MSRB.

[8] Some VRDOs have liquidity provisions where the liquidity is provided by the issuer, conduit borrower or affiliate instead of by a third-party. Rule G-34(c) currently requires Remarketing Agents to report the type of liquidity facility applicable to a VRDO. Currently, SHORT System specifications only provide two options for this data element – letter of credit and standby bond purchase agreement – and in conjunction with draft amendments the MSRB proposes to revise the specifications to also capture VRDOs that have "self liquidity."

[9] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

[10] Underlining indicates additions; brackets indicate deletions.

Alphabetical List of Comment Letters on MSRB Notice 2009-43 (July 14, 2009)

1. Allstate Investments, LLC: Letter from Patricia W. Wilson, Senior Managing Director, Global Alternatives, dated September 1, 2009
2. BMO Capital Markets GKST Inc: Letter from Robert J. Stracks, Counsel, dated September 1, 2009
3. First Southwest Company: Letter from Carl Giles, Managing Director, dated August 31, 2009
4. Regional Bond Dealers Association: Letter from Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, dated September 1, 2009
5. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 1, 2009

Allstate

Investments, LLC

Patricia W. Wilson
Senior Managing Director
Global Alternatives

VIA EMAIL (jpica@msrb.org)

September 1, 2009

Mr. Justin R. Pica
Director Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: Additional Increases in Transparency of Municipal Auction Rate Securities
and Variable Rate Demand Obligations

Dear Mr. Pica:

The undersigned are investment managers for affiliated investors who invest in Student Loan Auction Rate Securities ("ARS"). Many of the investments are issued by municipal issuers. Our affiliated investors hold approximately \$2 billion of ARS.

We write to applaud you on your recent proposed amendments to Rules G-8 and G-34. These proposed amendments will greatly improve the transparency in the ARS marketplace, if auctions are to be restarted. However, your changes to include significant additional information regarding the participants in the auction will be helpful only if the auctions ever restart.

We believe that the largest change that is needed, if the auctions continue in a "failed auction rate" or "maximum rate" mode, is to require the broker dealers to disclose the mechanics of how they determined the failed or maximum auction rate that is set during the period that the auctions are not functioning. Currently, and since February 2008, holders have not been able to determine if the interest rate that the auction agent or the broker dealer is stating is, in fact, the correctly calculated rate. As example, a common definition of a "failed auction rate" is stated below:

"Maximum Rate" means, with respect to the Bonds and with respect to any Interest Period applicable to the Bonds, the lesser of (a) either (i) the Applicable LIBOR Rate plus 1.50% (if both of the ratings assigned by Moody's and Fitch to the Bonds are "Aa3" and "AA-", respectively, or better), or (ii) the Applicable LIBOR Rate plus 2.50% (if any one of the ratings assigned by Moody's and Fitch to the Bonds is less than "Aa3" or "AA-", respectively, (b) the Net Loan Rate, and (c) the highest rate the Issuer may legally pay, from time to time, as interest on such Bonds.

Within this definition are three "defined" terms that would require an investor to reference the Indenture for the ARS. However, in some cases, the Indentures have been difficult to obtain, and even if they are now required to be included on EMMA, some of the defined terms, specifically,

Allstate Investments, LLC

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the "Net Loan Rate" include statistical information that is frequently not available to investors. Thus, an investor typically cannot check the calculations of the auction agent and is at the mercy of the quantitative staff of an auction agent or broker dealer. Therefore, we request that the actual calculation process, and an example relating thereto, be required inclusions on EMMA. This would lead to greater trust in the marketplace and increased credibility that broker dealers are accurately calculating the failed auctions and investors are being paid appropriately.

Therefore, we request that Rule G-34 include a new subsection under Section (c)(i)(A)(1)(b) that would include a requirement similar to the following:

Upon the occurrence of a failed auction, describe the step by step process of determining the "failed" or "maximum" interest rate (or such other similar termed new interest rate) for each reset interest rate. Describe the source of indices used and any formulaic inputs used to calculate the new interest rate. Provide an example with all formulaic inputs included.

We have tried to confirm that we are receiving the correct interest rate on our ARS with failed auctions and have found generally that the percentage of correct calculations is low. This highlights the need for additional disclosure to be made by the broker dealers who should also have an interest in knowing that the interest rate being paid on the ARS is accurate.

Thank you for the work that you are doing in bringing some meaningful transparency to this marketplace.

Please feel free to call me (847/402-7633) with any questions.

Sincerely,

By: 

Name: Patricia W. Wilson

Company: Allstate Investments, LLC

Allstate Investment Management Company

Title: Senior Managing Director



BMO Capital Markets GKST Inc.
300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606
312-441-2500

September 1, 2009

Mr. Justin R. Pica
Director, Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2009-43: Request for Comment on Additional Increases in Transparency of
Municipal Auction Rate Securities and Variable Rate Demand Obligations

Dear Mr. Pica:

Reference is made to the comment letter submitted today by the Securities Industry and Financial Markets Association ("SIFMA") with respect to the above captioned Notice.

Representatives of BMO Capital Markets GKST Inc. participated in the formulation of the SIFMA comment letter. We are an active participant in short-term municipal market as a remarketing agent for a significant number of VRDO issues. We strongly support the content and the conclusions of the SIFMA letter. We are especially concerned about the impracticality of the proposals and their attendant costs and burdens imposed on a broker-dealer community that has limited, if any, access to much of the material proposed to be required to be furnished.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Stracks", written over a horizontal line.

Robert J. Stracks
Counsel



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Carl Giles
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August 31, 2009

Justin R. Pica
Director Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: Notice 2009-43: Request for Comment on Additional Increases in Transparency of Municipal Auction Rate Securities and Variable Rate Demand Obligations

Dear Mr. Pica:

First Southwest Company, notably the ARS/VRDO Trading Desk, wishes to comment on the proposed amendments to MSRB Rule G-34(c) regarding increases in transparency of municipal auction rate securities and variable rate demand obligations. First Southwest Company applauds the Municipal Securities Rulemaking Board ("MSRB" or "Board") in seeking transparency in the short-term market. As direct market participants, we would like the Board to consider our views on this matter.

Proposed Amendment: ARS and VRDO Documents

The MSRB is proposing to require broker-dealers to submit Auction Rate Securities ("ARS") current auction procedures documents, interest rate setting mechanisms documents, and Variable Rate Demand Obligations ("VRDO") credit facility documents. Typically, these are complex and lengthy legal documents and in some cases the broker-dealer is not a party. Because of the nature of these documents, we feel that a better mechanism to disclose the mechanics of either ARS or VRDO and the credit support facility related to VRDO is the Official Statement. The Official Statement brings together these documents in a comprehensive way in plain language that could be understood by a wide array of investors. Should an investor require the actual documents, typically the Official Statements provide a mechanism for investors to receive actual documents by contacting either the issuer or a representative of the issuer.



In addition, in its present language, FSC believes that unspecified documents listed in one part of the proposed amendment that would be required are vague and ambiguous and would therefore cause confusion on which documents should be provided (G-34(c)(ii)(B)(c) "*Any other documents detailing the provisions of a liquidity facility*"). In order to achieve the desired transparency, the required documents should be more clearly defined by the MSRB rather than merely "Any other documents..."

We would like to comment on time frames for delivery of documents. We believe that there should be two different delivery requirements, one for new transactions and one for existing transactions. Concerning new transactions, because of the awareness of the rule and the ability adopt procedures to comply with the rule, we believe that an adequate period of time in which to submit new documents to the MSRB would be within 30 days after the documents are made available to us by the issuer.

However, with respect to existing documents, a longer time frame is necessary, such as 180 days from the implementation of the rule, in the format that the broker-dealer has the documents. We request this time period due to the volume of existing transactions and that the ability to generate documents in a searchable format may be problematic due to when and how those documents were created, as well as what documents might be covered under the rule. Typically, dealers do not create those documents and would have to go back to the creators of those documents to comply with the rule and possibly incur legal expense.

While the MSRB's proposed request for existing ARS and VRDO documents needs further clarification, FSC believes, that in general, the requested documents are available. FSC wishes to remind the MSRB that even with such access, assembling the documents and formatting them into a standardized format could prove to be a formidable task requiring many man hours of work and expense.

Proposed Amendment: ARS Bidding Information

In regard to ARS bidding information, FSC fully supports transparency in the municipal marketplace. However, FSC anticipates difficulty in being able to collect and report the additional information proposed by the MSRB. The time and effort to extract this information and to format into the appropriate media would be a costly and time consuming burden.

In MSRB Notice 2009-43, in the Request for Comment section, you also ask if there are additional items of information that should be added to these lists of proposed required information. We believe the items you have proposed, though burdensome, are sufficient to achieve transparency and that any other items, while perhaps informative, would not add value and therefore should not be added.



Proposed Amendment: Additional VRDO Information

As with credit facility documents discussed above, the remarketing agent broker-dealer is not a party to contracts between issuers, credit facility banks and tender agents. FSC would find it difficult and burdensome to be required to be continually updating information, which can and does change frequently, between two parties where it has no legal standing and should be the responsibility of the bank or tender agent that is party to those transactions.

Conclusion

We thank the MSRB for its efforts and appreciate this opportunity to express our views on these proposed rule changes. Should you have any questions, please do not hesitate to contact us. I can be reached at 214-953-4191.

Sincerely,

Carl Giles
Managing Director
Capital Markets



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September 1, 2009

Mr. Justin R. Pica
Director, Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Comments in regard to Notice 2009-43

Dear Mr. Pica,

The Regional Bond Dealers Association ("RBDA") is pleased to submit comments on MSRB Notice 2009-43, Request for Comment on Additional Increases in Transparency of Municipal Auction Rate Securities and Variable Rate Demand Obligations (the "Notice"). The RBDA is the organization representing regional securities firms active in the U.S. bond markets.

The RBDA generally supports the spirit of the MSRB's proposal to enhance market transparency in the market for municipal auction rate securities ("ARS") and variable rate demand obligations ("VRDOs"). We believe market participants would benefit from better access to documentation related to outstanding ARS and VRDO transactions and to better data on the performance of ARS auctions and VRDO remarketings. These sectors of the municipal market have been the hardest hit as a result of the broader financial crisis. Access to detailed information on the performance of auctions and remarketings before the crisis may have helped investors better gauge their exposure to weaknesses in the ARS and VRDO sectors and may have helped some investors avoid the problems that quickly emerged as the credit crisis worsened, especially with regard to ARS.

With respect to ARS, the MSRB's draft proposal would require ARS program dealers to submit to the MSRB's SHORT system additional information on the conduct of periodic ARS auctions. This information would include, among other items, the interest rates and aggregate par amounts of orders to buy, sell or hold at specific interest rates and the aggregate par amount of such orders that were executed, the number of unique bidders submitting orders to buy, other than the program dealer bidding for its own account, and the interest rates, aggregate par amounts, and type of order (buy, sell or hold) by a program dealer for its own account and aggregate par amounts of such orders, by type, that were executed. We believe that this type of information, when combined with information already collected under the SHORT program, would help give investors a brighter picture of how the ARS market is performing and help them evaluate their particular ARS investments.

With regard to VRDOs, the MSRB's draft proposal would require remarketing agents to submit to the SHORT system additional data regarding outstanding VRDOs. These would include, among others, the effective date that interest rate resets are applicable, the identity of the liquidity provider, including a indication of those VRDOs for which an issuer provides "self liquidity," and the amount of the VRDO, held by the remarketing agent, a liquidity provider, and a party other than the remarketing agent or as a bank bond.

We believe the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments. In the last year some segments of the VRDO market have suffered because in some cases downgrades or loss of investor confidence in certain bank liquidity providers has motivated investors to exercise their put options under liquidity agreements in larger-than-normal volumes. The ability to evaluate those trends with regard to both individual VRDO securities and on an aggregate basis would help investors make more informed choices. In addition, VRDO market participants currently have no way to accurately determine the aggregate volume of VRDOs being held by bank liquidity providers. Having access to these data would help issuers, investors, dealers, policy-makers and others gauge the health of the market.

We also support the MSRB's draft proposal to require the submission of certain ARS and VRDO documents to the MSRB for public access. We believe that easy access to these documents would help investors and other market participants. However, the usefulness of documents available through the MSRB may be limited in cases where the documents submitted are scanned images of hard-copy documents, and the scans are in image, as opposed to text, format. In those cases, documents stored, for example, on EMMA cannot be easily searched or indexed based on their content. In this regard, we recommend that the MSRB consider enhancing the documents it currently stores and disseminates by employing optical character recognition (OCR) technology to convert image-based scans of documents into character-based scans that are fully text searchable. This recommendation applies to all documents stored by the MSRB on EMMA, not just those documents proposed to be submitted under the Release. Other technology providers have successfully used OCR technology to convert image-based scanned documents to text searchable documents on a large-scale basis.¹ This function would greatly enhance the value of documents stored and disseminated by the MSRB, and it may be cost-effective for the MSRB to employ this technology. We recognize that the MSRB has considered issues related to OCR and image-based scans.² As OCR technology continues to improve, we are hopeful that this function can be added to documents stored and disseminated by the MSRB, including those covered by the draft proposal contained in the Release.

We are sensitive to concerns that ARS program dealers and VRDO remarketing agents may not be the best parties to submit all the documents and data referenced in the Release to the MSRB. In some cases program dealers or remarketing agents may not have ready access to all the

¹ See, for example, The Official Google Blog, "A picture of a thousand words?," October 30, 2008, <http://tinyurl.com/6opkqo>.

² See, for example, Securities and Exchange Commission, "Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access system (EMMA) and Amendments to MSRB Rules G-32 and G-36" (File No. SR-MSRB-2009-02), March 27, 2009, page 75.

information or documents proposed to be submitted to the MSRB. The RBDA would support other reasonable initiatives to achieve the ends outlined in the Release if the MSRB determines that program dealers and remarketing agents are not able to provide all the information and documents that would be required to be disclosed in the Release's draft rule changes.

Last year when the MSRB first proposed establishing the SHORT system and collecting and disseminating data on ARS auctions, we expressed reservations about the platform. We argued that the ARS market was a dying sector and we questioned the wisdom of creating a reporting and dissemination system to support a product that has no future. While we still believe that ARS are disappearing—no new ARS issued have been sold in 2008 or 2009 and many outstanding municipal ARS have been redeemed or converted to VRDOs—the fact that the SHORT system now supports disclosure for both ARS and VRDOs justifies the MSRB's development of the system. Moreover, it has become clear that many ARS may be outstanding for a long time. Penalty rates—the interest rates paid by ARS issuers in cases when auctions fail—which are tied to interest rate indexes on some outstanding ARS with perpetually failing auctions are at or near zero. In those cases, there is little incentive for issuers to take any actions to convert or redeem their securities. In other cases where issuers may still be facing high penalty rates, other factors such as weakened credit conditions or lack of access to bank liquidity facilities may prevent issuers from taking action. In all cases, as long as a significant number of municipal ARS remain outstanding, it is reasonable for the MSRB to adapt the SHORT system to provide investors with as much material information as possible.

The markets for ARS and VRDOs have been acutely affected by the financial crisis. Many ARS investors are still stuck holding illiquid securities which they do not want and cannot sell, and corporate investors continue to book losses on their ARS holdings.³ In the VRDO market, the volume of bank bonds is still higher than expected, and issuers suffer by being forced to pay maximum rates on their borrowing and by facing accelerated repayment of outstanding debt. In this environment, it is appropriate for the MSRB to consider reasonable methods for ensuring that the market has easy access to as much information as possible. For this reason we support in concept the draft rule amendments contained in the Release. We appreciate the opportunity to provide our views. Please contact us if you have any additional questions.

Sincerely,

/s/

Michael Decker
Co-Chief Executive Officer

/s/

Mike Nicholas
Co-Chief Executive Officer

³ Dunston McNichol, "Wall Street Betrayal Seen in \$4.8 Billion Company Debt Losses," *Bloomberg Professional* service, August 28, 2009.



September 1, 2009

Justin R. Pica
Director, Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2009-43: Request for Comment on Additional Increases in
Transparency of Municipal Auction Rate Securities and Variable Rate Demand
Obligations

Dear Mr. Pica:

The Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates this opportunity to respond to Notice 2009-43² (the "Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB requests comment on its draft amendments to Rule G-34(c), on variable rate security market information, that would increase the amount of information currently collected and made transparent by the MSRB on municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). SIFMA is in favor of transparency generally, and specifically in favor of the transparency on the Electronic Municipal Market Access ("EMMA") Dataport of many of the documents and data points set forth in the draft amendments. However, SIFMA feels strongly that broker dealers are not the appropriate parties to provide this information to EMMA as they are not a party to the requested documents, they are being asked to disclose information which may not be within their knowledge and the requirements will be extremely burdensome for them to fulfill. This new rule proposal is particularly problematic for legacy transactions. Nonetheless, if the MSRB decides to continue on this path of making broker dealers responsible for supplying additional documents and data, our comments on the specifics of the Notice are provided below.

¹ The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² MSRB Notice 2009-43 (July 14, 2009).

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ARS and VRDO Documents

The draft amendments would require ARS program broker dealers to submit certain ARS documents to the MSRB through the EMMA Dataport. The specific ARS documents that would be required to be submitted to the MSRB via the EMMA Dataport include ARS auction procedures and interest rate setting mechanisms, which may include the trust indenture, broker dealer agreement, and auction agent agreement (the "ARS documents"). These documents are already summarized in official statements on file with EMMA, and many broker dealers already have auction procedures on their websites as well.

The draft amendments would also require VRDO Remarketing Agents to submit certain VRDO documents to the MSRB through the EMMA Dataport. The specific VRDO documents that would be required to be submitted to the MSRB via the EMMA Dataport are VRDO liquidity facility documents, including current Letter of Credit and Stand-by Bond Purchase Agreements (the VRDO documents and, together with the ARS documents, the "ARS and VRDO documents"). Again, these are documents that are already summarized in official statements. VRDO liquidity facility documents are typically entered into between an issuer, a liquidity facility provider, such as a bank, and the trustee. SIFMA's broker dealer members are not parties to those documents. SIFMA is concerned about its members being required to submit to EMMA, for outstanding issues, documents that they were not a party to, and for which those who are parties to the agreements did not necessarily contemplate public release, and which therefore may contain confidential information. Of course, if this rule change is adopted, parties to new issue transactions would be on notice that such documents will be sent to EMMA in the future. We reiterate, however, that SIFMA's broker dealer members are typically not a party to liquidity facility documents, and can only forward on to EMMA information that they receive from issuers when and if they receive it.

SIFMA's members would like to note that some broker dealers have been voluntarily filing these kinds of documents (when and if they are received for new issues) with industry information services such as Bloomberg or posting them on their firm's website, and they could be sent to investors upon request. An alternate suggestion, instead of the proposed rule, may be for EMMA to provide a statement for any municipal short-term issue that advises the following: "To obtain copies of program documents, contact your investment professional".

However, SIFMA feels that broker dealers are not necessarily the appropriate party to be required to provide the requested documents and information to EMMA, and that there are other entities (those who are parties to these agreements) that may be more appropriately tasked with sending this information to EMMA. This is true both in terms of efficiency and the dissemination to investors of timely and accurate information. SIFMA feels that if disclosing

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material information to investors is the goal of this rule proposal, to the extent that the broker dealer has already filed a final official statement for an issue with EMMA pursuant to its obligations under Rule G-32, and that official statement contains information regarding the ARS and VRDO documents, broker dealers should not be required to make additional filings related to those documents.³

Timing of Implementation

New or Amended Documents

The draft rule change states dealers would be required to provide the current versions of the ARS and VRDO documents within one business day of receipt. That time frame is unduly burdensome for a broker dealer to submit documents to which it is not a party. Issuers and liquidity facility providers do not send broker dealers these documents in any uniform manner, and it may take a couple of days internally at a broker dealer for these documents to get routed to the proper place for submission to EMMA. SIFMA feels that a more reasonable submission deadline would be no later than five business days after receipt.⁴

Current Documents for Outstanding Issues

The draft rule change also states dealers would be required to provide the current versions of a variety of documents on outstanding issues within 30 days after the effective date of the draft amendments. SIFMA feels strongly that this rule proposal should not apply to outstanding issues. As stated above, SIFMA is concerned about its members being required to submit to EMMA, for outstanding issues, documents that they were not a party to, and for which those who are parties to the agreements did not necessarily contemplate public release, and which therefore may contain confidential information. If the MSRB nonetheless decides to implement this rule change for outstanding issues, SIFMA feels that 30 days is not a reasonable timeframe, and suggests that the dealers be required to utilize reasonable effort to submit the ARS and VRDO documents within 180 days of the effective date of the draft amendments for the reasons stated hereinafter. First, there are approximately 16,500 outstanding VRDO transactions that are serviced by approximately 80 different remarketing agent broker dealers. The top four remarketing agent broker dealers each service in excess of 1,100 weekly VRDO issues alone, not including VRDOs that have daily or other reset periods. There are approximately 1,750 outstanding ARS transactions concentrated with approximately two dozen program broker dealers. Most of the dealers that are active as ARS program broker dealers are also active as VRDO remarketing agents, which concentrates the impact of this rule proposal on certain broker

³ It is important to note that the SEC recently released proposed changes to Rule 15c2-12, which would eliminate the exemption for VRDOs. See <http://www.sec.gov/rules/proposed/2009/34-60332.pdf>.

⁴ This is similar to the MSRB timeframe for submission of advance refunding documents.

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dealers. This rule proposal will create an unreasonable burden on the handful of firms that are very active in the municipal short-term market.⁵ The sheer number of transactions for which documents will need to be submitted to the EMMA Dataport, and number of documents per transaction, is the primary reason that more time is needed. Second, broker dealers do not have ready access to all of these documents in an electronic form that can be easily uploaded to the EMMA Dataport. Many of these documents, particularly on older deals, are in storage on a "closing set" CD-ROM (not necessarily as a separate, easy-to-extract file) or in paper format in bound closing volumes. Third, those documents that the broker dealer only has on paper need to be scanned, and may require other manual processes such as breaking up the document files into sizes that can be uploaded. Finally, it is important to note that any documents for outstanding deals that need to be scanned will not be able to be word searchable. Given that broker dealers are not parties to these agreements, the amount of work by broker dealers needed to satisfy this proposed new requirement is staggering. For these reasons, SIFMA feels the MSRB should change the draft amendments for broker dealers to be required to utilize reasonable effort to submit the ARS and VRDO documents within 180 days of the effective date of the draft amendments.

ARS Bidding Information

The additional ARS bidding information being requested would increase the cost of doing business for auction rate securities, through increased work and liability, for a product that is winding down. There have not been any new ARS issues in over a year and a half, and none are expected. In light of the current status of the ARS market and the fact that there are no new ARS transactions anticipated, the burdens of providing this information to the MSRB are very costly in terms of time and resources and not practicable. However, if ultimately required, the disclosure of this information to EMMA by way of a document, instead of breaking out each data element, would help minimize the burden.

SIFMA needs to point out that disclosure of the "number of unique bidders" may be misleading, as there is no uniform paradigm for processing and counting bidders and orders. There are two specific reasons: (1) firms' systems may aggregate orders from separate lines of business; and (2) bids from other broker dealers (non-program broker dealers) will often "count" as one bid, but actually may represent the aggregation of multiple orders. Not all orders or investors will be accounted for individually. Therefore, without the knowledge of how each firm's systems are aggregating bids from other lines of business and non-program broker dealers, any filings to EMMA and resultant disclosure are likely to be inaccurate and misleading.

⁵ Conservatively, if it takes an hour to locate, extract, scan, and upload each such document or document sets, it would take several man-years for firms that have any degree of market share in these issues to satisfy this proposed rule change.

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Also, following the March 14, 2008 SEC No Action Letter⁶ SIFMA received on municipal auction rate securities, issuers have been disclosing their intent to bid and bidding results on public websites. These notices are posted on broker dealers' ARS websites or are posted on www.dacbond.com, which is a free public website run by DAC. Therefore, submission of this information to EMMA by the broker dealer is redundant and inefficient.

Additional VRDO Information

The collection and submission by broker dealers of the additional VRDO information to EMMA would be extremely burdensome, and the requirement would also increase the cost of doing business for VRDO transactions, through increased work and liability.

Tender Agent and Liquidity Provider Information

SIFMA feels that broker dealers should not be responsible for submitting to EMMA the identity of and contact information for each tender agent and liquidity provider, including indicating those VRDOs for which an issuer provides "self-liquidity" and the identity of the party providing such self-liquidity, and maintaining the accuracy of that information. Again, an issuer contracts with banking institutions to provide tender agent services and liquidity facility services. The remarketing agent broker dealer is not in privity of contract with the tender agent or the liquidity facility provider. The remarketing agent broker dealer may not receive notice of substitutions of liquidity facilities that it is entitled to receive or may not receive notice in a timely manner. Also, personnel at various tender agent and liquidity facility provider institutions and their coverage of clients changes frequently (sometimes without notice to remarketing agents), and therefore it is not appropriate for the remarketing agent broker dealer to be responsible for updating this information with the MSRB.

Holders of VRDOs

SIFMA feels strongly that specific disclosure of remarketing agent broker dealer inventory of VRDOs would be detrimental to the municipal securities market by giving competitors a trading advantage against each other. This information is collected by regulators as part of the SEC's Financial and Operational Combined Uniform Single ("FOCUS") Report,⁷ but the FOCUS Report is not disseminated to the public for transparency purposes so as not to disclose proprietary information about a firm. This proposed rule change would require the remarketing agent broker dealer to send to EMMA the par amount of the VRDOs, if any, held by the remarketing agent, a liquidity provider ("Bank Bonds") for the VRDOs, and a party other than the remarketing agent or as a Bank Bond. First, SIFMA feels that it is important to disclose

⁶ <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.

⁷ http://www.sec.gov/about/forms/formx-17a-5_schedi.pdf.

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to VRDO investors that the remarketing agent may, but is not obligated to, purchase bonds for its own account, and this is typically disclosed in an official statement. Again, SIFMA feels that the inventory level of securities at each firm is proprietary information. If this information is collected and disseminated by the MSRB, then the trading strategies of the various firms may be irreparably damaged. Second, the remarketing agent does not necessarily know the par amount of Bank Bonds that are being held by the liquidity facility provider at any point in time, since the remarketing agent is not in privity of contract with the liquidity facility provider. Investors who want to sell their VRDOs, tender their VRDOs directly to the tender agent. Depending on when VRDOs are tendered to the tender agent, the remarketing agent may not know the VRDOs have been tendered and are about to become Bank Bonds. Also, Bank Bonds may be subject to a revised amortization scheduled pursuant to the terms of the liquidity facility.

It is important to note that ARS and VRDOs are fundamentally different types of securities. The liquidity provided when ARS program broker dealers or issuers bid for and purchase ARS is not as of right to bondholders and may be discontinued, while VRDOs actually benefit from a dedicated liquidity facility that provides liquidity to all investors in that security. Broker dealer participation in VRDO transactions does not affect the liquidity of the securities any differently than participation by any other investor. All investors may exit their positions by tendering them to the tender agent for the issue. SIFMA feels that remarketing agents could provide, on a reasonable effort and aggregated basis, the amount of VRDOs that were successfully remarketed, which would include the par amount of VRDOs for that issue that were held by parties other than the remarketing agent plus the par amount of VRDOs held by the remarketing agent. SIFMA feels strongly that the amount of Bank Bonds and the amount of VRDOs held by remarketing agent broker dealers should not be required to be separately reported.

Interest Rate on Bank Bonds

SIFMA feels that any disclosure about the Bank Bond rate is more appropriately left to the issuer's annual financial statement to be considered among other financial disclosures in context with the rest of the issuer's transactions as opposed to a stand-alone piece of information. Transparency of the Bank Bond rate, on its own, does not aid investors; it merely places an unnecessary burden on broker dealers who would be required to provide it. Remarketing agents are contractually bound to continue to remarket VRDOs at a market rate, regardless if the bonds are tendered to the tender agent or are Bank Bonds. The Bank Bond interest rate does not affect the interest rate paid to investors, or the actions of the remarketing agent, as the Bank Bond rate reflects the negotiated rate for Bank Bonds between the issuer and the liquidity facility bank, not the periodic market rate for VRDOs. SIFMA does not believe this proposed requirement is justified.

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Remarketing agent broker dealers may not know the current Bank Bond rate and therefore cannot provide the Bank Bond rate to EMMA. The interest rate may be based on a calculation methodology for which the remarketing agent broker dealer may not have access to all of the factors that determine the rate. The interest rate on Bank Bonds may be a blended rate, consisting of a composite calculation of the rates then in effect when each block of bonds was tendered by an investor and that block became Bank Bonds. Bank Bonds may also have different rates depending on how long they have been Bank Bonds. This information is not something a remarketing agent broker dealer is typically responsible for determining or tracking, and it would be onerous for the remarketing agent broker dealer to attempt to ascertain and track this information, which may differ from reset period to reset period, particularly for VRDOs that reset daily or weekly.

Request for Comment

SIFMA has covered most of the MSRB's specifically bulleted requests for comment hereinabove. The final point that SIFMA would like to address is the MSRB's question, would dealers be able to provide a summary of the material terms of any such documents not available for submission to the MSRB? In the official statement, summary information is already presented regarding the then-current ARS and VRDO documents. Official statements are vetted by counsel to all parties to the transaction, and submitted by the broker dealers as required under Rule G-32. SIFMA feels strongly that broker dealers should not be responsible for independently summarizing documents to which they are not a party, and submitting those document summaries to EMMA for disclosure. This is not an appropriate allocation of responsibility, and it would significantly increase the potential liability of the broker dealer. Any such document summaries have the potential for being misleading. If firms are forced to manage this increased risk, it's likely that either the transaction costs will increase or firms will be less willing to participate in transactions – both of which are a cost to issuers. SIFMA feels that, in the interest of investor protection, investors would be better off choosing to invest (or not to invest) in a particular security based on the full official statement and ARS and VRDO documents. If those documents are not available, then investors should take that into consideration in their investment decision, instead of making an investment decision on document summaries provided by a third party which may be incomplete or inaccurate. SIFMA reiterates its suggestion that instead of the proposed rule, EMMA should provide a statement for any municipal short-term issue such as the following: "To obtain copies of program documents, contact your investment professional".

Conclusion

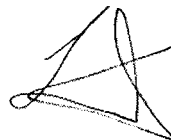
SIFMA is in favor of transparency, but feels this rule proposal as written is onerous, and objects to this plan of making broker dealers responsible for information in agreements to which

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they are not parties or to which they cannot gain ready access. SIFMA would like the MSRB and SEC to conduct a cost-benefit analysis to examine, not only this proposed rule change, but the cumulative impact of recent rule changes on the broker dealers, specifically with regard to the potential increase in liability for broker dealers and the potential effects on market efficiency.⁸ SIFMA suggests that: 1) if adopted, the time for submission of any new or amended documents should be within five days of receipt instead of one day; 2) if an official statement is on file with EMMA disclosing summaries of the ARS and VRDO documents for outstanding transactions, then that should be sufficient disclosure; 3) as opposed to burdening dealers with backfilling documents for historical issues, the industry could adopt a model or best practices for continuing disclosure agreements to add the ARS and VRDO documents, when amended or replaced; 4) if adopted, the broker dealers should be required to utilize reasonable effort to submit the ARS and VRDO documents within 180 days of the effective date of the draft amendments instead of 30 days; and 5) the MSRB and SEC should consider whether a replacement or amended liquidity facility should be deemed to be a material event under Rule 15c2-12, in light of the current amendments to the rule regarding VRDOs.

We appreciate this opportunity to comment on this proposed rule change. SIFMA's members feel strongly that further dialog would be helpful to achieve more transparency, and we would like to discuss these comments and suggestions with MSRB staff further. If you have any questions concerning these comments, or are open to discuss these comments with us further, please feel free to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully,



Leslie M. Norwood,
Managing Director
and Associate General Counsel

⁸ "Tighter Regulation Proposed for Muni Dealers to Increase Issuer Disclosure", 41 SRLR 33, August 17, 2009.

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cc: ***Securities Industry and Financial Markets Association***

Municipal Executive Committee
Municipal Legal Advisory Committee
Municipal Credit, Research, Strategy and Analysis Committee
Municipal Syndicate & Trading Committee
Municipal Operations Committee
ARS/VRDO Transparency Task Force
Regional Dealers Fixed Income Committee