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August 10, 2012

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Request for Comment on Draft Amendment to Limit Dealer Consents to Changes in Authorizing Documents for Municipal Securities (MSRB Notice 2012-36)

Dear Mr. Smith:

The Investment Company Institute¹ is pleased to provide comments on the Municipal Securities Rulemaking Board's proposed amendment to MSRB Rule G-11 to limit the practice by brokers, dealers, and municipal securities dealers ("dealers") of consenting to changes in authorizing documents for municipal securities.² Limiting this practice will result in greater protection for the interests of existing bondholders, and we therefore support it. Maintaining the integrity of the \$3.7 trillion municipal securities market to ensure fair and orderly markets is critical to ICI members who provide access to the 26 percent of investors—many of them retail—that invest in this market through registered investment companies.³

The MSRB explains that the proposal was developed to address the practice of dealers providing consents to changes in legal documents that: (i) set forth key rights of and protections for owners of municipal securities; and (ii) state that such consents are to be provided by the bondholders. Specifically, the MSRB is concerned that existing bondholders would not have contemplated that a

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.1 trillion and serve over 90 million shareholders.

² See *Request for Comment on Draft Amendment to Limit Dealer Consents to Changes in Authorizing Documents for Municipal Securities*, MSRB Notice 2012-36 (July 5, 2012), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-36.aspx>.

³ 2012 Investment Company Fact Book, *A Review of Trends and Activity in the Investment Company Industry*, Investment Company Institute, 52nd Edition.

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dealer acting as an underwriter, which may hold the bonds only momentarily during the initial distribution process of a new bond issuance without any prior or future economic or investment interest in the bonds, could consent to changes that would affect existing bondholders. To address this concern, the proposed amendment would prohibit a dealer from providing bondholder consents to any amendment to authorizing documents for municipal securities, either as an underwriter, remarketing agent, or as an agent for owners, or in lieu of owners, subject to limited exceptions.⁴

As significant investors in the municipal securities market, ICI members have a strong interest in protecting the rights of existing bondholders that are on a parity basis with owners of newly issued bonds. When purchasing municipal bonds under authorizing documents that, for example, grant security interests in specified collateral and subject the issuer to defined covenants, an investor generally expects that those protections will remain in force throughout the term of the bonds. Although authorizing documents often provide a procedure for amendments with the consent of a specified percentage of parity bondholders, investors typically view any change in those and other similar protections as the rare exception. Accordingly, funds initially investing in a municipal security would expect that such amendments would be implemented only after careful consideration and consent by both the existing investors and new investors having, as the MSRB noted, the same longer-term interests as the existing investors.

We thus support the MSRB's proposal as an important step in addressing these concerns and encouraging an approach that is more protective of the rights of existing bondholders in the municipal market.

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⁴ The exceptions consist of consents given to authorizing documents (i) for municipal securities owned by the dealer as an investment; (ii) for municipal securities that the dealer holds as a result of a mandatory tender, provided all outstanding securities affected by such amendment had been tendered; and (iii) by the dealer, acting as an underwriter or remarketing agent, in circumstances where the amendment would not become effective until all bondholders affected by the amendment (except those for which the dealer was providing consent) had also consented to the amendment.

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We look forward to working with the MSRB as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 218-3563 or Jane Heinrichs, Senior Associate Counsel, at (202) 371-5410.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue
Deputy General Counsel—Securities Regulation

cc: Lynette Kelly, Executive Director
Municipal Securities Rulemaking Board