



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.

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

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

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

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.

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.

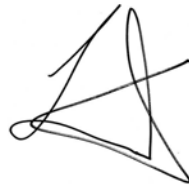
For the same reasons, the 1934 Act should not preclude the MSRB from having a website for the receipt of information from issuers, or processed through broker-dealers where technologically feasible, and should not be interpreted to make the broker-dealers legally responsible for an error of calculation 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, large, stylized letter 'A' that serves as a watermark or background for the signature.

Leslie M. Norwood,
Managing Director
and Associate General Counsel