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13 April 2012

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

Re: Proposed Rule Amendments and Interpretive Notice on Retail Order Periods—MSRB Notice 2012-13

Dear Mr. Smith:

CFA Institute¹ appreciates the opportunity to comment to the Municipal Securities Rulemaking Board (the “Board”) with regard to its proposed rule amendments (the “Rules”) and interpretative notice (the “Notice”) with regard to retail order periods (collectively, the “Proposals”). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the integrity and accountability of global financial markets.

Executive Summary

In general we support both the Rule proposals and the Notice proposal as necessary improvements to hold dealers more accountable during the sale of municipal securities. At the same time, we do not support giving issuers the authority to define “retail” for each offering of securities, as doing so creates confusion for all parties, including, potentially, courts of law who may hear appeals for related enforcement actions.

Most importantly, we are concerned that the dealer actions that have prompted the need for this Proposal will continue without firm enforcement actions on the part of the Board. We would support inclusion in the Proposal of sanctions that would be

¹ CFA Institute is a global, not-for-profit professional association of more than 108,000 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom nearly 99,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.



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imposed against dealers engaged in such abusive activities, including sanctions that prohibit the dealers from participating in any part of future municipal offerings for an extended period of time. We also would support sanctions against individuals engaged in such abusive behaviour, and alerting the Financial Regulatory Authority about such sanctions to those individuals.

Discussion

Rule Amendments

CFA Institute supports the various goals of the Proposals. In particular, we support the need for better and honest communications between various parties involved in the initial sale of municipal securities to investors as proposed in the amendments to Rule G-11. We believe the more inclusive definitions for “selling group” to include all dealers and not just syndicate members, together with the definition for “going away order”—an order from a customer who already is conditionally committed to buying the securities will provide clarity for dealers, issuers and the courts when it comes time to enforce these rules.

We are less supportive of giving the issuer authority to establish the definition for “retail” as it relates to determination of the duration and timing of a retail order period. Such flexibility in “definitions” leads to confusion on the part of all parties and makes it more difficult for the Board to enforce its own rulings without threat of having those enforcement actions overturned by a court of law. We suggest that the Board devise a standard definition for retail and apply it in all cases.

Interpretive Notice

We support the goals of the Notice, which provides that issuers should be able to rely upon all dealers to deal fairly with them, in particular during retail order periods. The Notice also warns dealers that false indications of retail orders that are given to other dealers will be considered a violation of the fair practice requirements of Rule G-17. Finally, the Notice provides that dealers must balance their duties of fair pricing to issuers with those duties owed to retail customers.

If candour and honesty are not present in the dealings among dealers in the sale of municipal securities, we can expect that such qualities also will be missing in their



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dealings with retail customers. We believe the proposed Notice, in conjunction with the disclosure requirements imposed by the Rules, will clarify what underwriters and other dealers must do. We also believe that these new obligations will make it easier for the Board to detect false indications of retail orders and retail order periods.

As noted, we support the goals and purpose of the Proposals. At the same time, we are concerned that the behavior of dealers that created the need for this Proposal may not be stemmed by the Rules or the Notice. It is apparent that dealers have been abusing the rules already in place, and that they have not paid a penalty for having done so.

We support the Proposals, in part, as they would reduce the legal scope in which dealers might engage in abusive activities with regard to retail orders and retail order periods. Unless these rules are firmly enforced with sufficient penalties against firms found in violation to them, however, we fear that they will have little benefit for issuers, investors or ethical underwriters of municipal securities.

To increase the chance of success for this Proposal, we suggest the Board add to the Notice that any dealer and underwriter found violating the Rules or the spirit of the Notice would be prohibited from participating in the underwriting or advisory services for municipal securities offerings for an extended period. We also suggest that the Board hold the individuals engaged in such activities accountable for their actions by imposing a ban on their participation in such offerings for periods based on the extent of their involvement, including permanent bans in some cases. We also encourage the Board to alert the Financial Industry Regulatory Authority to such fraudulent activities and to prohibit firms dealing in municipal securities to hire such individuals.

Conclusion

As noted above, we support the Proposals and the goals they seek to achieve. We believe that for the Proposals to succeed, however, they must be matched with corresponding and tough enforcement actions that indicate to all dealers that such behavior will not be tolerated in the future.



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We appreciate the opportunity to comment on the Proposed Rule Amendments and Interpretative Notice on Retail Order Periods. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or James C. Allen, CFA at james.allen@cfainstitute.org or 434.951.5558.

Sincerely,

/s/ Kurt N. Schacht

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Managing Director, Standards and
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