



April 23, 2010

Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-61793; File No. SR-MSRB-2010-02

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on a notice of filing with the Securities and Exchange Commission (“Commission”) of a proposed rule change by the Municipal Securities Rulemaking Board (“MSRB”) 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”)². SIFMA is in favor of transparency generally, and specifically in favor of the MSRB’s transparency efforts through 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.

Cost Benefit Analysis

SIFMA feels this rule proposal as written is onerous and costly in comparison to its benefits,³ and again objects to this plan of making broker dealers responsible for information in agreements to which they are not parties or to which they cannot gain easy access. SIFMA feels the SEC should 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 regards to the potential increase in liability for brokers dealers and the potential impediments to market

¹ SIFMA, or the “Association”, 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 Release No. 34-61793; File No. SR-MSRB-2010-02 (April 2, 2010), and MSRB Notice 2010-6 (March 10, 2010), collectively, the “Notice”.

³ See *Chamber of Commerce of the United States of America v. SEC*, 412 F.3d 133 (D.C. Cir. 2005).

efficiency.⁴ SIFMA feels there are more narrowly tailored solutions that achieve substantially similar results. SIFMA suggests that: 1) 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; 2) as opposed to burdening dealers with backfilling documents for historical issues, dealers could be required to adopt practices for continuing disclosure agreements to add the collection of ARS and VRDO documents, when amended or replaced; and 3) 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.

The cost benefit analysis for this proposal is most poignant when applied to ARS. As SIFMA noted in its September 1, 2009 letter, the ARS product is winding down, and no new issuances have occurred in two years. Industry sources estimate that there were approximately \$175 billion of outstanding tax-exempt auction rate securities as of February 2008, but only \$69 billion outstanding as of April 2010. The MSRB acknowledges in its filing that the SHORT System data indicates approximately 80% of all ARS continue to experience failed auctions, which may not at this time justify the expenses to be incurred by ARS Program Dealers.⁵ Additionally, increases in costs would likely result in an increase in transaction costs for issuers.

SIFMA notes that some of these changes will create significant costs not only for the regulated broker dealer community, but also for the MSRB. We would like to reiterate our previous requests to have resources allocated for projects that we feel would benefit the industry and investors such as: a) using MSRB-mandated NIIDS data to automatically populate G-32 forms in support of straight-through processing, b) expanding descriptive information available to the public and c) backfilling historical material events disclosures into EMMA.

ARS and VRDO Documents

The draft amendments would require ARS Program 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"). Although SIFMA would like clarification on exactly what documents are required for the purposes of this rule, all of the aforementioned documents are already summarized in official statements on file with EMMA, and many broker dealers have auction procedures on their websites as well. Not only do SIFMA members not see the benefit to investors of sending entire deal documents to EMMA when those documents are already summarized in official statements available on EMMA, but to

⁴ "Tighter Regulation Proposed for Muni Dealers to Increase Issuer Disclosure", 41 SRLR 33, August 17, 2009.

⁵ Although the MSRB was referring to the requirement for entering data in field based manner, SIFMA feels the argument applies more broadly.

add to the industry's burden, many ARS transactions have multiple program dealers and the proposed rule would require redundant filing of each of these documents by each dealer involved in the issue.⁶ These submissions would be very burdensome on the industry collectively, and would not be additive to the information currently publicly available. Therefore, SIFMA's view is that if the rate setting mechanism is summarized in the official statement and that official statement is on file with EMMA, then no further documents should be required to be sent to EMMA.

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")⁷. 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. Even with a "best efforts" requirement, broker dealers are going to be at increased regulatory risk for documents that are out of their control, and they will have to document that they used their best efforts to obtain them.⁸

SIFMA feels strongly 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 time efficiency and the dissemination to investors of accurate information. SIFMA feels that if disclosing timely material information to investors is the goal of this rule proposal, to the extent that the broker

⁶ Even if only a single set of documents need be filed, each of the participating broker dealers will have to do the work to locate the documents because they won't want to be in a position of relying on other broker dealers to file the documents.

⁷ SIFMA's members would like clarification that under the proposed rule change it would not be necessary to send reimbursement agreements on variable rate demand obligation issues to EMMA.

⁸ There is ambiguity as to what would be considered satisfactory "best efforts" to obtain the documents, and what documentation will be sufficient to satisfy the rule. On behalf of its members, SIFMA requests further clarity on this issue. Also, SIFMA requests clarity regarding the filing of documents that do not have any signatures or otherwise lack a full set of signatures. It is not unusual for parties not to have some or all of a document's signature pages.

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.

Alternatively, SIFMA's feels another more appropriate regulatory response would be for the SEC to act on its proposed amendments to Rule 15c2-12 under the Securities Act of 1934.⁹ In its response to the Rule 15c2-12 amendments, SIFMA generally supported the deletion the current exemption from the continuing disclosure obligations of Rule 15c2-12 that exists for demand securities.¹⁰ If such exemption was removed, then continuing disclosure obligations could be drafted so that the issuer, who is the party with knowledge of changes to liquidity facilities, would be the party responsible for sending documents related to a substitution or replacement of a liquidity facility to the MSRB's EMMA system. Further, we suggest that a substitution or modification of a liquidity facility be determined to be a material event pursuant to Rule 15c2-12, which would require the issuer to send the new or modified documents directly to EMMA, instead of indirectly through a broker dealer.

Finally, SIFMA's members would again 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 post them on their firm's website, and they could be sent to investors upon request. An alternate and more narrowly tailored suggestion, instead of the proposed rule, may be for EMMA to provide a statement for any municipal short-term issue that advises the following: "For further information about program documents contact your investment professional".

Considering the multitude of more narrowly tailored and streamlined solutions available to address the perceived issues, SIFMA feels the rule proposal, in its current form as it applies to broker dealers sending ARS and VRDO documents to EMMA, should not be approved.

Timing of Submission For 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. SIFMA reiterates its argument that this time frame is unduly burdensome for a broker dealer to submit documents to which it is not a party. As discussed in our prior letters, 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.

⁹ SEC Release No. 34-60332; 74 Fed. Reg. 36831 (July 24, 2009). See <http://www.sec.gov/rules/proposed/2009/34-60332.pdf>.

¹⁰ See <http://www.sec.gov/comments/s7-15-09/s71509-16.pdf>.

Issuers and liquidity facility providers do not send broker dealers these documents in any uniform manner or to a central point of contact, 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 strongly feels that a more reasonable submission deadline would be no later than five business days after receipt, to conform to the MSRB's current timeframe for submission of advance refunding documents.

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 two years, 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, SIFMA would like certain requirements clarified to conform to current practice and documentation, particularly "the requirement to disclose the interest rate(s) and aggregate par amount(s) of order to sell at a specific rate" should be amended to read "hold at a rate". When the rate drops below that customer's "hold at" rate, the order is automatically converted into a sell order.

Also, as noted in our September 1, 2009 letter, following the March 14, 2008 SEC No Action Letter¹¹ 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, SIFMA's view is that submission of this information to EMMA by the broker dealer is redundant and inefficient. Further, MSRB acknowledges that issuers or conduit borrowers may instruct a third party, such as an investment adviser or registered representative, to submit orders to an ARS Program Dealer on their behalf and 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. SIFMA Members are concerned that the way each dealer submits its ARS orders is not uniform across the industry. In particular, information for multi-Program Dealer auctions may be misinterpreted. Dealers are permitted to aggregate similar orders for submission to the auction agents. For large firms with several lines of businesses, the aggregation of orders may occur prior to the orders being sent to the auction desk. Other Program Dealers may track each individual order through to the auction desk. Furthermore, this current rule proposal creates a confusing situation which requires an ARS Program Dealer to separately report bidding information for orders submitted by an issuer if directly submitted to the that Program Dealer, but those orders will not be reported if the issuer order is submitted through a third party. Therefore, EMMA will have data which is inconsistent and may be

¹¹ <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.

misinterpreted by data users, so investors looking at the data may be misled as to issuer participation levels. As such, this information has limited value, at best, beyond what is currently available, but yet will create significant costs and burdens for dealers to report to the MSRB. SIFMA's view is that the requirement for dealers to report issuer orders if submitted directly to the Program Dealer should not be approved.

Finally, our previous comment letter indicated that 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. Upon further discussion and planning for the implementation of this proposed rule change, it has become evident that although some members still feel a document would be an easier form of submission, other members feel a data element level of submission would not only be easier but also a superior method for data management and analysis.

Additional VRDO Information

Tender Agent and Liquidity Provider Information

SIFMA feels that if the identity of each tender agent and liquidity provider is known to the remarketing agent, they can and will provide that information to EMMA as it is critical information for investors. However, SIFMA continues to believe that broker dealers are not the proper parties to be held legally responsible for submitting to EMMA the identity of 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 directly with banking institutions to provide tender agent services and liquidity facility services, and changes to this information should be required to be filed with EMMA directly by issuers pursuant to an amended Rule 15c2-12. 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. Therefore we feel it is not appropriate for the remarketing agent broker dealer to be responsible for updating this information with the MSRB. If the broker dealers will be responsible for submitting to EMMA any substitutions of the liquidity provider and tender agent, it should be made clear that the broker dealer is only obligated to use its best efforts to submit to EMMA such change to the extent it has knowledge of it.

Holders of VRDOs

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 a liquidity provider ("Bank Bonds") for the VRDOs. First, the remarketing agent does not necessarily know the par amount of Bank

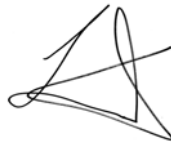
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Bonds that are being held by the liquidity facility provider at any point in time, since the remarketing agent is not in privity of contract with the liquidity facility provider. Investors who want to sell their VRDOs, tender their VRDOs directly to 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 schedule pursuant to the terms of the liquidity facility. SIFMA feels strongly that the amount of Bank Bonds should not be required to be separately reported.

Conclusion

We appreciate this opportunity to comment on this proposed rule change, and would like to discuss this with you 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,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, light-colored signature line.

Leslie M. Norwood,
Managing Director
and Associate General Counsel

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April 23, 2010
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cc: ***Securities and Exchange Commission***

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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