

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62550; File No. SR-MSRB-2010-02)

July 22, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to 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

On March 10, 2010, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² 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 was published for comment in the Federal Register on April 2, 2010.³ The Commission received five comment letters about the proposed rule change.⁴ On July 9, 2010, the MSRB filed with the Commission, pursuant to Section

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61793 (March 26, 2010), 75 FR 16878 (April 2, 2010) (File No. SR-MSRB-2010-02).

⁴ See letters from: Vladimir Drozdoff, Centerport, New York, dated April 4, 2010; Joseph S. Fichera, Saber Partners, LLC, New York, New York (“Saber Partners”), dated April 12, 2010; Heather Traeger, Associate Counsel, Investment Company Institute (“ICI”), dated April 23, 2010; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated April 23, 2010; and Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc. (“BMO Capital”), dated April 23, 2010.

19(b)(1) of the Exchange Act⁵ and Rule 19b-4 thereunder,⁶ Amendment No. 1 to the proposed rule change. Amendment No. 1 is described in items I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice of Amendment No. 1 to solicit comments on the proposed rule change, as amended, 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 Amendment No. 1 to File No. SR-MSRB-2010-02, originally filed on March 10, 2010 (the “original proposed rule change”). Amendment No. 1 amends and restates the original proposed rule change relating to enhancements to 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”) (as amended, the “proposed rule change”). 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 (a) submit to the MSRB 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) report to the MSRB ARS bidding information (“ARS bidding information rule change”); (c) report to the MSRB additional VRDO information (“VRDO information rule change”); and (d) communicate to an ARS Program Dealer the fact that an order submitted for inclusion in an auction is on behalf of an ARS issuer or conduit borrower (“ARS issuer bidding rule change”) (collectively, the “rule change proposal”); (ii) amend the MSRB Short-term Obligation Rate Transparency (“SHORT”) System Facility to collect and disseminate

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

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 Web site at <http://www.msrb.org/Rules-and-Interpretations/Information-Facilities.aspx>.

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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 1 makes certain modifications to the original proposed rule change based on comments received on the original proposed rule change, as described below.

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 (a) submit to the MSRB documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs; (b) report to the MSRB ARS bidding information; (c) report to the MSRB additional VRDO information; and (d) communicate to an ARS Program Dealer the fact that an order submitted for inclusion in an auction is on behalf of an ARS issuer or conduit borrower (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.⁷

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 Dealers⁸ 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.⁹ 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

⁷ 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.

⁸ 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.

⁹ See Securities Exchange Act Release No. 34-59212, January 7, 2009 (File No. SR-MSRB-2008-07).

collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") Web site.¹⁰ 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;¹¹ and

¹⁰ 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."

¹¹ 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

- 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;¹²
- Minimum denomination;
- Type of liquidity facility(ies);¹³ and
- Expiration date of each liquidity facility.

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.

¹²

Id.

¹³

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

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-time on EMMA.¹⁴ 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

As amended and restated by this amendment, the proposed rule change would require each ARS Program Dealer to report to the SHORT System “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.¹⁵ All items would be required to be reported within the same timeframe as the ARS interest rate and descriptive information currently

¹⁴ In the future, the MSRB also plans to make all information collected under the rule change proposal available on a subscription basis.

¹⁵ In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the list of specific items of ARS bidding information in the original proposed rule change. This amendment deletes the requirement to report the “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.”

required to be reported under Rule G-34(c). ARS bidding information would be required to be submitted to the SHORT System as data elements in the same manner as the interest rate and descriptive information currently required to be reported to the SHORT System.¹⁶

- 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.¹⁷

ARS Issuer Bidding

One of the items of ARS bidding information that would be required to be submitted to the SHORT System by ARS Program Dealers are orders by issuers or conduit borrowers for the

¹⁶ In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by requiring ARS Program Dealers to report ARS bidding information as data elements. The original proposed rule change specified that ARS bidding information would be required to be reported as a word-searchable electronic document.

¹⁷ In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by deleting the requirement for ARS Program Dealers to report whether orders submitted by an issuer or conduit borrower for an ARS were executed.

ARS. In response to comments received on the original proposed rule change, as discussed below, this amendment adds a requirement for dealers other than ARS Program Dealers that receive orders for inclusion in an auction for ARS from an issuer or conduit borrower of such ARS to disclose this fact when submitting such order to an ARS Program Dealer. This would ensure that ARS Program Dealers are able to submit to the SHORT System orders by issuers or conduit borrowers for the ARS when such orders are not submitted directly to the ARS Program Dealer by the issuer or conduit borrower.

Additional VRDO Information

As amended and restated by this amendment, 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 the 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.

The proposed rule change would require a VRDO Remarketing Agent to report to the SHORT System the effective date that the interest rate reset is applicable as well as the following information available to the VRDO Remarketing Agent as of the time of the interest rate reset:¹⁸

- 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;¹⁹
- Par amount of the VRDO, if any, held as a Bank Bond; and
- 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

As amended and restated by this amendment, 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

¹⁸ In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by clarifying that the VRDO Remarketing Agent is only required to report the identities of the Tender Agent and liquidity provider(s) reflective of information available to the VRDO Remarketing Agent as of the time of the interest rate reset.

¹⁹ 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.”

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 document²⁰ 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 five business days of receipt.²¹

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.

²⁰ For documents of existing VRDO issues that are unable to be obtained through best efforts, the proposed rule change would require dealers to keep records of all efforts undertaken for a period of three years. Such records of best efforts would include, for example, all written requests for documents to and any responses from an issuer or liquidity provider. In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by clarifying that such records are only required to be kept for those documents that are unable to be obtained.

²¹ In response to comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by changing the deadline to submit new or amended versions of documents from one to five business days of receipt.

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 proposed rule change would amend this facility to provide for the collection and public dissemination of documents identified in the rule change proposal.²²

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

²² This amendment does not modify the provisions of the original proposed rule change relating to the SHORT System Facility.

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 proposed rule change 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.²³

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,²⁴ which requires, among other things, that MSRB rules must 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 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

²³ This amendment does not modify the provisions of the original proposed rule change relating to the short-term obligation rate transparency service.

²⁴ 15 U.S.C. 78o-4(b)(2)(C).

The MSRB does not believe the proposed rule change would 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 on the Proposed Rule Change Received from Members, Participants or Others

The Commission received five²⁵ comment letters regarding the original proposed rule change and the Commission has requested that the MSRB respond. While all of the commentators indicated general support for the MSRB's effort to increase transparency of ARS and VRDO several compliance concerns as well as suggested improvements to the proposed rule change were noted. The provisions of the original proposed rule change, comments received and a discussion of these comments are below.

Additional VRDO Information

The original proposed rule change would increase the 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 include:

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider(s) including an indication of those VRDOs for which an issuer provides "self liquidity" and the identity of the party providing such self-liquidity;
- 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

²⁵ See supra note 4.

- 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.

SIFMA stated concerns with the requirement in the proposed rule change to report the identities of the Tender Agent and liquidity providers. SIFMA noted that the identities of these parties may change and that the VRDO Remarketing Agent may not receive timely notification of such changes. Accordingly, SIFMA suggested that VRDO Remarketing Agents only be required to report such information on a “best efforts” basis. While the MSRB acknowledges that the identities of Tender Agents and liquidity providers may change, and that VRDO Remarketing Agents may not receive timely notification that such information has changed, the MSRB does not believe that it is appropriate for VRDO Remarketing Agents to be required only to exercise best efforts to report this information. However, the MSRB is sensitive to compliance concerns in the event that the identity of a Tender Agent or liquidity provider changes, unbeknownst to the VRDO Remarketing Agent, yet a report to the SHORT System has been made that includes outdated information. Under the terms of the original proposed rule change, the VRDO Remarketing Agent would be required to modify any past submissions to the SHORT System in the event updated information about the Tender Agents and liquidity providers becomes known, which could place a significant compliance burden on dealers and result in frequent corrections to reports made to the SHORT System. Accordingly, in response to this comment, the MSRB has amended the original proposed rule change to clarify that the requirement to report these identities is based upon information known to the VRDO Remarketing Agent as of the time of the interest rate reset. The MSRB believes that this

clarification would alleviate concerns with respect to dealers failing to receive timely information about a change in the identity of a Tender Agent or liquidity facility provider and provide a clearer requirement that such information is anticipated to be reported than would be provided through a best efforts provision.

SIFMA also stated concerns related to reporting the par amount of Bank Bonds that are focused on whether the VRDO Remarketing Agent would be able to obtain and report accurate information. SIFMA noted that VRDO Remarketing Agents may not know the precise amount of securities held as Bank Bonds as a result of revised amortization schedules for securities held as Bank Bonds as well as instances when holders tender securities directly to a Tender Agent. The MSRB believes that the original proposed rule change already adequately addresses SIFMA's concern as it only requires VRDO Remarketing Agents to report the par amount of Bank Bonds based upon "information available to the VRDO Remarketing Agent as of the time of the interest rate."

ARS Bidding Information

The original proposed rule change identified ARS Bidding Information that an ARS Program Dealer would be required to report within the same timeframe as the ARS interest rate and descriptive information currently required to be reported. The proposed rule change identified the following items of "bidding information" that 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.

Saber Partners and SIFMA both stated that ARS Bidding Information should be reported as individual data elements instead of as a word-searchable document. A document-based approach for collecting such information was included in the original proposed rule change based in large part upon earlier comments from SIFMA that it would be costly and time consuming to require the collection of such information as individual data elements.²⁶ In response to the original proposed rule change, SIFMA noted that “a data element level of submission would not only be easier but also a superior method of data management and analysis.” The MSRB agrees with Saber Partners and SIFMA’s comments on the original proposed rule change that having ARS bidding information collected as data elements would be a preferred method of data collection as it would facilitate data analysis and the computation of statistics, such as a bid-to-cover ratio, that would provide meaningful information about the demand for a specific ARS. Accordingly, in response to these comments, the MSRB has

²⁶ See Securities Exchange Act Release No. 34-61793, March 26, 2010 (File No. SR-MSRB-2010-02).

amended the original proposed rule change to require ARS bidding information to be reported to the SHORT System as individual data elements.

SIFMA also stated concerns with the requirement to report orders submitted by an issuer or conduit borrower. SIFMA noted that some issuers or conduit borrowers utilize the services of a third party for submitting orders to an ARS Program Dealer. In these cases, the ARS Program Dealer may not know that an order represents an order submitted by an issuer or conduit borrower and would not be able to identify these orders in reports to the SHORT System. MSRB acknowledges that issuers or conduit borrowers may not always submit orders for an ARS directly to an ARS Program Dealer. To ensure ARS Program Dealers are provided with information that an order represents an order by an issuer or conduit borrower when such orders are placed with other dealers, the MSRB has amended the original proposed rule change to include a new requirement whereby any dealer that receives an order for inclusion in an auction for ARS from an issuer or conduit borrower of such ARS to disclose this fact when submitting the order to an ARS Program Dealer. MSRB has also amended the original proposed rule change by removing the requirement to identify whether orders placed by an issuer or conduit borrower were executed. MSRB notes that ARS Program Dealers would not be able to reliably ascertain whether orders on behalf of an issuer or conduit borrower submitted by a third-party dealer were executed, particularly if the third-party dealer submits more orders than just those on behalf of the issuer or conduit borrower and only some of those orders are filled.

SIFMA also suggested that the requirement to report “hold at rate” and “sell at rate” orders is redundant. MSRB acknowledges that this requirement could be consolidated to simplify the rule language and has therefore amended the original proposed rule change to

remove the requirement to report “sell at rate” orders as the remaining “hold at rate” and “sell at any interest rate” categories of orders should provide for the reporting of all sell orders.

ARS and VRDO Documents

The original proposed rule change would require 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.

For existing documents, the original proposed rule change would require VRDO Remarketing Agents to make and document best efforts to obtain existing VRDO documents and specified a timeframe of ninety days from the date of effectiveness of a rule change for dealers to submit such documents to the MSRB. For ARS documents, ARS Program Dealers would be required to submit existing documents to the MSRB no later than ninety days from the date of effectiveness of a rule change. On an ongoing basis, the original proposed rule change included a requirement to submit new or amended versions of ARS and VRDO documents no later than one business day after receipt by the dealer.

ICI stated that it “believes there is a need for timely receipt of the proposed information for outstanding ARS and VRDOs.” Accordingly, ICI stated that it “supports the MSRB’s original proposed submission deadline of [thirty] days from the effective date of the proposed [rule] change.”²⁷ While MSRB agrees that it is important to have a centralized source of ARS and VRDO documents as soon as practical, given the large number of documents that would

²⁷ See MSRB Notice 2009-43 (July 13, 2009).

need to be submitted to the MSRB and the fact that, for outstanding issues, dealers may need time to request documents from third parties, the MSRB believes that ninety days is an appropriate timeframe for having such documents submitted to the MSRB.

ICI also stated that it “strongly supports the one-business day submission requirement for new or amendment versions of the ARS and VRDO documents.” SIFMA, however, suggested that the deadline for submitting such new or amended documents be five business days after receipt. SIFMA noted the lack of a uniform manner in which dealers receive such documents from issuers and liquidity facility providers and that “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 [the MSRB].” MSRB acknowledges that it is unlikely that dealers would have an existing process in place to support submitting new or amended versions of ARS and VRDO documents within one business day of receipt. While MSRB believes that five business days is a generous amount of time, MSRB recognizes that it is consistent with the timeframe for submitting advance refunding documents to the MSRB and would be an appropriate timeframe, at least initially, for such new or amended versions of ARS and VRDO documents to be submitted to the MSRB. Accordingly, in response to this comment, MSRB has amended the original proposed rule change to provide a five business day deadline for submitting new or amended versions of ARS and VRDO documents to the MSRB.

SIFMA also requested clarification of the recordkeeping requirement for VRDO Remarketing Agents to document best efforts to obtain existing VRDO documents and whether such documents would be required to contain signatures. MSRB, in response to this comment, amended the original proposed rule change to clarify that such records are only required to be kept for those documents that are unable to be obtained. MSRB also notes that all documents

would be required to be final, operative versions of such documents. While this requirement does not necessarily require that the document be signed, MSRB notes that signatures would provide a clear indication that the document reflects a final version.

Other Comments

ICI recommended that the proposed rule change include a “catch-all” category to require dealers to report information “about new products that fall outside of the scope of the ARS and VRDO disclosure requirements.” MSRB agrees that new products may benefit from the transparency offered for ARS and VRDO by the SHORT System, yet technically fall outside of the definitions of such products, and plans to review in the future whether changes to the SHORT System and associated rules could accommodate future products without subsequent system and rule modifications.

ICI also suggested that VRDO “credit enhancement” data and documentation be required to be reported. MSRB believes that such information should not be limited to VRDOs and notes a separate MSRB initiative to display on EMMA information offered by credit ratings agencies would provide additional access to credit enhancement features associated with municipal securities on a market-wide basis.²⁸

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

²⁸ See MSRB Notice 2010-13 (May 20, 2010).

(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, as amended by Amendment No. 1, is consistent with the 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, 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,²⁹ 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F

²⁹ The text of Amendment No. 1 to the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).