



December 19, 2008

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-58998; File No. SR-MSRB-2008-07  
Related to MSRB "SHORT" System

Dear Secretary Harmon:

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> 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") to MSRB Rule G-34. As discussed in SIFMA's previous letters to the MSRB, dated April 21, 2008 and June 30, 2008, on the MSRB's ARS and VRDO transparency proposals respectively, SIFMA supports the concept of collection and display of auction rate reset and remarketing rate reset information. SIFMA's comments herein focus on the timing of implementation and certain data points proposed to be collected. SIFMA members feel strongly that January 30, 2009 is an unrealistically short timeframe for implementing this new regulatory requirement because: 1) technology changes at firms can only begin to be planned when a final rule and specifications are approved; 2) broker dealers annually have two to four week "system freezes" scheduled in December and January for year-end system maintenance; 3) due to the scheduled year-end "system freezes", many operations and technology staff schedule time off in December and January leaving the firms particularly shorthanded; and 4) this year has been a historic year for technological and operational issues due to the market dislocation and as a result there are many urgent technology and operations projects queued at broker dealer firms.

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<sup>1</sup> 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.

I. The Proposed Implementation Date of January 30, 2009 is Unrealistic

On November 18, 2008, the MSRB filed with the SEC a proposed rule change that would (i) implement the Short-term Obligation Rate Transparency System (“SHORT System”); (ii) provide free public access to information disseminated from the SHORT System through the MSRB’s Electronic Municipal Market Access (“EMMA”) system; and (iii) amend Rule G-34, on CUSIP numbers and new issue requirements, to require dealers to report, or ensure the reporting of, certain interest rate and descriptive information to the SHORT System about Auction Rate Securities and Variable Rate Demand Obligations. The MSRB proposed an effective date of January 30, 2009 for the proposed rule change.<sup>2</sup>

At each regulated broker dealer, the implementation of systems to ensure compliance with a new regulatory requirement involves a concerted effort by not only legal and compliance professionals, but also the relevant business, operations and technology professionals. New changes to a broker dealer’s operational computer systems are queued for coding and testing after final specifications for the regulatory change are released. In a normal market environment, a timeframe of at least six months after a final rule and specifications are approved is typically needed to ensure that there is adequate time for the broker dealer to make such changes and ensure compliance with a regulatory rule change. Version 1.0 of the SHORT System specifications was published on December 10, 2008,<sup>3</sup> and an updated Version 1.1 of the SHORT System specifications was published on December 16, 2008.<sup>4</sup> Assuming the December 16, 2008, specification are final, this timeframe leaves the broker dealer community with under 7 weeks to implement operations systems changes and ensure compliance with this proposed rule. SIFMA feels this is an unrealistically short timeframe, and will leave many broker dealers in a position where they will not be able to comply or their compliance will be sub-optimal, leaving them at risk of an enforcement action.

SIFMA’s reasons for proposing delaying the January 30, 2009 implementation of the SHORT System requirements are not limited to the mere 7 weeks that remain before that date. First, it is critical to point out that virtually all broker dealers have a year-end “system freeze” that extends for a two to four week period in December and/or January. This “system freeze” is a time when no operational systems changes can be made, as annual systems maintenance on the firm’s computer systems is being done. Second, many technology and operations personnel take scheduled time off during December and January, not only due to the holidays but specifically to

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<sup>2</sup> MSRB Notice 2008-46 (November 18, 2008).

<sup>3</sup> MSRB Notice 2008-48 (December 10, 2008).

<sup>4</sup> MSRB Notice 2009-49 (December 16, 2008).

coincide with the scheduled “system freeze” at their particular firm. Some of these technology and operations personnel are required by banking regulations to take off two consecutive weeks of leave. This leaves the firms shorthanded during this season, on top of the industry-wide economic layoffs that have been occurring. Third, a large amount of resources will be needed to implement this new regulatory requirement, not only technology and operations personnel but also legal and compliance professionals. Among the other challenges, some fields proposed to be collected by the new system require information to be researched in the transaction documents, data fields to be added to current systems, and those data fields populated. Fourth, this calendar year has been historic in terms of stresses on the markets, challenging economic conditions, systemic failures in particular security types and the failures of large firms resulting in a multitude of operational and technological issues beyond those that would occur in a normal development cycle, all which are demanding the immediate attention of the same firm personnel that would need to be redirected to implement this new requirement. For all the reasons stated above, SIFMA requests that this proposed rule change to MSRB Rule G-34 on the SHORT System requirements be delayed until the later of April 1, 2009 or 90 days after the final rule is approved by the SEC.

## II. Maximum and Minimum VRDO Rates Should Not Be Required By SHORT System

### A. Maximum VRDO Rates

As noted in the filing of the proposed rule change, auction rate securities (“ARS”) and variable rate demand obligations (“VRDO”) have different structures and rate setting mechanisms. The rate setting mechanisms for both ARS and VRDO, including maximum rate formulas, are described in the offering documents for these securities. The terms of these securities, by and large, have been negotiated on a bespoke basis for each transaction. SIFMA did develop model ARS documentation that was released in September 2007, but “maximum rate” was a term that was not standardized. No standard VRDO documents exist. SIFMA applauds the MSRB for its efforts in developing the EMMA disclosure system, as it is a convenient free website for investors and other market participants to obtain offering documents which describe the material provisions, including the maximum rate, of each security.

As described above, maximum rate formulas are not standardized. In the ARS context there is an auction agent who is under an obligation to the trustee for that security to not only calculate the auction rate but also the maximum rate.<sup>5</sup> On VRDO issues, the broker dealer, acting as remarketing agent, sets the rate for the interest rate period. Some common maximum rates provisions for VRDO include: (1) an absolute rate, (2) the lesser of an absolute number and

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<sup>5</sup> See “Model Auction Procedures” and “Auction Agency Agreement” at [www.sifma.org/ars](http://www.sifma.org/ars).

the maximum permitted under prevailing law and (3) the maximum rate that could cause the interest to accrue on the bonds to exceed the interest commitment under the liquidity facility for that period. Particularly in this current low interest rate environment when these VRDO are not even close to paying a maximum rate, the administrative burden of calculating and reporting the maximum rate for every reset period is in excess of the theoretical benefits it provides. Specifically, a VRDO with a maximum rate calculation that resembles (3) above and resets daily, would require the broker dealer acting as remarketing agent to have daily communication with the issuer's liquidity bank for that VRDO in order to identify the amount of the available interest commitment for that VRDO, do a calculation every day based on the then outstanding principal amount times the prevailing interest rate, and report that rate to the MSRB by the 6:30 p.m. EST deadline. Calculating such a VRDO maximum rate is made even more difficult by the fact that the remarketing agent is not in privity of contract with the liquidity facility; the liquidity facility is in privity of contract with the trustee and the issuer. Noting there are approximately 18,000<sup>6</sup> outstanding VRDO issues in the marketplace that are serviced by approximately 80<sup>7</sup> remarketing agents, the administrative burdens outweigh the benefits that would be provided, and therefore SIFMA suggests that the provision requiring disclosure of maximum VRDO rates in the proposed rule change should be removed.

#### B. Minimum VRDO Rates

An informal survey of SIFMA members found no evidence of minimum rates in any VRDO transaction. Therefore, SIFMA feels this is a superfluous field which should be eliminated.

#### III. ARS Rate Calculations

As noted above and in the rule proposal, in ARS an independent auction agent calculates the auction rate for the next period, as well as the maximum rate. The broker dealers regulated by the MSRB do not have control over all of the ARS data points being requested, particularly in a multi-program dealer auction; the broker dealers merely receive the auction information from the auction agent. The broker dealers do not calculate the auction rate for the next period or the maximum rate, and are not responsible for doing so under the transaction documents. They also do not necessarily know who the bidding program dealers are in a multi-program dealer auction, the par amount auctioned (less hold orders), or time of the auction, unless and until the information is sent to them by the auction agent. Therefore, SIFMA feels that there should be an

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<sup>6</sup> Thomson Data. As of September 30, 2008, total VRDO outstanding (not including tender option bonds) was \$422,720,700,000.00.

<sup>7</sup> Thomson Data.

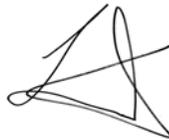
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acknowledgement in Rule G-34 (c)(i) that the broker dealer is only responsible for forwarding the information it has received from the auction agent, that it is not responsible for the accuracy of that data because it may not even have access to the necessary information for determining certain required data points.

#### IV. Conclusion

We appreciate this opportunity to comment on this proposed rule change. 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](mailto: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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cc:    ***Securities and Exchange Commission***  
          Martha Mahan Haines  
      ***Municipal Securities Rulemaking Board***  
          Lynnette Kelly Hotchkiss  
          Ernesto A. Lanza  
      ***Securities Industry and Financial Markets Association***  
          Municipal Executive Committee  
          Municipal Legal Advisory Committee  
          Municipal Syndicate & Trading Committee  
          Municipal Credit Research, Strategy & Analysis Committee  
          Regional Dealer Fixed Income Committee