

September 17, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20540-1090

Re: Response to Comments on File No. SR-MSRB-2012-06

Dear Ms. Murphy:

On June 28, 2012, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change consisting of proposed amendments to MSRB Rule G-34 (on CUSIP Numbers, New Issue, and Market Information Requirements) (the “Proposed Rule Change”). The Proposed Rule Change was published by the Commission for comment in the Federal Register on July 10, 2012, and the Commission received three responses.¹ This letter provides the MSRB’s responses to those comments.

Reporting of Price or Yield Data. The Proposed Rule Change would prohibit a broker, dealer or municipal securities dealer (a “dealer”) from using the designation “NRO” or the term “not re-offered” in any written communication about a new issue of municipal securities without also including the applicable price or yield information, applicable to any such communication occurring from and after the time of initial award² of a new issue of municipal securities.

¹ See Exchange Act Release No. 67344 (July 3, 2012), 77 FR 40668 (July 10, 2012). Comments were received from Government Finance Officers Association (“GFOA”), Shelly Frank (“Frank”) and Arthur Sinkler (“Sinkler”).

² The time of initial award would be the earlier of (A) the Time of Formal Award, or (B) if applicable, the time at which the issuer initially accepts the terms of a new issue of municipal securities subject to subsequent formal award, sometimes referred to as the “verbal award.” The “Time of Formal Award” currently is defined in MSRB Rule G-34(a)(ii)(C)(1)(a) as, “for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution.”

In noting that the Proposed Rule Change would require the underwriter to provide the applicable price or yield information, GFOA stated that yield information should be required, noting that reporting of only “price data requires issuers and investors to calculate the corresponding yield based on the bond’s closing date, redemption provisions and interest rate.”

The MSRB considered whether to require both price and yield information to be provided whenever a dealer uses the designation of “not reoffered” in response to GFOA’s comments on a proposed draft circulated by the MSRB for comment (“Draft Proposal”),³ and acknowledged the value of having both price and yield information available for investors in the MSRB’s filing of the Proposed Rule Change with the Commission. Because certain other MSRB rules generally do not require that both price and yield be reported, requiring both in this particular rule would create an inconsistency that would affect both other MSRB rules and its information systems. The MSRB also noted that it has included significant enhancements to the scope and timing of information through its Electronic Municipal Market Access (EMMA®) system in its Long-Range Plan for Market Transparency Products (the “Long-Range Plan”)⁴ and would consider potential changes necessary to allow both the price and yield to be included on the EMMA website as part of its review of other enhancements.

The MSRB again acknowledges the value of having both price and yield information available for investors but continues to believe that this Proposed Rule Change is not the appropriate venue to incorporate this change. As noted above and further discussed below, concurrent changes to other rules and information systems are needed to require that both items of information be included. Currently, some market information systems, including but not limited to EMMA and systems of certain private sector vendors, provide a single field for providing either price or yield and would need to be reprogrammed to provide separate fields for price and yield both for purposes of submission of information to such systems and for purposes of disseminating such information to subscribers or the general public. Issuers themselves often do not provide both price and yield information in their official statements. Even if the systems used to publish offering scales through private vendors did not face reprogramming issues, it would be inconsistent to require both items of information when underwriters voluntarily provide such information to the public but only one such item when they provide such information under a regulatory requirement, including but not limited to submissions to EMMA in connection with new issue underwritings or, in certain cases, on customer confirmations. Requiring both items of information on voluntary disseminations of offering scales, particularly if some information systems are not ready to process both, may inadvertently result in reduced dissemination of offering scales.

Short of requiring that both price and yield be provided whenever a dealer uses the designation of “not reoffered,” GFOA’s comment could be viewed as suggesting that dealers be required to provide the yield rather than the price of such maturity. Although such an approach would avoid concerns regarding the ability of MSRB and other industry information systems to

³ See MSRB Notice 2012-14 (March 13, 2012).

⁴ See MSRB Notice 2012-06 (February 23, 2012).

receive and process such information, the MSRB's observations regarding the inconsistencies with other MSRB rules and information systems, described above, would also apply in this scenario.

However, either approach described above would not be appropriate in the context of the Proposed Rule Change since either such approach would potentially result in inconsistent information about various maturities being provided to investors as a result of the scope of the Proposed Rule Change. The Proposed Rule Change, as drafted, would require that a dealer include the applicable price or yield only when it uses the term NRO or not reoffered in its communications. The Proposed Rule Change would not apply, for example, to those maturities that are not so designated. The Proposed Rule Change, if revised as contemplated by either of the two approaches described above, could result in communications that would include price or yield information for maturities without the NRO designation, constituting the vast majority of maturities for which information is provided to the marketplace on a day to day basis, while only those maturities designated NRO would be subject to the more stringent information mandate under such potential approaches. The Proposed Rule Change was intended to address only those situations where the term NRO or not reoffered was used, and not situations where the dealer chose not to use such term or designation. The MSRB believes that incorporating the change as suggested would create a narrow and potentially confusing distinction between those maturities that are designated NRO and those that are not.

The MSRB recognizes that a potential third approach to GFOA's comment would be to require that all communications about new issues of municipal securities, when including pricing information, include the applicable yield (either by itself or along with the price), irrespective of the use of the designation NRO. This third approach would significantly expand the scope and intent of the Proposed Rule Change and would require further rulemaking by the MSRB. Rather than withdrawing the Proposed Rule Change at this time to undertake such further rulemaking and to seek further comment from the marketplace prior to potentially filing an expanded proposal, the MSRB believes that it is more appropriate to proceed with the current Proposed Rule Change to address an existing gap in information flow to the marketplace. The MSRB would then consider, as a potential further step, addressing the question of whether a more universal approach to price and yield information for new issues of municipal securities should be undertaken in the context of the MSRB's existing process outlined in the Long-Range Plan, which would allow the MSRB to coordinate this and other changes to its rules and information systems in a more efficient and effective manner.

Timeframe to Submit Pricing Information Should Be Shorter. All of the commenters requested that the Proposed Rule Change be revised to require information about new issue pricing be submitted earlier than currently required by MSRB rules. GFOA, in referring to the current requirement under MSRB Rule G-32 that new issue pricing information be submitted by underwriters to the MSRB by the end of the first day of trading, said that the "end of the day" was too late and that such information should be submitted as promptly as possible. Both Frank and Sinkler said that initial prices or yields information should be made available to retail investors before the pricing was final, so that retail investors would have the opportunity to buy the new issue at the original issue price.

With respect to GFOA's comment, the MSRB notes that the Proposed Rule Change does not address the timing of reporting new issue pricing information to the MSRB (addressed in MSRB Rule G-32 as well as in MSRB Rules G-14 and G-34). The Proposed Rule Change requires a dealer that chooses to distribute written information about the initial prices or yields about a new issue of municipal securities to also include such information for any maturity that it indicates is not reoffered, beginning with the initial award of the issue, but does not establish a timeframe in which dealers must distribute any such information.⁵

With respect to the comments from Frank and Sinkler suggesting that information about new issue pricing be made available prior to final award, the MSRB notes that the Draft Proposal would have required a dealer to include all price or yield information about issues not reoffered in any communication sent by the dealer at any time. As noted in the MSRB's filing of the Proposed Rule Change, one comment to the Draft Proposal noted that such requirement would apply to sealed bids submitted in competitive bid offerings, in violation of submission requirements. Other comments noted that distribution of preliminary price and yield information could result in inaccurate scales being circulated in the marketplace, as well as adversely affect an underwriter's competitive position if it was bidding on comparable issues on the same day. As a result of these comments, the MSRB modified the Draft Proposal to apply to written communications sent by a dealer from and after the time of initial award, reflecting confirmed pricing information rather than potential pricing information.

While the Proposed Rule Change would not require a dealer to distribute information about initial offering prices or yields prior to the initial award, it would not prohibit a dealer from doing so, or from indicating that such information was preliminary or subject to change. Further, as noted above, the scope of the Proposed Rule Change is limited to situations where a dealer designates a maturity as "not reoffered" and was not intended to apply to broader matters relating to dissemination of information on all maturities, to the dissemination of preliminary pricing scales, or to the nature of the audience to which such information is disseminated, any of which would require further rulemaking by the MSRB. Rather than withdrawing the Proposed Rule Change at this time to undertake such further rulemaking and to seek further comment from the marketplace prior to potentially filing an expanded proposal, the MSRB believes that it is more appropriate to proceed with the current Proposed Rule Change to address an existing gap in

⁵ The MSRB agrees, however, with the suggestion that new issue pricing be available sooner than the end of the first day of trading and notes that it is preparing proposed rule changes based on comments received in connection with a recently published request for comment on draft amendments to MSRB Rules G-32 and G-34. These proposed amendments would cause information about new issue pricing to be available on EMMA within two hours of the time of formal award. See MSRB Notice 2012-19 (April 10, 2012).

information flow to the marketplace. The MSRB would then consider, as a potential further step, addressing these comments in the context of existing or potential new rulemaking initiatives.⁶

Distribution of Scales Relating to New Issues of Municipal Securities. Both Sinkler and Frank reported that some firms refuse to send price or yield scales for new issues of municipal securities to investors claiming that their respective firm policies, based on MSRB rules, prohibit the distribution of such information.

The MSRB is not aware of any MSRB rules that would prohibit a dealer from distributing pricing scales to retail investors. The Proposed Rule Change would only prohibit the use of the designation “NRO” or “not re-offered” without also including the applicable price or yield information in written communications from and after the time of initial award. Thus, the distribution of scales including prices or yields for a new issue of municipal securities would be permitted, provided that the communication include such price or yield for any maturities designated as not reoffered. The dealer is free to inform retail investors that certain maturities are not available for sale if that is in fact the case, and as noted above also may indicate that prices or yields are subject to change if dealers have any concerns regarding the potential for such changes.

Other comments by Frank and Sinkler concerning a retail customer’s ability to purchase municipal securities during an initial offering period, and to place an order at the original offering price, are not contemplated by the Proposed Rule Change and are not addressed here. The MSRB will consider addressing these comments as appropriate in any future rulemaking initiatives concerning retail investors.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Karen Du Brul
Associate General Counsel

⁶ For example, the MSRB is currently considering comments received in connection with its request for comment proposing amendments to Rule G-11 addressing certain practices of dealers during a primary offering period. *See, e.g.*, MSRB Notice 2012-13 (March 6, 2012). The proposed amendments to Rule G-11 would require a syndicate manager to provide certain information about retail order periods to syndicate and selling group members, and would require syndicate and selling group members to redistribute such information upon request to others. Comments to the proposed amendments suggested, among other things, that such information also include pricing information about a new issue. The MSRB is considering this and other comments in connection with the proposed amendments to Rule G-11.