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July 18, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number SR-MSRB-2013-05 – Notice of Filing of a Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods

Dear Secretary Murphy:

Thank you for the opportunity to comment on the important topic of the SEC's approval of the proposed changes to the Municipal Securities Rulemaking Board's (MSRB) Rules G-8, G-11 and G-32 related to retail order periods. This is a topic of interest to many of our members, and we support MSRB's efforts to ensure that the terms and conditions set by the issuer in a retail order period are executed correctly by bond dealers.

Members of the Government Finance Officers Association's (GFOA) Governmental Debt Management Committee assisted with the development of these comments, which are similar to those we presented in our correspondence to MSRB on this subject in April and November of 2012. Rules related to retail orders will help implement the MSRB's mission to protect issuers of municipal securities. This can be done by putting into place clear rules for dealers to follow, and more importantly to allow for enforcement measures to occur when rules are violated. While we are generally supportive of the concepts embedded in the proposed changes, there are a couple of areas where we believe the rulemaking could be enhanced, in order to better protect issuers as outlined below.

Definition of "Retail"

We appreciate the MSRB's discussion and decision allowing the issuer to be the party responsible for establishing terms and conditions and order priority provisions. An issuer should provide this information to the dealer in writing, who will then distribute the information accordingly to syndicate managers. However, we think that the MSRB can do more to help protect issuers by developing a non-binding definition of the term "retail order". Many issuers would benefit from a baseline definition of "retail order" within the Rule that they can rely upon or alter to meet their specific needs. This is especially true in those instances where issuers may not have the experience to develop their own definition of a retail order, and this often occurs when an issuer chooses not to engage the services of a financial advisor. Setting a baseline definition, but not requiring its use, would go a long way to give issuers a starting point, so that they do not have to completely rely on dealers, who do not have a fiduciary duty to the issuer. While the GFOA recommends that issuers do engage the services of a financial advisor, many issuers may not do so, and having the MSRB establish a safety net (so to speak) by developing a definition of a retail order would be very helpful. The MSRB's plan to develop educational materials is

certainly positive, but we believe the Board should go a step further and develop – but not require – the definition be used or have it implicated as a *de facto* standard within the rule.

Definition of “Retail Order Period”

Also, the GFOA recommends that the definition of “retail order period” be amended to read as follows: The term “retail order period” means an order period during which *bona fide* customer orders that meet the issuer’s designated eligibility criteria for retail orders will either be: (i) the only orders solicited or (ii) given priority over other orders. We make this recommendation for three reasons:

First, the MSRB’s proposed definition of “going away orders” is not consistent with the commonly accepted meaning of the term to issuers. Many issuers’ terms for retail order periods are designed to have the bonds purchased during the retail order period by ultimate investors, rather than intermediate investors who will sell them quickly and affect the secondary market pricing of the issuers’ securities even prior to closing. They want the bonds to “go away” to ultimate investors, who are unlikely to trade them, at least not quickly. The MSRB’s definition of “going away orders” would suffice to eliminate orders for dealer inventory (or “stock”) during a retail order period, but it would not eliminate sales to intermediate investors. The definition of “going away orders” was developed in the context of the MSRB’s “priority of orders” proposal and is workable for distinguishing customer orders from dealer orders. However, it does not adequately identify those customer orders that are from ultimate investors. GFOA suggests that the use of the term “*bona fide*,” which is commonly understood to mean “real” or “genuine,” more appropriately addresses the concern that issuers’ directions concerning retail orders are being ignored.

Second, without the addition of the words “for retail order” after the words “the issuer’s designated eligibility criteria” in the definition of “retail order period,” the definition could actually apply to order periods in which only institutional orders are solicited, which does not appear to have been intended.

Third, many issuers conduct order periods in which both retail and institutional investors are allowed to place orders but retail orders are given priority. This is especially true in the case of issuers whose bond issues are not large in size. GFOA believes that all issuers deserve the benefits of the MSRB’s proposed rule changes. Indeed, smaller issuers may be more in need of these protections than larger issuers.

Representations by Dealers

In view of our comments above, we suggest that changes be made to the MSRB’s proposed Rule G-11(k). Specifically, the words “designated as retail” should be added near the end of the first sentence of proposed Rule G-11(k) as follows to take into account that “retail” orders may not be the only orders permitted during the order period:

“(k) Retail Order Period Representations and Required Disclosures. From the end of the retail order period but no later than the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)), each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide, in writing, which may be electronic (including, but not limited to, an electronic order entry system), the following information relating to each order designated as “retail” submitted during a retail order period:”

“Going Away” Orders

For the reasons stated above, we recommend that all references in the proposal to “going away orders” be deleted. These references include: (i) the definition of “retail order period” in proposed Rule G-

11(a)(vii), (ii) the definition of “going away order” in proposed Rule G-11(a)(xii), and (iii) proposed Rule G-11(k)(ii). We recommend that, in lieu of the term “going away,” the term “*bona fide*” be used.

Implementation Timeline

The GFOA supports the proposed implementation timeline for the revisions to Rules G-11, G-8 and G-32.

Thank you again for the opportunity to comment on SEC Notice SR-MSRB-2013-05.

Sincerely,

A handwritten signature in blue ink that reads "Dustin McDonald". The signature is written in a cursive, flowing style.

Dustin McDonald
Director, Federal Liaison Center