

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58998; File No. SR-MSRB-2008-07)

November 21, 2008

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, to Establish a Transparency System for Municipal Auction Rate Securities and Municipal Variable Rate Demand Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 18, 2008, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change 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 a proposed rule change to establish a transparency system for municipal Auction Rate Securities (“ARS”) and municipal Variable Rate Demand Obligations (“VRDO”). The proposed rule change would: (i) implement an electronic system that would collect and disseminate ARS and VRDO information (the “Short-term Obligation Rate Transparency System Proposal”); (ii) provide free public access to information disseminated from the Short-term Obligation Rate Transparency (“SHORT”) System through the MSRB’s Electronic Municipal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Market Access (EMMA) system (the “EMMA short-term obligation rate transparency service”); and (iii) amend Rule G-34, on CUSIP numbers and new issue requirements, to require brokers, dealers and municipal securities dealers (collectively “dealers”) to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset (the “rule change proposal”).

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 variable rate transparency service, would be available on the MSRB Web site at www.msrb.org/msrb1/rulesandforms under the heading Information Facilities.

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

The proposed rule change would increase the amount of information available to market participants for municipal ARS and VRDO by: (i) implementing the Short-term

Obligation Rate Transparency System (“SHORT” System) to collect and disseminate information about securities bearing interest at short-term rates; (ii) providing free public access to information disseminated from the SHORT System through EMMA; and (iii) amending Rule G-34 to require dealers to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset.

BACKGROUND

In recent years, there has been a growing market in municipal securities with long-term maturity dates and short-term (nine months or under) interest rate reset periods. ARS and VRDO comprise most of the securities in this sector. ARS and VRDO are similar in that they both are long-term securities with short-term interest rates. In both types of securities, interest rates are reset periodically through programs operated by dealers on behalf of the issuers of the securities.

VRDO Remarketing Process

VRDO are distinguished by the existence of a “put” or “tender” feature that allows holders to tender their securities back to an issuer-appointed representative, at par, on a periodic basis. VRDO normally operate with a letter of credit or stand-by bond purchase agreement designed to ensure liquidity. Interest rates typically are reset by a dealer serving as the “Remarketing Agent” for the issue at a rate that allows the securities to be sold at par.

ARS Auction Process

ARS are distinguished by the auction process that is used to reset interest rates. ARS are not characterized by, and generally do not have, put features or liquidity

facilities. Although the auction process is designed to allow holders normally to sell their positions at par value during any auction, it is possible for auctions to fail, in which case holders are not able to liquidate their positions at par.

The auction methodology used in ARS is a type similar to a “Dutch auction.” An auction program employs one or more dealers (“ARS Program Dealers”)³ that solicit orders from investors who wish to own the securities over the next interest rate reset period. Typical interest rate reset periods are 7, 28, and 35 days. The programs require one “ARS Auction Agent” – typically a bank – that receives orders from the ARS Program Dealer(s) and conducts auctions in accordance with the method described in program documents. The ARS Auction Agent provides the results of the auction to the ARS Program Dealer(s), which then inform their bidders of the auction results and the securities, if any, that have been allocated to them as a result of the auction.

The auction method specified in program documents for ARS takes into consideration the total quantity of orders received in each order category specified in ARS documents. Typical order categories include:

- Existing holders that want to hold at any rate decided by the auction;
- Potential investors bidding to purchase a specified amount of securities by stating minimum acceptable interest rates;
- Existing holders that want to hold, but only if the auction produces a rate equal to or greater than one that the existing holder specifies; and
- Existing holders that want to sell a specified amount.

³ The ARS Program Dealer(s) is so designated through an agreement with an Auction Agent and the issuer of or other obligated person with respect to the Auction Rate Security.

Using order information that must be submitted by an ARS Program Dealer(s) before the auction deadline, the ARS Auction Agent employs an algorithm to determine the lowest interest rate at which all of the securities that have been offered for sale by current holders of the securities will clear the market (the “clearing rate”). The clearing rate then becomes the interest rate for all of the securities in the issue for the next interest rate reset period.

ARS also have provisions that address situations that may occur if no clearing rate can be determined through the normal auction process. For example, if all existing holders want to hold at any rate, then an “all hold rate” is used. The all hold rate is usually a multiple of a market index and is designed to be lower than the rate that normally would be expected as a clearing rate. Conversely, auctions also can “fail” if the auction agent does not receive enough bids to cover the aggregate amount of securities that need to be sold, or if the clearing rate is above a “maximum rate” set in the program documents. In a failed auction, all existing holders hold their securities and the rate for the next interest rate reset period is set to the “maximum rate.” Like the all hold rate, the maximum rate may be a multiple of a specified index. However, it is normally designed to be a rate higher than the rate that would normally be expected in a successful auction.

Existing Price Transparency Issues

As “short-term” securities under Rule G-14 on transaction reporting, both ARS and VRDO are subject to slightly different reporting requirements than other securities. In 2003, the MSRB proposed rules for a Real-Time Transaction Reporting System (RTRS), including a requirement to report trades no later than fifteen minutes after the time of trade execution, and, for customer transactions, a requirement that the trade report

include both a dollar price and yield.⁴ In response, the MSRB received comments from dealers that, because of the special trade processing methodologies for short-term variable rate securities, it would be difficult or impossible to meet these requirements for such securities. Based on these concerns, the MSRB included special provisions that provide dealers with an end-of-day exception from the fifteen-minute reporting deadline and allows dealers to report customer transactions in variable rate securities without yield.

Since transactions in short-term variable rate securities normally are executed at a dollar price of par and the current interest rate for such variable securities are not included in the data sources used by RTRS and the municipal securities industry in general, the lack of yield means that RTRS does not currently provide a means by which to determine the return on an investment in these securities. The MSRB was aware of this in 2003 when it decided to provide the special variable rate securities provisions, noting:

The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for short-term rates that are being set...in variable rate and auction products.⁵

The MSRB has continued to consider the availability of this information through existing data sources and is not aware of any ready source of interest rate reset

⁴ Inter-dealer trade reports, in general, are not required to include yield.

⁵ See Real-Time Transaction Reporting: Revised Schedule and Operational Plan, MSRB Notice 2003-44 (December 11, 2003).

information available to retail investors or, in some cases, to market participants in general about ARS and VRDO.

Recent Market for ARS and VRDO

Since early 2008, downgrades of municipal bond insurers and other short-term liquidity concerns have created extreme volatility in the market for ARS. This has resulted in an unprecedented number of “failed auctions,” meaning that investors who chose to liquidate positions through the auction process were not able to do so. As a result of the volatility in the market for ARS, there has been increased interest in the market for VRDO by both issuers and investors. At the same time, the extreme turmoil in the financial markets has resulted in considerable pressures on the supply of liquidity facilities for the VRDO market and, consequently, much higher levels of rate volatility. Given these developments in the market for VRDO, the MSRB has concerns about the lack of information available to market participants on VRDO similar to those concerns with respect to ARS.

DESCRIPTION OF THE SHORT SYSTEM

To increase the information available about ARS and VRDO, the proposed rule change would implement the Short-term Obligation Rate Transparency System for the collection and dissemination of information about ARS and VRDO. The SHORT System will receive submissions of information about ARS and VRDO under the proposed amendments to Rule G-34. Information submitted to the SHORT System will be processed upon receipt and disseminated in real-time.

Submissions to the SHORT System

Information to be Submitted. The basic items of information proposed to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under the proposed amendments to Rule G-34. The complete list of data elements that would be required on a submission to the SHORT System will be made available in input specifications and system procedures made available on www.msrb.org.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-protected accounts in MSRB Gateway.⁶

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.

Dealers may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. Such Designated Agents must register to obtain password-protected accounts through MSRB Gateway in order to make submissions on behalf of the designating dealers. All actions taken by a

⁶ MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System would be 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. See MSRB Gateway Roll Out and Training, MSRB Notice 2008-43 (October 15, 2008).

Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

The MSRB anticipates that a majority of ARS information will be submitted by ARS Auction Agents. ARS Auction Agents would be allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. In the event that an ARS Auction Agent submits information about an auction to the SHORT System, an ARS Program Dealer would not also be required to submit information provided that the ARS Program Dealer has been correctly identified on the submission by the ARS Auction Agent. In the event that an ARS Auction Agent fails to submit information about an ARS auction, the ARS Program Dealer is required to submit the required information about the auction to the SHORT System.⁷

Timing of Submissions. Submitters shall make submissions to the SHORT System within the timeframes set forth in MSRB rules. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G-14 RTRS Procedures section (d)(ii), 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. The MSRB shall provide 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.

⁷ In the event that an ARS Auction Agent fails to submit information about an ARS auction and multiple ARS Program Dealers are required to submit information, each ARS Program Dealer would be responsible for ensuring that the required information is provided in a timely manner.

Method of Submission. Information 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. Computer-to-computer submissions utilize XML files. Appropriate schemas and procedures for web-based and computer-to-computer submissions will be included in input specifications and system procedures made available on www.msrb.org.

SHORT System Processing

The SHORT System would perform various data checks to ensure that information submitted is in the correct format. In addition, data checks would be 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. The MSRB expects to institute the following processes, which are subject to modification, addition and deletion as appropriate.

Measurement of Timely Submission. The time of receipt of a submission will be recorded by the SHORT System and compared with the submitting deadline (e.g., 6:30 P.M. Eastern Time on the day an interest reset occurs for a VRDO). Submissions not received by the appropriate deadline will be considered late.

Format Edits. Each submission will be reviewed to verify that its format is correct. This involves checking various required data elements to ensure that they are present in the correct form (e.g., dates are in date format) and with the correct number of

digits or characters. Submissions that fail these edits will not be processed further. Input from web-based screens will be checked before information is transferred from the submitters personal computer to the SHORT System.

Submitter Validation. The SHORT System will accept information only from parties known to the MSRB. In addition, information submitted by a Designated Agent on behalf of a dealer or ARS Auction Agent will only be accepted if such dealer or ARS Auction Agent for whom the Designated Agent is submitting information has previously been so designated by the dealer or ARS Auction Agent.

Content Edits. The values in submissions of data to the SHORT System will be checked to determine that they are within reasonable limits, in order to detect input errors. Any errors or possible errors found will be noted and an error message describing the deficiency will be returned to the submitter.

Feedback. All submissions processed by the SHORT System will generate an acknowledgement or error message. In addition, all dealers that have information submitted on their behalf by either an ARS Auction Agent or a Designated Agent will be able to monitor such information submissions in real-time, once such submissions have been successfully processed by the SHORT System.

SHORT System Data Dissemination

Information submitted to the SHORT System that passes the format edits described above will be processed and disseminated on a real-time basis. Any changes to submissions also will be processed and updated information will be disseminated in real-time. Such information will be disseminated through the EMMA portal. The MSRB also

anticipates providing a subscription service for the information provided through the SHORT System pursuant to a future filing with the Commission.

DESCRIPTION OF THE RULE CHANGE PROPOSAL

The proposed rule change would amend Rule G-34, on CUSIP numbers and new issue requirements, to require that information about ARS and VRDO is submitted to the SHORT System following an ARS auction or VRDO interest rate reset. The MSRB proposes a January 30, 2009 effective date for the proposed rule change.

Amendments to Rule G-34 Relating to ARS

The proposed rule change would require an ARS Program Dealer to report (either directly or through a Designated Agent), or ensure that an ARS Auction Agent reports, the information below to the SHORT System by no later than 6:30 P.M. Eastern Time on the day that an auction occurs.⁸ The information required to be provided to the MSRB about an ARS includes:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;

⁸ The 6:30 P.M. Eastern Time deadline only applies on those ARS auctions and VRDO interest rate resets that occur on an RTRS Business Day, as defined in Rule G-14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur on non-RTRS Business Days would be required to be submitted to the SHORT System by no later than 6:30 P.M. Eastern Time on the next RTRS Business Day. The MSRB plans to review the appropriateness of the 6:30 PM Eastern Time deadline once experience with the SHORT System and associated MSRB rules has been obtained with a view toward advancing the timing of the requirement to submit information to the SHORT System.

- Date and time of the auction;
- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the clearing rate is a “maximum rate,” an “all hold rate,” or “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;⁹ and
- Par amount auctioned, not including hold orders effective at any rate.

Amendments to Rule G-34 Relating to VRDO

The proposed rule change would require a dealer that acts as a Remarketing Agent for a VRDO to report (either directly or through a Designated Agent) to the SHORT System the following items of information about a VRDO by no later than 6:30 P.M. Eastern Time on the day that an interest rate reset occurs:¹⁰

- 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;

⁹ If a minimum or maximum rate is unable to be determined on the day that an ARS auction or VRDO interest rate reset occurs, for example because the maximum rate for an ARS is determined through a clawback provision, the submitter would be required to report that the maximum rate is not calculable. This exception does not apply to maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such maximum rates would be required to be computed and provided to the MSRB.

¹⁰ See supra note 8.

- Length of Notification Period;
- Indicate 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;¹¹
- Minimum denomination;
- Type of liquidity facility(ies);¹² and
- Expiration date of each liquidity facility.

DESCRIPTION OF THE EMMA SHORT-TERM OBLIGATION RATE

TRANSPARENCY SERVICE

The EMMA short-term obligation rate transparency service would make the information disseminated from the SHORT System publicly available, at no charge, on the MSRB’s EMMA portal. The EMMA short-term obligation rate transparency service would provide free public access to the information about ARS and VRDO that would be provided to the MSRB under the amendments to Rule G-34.

As proposed, EMMA would provide on-line search functions to enable users to readily access information about ARS and VRDO based on a broad range of search parameters. The MSRB would not be responsible for the content of the information submitted by submitters to the SHORT System displayed on the EMMA portal.

¹¹ See supra note 9.

¹² An indication of whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement would be required to be submitted to the SHORT System.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹³ which provides that the MSRB's rules shall:

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 ARS and VRDO. The proposed rule change would provide greater access to information about 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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

¹³ 15 U.S.C. 78o-4(b)(2)(C).

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

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS (“March ARS Notice”)¹⁴ and on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDO (“May VRDO Notice”).¹⁵ These notices, the comments received, and the MSRB’s responses are discussed below.

March ARS Notice

The March ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The proposed plan would require ARS Program Dealers to report the following information to a central system operated by the MSRB on the day that an auction occurs:

ARS Interest Rate and Descriptive Information

- CUSIP number
- Name of Program Dealer(s)
- Number of days of the reset period
- Minimum denomination
- Date and time of the auction
- Interest rate for the next reset period

¹⁴ See MSRB Notice 2008-15 (March 17, 2008).

¹⁵ See MSRB Notice 2008-24 (May 23, 2008).

- Indication of whether the clearing rate is a “maximum rate,” an “all hold rate,” or “set by auction”
- Dollar amount of securities auctioned

ARS Bidding Information

- Number of bidders
- Par amount of securities for sale in the auction
- Number and aggregate dollar amount of bids made
- Number of bidders other than the Program Dealer(s), issuer or conduit borrower
- Number, interest rate(s) and amount of bids by a Program Dealer for its own account
- Number, interest rate(s) and amount of bids by issuer or conduit borrower
- Par amount of securities allocated to bids at clearing rate
- High bid
- Low bid
- Median bid

In addition to the information listed above, the March ARS Notice also proposed collecting documents concerning ARS that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD).

May VRDO Notice

The May VRDO Notice proposed a plan to collect and disseminate critical market information about VRDO using the same system proposed in the March ARS Notice.

Under the plan proposed in the May VRDO Notice, dealers that act as Remarketing

Agents would be required to report the following information about a VRDO by the end of the day on which an interest rate reset occurs:

VRDO Interest Rate and Descriptive Information

- CUSIP number
- Name of Remarketing Agent
- Date of interest rate reset
- Interest rate for the next reset period
- Length of the interest rate reset period
- Length of Notification Period
- Whether interest rate is “set by formula” or “set by Remarketing Agent”
- Minimum and maximum rates, if any
- Minimum denomination
- Type of liquidity facility(ies)
- Expiration date of each liquidity facility

In addition to the specific items of information listed above, the May VRDO Notice also proposed collecting documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, such as the letter of credit or standby bond purchase agreement.

Discussion of Comments

The MSRB received comments on the March ARS Notice from seven commentators¹⁶ and on the May VRDO Notice from nine commentators.¹⁷ After

¹⁶ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC (“DAC”) to Justin Pica, dated April 21, 2008; Jack B. McPherson to Mr. Pica, dated March 27, 2008; Mikag@cox.net to Mr. Pica, e-

reviewing these comments, the MSRB approved a phased-in approach to collecting the information and documents identified in the March ARS Notice and May VRDO Notice. This first phase of this approach includes the collection of ARS and VRDO interest rate and descriptive information, listed above. The principal comments concerning the collection of ARS and VRDO interest rate and descriptive information are discussed below.¹⁸

Support for MSRB Plan to Increase Information Available for ARS and VRDO

In response to the March ARS Notice, commentators generally stated support for the creation of a system to increase the information available on ARS. SIFMA “fully supports the development by the MSRB of a system to display auction information on a website.” RBDA stated that “the MSRB’s proposal...represents a reasonable response to

mail dated April 23, 2008; Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association (“RBDA”) to Mr. Pica, dated April 21, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners, LLC (“Saber Partners”) to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) to Mr. Pica, dated April 21, 2008; and, Jeff Yankauer to Mr. Pica, e-mail dated April 17, 2008.

¹⁷ See letters from Ms. Stuart, DAC, to Mr. Pica, dated July 1, 2008; Daniel Thieke, Vice President, Depository Trust and Clearing Corporation (“DTCC”) to Mr. Pica, dated June 26, 2008; Christine Walsh, Managing Director, Merrill Lynch to Mr. Pica, dated June 26, 2008; S. Lauren Heyne, Chief Compliance Officer, RW Smith and Associates, Inc. (“RW Smith”) to Mr. Pica, dated June 30, 2008; Mr. Fichera, Saber Partners, to Mr. Pica, dated July 9, 2008; Ms. Norwood, SIFMA, to Mr. Pica, dated June 30, 2008; Dara L. Smith, Managing Director, SunTrust Robinson Humphrey (“SunTrust”) to Mr. Pica, dated June 27, 2008; Joseph A. Whitehead, Thornton Farish Inc. (“Thornton Farish”) to Mr. Pica, dated June 30, 2008; and, Belle Walker, Senior Vice President, W.R. Taylor and Company, LLC (“W.R. Taylor”) to Mr. Pica, dated August 7, 2008.

¹⁸ Future phases may include the collection and dissemination of the other information and documents identified in the March ARS Notice and May VRDO Notice. Comments relating to the collection and dissemination of such information and documents will be discussed in connection with the future filings of relevant proposed rule changes with the SEC.

the problem of a lack of transparency regarding the conduct of auctions in the [municipal ARS] market.” However, RBDA stated that “since the downturn in [ARS], the market for [ARS] has shrunk significantly” and that “if the [ARS] continues to shrink, ... [RBDA] believe[s] the MSRB’s and dealers’ resources would be more productively directed to other initiatives.” The MSRB agrees with RBDA’s view that the amount of information that could be collected in any new information system must be balanced with the cost of system development and in review of comments on the March ARS Notice, the question of increased transparency for VRDO surfaced. Accordingly, the MSRB published the May VRDO Notice.

In response to the May VRDO Notice, commentators also stated support for increasing the information available about VRDO using the same system proposed in the March ARS Notice. SIFMA “fully supports the development by the MSRB of a system to display remarketing information on a website.” RW Smith “believes the most effective way to ensure efficient, liquid markets is through timely distribution of security data, market pricing and transaction information.” Thornton Farish stated “the transparency and communication of appropriate information for [VRDO] should be a priority of [the] MSRB.” One commentator, W.R. Taylor, opposed the proposed requirement for VRDO Remarketing Agents to report information to an MSRB system following a VRDO interest rate reset.

Information Proposed to be Collected and Disseminated

In response to the ARS interest rate and descriptive information proposed to be collected in the March ARS Notice, Mr. Yankauer stated that he is “in agreement that all

of the proposed items...should be disclosed.”¹⁹ Mr. Yankaur suggested that the MSRB collect information on how ARS maximum rates are computed. While the MSRB agrees that such information would be of value, the MSRB has instead included in the ARS interest rate and descriptive information required to be submitted to the MSRB the current computation of the maximum rate, when such value is able to be computed. SIFMA stated that it agrees with the items proposed for collection, but recommended a phased-in approach that initially only includes the collection of ARS interest rate and descriptive information. SIFMA states that this would allow the system to be brought up as quickly as possible.

In response to the May VRDO Notice, SunTrust stated that the items of information proposed to be collected and disseminated about VRDOs are appropriate and that there are no additional items of information that should be added to the list of information. SIFMA “considers the ... information proposed to be collected and disseminated to be appropriate.”²⁰

Information Collection Methodology

DTCC, in commenting on the May VRDO Notice, proposed that its New Issue Information Dissemination System (NIIDS) could be used as a mechanism for reporting

¹⁹ Mr. Yankauer further suggested that the MSRB collect information about whether an auction for a specific security has ever failed and the date of the most recent failure. While the MSRB believes that such information would be useful to market participants, the MSRB decided to not require Program Dealers to provide historical information about an ARS. The MSRB notes that on a prospective basis, such information would be available to market participants.

²⁰ Thornton Farish suggests that remarketing agents that market VRDOs solely to institutional investors should be exempt from a proposed rule to report information about the VRDO. However, the MSRB believes it is important that the information available on VRDOs be comprehensive.

information about VRDOs to the MSRB. DTCC stated that since NIIDS “contains many of the sought-after data elements for [VRDOs], there would be a limited amount of system modifications needed to support this initiative.” While NIIDS is designed to receive and disseminate many of the items of information listed in the May VRDO Notice, the MSRB notes that modifications to NIIDS would be needed to receive the ARS interest rate and descriptive information. Further, NIIDS is only currently designed to receive and disseminate information about new issues of municipal securities.

The MSRB believes that the amount of changes to NIIDS to support the collection and dissemination of ARS information and to receive information from dealers on an ongoing basis would not be insignificant. Since underwriters of new issues of VRDOs would be required to input many of the items of information to NIIDS in connection with filing an application for depository eligibility, the MSRB will work with DTCC to see if such data could, in the future, serve as a “template” for Remarketing Agents to minimize the amount of information that would need to be provided to the MSRB in connection with a VRDO interest rate reset under the proposed rule change.

RW Smith and SunTrust stated that Remarketing Agents typically communicate information about VRDOs to information vendors and SunTrust suggested that if a Remarketing Agent can designate an information vendor for purposes of submitting information to the MSRB, “then the impact to the remarketing agent will be minimal.” The MSRB notes that dealers would be able to designate agents, including information vendors, for purposes of submitting information to the MSRB on a dealer’s behalf.

Allocations of Responsibilities Among ARS Program Dealers

Some ARS programs employ multiple Program Dealers. SIFMA noted that unlike in an underwriting of municipal securities where a lead underwriter executes a bond purchase agreement on behalf of all underwriters, “there is generally no ‘lead’ Program Dealer specifically designated as such in programs involving multiple Program Dealers.” SIFMA recommended that when more than one Program Dealer exists in an auction program, the Program Dealers should designate one Program Dealer “to act as ‘manager’ for all Program Dealers for purposes of compliance with the proposed rule.”

The MSRB anticipates that ARS Auction Agents would submit information on behalf of all Program Dealers for those securities that have multiple Program Dealers. The MSRB acknowledges that having multiple submission of identical information by separate dealers would not be efficient and could result in data discrepancies. In the event that an Auction Agent does not submit information on behalf of ARS Program Dealers, dealers would be able to designate agents for purposes of reporting information to the MSRB and in this case, Program Dealers would be able to designate a “lead” Program Dealer to report information to the MSRB or a third party, such as a vendor, to report information on behalf of all Program Dealers connected with an ARS.²¹

Deadline for Submission of Information

Both the March ARS Notice and May VRDO Notice proposed requiring ARS Program Dealers and VRDO Remarketing Agents to submit interest rate information on the day that an ARS auction or a VRDO rate reset occurs. Several commentators suggested an end-of-day submission deadline and SIFMA recommended that the deadline should be the same as the deadline under MSRB Rule G-14, on transaction reporting, for

²¹ See supra note 7.

reporting transactions in short-term securities to the MSRB Real-Time Transaction Reporting System. The MSRB agrees with these commentators that an “end-of-day” deadline for reporting information to the MSRB should coincide with the end-of-day in MSRB rules on transaction reporting and has included a 6:30 P.M. Eastern Time deadline for submitting ARS and VRDO information to the MSRB in the proposed rule change.

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
- 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 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-2008-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2008-07. 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, 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2008-07 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.²²

Florence E. Harmon
Acting Secretary

²² 17 CFR 200.30-3(a)(12).