

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61793; File No. SR-MSRB-2010-02)

March 26, 2010

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 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

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 March 10, 2010, 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 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 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 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 submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

ARS and liquidity facilities for VRDOs (“short-term obligation document disclosure rule change”); (b) ARS bidding information (“ARS bidding information rule change”); and (c) additional VRDO information (“VRDO information rule change”) (collectively, the “rule change proposal”); (ii) amend the MSRB Short-term Obligation Rate Transparency (“SHORT”) System Facility to collect and disseminate 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 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. 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 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 submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs; (b) ARS bidding information; and (c) additional VRDO information (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.³

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 Dealers⁴ 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

³ 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.

⁴ 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.

reset to the SHORT System.⁵ 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 collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") Web site.⁶ 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;"

⁵ See Securities Exchange Act Release No. 34-59212, January 7, 2009 (File No. SR-MSRB-2008-07).

⁶ 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."

- 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;⁷ and
- 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;⁸
- Minimum denomination;

⁷ 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 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.

⁸ Id.

- Type of liquidity facility(ies);⁹ and
- Expiration date of each liquidity facility.

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.¹⁰ 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

The proposed rule change would require each ARS Program Dealer to report to the SHORT System an electronic document containing “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

⁹ Dealers are required to submit to the SHORT System whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement.

¹⁰ In the future, the MSRB also plans to make all information collected under the rule change proposal available on a subscription basis.

ARS Program Dealer would be required to report to the SHORT System are listed below.

All items would be required to be reported within the same timeframe as the ARS interest rate and descriptive information currently required to be reported under Rule G-34(c).

The ARS bidding information document 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.

Additional VRDO Information

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 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. A complete list of the specific items of additional VRDO information a VRDO Remarketing Agent would be required to report to the SHORT System under the proposed rule change are listed below.

- Effective date that the interest rate reset is applicable;
- 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;¹¹

¹¹ 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.”

- 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
- 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.

ARS and VRDO Documents

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 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 document¹² 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 one business day of receipt.

¹² The proposed rule change would require dealers to keep records for a period of three years of all best efforts undertaken to obtain documents for existing VRDO issues. Such records of best efforts would include, for example, all written requests for documents to and any responses from an issuer or liquidity provider.

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.

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

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 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 amendment to this service 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.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to 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 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

¹³ 15 U.S.C. 78o-4(b)(2)(C).

The MSRB does not believe the proposed rule change will 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

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS (“March 2008 ARS Notice”),¹⁴ on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDOs (“May 2008 VRDO Notice”),¹⁵ and on July 14, 2009 the MSRB requested comment on the draft amendments to Rule G-34(c) (“July 2009 Notice”).¹⁶ These notices, the comments received, and the MSRB’s responses are discussed below.

March 2008 ARS Notice

The March 2008 ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The March 2008 ARS Notice proposed the collection and dissemination of the current interest rate and certain descriptive information for ARS programs, bidding information detailing the orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction (“ARS bidding information”) and documents concerning ARS that were not required to be filed with the MSRB under former Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD).

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

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

¹⁶ See MSRB Notice 2009-43 (July 14, 2009).

May 2008 VRDO Notice

The May 2008 VRDO Notice proposed a plan to collect and disseminate critical market information about VRDOs using the same system proposed in the March 2008 ARS Notice for ARS. The May 2008 VRDO Notice proposed collecting and disseminating the current interest rate and certain descriptive information for VRDOs and documents concerning VRDOs that were not required to be filed with the MSRB under former Rule G-36, such as the letter of credit or standby bond purchase agreement.

July 2009 Notice

The July 2009 Notice requested comment on draft amendments to Rule G-34(c). The draft amendments would require ARS Program Dealers to report ARS bidding information and VRDO Remarketing Agents to report additional descriptive information about VRDOs to the MSRB Short-term Obligation Rate Transparency (“SHORT”) System. The draft amendments also would require ARS Program Dealers and VRDO Remarketing Agents to submit ARS documents defining current auction procedures and interest rate setting mechanisms and VRDO liquidity facility documents, including current Letters of Credit and Stand-by Bond Purchase Agreements (collectively “short-term obligation documents”). For existing ARS and VRDOs, the draft amendments would require dealers to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft amendments and on an ongoing basis dealers would be required to provide any new or amended versions of these documents within one business day of receipt.

DISCUSSION OF COMMENTS

The MSRB received comments on the March 2008 ARS Notice from seven commentators,¹⁷ on the May 2008 VRDO Notice from nine commentators,¹⁸ and on the July 2009 Notice from five commentators.¹⁹ After reviewing the comments on the March 2008 ARS Notice and May 2008 VRDO Notice, the MSRB approved a phased-in approach to the collection and dissemination of ARS and VRDO information and

¹⁷ 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-mail dated April 23, 2008; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, 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.

¹⁸ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC (“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; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, 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.

¹⁹ See letters from Patricia W. Wilson, Senior Managing Director Global Alternatives, Allstate Investments, LLC (“Allstate”) to Mr. Pica, dated September 1, 2009; Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc. to Mr. Pica, dated September 1, 2009; Carl Giles, Managing Director Capital Markets, First Southwest Company (“First Southwest”) to Mr. Pica, dated August 31, 2009; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, RBDA to Mr. Pica, dated September 1, 2009; and Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated September 1, 2009.

documents. The first phase of this approach included changes to MSRB Rule G-34 to require dealers to report ARS and VRDO interest rate and descriptive information to the MSRB and implementation of the SHORT System, which became effective on January 30, 2009 for ARS and April 1, 2009 for VRDOs.²⁰ The principal comments of the March 2008 ARS Notice, May 2008 VRDO Notice and July 2009 Notice concerning the collection of ARS bidding information, additional VRDO descriptive information and short-term obligation disclosure documents are discussed below.

Additional VRDO Data

The draft amendments in the July 2009 Notice identified items of 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 proposed included:

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider;
- Par amount, if any, held by VRDO Remarketing Agent, at time of interest rate reset;
- Par amount, if any, held by a liquidity facility (“Bank Bond”) at time of interest rate reset and interest rate paid to the liquidity provider; and

²⁰ See Securities Exchange Act Release No. 59212, January 7, 2009 (File No. SR-MSRB-2008-07). The principal comments of the March ARS Notice and May VRDO Notice concerning the collection of ARS and VRDO interest rate and descriptive information as well as the implementation of the SHORT System were discussed in File No. SR-MSRB-2008-07.

- Par amount, if any, held by a party other than the Remarketing Agent or as a Bank Bond.

In response to July 2009 Notice, First Southwest and SIFMA stated concerns relating to the draft amendment's requirement to report the additional VRDO information to the SHORT System, which are primarily focused on whether a VRDO Remarketing Agent would be able to obtain and report accurate information for several of the additional items of VRDO information. For example, with respect to reporting the identity of the Tender Agent and liquidity provider, First Southwest stated that it would be "difficult and burdensome to be required to be continually updating [this] information, which can and does change frequently, between two parties where [the VRDO Remarketing Agent] has no legal standing and should be the responsibility of the bank or tender agent that is party to those transactions." However, RBDA generally supported the additional items of VRDO information and stated that "the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments" but acknowledged that "Remarketing Agents may not have ready access to all of the information ... proposed to be submitted ... [and] would support other reasonable initiatives to achieve the ends outlined in the [July 2009 Notice]...."

The MSRB believes that information concerning the identity of the Tender Agent and liquidity provider is material to market participants and, in particular, investors of VRDOs. With respect to Tender Agents, the July 2009 Notice also solicited comment on whether a VRDO Remarketing Agent could also provide the contact information for the Tender Agent and the MSRB believes some of the concerns stated by SIFMA about providing the identity of the Tender Agent were focused on challenges in obtaining and

keeping current contact information for the Tender Agent. MSRB acknowledges that it may be difficult to obtain and keep current contact information for a Tender Agent, particularly for smaller Tender Agents that use the name and contact information for an individual instead of a division within a company for submitting tender requests, but the MSRB believes that a basic requirement to provide the identity of the Tender Agent is reasonable and that it is important that investors be able to have access to the identity of the Tender Agent to facilitate an investor tendering its position in VRDOs.

In response to the July 2009 Notice proposal to require reporting of the par amounts of a VRDO held as a Bank Bond, by the VRDO Remarketing Agent and by investors at the time of the interest rate reset, SIFMA stated that making such information transparent “would be detrimental to the municipal securities market by giving competitors a trading advantage against one another.” MSRB is sensitive to SIFMA’s concerns related to reporting and making transparent the individual par amounts of the VRDO held as a Bank Bond,²¹ by the VRDO Remarketing Agent and by investors. One of the purposes of requiring this information to be reported is to provide market participants with an indication that the interest rate set by the VRDO Remarketing Agent represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely as a Bank Bond and that the interest rate set is therefore not set by

²¹ The July 2009 Notice also proposed collecting the interest rate paid to a liquidity provider for VRDOs held as a Bank Bond. SIFMA noted that many VRDO Remarketing Agents are not made aware of the interest rate paid on Bank Bonds. The MSRB acknowledges that this requirement may present significant compliance challenges for dealers and has accordingly decided not to proceed with it at this time.

market demand.²² As an alternative to the requirement in the July 2009 Notice, the proposed rule change includes a requirement for a VRDO Remarketing Agent to report the “par amount remarketed,” which would be the aggregate of VRDOs held by the VRDO Remarketing Agent and investors, but not Bank Bonds, and separately report the par amount held as Bank Bonds. This should provide a sufficient indication that the interest rate set reflects a market interest rate paid to holders of the VRDO while preventing individual par amounts held by VRDO Remarketing Agents from being disclosed to the public.

ARS Bidding Information

The July 2009 Notice identified ARS Bidding Information that an ARS Program Dealer would be required to submit to the SHORT System as individual data elements in connection with a report of the ARS interest rate and descriptive information currently required to be reported following an auction. In response to the July 2009 Notice, First Southwest and SIFMA both noted that reporting ARS Bidding Information to the SHORT System as individual data elements would be costly and time consuming, particularly, as SIFMA noted, “for a product that is winding down.” SIFMA further noted that “there have not been any new ARS issues in over a year and a half, and none are expected.” Instead of submitting information as individual data elements, SIFMA suggested that “the disclosure of this information to [the MSRB] by way of document, instead of breaking out each data element, would help minimize the burden.”

²² This information also is intended to provide a centralized source of information about holdings of VRDOs. SIFMA notes that information collected by the SEC in its Financial and Operational Combined Uniform Single (“FOCUS”) Reports, while not an identical requirement, provides such a centralized source of information about the holdings of VRDOs by Remarketing Agents.

The MSRB acknowledges that reporting ARS Bidding Information to the SHORT System as individual data elements would result in ARS Program Dealers incurring programming expenses as well as increasing the ongoing cost of compliance with reporting information to the SHORT System. Further, current interest rate information from the SHORT System indicates that approximately 80% of all ARS continue to experience failed auctions,²³ so one of the purposes of having ARS Bidding Information as individual data elements, to compute a “bid-to-cover ratio”²⁴ that would show the demand for the ARS, may not at this time justify the expense incurred by ARS Program Dealers to report such information as individual data elements to the SHORT System. Nonetheless, the MSRB believes that having a centralized source of ARS Bidding Information, even if such information is only available as a document, would be of benefit to market participants as it would further the MSRB’s investor protection mission. This document-based approach would provide for indexing of each such submission to the appropriate security so that the information would be easy to find, even if the information contained within such documents could not easily be exported to a data file or otherwise manipulated.

In response to specific items of ARS Bidding information identified in the July 2009 Notice, SIFMA noted that when an ARS Program Dealer receives orders to buy

²³ In light of the high number of failed auctions, Allstate suggests requiring ARS Program Dealers to provide the formula used to compute the maximum rate, including the “net loan rate.” MSRB does not believe that this information is readily available to ARS Program Dealers but notes that a separate requirement for certain ARS documents to be submitted to the MSRB and made available publicly should aid in determining how maximum rates are set.

²⁴ In response to the April 2008 ARS Notice, Saber Partners identified this statistic as one that “can give great insight into the liquidity of an auction.”

from other dealers for submission to an ARS auction, such orders may be aggregated by the other dealer making it impossible for the ARS Program Dealer to provide accurate information on the number of unique bidders other than the Program Dealer bidding for its own account. MSRB acknowledges that orders submitted to an ARS Program Dealer may be aggregated by the submitting party and believes that disclosing such aggregated orders may be misleading to market participants. Thus, the MSRB has not included this requirement in the proposed rule change. SIFMA also noted that separately requiring an ARS Program Dealer to report bidding information for orders submitted by an issuer or conduit borrower would be unnecessary since issuers and ARS Program Dealers have made such information available on public Web sites. The MSRB notes that while the EMMA Continuing Disclosure Service provides a document category for issuers to voluntarily disclose an intent to bid on its ARS, this does not provide for a centralized source of all orders submitted by an issuer or conduit borrower, which would be provided by the proposed rule change.²⁵

Short-term Obligation Documents

The draft amendments in the July 2009 Notice proposed requiring 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;

²⁵ MSRB notes that issuers or conduit borrowers may instruct a third party, such as an investment adviser, to submit orders to an ARS Program Dealer on their behalf. In these cases, MSRB acknowledges that the ARS Program Dealer would not know that such orders are on behalf of issuers or conduit borrowers and would not be able to include this fact when making submissions of ARS Bidding Information to the SHORT System.

- VRDO documents consisting of liquidity facilities, including Letter of Credit Agreements and Stand-by Bond Purchase Agreements.

In response to the July 2009 Notice First Southwest and SIFMA both stated concerns with the requirement to submit ARS and VRDO documents for outstanding issues to the MSRB. First Southwest noted that to obtain some of these documents, dealers “would need to go back to the creators of those documents to comply with the rule” but nevertheless noted that “in general, the requested documents are available.”²⁶ SIFMA also stated a concern that some documents for outstanding VRDOs may contain information that was not intended to be made public. In response to the May 2008 VRDO Notice DAC also noted that dealers “may not always be a party to or have control over all of the documents.” MSRB recognizes that dealers’ ability to comply with the requirement proposed in the July 2009 Notice for VRDOs would, in some cases, be subject to the ability of the dealer to obtain a document from a third party. Therefore, MSRB has incorporated into the proposed rule change a “best efforts” provision coupled with a recordkeeping requirement that would require dealers to make and document all efforts to obtain a VRDO document for which the dealer does not already have access.

First Southwest and SIFMA also stated concerns with the timeframes proposed for submitting ARS and VRDO documents to the MSRB due to the high number of ARS

²⁶ Both First Southwest and SIFMA also noted that Official Statements typically contain summaries of the information contained in the documents identified in the draft amendments and note that if an investor wanted to obtain the actual document, they could request the documents identified in the draft amendments from either the issuer or a dealer. In particular, SIFMA noted in response to the April 2008 ARS Notice that ARS Official Statements generally already contain much of the information. MSRB notes that the proposed rule change would permit dealers to reference documents already submitted in lieu of submitting duplicate documents.

and VRDO issues, which SIFMA states is approximately 16,500 VRDOs and 1,750 ARS, and the fact that dealers may not have such documents in a format that would allow for easy electronic submission of the document to the MSRB. Given the high numbers of these securities, First Southwest and SIFMA both stated that 180 days, instead of the 30 days proposed in the July 2009 Notice, would be a more appropriate amount of time to submit the documents to the MSRB. MSRB recognizes that there are a large number of documents that would need to be obtained, converted into an electronic format and submitted to the MSRB. However, MSRB believes that it is important for investors and other market participants to have centralized access to these documents. Acknowledging the large number of documents and the fact that, for outstanding issues, dealers may need time to request documents from third parties, MSRB has provided 90 days from the date of effectiveness of a rule in the proposed rule change for dealers to submit outstanding ARS and VRDO documents to the MSRB. However, MSRB notes that dealers should not wait until a rule is in effect to begin the process of requesting documents and converting them into the appropriate electronic format.²⁷

In response to the July 2009 Notice proposal that any new or amended versions of documents be submitted to the MSRB within one day of receipt, SIFMA suggested that dealers be required to submit a document within 5-days of receipt so that the deadline would be consistent with the deadline for submitting advance refunding documents to the MSRB. MSRB believes that it is important that market participants have access to

²⁷ As previously described, the MSRB has requested flexibility with respect to the setting of effective dates for the proposed rule change. The MSRB notes that it would be prudent for dealers to use the time between the approval date of the proposed rule change and the effective date to begin collecting such required documents and converting them into electronic format.

documents that are current and therefore has retained in the proposed rule change the timeframe for an ARS Program Dealer or VRDO Remarketing Agent to provide such new or amended versions of documents to the MSRB no later than one business day after receipt by the dealer.²⁸

Public Availability of Collected Information and Documents

In response to the April 2008 ARS Notice, Mr. Yankauer recommended that the MSRB make information collected about ARS available “to the general public without any fee to view the information.” MSRB agrees with Mr. Yankauer’s recommendation and notes that the interest rate and descriptive information currently collected by the SHORT System is available at no charge on the EMMA Web site. MSRB also notes that it plans to make all information and documents collected under the proposed rule change available at no charge on the EMMA Web site.

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

²⁸ RBDA also suggested that MSRB look into utilizing optical character recognition technology to facilitate performing word searches on EMMA of documents that are scanned and not “native” PDFs. MSRB notes that all documents submitted to EMMA since January 1, 2010 are required to be word-searchable and that the proposed rule change would require documents created after the effective date of the proposed rule change to also be word-searchable.

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-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, 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

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-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.²⁹

Florence E. Harmon
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).