

MEMO# 26375

August 7, 2012

ICI Draft Letter Regarding MSRB Proposal to Limit Dealer Consents

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 35-12 RE: ICI DRAFT LETTER
REGARDING MSRB PROPOSAL TO LIMIT DEALER CONSENTS

As you know, the Municipal Securities Rulemaking Board has proposed an amendment to MSRB Rule G-11 that would prohibit brokers, dealers, and municipal securities dealers (“dealers”) from consenting to any amendment to bond authorizing documents for municipal securities except in limited circumstances. [1] ICI has prepared a draft letter, which is attached.

Comments on the draft letter should be sent to the undersigned at jheinrichs@ici.org by Thursday, August 9.

According to the MSRB, the proposal is intended to address the practice of dealers providing consents to changes in legal documents that set forth key rights of and protections for owners of municipal securities and that state that consents are to be provided by the bond owners. The MSRB is concerned that existing bondholders would not have contemplated that an underwriter, which may hold the bonds only momentarily during the initial distribution process without any prior or future economic or investment interest in the bonds, could provide consent to changes that would affect existing bondholders, who have a vested interest in assessing the potential impact of any amendment to the authorizing documents.

Under the proposal, a dealer would be prohibited from providing bondholder consents to any amendments to authorizing documents for municipal securities, subject to three limited exceptions. [2]

The draft letter supports the proposal and notes that as significant investors in the municipal securities market, ICI members have a strong interest in protecting the rights of existing parity bondholders.

Jane G. Heinrichs

[Attachment](#)

endnotes

[1] Request for Comment on Draft Amendment to Limit Dealer Consents to Changes in Authorizing Documents for Municipal Securities, MSRB Notice 2012-36 (July 5, 2012), available at

<http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-36.aspx>.

[2] The exceptions consist of consents given to authorizing documents (i) for municipal securities owned by the dealer as an investment; (ii) for municipal securities that the dealer holds as a result of a mandatory tender, provided all outstanding securities affected by such amendment had been tendered; and (iii) by the dealer, acting as an underwriter or remarketing agent, in circumstances where the amendment would not become effective until all bondholders affected by the amendment (except those for which the dealer was providing consent) had also consented to the amendment. The proposal would not affect other methods used by issuers to obtain consents from owners of newly issued bonds, such as consents received (in writing or constructively) from bondholders upon initial purchase of the bonds, provided that the Rule G-11 amendment would prohibit the dealer from providing any such constructive or deemed consent for or in lieu of bondholders.