

MEMO# 26045

April 16, 2012

ICI Files Comment Letter with MSRB Regarding Retail Order Periods

[26045]

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TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 23-12
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 14-12 RE: ICI FILES COMMENT LETTER
WITH MSRB REGARDING RETAIL ORDER PERIODS

As you know, the Municipal Securities Rulemaking Board has proposed amendments to MSRB rules and a related interpretive notice that would govern the responsibilities of dealers in the conduct of retail order periods. [*](#) In response, the Institute filed a comment letter, which is attached and summarized below.

The MSRB explains that the proposal was developed to address various concerns related to retail order periods, including disregard by dealers of terms and conditions established by municipal securities issuers and the use of retail order periods to achieve yields that may be below market. To address these concerns, the proposed amendments would, among other things, define “retail order period” in a manner that would permit each issuer the latitude to define “retail.” The MSRB acknowledges, however, that certain market participants have expressed concern that issuer definitions of “retail” are not uniform and may vary considerably from one another, possibly leading to unintended erroneous orders by dealers. In light of this, the MSRB is seeking comment on whether it should adopt a uniform definition of “retail” for purposes of its retail order period rules and, if so, what it should be.

The letter notes institutional investors are frequently closed out of issuer defined “retail order periods” as a matter of course because the institution itself is viewed as the buyer and its orders classified as “institutional” order flow. This classification exists regardless of whether an institution is trading for a proprietary account or, for example, representing the interests of millions of retail investors who choose to gain access to the municipal markets through funds or have limited resources to otherwise buy bonds directly.

The letter states that a failure by the MSRB to provide a uniform definition of “retail” and to include within that definition institutions trading on behalf of retail investors would result in a disservice to many retail investors. The letter then urges the MSRB to apply a uniform definition of “retail” for purposes of “retail order periods” that recognizes that retail investors access the municipal market through a variety of ways, including indirectly

through funds. It also recommends that the MSRB make clear that orders placed by funds not be subject to any limitations as to size given the large number of retail investors on whose behalf they are investing. Alternatively, the letter suggests that if the MSRB determines not to apply a uniform definition of retail, issuers should not be permitted to exclude funds from retail order periods but rather must view their orders as aggregated retail orders that are made on behalf of the funds' shareholders.

Jane G. Heinrichs
Senior Associate Counsel

[Attachment](#)

endnotes

* See Request for Comment on Proposed Rule Amendments and Interpretive Notice on Retail Order Periods. MSRBO Notice 2012-13 (March 6, 2012), available on the MSRB's website at

<http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-13.aspx>

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