

MEMO# 26330

July 23, 2012

ICI Draft Comment Letter on MSRB Concept to Require Disclosure of Financial Incentives and Conflicts of Interest

[26330]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 32-12
PENSION COMMITTEE No. 23-12 RE: ICI DRAFT COMMENT LETTER ON MSRB CONCEPT TO
REQUIRE DISCLOSURE OF FINANCIAL INCENTIVES AND CONFLICTS OF INTEREST

As you may know, in May, the Municipal Securities Rulemaking Board published a concept proposal relating to public disclosure on the MSRB's EMMA system of certain payments and receipts by municipal securities dealers and municipal advisors that could represent conflicts of interest. [\[1\]](#) Because the scope of the term "municipal advisor" may be extended to recordkeepers that provide services to certain governmental plans, the concept proposal could have broad applicability. The Institute has drafted the attached comment letter to file with the MSRB. The MSRB's proposal and the draft letter are briefly summarized below.

Comments are due to the MSRB by July 31st. Members with comments on the Institute's comment letter should provide them to the undersigned no later than Wednesday, July 25th. Comments may be provided by phone (202-326-5825) or email (tamara@ici.org).

Overview of the MSRB's Proposal

The Concept Proposal seeks feedback on the concept of the MSRB requiring dealers and municipal advisors to submit to it, for public display through the EMMA website, disclosures regarding certain payments and receipts in connection with the dealer's or advisor's municipal securities activities – including in relation to 529 plan activities. In the view of the MSRB, such disclosures could alert investors and other market participants to possible conflicts of interest of transaction participants and make transparent any potential financial incentives that may have an impact on the substantial and long-term commitments undertaken by municipal entities. The disclosures envisioned by the MSRB might include

financial incentives paid by an underwriter to any third-party in connection with a new-issue transaction, as well as any incentives received by the underwriter from a third-party payor for recommending municipal transactions to the municipal entity or for including the third party's participation in such transactions. [2] The Concept Proposal also proposes to impose on "municipal advisors" various disclosures relating to such persons' conflict of interest.

The Institute's Draft Comment Letter

The Institute's letter largely focuses on concerns of the application of the proposed disclosures to 529 plan offerings. The letter notes that, while the MSRB's Notice is silent on its application to 529 plans and other municipal securities and we are uncertain as to how the MSRB intends any new disclosure requirements to apply to such plans, particularly in light of the intent of the proposal. The letter discusses in detail how the disclosures contemplated for traditional municipal securities would appear to have no application when applied to municipal fund securities. Accordingly, the letter recommends that, to the extent the MSRB determines additional disclosures are warranted by municipal securities dealers in connection with municipal fund offerings, the MSRB publish a separate concept release on that issue, which details any abuses in that market that the MSRB intends to address and the disclosures proposed to address them.

The letter also reiterates comments the Institute has previously made to the MSRB regarding the inappropriateness of using EMMA as the repository for 529 plan disclosures. While the letter discusses the value of EMMA as a central repository of information on municipal securities offerings, it notes that is not the case with respect to investors searching for information on 529 plans. Such investors are more likely to utilize information sources that are dedicated to 529 plan securities and that also may be more user-friendly and interactive than EMMA. Also, because not all state plans are subject to the MSRB's jurisdiction, the letter notes that, under the best of circumstances, EMMA can never provide disclosure for all 529 plans, unlike other sites such as that of the College Savings Plan Network. Should the MSRB determine to impose disclosure requirements on the offer of 529 plans, the letter recommends that the MSRB consider publication of such information on those sources retail investors are most likely to consult to obtain information on these plans

Finally, with respect to the Concept Proposal's application to municipal advisors, the letter notes that, because there is no permanent definition of the term "municipal advisor," it is premature for the MSRB to consider imposing disclosure requirements on an undefined universe of persons. The letter recommends that the MSRB defer imposing any regulatory requirements on such persons until the SEC adopts a permanent definition of this term.

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[Attachment](#)

endnotes

[1] See Request for Comment on Concept Proposal to Provide for Public Disclosure of Financial Incentives Paid or Received by Dealers and Municipal Advisors Representing

Potential Conflicts of Interest, MSRB Notice 2012-28 (May 31, 2012) (the “Concept Proposal”), which is available on the MSRB’s website at:
<http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-28.aspx?n=1>

[2] As noted in the Concept Proposal, some of these disclosures would be required to be provided to issuers by a recent Interpretive Notice of the MSRB. The effective date of this Interpretive Notice is August 2, 2012. See Securities and Exchange Commission Approves Interpretive Notice on the Duties of Underwriters to State and Local Government Issuers, MSRB Notice 2012-25 (May 7, 2012), which is available on the MSRB’s website at:
http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_D54ECA7-2CE6-4ED9-BB05-3C9B32FB7BF4. See also ICI [Memorandum](#) No. 26276 (June 28, 2012) summarizing MSRB Notice 2012-25.

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