

MEMO# 26640

November 2, 2012

ICI Files Letter with MSRB Regarding Retail Order Periods

[26640]

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TO:

MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 46-12

RE:

ICI FILES LETTER WITH MSRB REGARDING RETAIL ORDER PERIODS

The Investment Company Institute has provided comments again on the Municipal Securities Rulemaking Board's proposed amendments that would govern the responsibilities of dealers in the conduct of retail order periods. [*] The letter notes that although we continue to support the MSRB's efforts to address concerns regarding retail customer orders in primary offerings, we are disappointed that the MSRB through these amendments has declined to define the term "retail" for these purposes.

The letter states that although the MSRB acknowledges that commenters have recommended it establish a definition of "retail" that would be used if an issuer determined to conduct a retail order period, it has declined to make this change, in part noting that it is concerned that if the MSRB defined "retail" it may unduly influence certain issuers' decision as to what should be included in, or excluded from, the definition. Instead, the MSRB believes that an issuer, in conjunction with its financial advisor, should have the flexibility to define "retail" on an issue-by-issue basis.

Our letter notes that members remain concerned 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 who choose to gain access to the municipal markets through funds or have limited resources to otherwise buy bonds directly. If investment vehicles, such as funds, are, with regularity, unable to acquire municipal bonds in primary offerings because the fund itself is viewed as an institutional buyer and its orders classified as "institutional" order flow, retail investors

investing in those vehicles are unfairly disadvantaged. This is especially problematic in the case of single state funds because of the even more limited pool of municipal bonds available to in-state investors.

The letter concludes by urging 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.

Jane G. Heinrichs
Senior Associate Counsel

[Attachment](#)

endnotes

[*] See [Request for Comment on Revised Draft Rule Amendments and a Revised Draft Interpretive Notice on Retail Order Periods](#) (MSRB Notice 2012-50) (October 2, 2012). See also [Letter](#) from Dorothy Donohue, Deputy General Counsel - Securities Regulation, Investment Company Institute, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (April 13, 2012).

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