

MEMO# 26028

April 10, 2012

ICI Draft Letter to MSRB Regarding Retail Order Periods; Comments due to ICI by April 12

[26028]

April 10, 2012

TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 12-12
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 18-12 RE: ICI DRAFT LETTER TO MSRB
REGARDING RETAIL ORDER PERIODS; COMMENTS DUE TO ICI BY APRIL 12

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. [*] The Institute has drafted a comment letter, which is attached and summarized below.

Comments are due to the MSRB by April 13, 2012. In order to have time to incorporate members' comments, please provide all comments to the undersigned via email (jheinrichs@ici.org) by COB Thursday, April 12.

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, include a definition of "retail order period" that would leave the definition of "retail" to the issuer for that purpose. The proposal acknowledges, however, that certain market participants have expressed concern that issuer definitions of "retail" are not uniform and may vary considerably from one another. In light of these concerns, 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 draft letter states that issuers often designate "retail order periods" in an effort to accumulate retail interest to fill a primary offering in the municipal bond market and that these orders are attractive to issuers because they generate demand from additional buyers. Similarly, the letter states that these orders are attractive to investors because they provide retail investors with access to primary offerings that they otherwise may not

have access to. Consequently, the draft letter notes that institutional investors are frequently closed out of issuer defined “retail order periods” as a matter of course even if an institution is representing the interests of retail investors who choose to gain access to the municipal markets through its mutual funds.

The draft letter concludes by stating that a failure by the MSRB to provide a uniform definition of “retail” for these purposes and to include within that definition institutions trading on behalf of retail investors results in a disservice to many retail investors. If institutional investors are, with regularity, unable to acquire in primary offerings the municipal bonds they need for investments in their mutual funds, retail investors relying on those funds are unfairly disadvantaged. The draft letter urges the MSRB to not leave the definition of “retail” to the discretion of issuers, but instead consider applying 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 mutual funds.

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>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.