

MEMO# 24042

December 23, 2009

ICI Comment Letter on MSRB Proposal Regarding Priority of Orders in Primary Offerings

[24042]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 68-09 RE: ICI COMMENT LETTER ON MSRB PROPOSAL REGARDING PRIORITY OF ORDERS IN PRIMARY OFFERINGS

The Municipal Securities Rulemaking Board ("MSRB") has filed with the Securities and Exchange Commission a proposed rule change regarding the priority of orders in primary offerings. [\[1\]](#) Specifically, the proposal would modify the scope of MSRB Rule G-11, on new issue syndicate practices, to encompass all primary offerings and amend MSRB Rules G-8 and G-9, on books and records and preservation of records, to reflect the proposed revisions to Rule G-11. The proposal also would set forth an interpretive notice of MSRB Rule G-17, on conduct of municipal securities activities, with respect to the proposed priority provisions. The Institute has prepared a comment letter, which is attached and briefly summarized below.

The letter supports the MSRB's efforts to tighten the gaps surrounding the priority of customer orders in primary offerings. The letter recognizes that the allocation of securities involves a balance of competing interests. The MSRB principles of fair dealing in Rule G-17, however, generally require a syndicate manager to give priority to customer orders over orders for its own account, an affiliated, or a related account consistent with the orderly distribution of securities in a primary offering. The letter states our belief that the proposal would help address uncertainty surrounding Rule G-17 and notes that the experience of our members has demonstrated that industry practice over the previous year has allowed for the regular disregard of these provisions. The letter states that the MSRB's proposal serves a useful purpose by reminding market participants of their fair dealing obligations with respect to customers. In addition, the letter supports the extension of the priority rule to cover all primary market offerings.

The letter also notes that issuers often designate “retail order periods” in an effort to accumulate retail interest to fill a primary offering in the municipal bond market. Institutional investors, on the other hand, are frequently closed out of “retail order periods” as a matter of course because the institution itself is viewed as the buyer and therefore classified as “institutional” order flow even if an institution is representing the interests of millions of retail investors who choose to gain access to the municipal markets through its mutual funds. If institutional investors are, with regularity, unable to acquire in primary offerings the municipal bonds required to service their mutual funds, retail investors relying on those funds could be harmed. As a result, the letter urges the MSRB to consider defining “retail” for purposes of “retail order periods” in a way that recognizes that retail investors access the municipal market through a variety of ways, including mutual funds.

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[Attachment](#)

endnotes

[\[1\]](#) See SEC Release No. 34-61110 (December 3, 2009); see also MSRB Notice 2009-59, *Rule Amendments and Interpretive Notice Filed Regarding Priority of Orders in Primary Offerings* (November 18, 2009).

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