

## COMMENT LETTER

April 23, 2010

# Comment Letter on MSRB Proposal to Enhance ARS and VRDO Disclosure

[Type text] April 23, 2010 Ms. Elizabeth M. Murphy Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-1090 Re: MSRB Notice of Filing of Proposed Rule Change Relating to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, to Enhance the Interest Rate and Descriptive Information Currently Collected and Made Transparent by the MSRB on Municipal Auction Rate Securities and Variable Rate Demand Obligations (File No. SR-MSRB- 2010-02) Dear Ms. Murphy: The Investment Company Institute<sup>1</sup> supports the Municipal Securities Rulemaking Board's ("MSRB") continuing efforts to increase transparency in the municipal securities market. As we have said on many occasions, more detailed, consistent, and timely disclosure of information regarding municipal securities is critical to investors in the municipal market.<sup>2</sup> By increasing the amount of information available through the MSRB's Electronic Municipal Market Access system ("EMMA") to investors regarding auction rate securities ("ARS") and variable rate demand obligations ("VRDOs"), the MSRB's proposal<sup>3</sup> supplies investors with access to important disclosure about these municipal securities through a single, easily accessible, and cost-effective source.

<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UIT) (collectively "funds"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholder, directors, and advisers. Members of ICI manage total assets of \$11.66 trillion and serve over 90 million shareholders. <sup>2</sup> See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth Murphy, Secretary, Securities and Exchange Commission, dated September 8, 2009. <sup>3</sup> SEC Release No. 34-61793 (March 26, 2010), 75 FR 16878 (April 2, 2010). Ms. Elizabeth M. Murphy April 23, 2010 Page 2 of 4 <sup>4</sup> I. Items for Disclosure We strongly support the MSRB's proposal as the next step in increasing transparency about the ARS and VRDO markets.<sup>4</sup> The information proposed to be collected in EMMA would be in addition to steps taken over the last two years to provide investors with more comprehensive and detailed information regarding outstanding ARS and VRDO transactions and the performance of auctions and remarketings. We believe that the interest rate and other descriptive information proposed to be collected is material to investors and, in combination with the information already collected by the MSRB, would further facilitate investors' ability to make informed investment decisions.<sup>5</sup> In addition, by improving transparency with respect to ARS and VRDOs, the proposal should strengthen investor confidence in these securities and in the municipal securities market as a whole.<sup>6</sup> We recommend that the MSRB consider expanding the proposed disclosures to ensure a more complete picture of the risks

associated with ARS, VRDOs and other variable rate securities. In particular, we recommend that the information submitted to EMMA regarding VRDO transactions include “credit enhancement” data and documentation as well as the currently proposed information regarding liquidity facilities. This additional information would provide investors with important information on the existence of other credit enhancements, such as insurance or guarantees, which affect not only purchase price but also general principal and interest payment obligations. We also recommend that the MSRB create a “miscellaneous” or “catch-all” category of variable rate securities to provide investors with material information about new products that fall outside the scope of the ARS and VRDO disclosure requirements.<sup>7</sup> We believe that disclosure must keep pace with the developing complexity of the marketplace. A miscellaneous or catch-all provision would provide investors with information enabling them to monitor and confidently invest in new types of variable rate securities while simultaneously providing the MSRB with adequate time to modify its rules, if

4 We recognize that that municipal variable rate securities market may not revive to its former size or operations as before the credit crisis. This, however, is even more of a reason to ensure that current holders, and investors who may enter the market in the future, have adequate disclosure regarding these securities. New variable rate structures, in addition to ARS and VRDOs, are likely to be created in the future and investors in these securities should benefit from the same transparency requirements. 5 We particularly support the inclusion of disclosure regarding the identity of the liquidity provider for VRDOs and disclosure of transactions in which an issuer provides “self-liquidity.” 6 Disclosure regarding VRDOs is particularly important because the current disclosure regime for these and other demand securities is extremely limited. For this reason, we also supported the Securities and Exchange Commission’s proposed amendment to Rule 15c2-12 of the Securities Exchange Act of 1934 to improve VRDO disclosure by eliminating the current exemption for these securities from the continuing disclosure requirements. See *supra* fn. 2. 7 This could be accomplished by adding a new clause (c)(iii) to MSRB Rule G-34. Ms. Elizabeth M. Murphy April 23, 2010 Page 3 of 4 appropriate, to create a specific category of disclosure for the new product beyond the classification of miscellaneous or catch all. II. Location and Form of Disclosure The proposed use of a central repository, EMMA, for information about ARS and VRDOs with real-time dissemination would provide investors with prompt and ready access to important information about a security at a single source.<sup>8</sup> Collection of the proposed disclosure items in EMMA also has the advantage of providing investors with the ability to easily navigate and to compare data, thereby improving the utility of this information for investors. It is critical, however, that the documents be word-searchable files to ensure this outcome.<sup>9</sup> We therefore support the proposed requirement that ARS and VRDO documents submitted to EMMA be word-searchable portable document file (“PDF”) for new or amended versions of documents produced after the effective date of the proposal. III. Timing of Disclosure The proposal would require dealers and remarketing agents to submit the requisite documents to EMMA within 90 days for outstanding ARS and VRDOs and within one business day of receipt for any new or amended versions of the documents, after the effective date of the proposal. We believe timing is vital to the value of collecting and disseminating this information to investors. Accordingly, we strongly support the one-business-day submission requirement for new or amended versions of the ARS and VRDO documents. Similarly, we believe there is a need for timely receipt of the proposed information for outstanding ARS and VRDOs. This need is particularly acute to current holders of ARS and VRDOs because of the continuing uncertainty in these markets following the credit crisis. We therefore would support the MSRB’s original proposed submission deadline of 30 days from the effective date of the proposed change,<sup>10</sup> instead of the currently proposed 90 days. Dealers and remarketing agents have been reporting ARS and VRDO information to EMMA since January

and April 2009, respectively. Having already established and used their reporting systems for the past year, this additional

8 See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated September 22, 2008. 9 As noted by the Regional Bond Dealers Association (“RBDA”), the usefulness of scanned images of hard-copy documents is limited because it cannot be easily searched. See Letter from Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, Regional Bond Dealers Association, to Justin R. Pica, Director, Uniform Practice Policy, Municipal Securities Rulemaking Board, dated September 1, 2009. 10 See MSRB Notice 2009-43 (July 14, 2009). Ms. Elizabeth M. Murphy April 23, 2010 Page 4 of 4

information should not be overly burdensome to gather and file for most ARS and VRDOs. In addition, as discussed above, with respect to certain information the dealer or remarketing agent would be required to file only a copy of the relevant documents instead of submitting information as individual data elements. Finally, for those individual documents that present difficulties, presumably because they are not held by the dealer or remarketing agent, the proposal now includes a “best efforts” provision which would permit the dealer or remarketing agent to follow a recordkeeping requirement for documents to which it does not already have access. \* \* \* \* We look forward to working with the Commission as it continues to examine these issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5920 or Ari Burstein at (202) 371-5408. Sincerely,

/s/ Heather Traeger Heather Traeger Associate Counsel cc: Robert W. Cook, Director Martha Mahan Haines, Chief, Office of Municipal Securities Division of Trading and Markets U.S. Securities and Exchange Commission Justin R. Pica, Director, Uniform Practice Policy Municipal Securities Rulemaking Board