



REGIONAL
BOND DEALERS
ASSOCIATION

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September 1, 2009

Mr. Justin R. Pica
Director, Uniform Practice Policy
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Comments in regard to Notice 2009-43

Dear Mr. Pica,

The Regional Bond Dealers Association (“RBDA”) is pleased to submit comments on MSRB Notice 2009-43, Request for Comment on Additional Increases in Transparency of Municipal Auction Rate Securities and Variable Rate Demand Obligations (the “Notice”). The RBDA is the organization representing regional securities firms active in the U.S. bond markets.

The RBDA generally supports the spirit of the MSRB’s proposal to enhance market transparency in the market for municipal auction rate securities (“ARS”) and variable rate demand obligations (“VRDOs”). We believe market participants would benefit from better access to documentation related to outstanding ARS and VRDO transactions and to better data on the performance of ARS auctions and VRDO remarketings. These sectors of the municipal market have been the hardest hit as a result of the broader financial crisis. Access to detailed information on the performance of auctions and remarketings before the crisis may have helped investors better gauge their exposure to weaknesses in the ARS and VRDO sectors and may have helped some investors avoid the problems that quickly emerged as the credit crisis worsened, especially with regard to ARS.

With respect to ARS, the MSRB’s draft proposal would require ARS program dealers to submit to the MSRB’s SHORT system additional information on the conduct of periodic ARS auctions. This information would include, among other items, the interest rates and aggregate par amounts of orders to buy, sell or hold at specific interest rates and the aggregate par amount of such orders that were executed, the number of unique bidders submitting orders to buy, other than the program dealer bidding for its own account, and the interest rates, aggregate par amounts, and type of order (buy, sell or hold) by a program dealer for its own account and aggregate par amounts of such orders, by type, that were executed. We believe that this type of information, when combined with information already collected under the SHORT program, would help give investors a brighter picture of how the ARS market is performing and help them evaluate their particular ARS investments.

With regard to VRDOs, the MSRB's draft proposal would require remarketing agents to submit to the SHORT system additional data regarding outstanding VRDOs. These would include, among others, the effective date that interest rate resets are applicable, the identity of the liquidity provider, including a indication of those VRDOs for which an issuer provides "self liquidity," and the amount of the VRDO, held by the remarketing agent, a liquidity provider, and a party other than the remarketing agent or as a bank bond.

We believe the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments. In the last year some segments of the VRDO market have suffered because in some cases downgrades or loss of investor confidence in certain bank liquidity providers has motivated investors to exercise their put options under liquidity agreements in larger-than-normal volumes. The ability to evaluate those trends with regard to both individual VRDO securities and on an aggregate basis would help investors make more informed choices. In addition, VRDO market participants currently have no way to accurately determine the aggregate volume of VRDOs being held by bank liquidity providers. Having access to these data would help issuers, investors, dealers, policy-makers and others gauge the health of the market.

We also support the MSRB's draft proposal to require the submission of certain ARS and VRDO documents to the MSRB for public access. We believe that easy access to these documents would help investors and other market participants. However, the usefulness of documents available through the MSRB may be limited in cases where the documents submitted are scanned images of hard-copy documents, and the scans are in image, as opposed to text, format. In those cases, documents stored, for example, on EMMA cannot be easily searched or indexed based on their content. In this regard, we recommend that the MSRB consider enhancing the documents it currently stores and disseminates by employing optical character recognition (OCR) technology to convert image-based scans of documents into character-based scans that are fully text searchable. This recommendation applies to all documents stored by the MSRB on EMMA, not just those documents proposed to be submitted under the Release. Other technology providers have successfully used OCR technology to convert image-based scanned documents to text searchable documents on a large-scale basis.¹ This function would greatly enhance the value of documents stored and disseminated by the MSRB, and it may be cost-effective for the MSRB to employ this technology. We recognize that the MSRB has considered issues related to OCR and image-based scans.² As OCR technology continues to improve, we are hopeful that this function can be added to documents stored and disseminated by the MSRB, including those covered by the draft proposal contained in the Release.

We are sensitive to concerns that ARS program dealers and VRDO remarketing agents may not be the best parties to submit all the documents and data referenced in the Release to the MSRB. In some cases program dealers or remarketing agents may not have ready access to all the

¹ See, for example, The Official Google Blog, "A picture of a thousand words?," October 30, 2008, <http://tinyurl.com/6opkqo>.

² See, for example, Securities and Exchange Commission, "Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access system (EMMA) and Amendments to MSRB Rules G-32 and G-36" (File No. SR-MSRB-2009-02), March 27, 2009, page 75.

information or documents proposed to be submitted to the MSRB. The RBDA would support other reasonable initiatives to achieve the ends outlined in the Release if the MSRB determines that program dealers and remarketing agents are not able to provide all the information and documents that would be required to be disclosed in the Release's draft rule changes.

Last year when the MSRB first proposed establishing the SHORT system and collecting and disseminating data on ARS auctions, we expressed reservations about the platform. We argued that the ARS market was a dying sector and we questioned the wisdom of creating a reporting and dissemination system to support a product that has no future. While we still believe that ARS are disappearing—no new ARS issued have been sold in 2008 or 2009 and many outstanding municipal ARS have been redeemed or converted to VRDOs—the fact that the SHORT system now supports disclosure for both ARS and VRDOs justifies the MSRB's development of the system. Moreover, it has become clear that many ARS may be outstanding for a long time. Penalty rates—the interest rates paid by ARS issuers in cases when auctions fail—which are tied to interest rate indexes on some outstanding ARS with perpetually failing auctions are at or near zero. In those cases, there is little incentive for issuers to take any actions to convert or redeem their securities. In other cases where issuers may still be facing high penalty rates, other factors such as weakened credit conditions or lack of access to bank liquidity facilities may prevent issuers from taking action. In all cases, as long as a significant number of municipal ARS remain outstanding, it is reasonable for the MSRB to adapt the SHORT system to provide investors with as much material information as possible.

The markets for ARS and VRDOs have been acutely affected by the financial crisis. Many ARS investors are still stuck holding illiquid securities which they do not want and cannot sell, and corporate investors continue to book losses on their ARS holdings.³ In the VRDO market, the volume of bank bonds is still higher than expected, and issuers suffer by being forced to pay maximum rates on their borrowing and by facing accelerated repayment of outstanding debt. In this environment, it is appropriate for the MSRB to consider reasonable methods for ensuring that the market has easy access to as much information as possible. For this reason we support in concept the draft rule amendments contained in the Release. We appreciate the opportunity to provide our views. Please contact us if you have any additional questions.

Sincerely,

/s/

Michael Decker
Co-Chief Executive Officer

/s/

Mike Nicholas
Co-Chief Executive Officer

³ Dunston McNichol, "Wall Street Betrayal Seen in \$4.8 Billion Company Debt Losses," *Bloomberg Professional* service, August 28, 2009.