



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

April 13, 2012

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Request for Comment on Proposed Rule Amendments and Interpretive Notice on Retail Order Periods (MSRB Notice 2012-13)

Dear Mr. Smith:

The Investment Company Institute¹ is pleased to provide comments on the Municipal Securities Rulemaking Board's proposed amendments that would govern the responsibilities of dealers in the conduct of retail order periods.² We support the MSRB's efforts to address concerns regarding retail customer orders in primary offerings and, in this regard, believe it is important for the MSRB to define the term "retail" for these periods. Maintaining the integrity of the \$3.7 trillion municipal securities market to ensure fair and orderly markets is critical to ICI members who provide access to the 26 percent of investors—many of them retail—that invest in this market through registered investment companies ("funds").³

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, define "retail order period" in a manner that would permit each issuer the latitude to define "retail."

¹ 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 (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.3 trillion and serve over 90 million shareholders.

² See *Request for Comment on Proposed Rule Amendments and Interpretive Notice on Retail Order Periods*, MSRB Notice 2012-13 (March 6, 2012).

³ Forthcoming 2012 Investment Company Fact Book, *A Review of Trends and Activity in the Investment Company Industry*, Investment Company Institute, 52nd Edition.

The MSRB acknowledges, however, that certain market participants have expressed concern that issuer definitions of “retail” are not uniform and may vary considerably from one another, possibly leading to unintended erroneous orders by dealers. In light of this, 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. For the following reasons, it is important that the MSRB adopt a uniform definition of “retail,” which includes investment vehicles, such as funds, that invest on behalf of retail investors within that definition.

It is our understanding that issuers often designate “retail order periods” in an effort to accumulate retail interest to fill a primary offering in the municipal bond market. Many individual retail investors, however, do not have the ability to evaluate (and certainly not to influence) the pricing of the bonds in the same manner as larger institutional investors. This may result in lower interest rates for an issuer’s securities. The ability to place these orders is attractive to retail investors because it provides them with access to primary offerings.

Institutional investors, consequently, are frequently closed out of issuer defined “retail order periods” as a matter of course because the institution itself is viewed as the buyer and its orders classified as “institutional” order flow. This classification exists regardless of whether an institution is trading for a proprietary account or, for example, representing the interests of millions of retail investors who choose to gain access to the municipal markets through funds or have limited resources to otherwise buy bonds directly. As a result, retail investors are excluded from the retail order periods if they make their municipal bond investments through funds.

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.⁴ If investment vehicles, such as funds, are, with regularity, unable to acquire municipal bonds in primary offerings, retail investors investing in those vehicles are unfairly disadvantaged, particularly as compared to retail investors in separate accounts.⁵ This is especially problematic in the case of single state funds, in which there is an even more limited pool of municipal bonds available to in-state investors.

We therefore urge 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. We also recommend that the MSRB make clear that orders placed by funds not be subject to any limitations as to size given the large number of retail investors on whose behalf they are investing. Alternatively, if the MSRB determines not to apply a uniform

⁴ Some members have suggested that issuers also are disadvantaged if the definition of “retail” excludes funds because their borrowing yields may not reflect the full universe of demand.

⁵ As the MSRB acknowledges, separately managed accounts are frequently allowed to place orders during the retail order period, while funds are not, despite the fact that fund clients, the indirect owners of the bonds, are often natural persons.

Mr. Ronald W. Smith

April 13, 2012

Page 3 of 3

definition of retail, issuers should not be permitted to exclude funds from retail order periods but rather must view their orders as aggregated retail orders that are made on behalf of the funds' shareholders.

* * * *

We look forward to working with the MSRB as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 218-3563 or Jane Heinrichs, Senior Associate Counsel, at (202) 371-5410.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue
Deputy General Counsel—Securities Regulation

cc: Lynette Kelly, Executive Director
Municipal Securities Rulemaking Board