

Comment Letter on the MSRB's MSIL® System, November 2000

November 17, 2000

Mr. Ernesto A. Lanza
Associate General Counsel
Municipal Securities Rulemaking Board
1150 18th Street, N.W., Suite 400
Washington, D.C. 20036

Re: Electronic Submission of Disclosure Documents and Forms to the MSRB's MSIL® System

Dear Mr. Lanza:

The Investment Company Institute¹ appreciates the opportunity to comment on the proposal by the Municipal Securities Rulemaking Board to establish an optional system of electronic submissions by underwriters of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSRB's Municipal Securities Information Library® ("MSIL®") system, and related draft amendments to MSRB Rule G-36.²

The Institute supports the MSRB's initiative to improve and modernize disclosure practices in the municipal securities markets. Our members, who are investors of over \$7 trillion of assets for over 83 million individual shareholders, are active participants in the municipal securities markets, and thus have a vital interest in ensuring the timely access of relevant and reliable information on municipal securities offerings. For this reason, the Institute supports the MSIL® system as a means of making available to investors in municipal securities the official statements and advance refunding documents submitted to the MSRB by underwriters.³ It is critical to the health of the municipal securities marketplace that these investors have timely access to primary disclosure, as well as continuing disclosure, about the municipal securities they own or that are offered to them by municipal securities issuers. The objective of timely delivery of disclosure documents requires a delivery method and format that facilitates timely review by investors, who are the end-users and intended beneficiaries of systems such as MSIL. This means that improvements in the speed and cost of delivery of disclosure documents, such as those achieved by electronic transmission, should occur in a manner that does not distort or create confusion about the contents of the transmitted documents.

The Proposing Release notes that electronic submission of documents to the MSIL® system may decrease redelivery time of such documents to MSIL subscribers by one or more business days relative to redelivery of paper documents that are physically delivered by underwriters to MSIL by mail or other means.⁴ But the Proposing Release also recognizes that many analysts and retail and institutional investors prefer to review paper copies of official statements rather than transmissions of such documents in an electronic format (which shift to investors the burden of printing and properly assembling complex and lengthy documents), and are concerned about the potential for errors and omissions in the generation and transmission of electronic documents.⁵ We agree. Such investors are concerned that MSIL may evolve into a system in which both the input by underwriters to MSIL and the corresponding output by MSIL to subscribers is provided solely in an electronic format. Because, for the purposes of its subscriber services, MSIL currently scans the paper format of official statements and advance refunding documents it receives, and redelivers such documents to subscribers through electronic files on CD-ROM, subscribers currently face electronic redelivery from MSIL irrespective of whether MSIL accepts electronic submissions. For these subscribers, the proposal's emphasis on the consistency of format between files submitted to MSIL by underwriters and files redelivered by MSIL to subscribers, as well as on the faster redelivery that will result from electronic submissions, is appropriate. For the reasons explained below, however, the Institute believes it is important that MSIL retain a paper copy of all filed documents for those investors who wish to make copies of the paper documents at the MSRB or receive such copies by mail.

Our specific comments on other aspects of the MSRB's proposal are set forth below.

I. Choice of Submission Method

Under the MSRB's proposal, underwriters may choose whether to submit in paper form or electronically the documents and forms required to be filed with MSIL. MSIL users currently include subscribers who receive filings on CD-ROM and investors who review paper filings at the MSIL site or order paper copies by mail. Because many of our members prefer reviewing these documents and forms in paper format, rather than through an electronic medium, we urge the MSRB to refrain from taking steps that would reduce the availability of paper copies at MSIL. Accordingly, underwriters who choose to file an electronic copy of an official statement should also be required to file a paper copy when a paper version has been used for offering purposes or for documenting the transaction. In our view, no hardship would result from imposing this requirement as the filing of paper copies is not particularly onerous for transactions in which paper copies exist. Under our recommendation, underwriters exercising the electronic filing option would not be required to create paper copies exclusively for purposes of complying with MSRB Rule G-36.

II. Types of Submissions

The MSRB's proposal would permit the electronic submission of the following documents and forms: (1) final official statements together with Form G-36(OS); (2) advance refunding documents together with Form G-36(ARD); (3) amended official statements together with Form G-36(OS), or amended advance refunding documents together with Form

G-36(ARD); (4) amended Form G-36(OS) or Form G-36(ARD) correcting a prior electronic submission of either form; and (5) notice of cancellation of an issue for which a submission has previously been made to MSIL. The proposal would permit the electronic submission of amended official statements and amended advance refunding documents only if the original official statement or advance refunding document was submitted electronically. Because expedient redelivery of such amendments is particularly important to minimize erroneous reliance on outdated documents, the Institute urges the MSRB to consider whether it is feasible to permit electronic submission of such amending documents even if the original documents were submitted to MSIL in paper format.

III. Format of Uploaded Files

The Institute agrees with the MSRB that all documents submitted electronically to MSIL, as well as all documents redelivered by MSIL to subscribers, should follow a consistent file format. To that end, we believe that the Adobe Acrobat® portable document format ("PDF") is a workable format choice. We recommend that underwriters who wish to submit documents to MSIL electronically be required to use only "native" PDF files, rather than scanned image PDF files. We agree with the MSRB's assessment that native PDF files are substantially superior to scanned image PDF files,⁶ and note that it should not cause underwriters significant hardship if the MSRB were to condition the availability of the electronic submission option on the generation of native PDF files for official statements and advance refunding documents.

The Institute also agrees that electronic submissions of official statements and appendices thereto should be submitted and redelivered in a format that raises no doubts as to the proper sequencing of the constituent parts of the electronic official statement received by the investor. Therefore, the MSRB should require an underwriter to merge any separate PDF files relating to an official statement into a single, properly sequenced PDF file prior to submitting the official statement to MSIL. This is technologically feasible and should ensure that the file received by the subscriber will be properly sequenced.

IV. Advance Refunding Documents

The Institute believes that the MSRB should take this opportunity to clarify that the term "advance refunding documents" as used in MSRB Rule G-36 includes, in addition to escrow agreements or refunding trust agreements for advance refunded bonds, any verification reports by accountants and defeasance opinions by bond counsel issued in connection with the applicable advance refunding. This clarification should apply to paper submissions as well as to electronic submissions of advance refunding documents. The verification reports and legal opinions delivered to issuers and bond trustees in connection with advance refundings are a critical component of the proper valuation of advance refunded bonds, and are available to underwriters at the same time as the escrow agreements become available. Such documents are required by rating agencies in their re-rating of advance refunded bonds, which often does not occur until a significant period has elapsed from the date the bonds are advance refunded, and in some instances may not occur at all. Accordingly, we would not expect underwriters to experience significant hardship in submitting such ancillary advance refunding documents together with the applicable escrow agreement. In fact, in our view, excluding verification reports and legal opinions from such documents would significantly diminish the value to investors of the advance refunding document component of the MSIL® system.

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The Institute appreciates the opportunity to comment on the MSRB's proposal relating to electronic submissions of disclosure documents and forms to the MSRB's MSIL® system. If you have any questions regarding our comments, please contact the undersigned at 202-326-5824 or Barry E. Simmons at 202-326-5923.

Sincerely,

Amy B. R. Lancellotta
Senior Counsel

cc: Thomas A. Hutton
Director
MSIL@ System

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,325 open-end investment companies ("mutual funds"), 489 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$7.232 trillion, accounting for approximately 95% of total industry assets, and over 83.5 million individual shareholders.

² Electronic Submission of Official Statements, Advance Refunding Documents and Forms G-36 (OS) and G-36 (ARD) to the MSRB (September 19, 2000) ("Proposing Release").

³ The Institute finds it unfortunate, however, that in contrast to the Securities and Exchange Commission's EDGAR system for corporate securities, the disclosure system for municipal securities currently does not include a centralized system for accessing primary disclosure documents for municipal securities on a no-charge, on-line basis. In the absence of such a system for municipal offerings, the Institute supports measures that improve systems, such as MSIL, that are available.

⁴ See Proposing Release at 4.

⁵ Id. at n. 8.

⁶ The MSRB notes that native PDF files provide the greatest benefit to the municipal securities marketplace, given their searchable nature and their significantly smaller file size, as compared to scanned image PDF files, and should be used where possible. Proposing Release at 3.