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November 2, 2012

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

Re: Request for Comment on Revised Draft Rule Amendments and a Revised Draft Interpretive Notice on Retail Order Periods (MSRB Notice 2012-50)

Dear Mr. Smith:

The Investment Company Institute¹ appreciates another opportunity 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 continue to support the MSRB's efforts to address concerns regarding retail customer orders in primary offerings; however, we are disappointed that the MSRB through these amendments has declined to define the term "retail" for these purposes.

The MSRB acknowledges that commenters have recommended it establish a definition of "retail" that would be used if an issuer determined to conduct a retail order period. Despite these comments, the MSRB declined to make this change, in part noting that it is concerned that if the MSRB defined "retail" it may unduly influence certain issuers' decision as to what should be included in, or excluded from, the definition. Instead, the MSRB states its belief that an issuer, in conjunction with its financial advisor, should have the flexibility to define "retail" on an issue-by-issue basis.

Our members remain concerned, however, that a failure by the MSRB to provide a uniform definition of "retail" and to include within that definition institutions trading on behalf of 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 \$13.5 trillion and serve over 90 million shareholders.

² See *Request for Comment on Revised Draft Rule Amendments and a Revised Draft Interpretive Notice on Retail Order Periods* (MSRB Notice 2012-50) (October 2, 2012). See also Letter from Dorothy Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (April 13, 2012).

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investors would result in a disservice to many retail investors who choose to gain access to the municipal markets through funds or have limited resources to otherwise buy bonds directly.³ If investment vehicles, such as funds, are, with regularity, unable to acquire municipal bonds in primary offerings because the fund itself is viewed as an institutional buyer and its orders classified as “institutional” order flow, retail investors investing in those vehicles are unfairly disadvantaged. This is especially problematic in the case of single state funds because of the even more limited pool of municipal bonds available to in-state investors.

We therefore continue to 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 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

³ 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.