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## Contacts

**Andrew R. Kintzinger**

(202) 955-1837  
akintzinger@hunton.com

**Christopher G. Kulp**

(804) 788-8742  
ckulp@hunton.com

**William H. McBride**

(919) 899-3030  
wmcbride@hunton.com

**J. Nicholson Meindl**

(214) 468-3358  
nmeindl@hunton.com

**John D. O'Neill**

(804) 788-8406  
joneill@hunton.com

**Robert Dean Pope**

(804) 788-8438  
dpope@hunton.com

**Mary Nash K. Rusher**

(919) 899-3066  
mnrusher@hunton.com

**Caryl Greenberg Smith**

(404) 888-4025  
carylsmith@hunton.com

## New Filing Requirements for Variable Rate Municipal Bonds


The Municipal Securities Rulemaking Board (“MSRB”) and the Securities and Exchange Commission (“SEC”) have adopted revisions to MSRB Rule G-34 that will require broker-dealers to file documents with the MSRB for both new and existing securities relating to the auction procedures for auction rate securities (“ARS”) and liquidity provisions for variable rate demand obligations (“VRDOs,” often referred to as low floaters or variable rate demand bonds). The new filing requirements become effective May 16, 2011, for new issues. Brokers and dealers have until September 22, 2011, to submit information about t and VRDOs in existence prior to May 16. All documents must be submitted through the MSRB’s Short-term Obligation Rate Transparency System or “SHORT System.”

Revised MSRB Rule G-34, as approved by the SEC, contains changes to subsections (c)(i) (for ARS) and (c)(ii) (for VRDOs) that require brokers and dealers to file auction procedures and interest rate setting documents for ARS and liquidity documents for VRDOs. The filing requirements become effective on May 16, 2011, for new issues, and on September 22, 2011, for issues outstanding prior to May 16, 2011.

MSRB Notice 2011-17 February 23, 2011 (the “Notice”) provides an overview of the rule change and guidance as to implementation of the revised rule. As set forth in the Notice and the revised rule, the purpose of the rule change is to provide a centralized source of documents for bondholders to find the key terms of the auction procedures for ARS and key liquidity terms for VRDOs.

ARS program dealers will be required to submit documents defining current auction procedures and interest rate setting mechanisms associated with an issue within five business days of receipt. Those key terms could be contained in multiple documents (such as, for example, an indenture and an auction agency agreement). The SHORT System will permit the submission of multiple documents.

Remarketing agents for VRDOs will be required to obtain and submit the current version of documents detailing provisions of liquidity facilities associated with the VRDO, including in particular the terms under which a liquidity provider for a VRDO is no longer obligated to purchase the bonds, and the term out period. The Rule lists the letter of credit agreement (including the letter of credit) and the standby bond purchase agreement as the two types of agreements it would expect to be filed (“Liquidity Documents”). The Rule adds another category, which is “any other document that



establishes an obligation to provide liquidity.” The Notice explains that this category is intended to pick up, for example, documents relating to an issuer who is providing self-liquidity, but is not intended to require the filing of documents related to the VRDO such as the remarketing agreement. Remarketing agents will also be required to file renewal documents when a letter of credit or standby agreement is renewed or extended, either by submitting just the renewal document or the renewal plus the original documents.

In the Notice, the MSRB acknowledges that certain ARS and VRDO documents may contain information that was not intended to be made public. The Notice permits a broker-dealer to perform a limited amount of redacting of confidential information (e.g., fees, staff names, contact information for draws, bank routing numbers) or other information from the liquidity documents that could be used in a fraudulent manner. Redaction cannot include information that would reasonably be assumed to be used by an investor or market participant in evaluating the VRDO.

For existing deals for which liquidity documents are to be filed before September 22, 2011 (the “transition period”), the remarketing agent is only required to use its “best efforts” to obtain and file the information required by the revised rule, and must document its “best efforts” in trying to obtain such information, including written requests for documents and any responses from an issuer or liquidity provider. If it is not able to obtain the information to file, it will be required to submit a notice by September 22, 2011, that such information was not able to be obtained. Records of such efforts should be maintained for three years.

All documents submitted on the SHORT System should be identified by the CUSIP number of the bonds to which they relate and will be searchable by that CUSIP. Documents submitted for new issues and renewal documents for existing issues must be in a PDF format that is word searchable, but documents submitted for existing deals during the transition period are not required to be word searchable.

Hunton & Williams stands ready to assist broker-dealers and liquidity providers in providing information to comply with the revised G-34 requirements. Please contact us to discuss or speak about particular situations.

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