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July 19, 2013

Via: <http://www.sec.gov/cgi-bin/ruling-comments>

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release No. 34-69834; File No. SR-MSRB-2013-05; Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods

Dear Ms. Murphy:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to briefly comment on a proposal by the Municipal Securities Rulemaking Board (“MSRB” or “the Board”) to amend its existing rules to include provisions covering retail order periods.¹ The proposal would require senior syndicate managers to assure timely dissemination of the terms and conditions of a retail order period to syndicate and selling group members. In addition, the proposed amendments would require dealers to assure that any orders submitted during the retail order period satisfy the issuer’s retail customer criteria. Finally, the proposed amendments would require syndicate managers or sole underwriters to identify in submissions to MSRB’s Electronic Municipal Market Access municipal disclosure and market data platform

¹ SEC. & EXCH. COMM’N, Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods, <http://www.sec.gov/rules/sro/msrb/2013/34-69834.pdf>.

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(“EMMA”) whether a retail order period was conducted as part of a municipal underwriting.² WFA files this comment letter to offer its views as the Securities Exchange Commission (“the SEC” or “the Commission”) considers MSRB’s retail order period proposal.

WFA consists of brokerage operations that administer approximately \$1.3 trillion in client assets. It employs 15,268 full-service financial advisors in branch offices located in all 50 states and the District of Columbia, and 3,304 licensed financial specialists located in retail bank branches.³ WFA offers a range of fixed income solutions, including municipal securities, to its retail clients.

WFA has previously expressed its support for MSRB’s effort to clarify duties relating to the conduct of retail order periods and appreciates the need for recordkeeping that demonstrates compliance with the terms of retail order periods.⁴ WFA offers these comments to assure that MSRB’s retail order period rules balance dealer concerns about the privacy of customer information with the need for issuer verification of the *bona fide* status of retail orders. In addition, WFA believes MSRB’s plans for implementing the retail order period rules must provide dealers sufficient time to prepare for the additional recordkeeping and submission requirements.

I. MSRB Should Prohibit Issuers from Requiring Sensitive Customer Information to Demonstrate Bona Fide Status of Retail Orders.

MSRB’s proposed retail order period amendments include new paragraph (k) in G-11 which specifies five types of information that a dealer submitting orders during a retail order period must provide to support a determination of the order’s *bona fide* retail status.⁵ Included among these requirements is a provision that the dealer must submit “any identifying information” other than social security numbers or customer names required by or on behalf of the issuer.⁶

The MSRB acknowledged that it received comments asking that issuers not be permitted to require dealers submitting retail orders to provide sensitive customer data such as customer account numbers, addresses, phone numbers or tax identification numbers in order to fulfill

² MSRB Filing of Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32 to Include Provisions Specifically Tailored for Retail Order Periods, 4-5, <http://msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/SR-MSRB-2013-05-SEC-Filing.ashx>.

³ WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network LLC (“WFAFN”) and First Clearing LLC, which provides clearing services to 88 correspondent clients, WFA and WFAFN. For ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

⁴ WFA Comment Re: MSRB 2012-13 Request for Comment on Proposed Rule Amendments and Interpretive Notice on Retail Order Periods, 1, <http://msrb.org/RFC/2012-13/WellsFargoAdvisors.pdf>

⁵ MSRB Filing of Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32, at 29-30.

⁶ *Id.* at 30.

the proposed rule's "identifying information" requirement.⁷ The MSRB declined to incorporate any additional limits to address these concerns, expressing the view that "an issuer may be amenable to allowing a dealer to truncate" potentially sensitive data such as account numbers "if there are legitimate customer privacy protection issues."⁸

WFA believes that the open-ended nature of the "identifying information" requirement poses "legitimate customer privacy protection issues" that should be addressed within the rule.⁹ It would be unduly burdensome for dealers to contact individual issuers to ascertain the issuer's amenability to alternative submission measures necessary to protect sensitive customer information. Moreover, an issuer's refusal to consider the dealer's request to address customer privacy protection concerns could conflict with the dealer's regulatory obligations to protect customer information.¹⁰ In view of these issues, WFA urges the MSRB to amend the G-11(k) "identifying information" requirement to prohibit issuers from requiring submission of customer account numbers, addresses, phone numbers, tax identification numbers, as well as the proposed rule's existing limits prohibiting issuers from requiring social security numbers and customer names.

II. MSRB Should Align the Implementation Date for the G-8 and G-11 Amendments with the G-32 Amendments.

The MSRB has proposed that the "core" provisions of its retail order period amendments, including those of proposed paragraph (k) of G-11, be implemented six months from Commission approval.¹¹ The Board, however, believes that "it is reasonable to delay" the new requirements under amended G-32 in order to facilitate the design and testing of an automated filing system for submission of additional data about retail order periods to EMMA.¹²

Although, the rule envisions that the submission by dealers of data required under proposed G-11(k) "may be part of the order submitted to the senior syndicate manager through an electronic order entry system," it would permit other means of transmitting this information so long as it is provided no later than the "Time of Formal Award."¹³ Regardless of the means of transmission, the MSRB acknowledges dealers will need to make "software or systems modifications" to comply with these and other provisions. Notwithstanding the need for such technology modifications, the Board believes a six-month implementation window is sufficient.¹⁴

⁷ *Id.* at 45-6.

⁸ *Id.*

⁹ *Id.*

¹⁰ The protection of customer personal and financial information is "a key responsibility" of FINRA member firms and under Regulation S-P, <http://www.finra.org/Industry/Issues/CustomerInformationProtection/>.

¹¹ MSRB Filing of Proposed Rule Change to Amend MSRB Rules G-8, G-11 and G-32, at 29-30.

¹² *Id.* at 38.

¹³ *Id.* at 150.

¹⁴ *Id.* at 5.

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WFA respectfully requests that MSRB reconsider the shorter time frame for compliance with provisions of G-8 and G-11. As MSRB notes, dealers will be required to design and test software to assure that they can comply with the new provisions of G-8 and G-11.¹⁵ The MSRB has not demonstrated that the design and testing requirements for these provisions will be any less burdensome than for the new EMMA requirements under revised G-32. Accordingly, WFA urges the MSRB to synchronize the implementation date of these requirements, particularly those of proposed G-11(k), with the later date the Board has proposed for the new provisions of G-32.

Conclusion

WFA thanks the SEC for its willingness to consider the issues raised in this letter as it evaluates MSRB's proposed retail order period rules. WFA believes the suggestions above will enable the Board to increase the level of clarity associated with the conduct of retail order periods while addressing dealers' legitimate concerns about the importance of protecting sensitive customer information and providing dealers adequate time to prepare for the new requirements. If you have questions regarding this comment letter, please do not hesitate to contact me.

Respectfully submitted,



Robert J. McCarthy
Director of Regulatory Policy
Wells Fargo Advisors, LLC

¹⁵ *Id.*