



April 29, 2014

Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20540-1090

Re: Amendment No. 1 to File No. SR-MSRB-2014-01

Dear Secretary:

On January 29, 2014, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC”) a proposed rule change consisting of proposed revisions to MSRB Rule G-30, on prices and commissions, and the deletion of Rule G-18, on execution of transactions (the “original proposed rule change”).<sup>1</sup> The SEC published the proposed rule change for comment in the Federal Register on February 19, 2014,<sup>2</sup> and received two comment letters. On April 29, 2014 the MSRB submitted its response to comments and filed a partial amendment (“Amendment No. 1”) to File No. SR-MSRB-2014-01 (the “original proposed rule change”).

A copy of Amendment No. 1 is attached to this letter. Changes made by Amendment No. 1 to the rule text of the original proposed rule change can be found in Exhibit 4 of Amendment No. 1.

If you have any questions regarding this matter, please contact Benjamin Tecmire, Counsel, or me at (703) 797-6600.

Sincerely,

Michael L. Post  
Deputy General Counsel

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<sup>1</sup> See File No. SR-MSRB-2014-01 (Jan. 29, 2014), Exchange Act Release No. 71536 (Feb. 12, 2014).

<sup>2</sup> See 79 FR 9558 (Feb. 19, 2014).

The Municipal Securities Rulemaking Board (“MSRB”) is filing this partial amendment (“Amendment No. 1”) to File No. SR-MSRB-2014-01, originally filed with the Securities and Exchange Commission (the “Commission”) on January 29, 2014, with respect to a proposed rule change concerning pricing and commissions (the “original proposed rule change” and, together with Amendment No. 1, the “proposed rule change”). The MSRB requests that the proposed rule change be made effective 60 days after Commission approval.

The original proposed rule change consists of proposed amendments to MSRB Rule G-30 (Prices and Commissions), the deletion of MSRB Rule G-18 (Execution of Transactions) and the consolidation and codification of existing interpretive guidance regarding fair pricing under MSRB Rules G-17 (Conduct of Municipal Securities and Municipal Advisory Activities) and G-30.

The MSRB submitted the original proposed rule change to codify the substance of existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”) and further streamline the MSRB’s Rule Book. Fair-pricing provisions are currently organized in two separate rules, Rules G-18 and G-30, with interpretive guidance under Rule G-30 as well as under a third rule, Rule G-17, on fair dealing.

Amendment No. 1 would partially amend the text of the original proposed rule change to (i) revise Supplemental Material .05 of Rule G-30 to reference MSRB Rule G-48 (Transactions with Sophisticated Municipal Market Professionals) rather than MSRB Rule G-17; (ii) amend the text of MSRB Rule G-48(b) to reference MSRB Rule G-30 rather than Rule G-18; (iii) preserve rule number G-18 for possible future rulemaking; and (iv) insert a clarifying clause into subparagraph .02(b) of the Supplementary Material to Rule G-30.

The MSRB is proposing these minor revisions to the original proposed rule change because, since the filing of the original proposed rule change, other amendments to MSRB rules are being implemented that will make these existing references in Rules G-30 and G-48 no longer accurate.<sup>1</sup> Specifically, because the original proposed rule change would eliminate Rule G-18 and include its content in Rule G-30, Rule G-48 must reference Rule G-30(b)(i) rather than Rule G-18. Also, because of the pending implementation of new MSRB Rule G-48, Supplemental Material .05 in Rule G-30 must now reference Rule G-48 rather than Rule G-17. This technical amendment was anticipated in the original proposed rule change which mentioned that the MSRB had separately proposed to consolidate its interpretive guidance under Rule G-17 related to time of trade disclosures, suitability of recommendations, and dealings with sophisticated municipal market professionals into several rules, including Rule G-48.<sup>2</sup> Next, the MSRB is proposing to preserve rule number G-18 for possible future rulemaking activities after its text is deleted by the proposed rule change. In addition, to clarify that the list of fair-pricing factors in subparagraph .02(b) of the Supplementary Material of Rule G-30 is a non-exhaustive

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<sup>1</sup> New MSRB Rule G-48 will become effective July 5, 2014, and these changes are being made in anticipation of its implementation. See Release No. 34-71665 (Mar. 7, 2014); File No. SR-MSRB-2013-07.

<sup>2</sup> Release No. 34-71536 (Feb. 12, 2014); File No. SR-MSRB-2014-01.

list of factors, the rule text will be amended to specify that the list is not limited. Finally, because the original rule proposal did not propose a specific effective date the MSRB is now proposing an effective date of 60 days after approval by the Commission.

The MSRB believes that the Commission has good cause, pursuant to Section 19(b)(2) of the Securities and Exchange Act of 1934, for granting accelerated approval of the proposed change because the revisions made by Amendment No. 1 are technical amendments that do not alter the substance of the original proposed rule change, are consistent with the purpose of the original proposed rule change, and do not raise significant new issues. Moreover, as noted, the rule filing apprised commenters of the concurrent proceeding to codify other interpretive guidance under Rule G-17.

The changes made by Amendment No.1 to the original proposed rule change are indicated as attached in Exhibit 4. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

**Rule G-18: RESERVED**

No Change.

RESERVED

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**Rule G-30: Prices and Commissions**

(a) - (b) No Change.

**- - - Supplementary Material:**

.01 No Change.

**.02 Relevant Factors in Determining the Fairness and Reasonableness of Prices.**

(a) No Change.

(b) Other factors include, but are not limited to:

(i) - (x) No Change.

.03 No Change.

.04 No Change.

.05 Pricing Irregularities on Alternative Trading Systems.

Although the duty under section (b)(i) of this rule to evaluate the prices of certain individual transactions is eliminated under Rule [G-17] G-48 when they are effected for sophisticated municipal market professionals, a dealer operating an alternative trading system must, under the general duty set forth in section (b)(i), act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer operating an alternative trading system may be in violation of section (b)(i) if it fails to take actions to address system or participant pricing abuses.

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**Rule G-48: Transactions with Sophisticated Municipal Market Professionals**

(a) No Change.

(b) Transaction Pricing. The broker, dealer or municipal securities dealer shall not have any obligation under [Rule G-18] Rule G-30(b)(i) to take action to ensure that transactions meeting all of the following conditions are effected at fair and reasonable prices:

(i) - (iii) No Change.

(c) - (d) No Change.

**EXHIBIT 5****Rule G-30: Prices and Commissions**

[(a) *Principal Transactions*. No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer or sell municipal securities for its own account to a customer except at an aggregate price (including any mark-down or mark-up) that is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transaction.]

[(b) *Agency Transactions*. No broker, dealer or municipal securities dealer shall purchase or sell municipal securities as agent for a customer for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors, including the availability of the securities involved in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the broker, dealer or municipal securities dealer, and the amount of any other compensation received or to be received by the broker, dealer, or municipal securities dealer in connection with the transaction.]

(a) *Principal Transactions*.

No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.

(b) *Agency Transactions*.

(i) Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.

(ii) No broker, dealer or municipal securities dealer shall purchase or sell municipal securities as agent for a customer for a commission or service charge in excess of a fair and reasonable amount.

**- - - Supplementary Material:****.01 General Principles.**

(a) Each broker, dealer or municipal securities dealer (each, a “dealer,” and collectively, “dealers”), whether effecting a trade on an agency or principal basis, must exercise diligence in establishing the market value of the security and the reasonableness of the compensation received on the transaction.

(b) A dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account.

(c) A “fair and reasonable” price bears a reasonable relationship to the prevailing market price of the security.

(d) Dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction. As part of the aggregate price to the customer, mark-up or mark-down also must be a fair and reasonable amount, taking into account all relevant factors.

(e) Reasonable compensation differs from fair pricing. A dealer could restrict its profit on a transaction to a reasonable level and still violate this rule if the dealer fails to consider market value. For example, a dealer may fail to assess the market value of a security when acquiring it from another dealer or customer and as a result may pay a price well above market value. It would be a violation of fair-pricing responsibilities for the dealer to pass on this misjudgment to another customer, as either principal or agent, even if the dealer makes little or no profit on the trade.

#### **.02 Relevant Factors in Determining the Fairness and Reasonableness of Prices.**

(a) The most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.

(b) Other factors include, but are not limited to:

(i) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and, where applicable, of any securities exchanged or traded in connection with the transaction;

(ii) the expense involved in effecting the transaction;

(iii) that the dealer is entitled to a profit;

(iv) the total dollar amount of the transaction;

(A) To the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions.

(v) the service provided in effecting the transaction;

(vi) the availability of the securities in the market;

(vii) the rating and call features of the security (including the possibility that a call feature may not be exercised);

(A) A dealer should consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any bond insurance applicable to the security.

(B) A dealer pricing securities on the basis of yield to a specified call feature should consider the possibility that the call feature may not be exercised. Accordingly, the price to be paid by a customer should reflect this possibility and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in this manner may constitute a violation of this rule because the price may not be “fair and reasonable” if the call feature is not exercised. That a customer in these circumstances may realize a yield greater than the yield at which the transaction was effected does not relieve a municipal securities professional of its responsibility under this rule.

(viii) the maturity of the security;

(ix) the nature of the dealer’s business; and

(x) the existence of material information about a security available through EMMA or other established industry sources.

**.03 Relevant Factors in Determining the Fairness and Reasonableness of Commissions or Service Charges.**

(a) A variety of factors may affect the fairness and reasonableness of a commission or service charge, including:

(i) the availability of the securities involved in the transaction;

(ii) the expense of executing or filling the customer’s order;

(iii) the value of the services rendered by the dealer;

(iv) the amount of any other compensation received or to be received by the dealer in connection with the transaction;

(v) that the dealer is entitled to a profit;

(vi) the total dollar amount and price of the transaction;

(vii) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and of any securities exchanged or traded in connection with the transaction; and



(viii) for a dealer that sells municipal fund securities, whether the dealer's commissions or other fees fall within the sales charge schedule specified in Rule 2830 of the National Association of Securities Dealers, Inc. (Such compliance with Rule 2830 may, depending upon the facts and circumstances, be a significant, though not dispositive, factor in determining whether a commission or other fee is fair and reasonable.)

#### **.04 Fair-Pricing Responsibilities and Large Price Differentials.**

(a) A transaction chain that results in a large difference between the price received by one customer and the price paid by another customer for the same block of securities on the same day, without market information or news accounting for the price volatility, raises the question as to whether each of these customers received a price reasonably related to the market value of the security, and whether the dealers effecting the customer transactions (and any broker's brokers that may have acted on behalf of such dealers) made sufficient effort to establish the market value of the security when effecting their transactions.

(b) The lack of a well-defined and active market for an issue does not negate the need for diligence in determining the market value as accurately as reasonably possible when fair-pricing obligations apply. Although intra-day price differentials for obscure and illiquid issues might generally be larger than for more well-known and liquid issues, dealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances. For example, when a dealer is unfamiliar with a security, the efforts necessary to establish its value may be greater than if the dealer is familiar with the security.

(i) A dealer may need to review recent transaction prices for the issue or transaction prices for issues with similar credit quality and features as part of its duty to use diligence to determine the market value of municipal securities. When doing this, the dealer often will need to use its professional judgment and market expertise to identify comparable securities and to interpret the impact of recent transaction prices on the value of the block of municipal securities in question.

(ii) If the features and credit quality of the issue are unknown, it also may be necessary to obtain information on these factors directly or indirectly from an established industry source. For example, the current rating or other information on credit quality, the specific features and terms of the security, and any material information about the security such as issuer plans to call the issue, defaults, etc., all may affect the market value of securities.

(c) A bid-wanted procedure is not always a conclusive determination of market value. Therefore, particularly when the market value of an issue is unknown, a dealer may need to check the results of the bid-wanted process against other objective data to fulfill its fair-pricing obligations.

**.05 Pricing Irregularities on Alternative Trading Systems.**

Although the duty under section (b)(i) of this rule to evaluate the prices of certain individual transactions is eliminated under Rule G-48 when they are effected for sophisticated municipal market professionals, a dealer operating an alternative trading system must, under the general duty set forth in section (b)(i), act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer operating an alternative trading system may be in violation of section (b)(i) if it fails to take actions to address system or participant pricing abuses.

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**Rule G-18: RESERVED [Execution of Transactions]**

[Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.]

RESERVED

**Rule G-48: Transactions with Sophisticated Municipal Market Professionals**

(a) No Change.

(b) Transaction Pricing. The broker, dealer or municipal securities dealer shall not have any obligation under [Rule G-18] Rule G-30(b)(i) to take action to ensure that transactions meeting all of the following conditions are effected at fair and reasonable prices:

(i) - (iii) No Change.

(c) - (d) No Change.