



Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson Avenue
St. Louis, MO 63103
HO004-095
314-955-2156 (t)
314-955-2928 (f)

Member FINRA/SIPC

September 29, 2014

Via E-mail to <http://www.sec.gov/rules/sro.shtml>

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

RE: File No. SR-MSRB-2014-07, Notice of Filing of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals (“SMMP”), and Rule D-15, on the Definition of SMMP

Dear Ms. Murphy:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment to the Securities and Exchange Commission (“SEC” or the “Commission”) regarding the Municipal Securities Rulemaking Board’s (“MSRB” or the “Board”) Notice of Filing of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals (“SMMP”), and Rule D-15, on the Definition of SMMP (the “Proposal”).¹ WFA commends the Board’s effort to “tailor best execution obligations to the characteristics of the municipal securities market” by accommodating for situations prevalent within the existing market structure.²

¹ SEC’s Request for Comment on MSRB’s Notice of Filing of Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals (“SMMP”), and Rule D-15, on the Definition of SMMP, Release No. 34-72956, File No. SR-MSRB 2014-07, Dated September 2, 2014. http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/~/_media/Files/SEC-Filings/2014/MSRB-2014-07.ashx.

² *Id.* at 8.

WFA consists of brokerage operations that administer almost \$1.4 trillion in client assets. It employs approximately 15,280 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in retail stores across the United States.³ WFA offers a range of fixed income solutions to its clients, many of whom regularly transact in municipal securities in the secondary markets.

WFA previously commented that existing fair pricing standards are most appropriately tailored to municipal market conditions than a proposed best execution requirement.⁴ Even the MSRB states in Supplementary Material .01 that the most favorable prices possible will not necessarily mean “best execution”, a position we continue to hold. Notwithstanding these comments, WFA applauds the Board’s efforts to better align the Rule to the municipal market by acknowledging that the goal dealers must strive to achieve is one of reasonable diligence in the municipal market.

In our previous public comments, WFA requested MSRB to clarify the language around a dealer achieving and demonstrating reasonable diligence set forth in the Supplemental Material. The Proposal including the proposed Supplementary Material however, does not address those requests for clarification. WFA believes the current fair pricing standards are appropriately tailored to the municipal securities market and encourages the Board to provide clarification regarding when a firm has exercised reasonable diligence.

Additionally, the Proposal includes changes to Rule D-15, the definition of SMMP. WFA has significant concerns with these modifications, in particular the de-harmonization of the SMMP affirmation process from the FINRA Rule 2111 affirmation process. Moreover, such changes, which substantially modify the SMMP affirmation process, were made by the Board without first offering public comment.

I. MSRB Should Provide Guidance to Clarify When a Firm Has Exercised Reasonable Diligence.

Proposed Rule G-18 outlines factors that will be considered to determine whether a dealer exercised reasonable diligence in pursuit of the most favorable price possible under prevailing market conditions.⁵ Proposed Supplementary Material .01 explains that the Rule’s “principal purpose” is the promotion of “reasonable diligence in ascertaining the best market and obtaining the most favorable price possible under prevailing market conditions.”⁶ It also notes that a

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 has 275,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC, which provides clearing services to 77 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

⁴ See Correspondence from Robert J. McCarthy to Ronald W. Smith, dated April 2, 2014, regarding MSRB 2014-02, Request for Comment on Draft Best-Execution Rule, Including Exception for Transaction with Sophisticated Municipal Market Professionals. <http://www.msrb.org/RFC/2014-02/wellsfargo.pdf>.

⁵ Proposal at 8.

⁶ *Id* at 8.

failure to achieve the most favorable price may not mean reasonable diligence has not been exercised. Nevertheless, there is little guidance in the Proposed Rule and Supplementary Material to elaborate how reasonable diligence can be demonstrated. Furthermore, the Proposed Rule does not delineate how diligence obligations may differ when effecting customer purchases versus customer sales of municipal securities.

Proposed Supplementary Material .02 notes a “dealer’s failure to maintain adequate resources” such as staff or technology does not justify an execution “away from the best available market.” The Supplementary Material acknowledges a dealer’s business and level of activity are factors in determining the appropriate resource level and broadly references staff and technology as examples.⁷ WFA is concerned this language may create confusion over enforcement as the Rule could be applied inconsistently and arbitrarily based on the activity level and number of ATSs to which a particular dealer subscribes. If firms are held to different execution standards, the Rule will not achieve its regulatory objective. The MSRB should offer more clarity as to how a firm establishes it has the appropriate level of resources. For example, must an active dealer subscribe to some or all ATSs to demonstrate that it has adequate resources? If a dealer does not subscribe to a particular ATS and executes at a price inferior to that available on that ATS, will it be presumed to have failed to exercise adequate diligence?

Proposed Supplementary Material .03 explains that dealers must “make every effort to execute a customer transaction in a reasonably timely manner” but also notes that “[i]n certain market conditions a dealer may need to use more time to use reasonable diligence” in order to determine the best market.⁸ However, the Supplementary Material does not offer examples of circumstances where reasonable diligence requires more time. Does this apply only in the case of a security with limited pricing information or quotations available? If quotes are available from more than one ATS, are market conditions such that a dealer should prioritize timeliness of execution? The MSRB should provide additional guidance to illustrate how dealers can identify trades that require more time to show reasonable diligence.

Proposed Supplementary Material .06 notes that “a dealer must be especially diligent” to meet its best execution responsibilities when limited pricing information or quotations are available.⁹ Although the Material instructs dealers to have written policies and procedures outlining how the dealer will meet its best execution duties in such a circumstance, there is no guidance explaining what it means to have “limited pricing information or quotations available.”

Proposed Supplementary Material .06 also indicates a dealer should “seek out other sources of pricing information and potential liquidity” for securities with limited pricing information or quotations. It is unclear what these “other sources” would be. Could a dealer satisfy its diligence obligations for such a security by pricing it to yield equivalency with a comparable security? Could a dealer rely on vendor pricing data? The MSRB should offer additional guidance to elaborate how a dealer would identify that a bond has limited pricing or quotations available.

⁷ Proposal at 10.

⁸ *Id.* at 10

⁹ *Id.* at 11.

Moreover, MSRB should clarify what is meant by “other sources” and outline circumstances in which the use of a particular source is sufficient to support reasonable diligence.

Lastly, Rule G-18 clearly states “a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions”.¹⁰ Moreover, the Board provides various factors in determining “reasonable diligence” and Supplementary Material to support the goal of obtaining “reasonable diligence”. Despite MSRB’s focus on achieving “reasonable diligence”, the proposed Rule G-18 uses the term “Best Execution” in multiple instances including in the title itself. The term “Best Execution” correlates with the equity market and is inconsistent with the fundamental goal expressed within the Rule. WFA recommends the term “Best Execution” be removed from the Rule language, including the title, and be replaced with the term “reasonable diligence”.

II. SMMP Affirmation Process Should Remain Harmonized with FINRA Rule 2111 and Should Be Offered Industry Comment.

The Proposal introduces significant revisions to Rule D-15, which defines a SMMP, that were not included in MSRB Notice 2014-02.¹¹ Specifically, Proposed Rule D-15 provides that a dealer could not treat any customer as an SMMP after the proposed implementation date unless a customer has been given the new customer affirmation. The new affirmation process would require the customer to affirm it is exercising independent judgment in evaluating the quality of execution and the transaction price, and affirm it has timely access to “material information” available publicly from “established industry sources”. As of the effective date of the proposed rule change, all existing SMMP designations would be invalidated, and firms would be forced to re-qualify all SMMPs.

Moreover, the proposed changes would de-harmonize the SMMP designation from the institutional customer designation in FINRA Rule 2111. This contradicts MSRB’s stated goal to seek harmony with FINRA rules, when it revised the SMMP standards in 2012. WFA sees no benefit to invalidate current certifications. While WFA supports the exemption for SMMPs set forth in Rule G-48, a more efficient solution would be to allow dealers to use a negative consent as a way for SMMPs to opt-out of SMMP status.

The condensed comment period offers little time to formulate a constructive analysis of the operational changes necessary to comply with the requirements set forth in the Proposal. WFA believes that modifications of this magnitude warrant informed comment and recommend the substantial changes in Proposed Rule D-15 be withdrawn until they can be properly reviewed.

¹⁰ Proposal at 8.

¹¹ MSRB Regulatory Notice 2014-02 Request for Comment on Draft Best-Execution Rule, Including Exception for Transactions with Sophisticated Municipal Market Professionals at 5, <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-02.ashx?n=1>.

Ms. Elizabeth M. Murphy

September 29, 2014

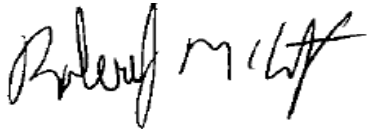
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CONCLUSION

WFA appreciates the opportunity to share its views about the Proposal and commends MSRB for its efforts to tailor Rule G-18 to the unique character of the municipal securities market. As described in the foregoing comments, WFA believes MSRB should provide additional guidance about the steps needed to demonstrate reasonable diligence. WFA also believes the SMMP affirmation process should remain harmonized with the FINRA Rule 2111 affirmation process and any modifications to the current affirmation process be properly reviewed. If you would like to further discuss these issues, please contact the undersigned at

██████████ or ██████████.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is written in a cursive, slightly slanted style.

Robert J. McCarthy
Director of Regulatory Policy