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May 29, 2015

**Via E-mail to *rule-comments@sec.gov***

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**RE: File No. SR-MSRB-2015-03**, Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

Dear Mr. Fields:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the Municipal Securities Rulemaking Board’s (“MSRB” or the “Board”) Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors.<sup>1</sup> WFA commends the SEC and the Board for their continued efforts to elaborate on the duties of municipal advisors and appreciates its consideration of these comments.

WFA consists of brokerage operations that administer almost \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and

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<sup>1</sup> SEC’s Request for Comment on MSRB’s Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors. Release No. 34-74860, File No. SR-MSRB 2015-03, Dated May 4, 2015. <http://www.msrb.org/~media/Files/SEC-Filings/2015/MSRB-2015-03-Federal-Register-Notice.ashx?la=en>

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3,472 licensed financial specialists in 6,610 retail bank branches across the United States.<sup>2</sup> WFA offers a range of fixed income solutions, including municipal securities, to its clients.

WFA appreciates the Board's consideration of earlier comments regarding the potential breadth of the principal transaction prohibition, but remains concerned that the prohibition will have unintended consequences for certain affiliate transactions. Although WFA is not a municipal advisor, it offers this brief comment to the SEC to reiterate its view that the principal trading prohibition should not apply to municipal advisor affiliates.<sup>3</sup>

### **Rule G-42 Should Not Prohibit Principal Transactions by Affiliates of a Municipal Advisor.**

Proposed Rule G-42 as currently drafted clarifies that an affiliate of a municipal advisor to a municipal entity client is prohibited from "engaging in a principal transaction directly related to the same municipal transaction or financial product as to which the municipal advisor is providing advice."<sup>4</sup> Although this seems to mitigate the impact of such prohibition by narrowing the application to a transaction for which the municipal advisor is engaged, WFA continues to believe the prohibition could cover certain non-municipal advisor transactions resulting in fewer choices for municipal entity clients. This letter simply reiterates our position with respect to such prohibition.

Large financial institutions, such as Wells Fargo, may have numerous affiliates conducting business with municipal entities. Affiliates of large financial institutions often offer substantially different services, operate with distinct governance structures and employ information barriers. If, based on such factors, a non-municipal advisor affiliate is not connected to the municipal advisor relationship, the risk of a conflict of interest in a principal transaction between a municipal advisory client and the non-municipal advisor affiliate is significantly diminished.

Despite the MSRB's attempt to narrow the application of the principal trading prohibition, WFA is concerned that certain affiliate transactions could still be implicated by the rule in instances where a non-municipal advisor affiliate may be unaware of the existence of a municipal advisory engagement between a municipal entity and the municipal advisor.

For example, a municipal advisor may engage with a municipal entity to provide advice relating to the investment of proceeds. Due to information barriers and separate governance structures, non-

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<sup>2</sup> 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 ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

<sup>3</sup> See Correspondence from Robert J. McCarthy to Ronald W. Smith, dated March 10, 2014, regarding MSRB Notice 2014-01 Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors, <http://www.msrb.org/RFC/2014-01/WellsFargo.pdf> and Correspondence from Robert J. McCarthy to Ronald W. Smith, dated August 25, 2014, regarding MSRB Notice 2014-12 Request for Comment on Revised Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors, <http://www.msrb.org/RFC/2014-12/WellsFargoAdvisorsCmtLtrMSRBNotice2014-12RevisedRuleG-42.pdf>.

<sup>4</sup> SR-MSRB-2015-03 (April 24, 2015) at 634.

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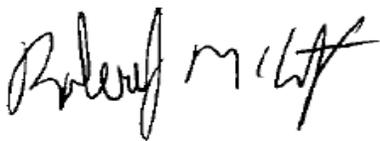
municipal advisor affiliates may be unaware of the existence of such a municipal advisory relationship. That same municipal entity client, however, may have an existing relationship with a separate, non-municipal advisor broker-dealer affiliate. Consistent with SEC staff guidance, the non-municipal advisor broker-dealer affiliate could provide the municipal entity client “information regarding a financial institution’s currently-available investments (e.g. the terms, maturities and interest rates at which the financial institution offers these investments)” in response to the same municipal entity’s inquiry about investment alternatives for those proceeds.<sup>5</sup>

If a transaction were to arise out of this activity, which is permissible under the general information exclusion from the advice provision of the SEC Municipal Advisor rule, the non-municipal advisor affiliate would be in violation of the principal transaction prohibition despite the fact that it is unaware of the existence of the municipal advisor’s relationship with the municipal entity client regarding the same transaction. Consequently, the effect of the principal prohibition will be to discourage non-municipal advisor broker-dealers affiliated with a municipal advisor from continuing to conduct business with municipal entity clients to avoid the risk of an inadvertent violation. Accordingly, WFA believes the MSRB should exempt municipal advisor affiliates operating with information barriers from the principal transaction prohibition.

## **CONCLUSION**

WFA appreciates the opportunity to reiterate its views regarding the duties of non-solicitor municipal advisors. For the foregoing reasons, WFA respectfully requests the SEC and MSRB to review the principal trading prohibition. If you would like to further discuss WFA’s position on this matter, please do not hesitate to contact me.

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy

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<sup>5</sup> SEC Registration of Municipal Advisors, Frequently Asked Questions, (updated May, 19, 2014), <http://www.sec.gov/info/municipal/mun-advisors-faqs.shtml>.