MSRB NOTICE 2013-04 (FEBRUARY 11, 2013)

REQUEST FOR COMMENT ON CODIFYING TIME OF TRADE DISCLOSURE OBLIGATION

The Municipal Securities Rulemaking Board ("MSRB") is seeking comment on a proposed rule (the "proposed rule") that would codify the time of trade disclosure obligation of brokers, dealers, and municipal securities dealers ("dealers") currently described in interpretive guidance to MSRB Rule G-17. The rule provides that, in the conduct of its municipal securities activities, each dealer must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market ("time of trade disclosure obligation"). Over the course of a number of years, the MSRB has issued interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios such as in connection with transactions involving new or non-standard products or features. Proposed Rule G-47 would codify the principles from these interpretive notices without changing the time of trade disclosure obligation.

Comments should be submitted no later than March 12, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, Regulatory Support, or Darlene Brown, Assistant General Counsel, at 703-797-6600.

BACKGROUND

The MSRB is conducting a review of Rule G-17, a principles-based rule, which has been expanded upon through numerous interpretive notices and interpretive letters. The MSRB has examined its interpretive guidance[2] related to the time of trade disclosure obligation and is proposing to consolidate this guidance by codifying it into a new time of trade disclosure rule.[3] Market participants have expressed concern regarding the difficulty of reviewing years of interpretive guidance to determine current obligations, and consolidating this guidance into rule language would ease the burden on dealers and other market participants who endeavor to understand, comply with and enforce the time of trade disclosure obligation.

PROPOSED RULE

The codification of the interpretive guidance into a rule is not intended to substantively change the time of trade disclosure obligation.[4] Rather, the codification is an effort to consolidate the current obligations into one easy to follow rule. The structure of the proposed rule (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations ("SROs").[5] The MSRB intends to follow this new structure for all of its rules going forward, in order to streamline the rules, harmonize the format with that of other SROs, and make the

rules more flexible and easier for dealers and municipal advisors to understand and follow.

CURRENT INTERPRETIVE GUIDANCE

The MSRB has identified three interpretive notices that would be superseded in their entirety by the proposed rule and the MSRB proposes deleting these three notices.[6] The remaining interpretive notices and interpretive letters cover the time of trade disclosure obligation as well as other topics and, therefore, will remain intact at this time.

REQUEST FOR COMMENT

The MSRB is requesting comment from the industry and other interested parties on the proposed rule set forth below. Specifically, the MSRB requests that commenters address the following questions:

1. Will the proposed codification of existing guidance impose any particular burden on dealers or provide any material benefit to dealers?
2. Will the proposed new rule format impose any particular burden on dealers or provide any material benefit to dealers?

February 11, 2013

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TEXT OF PROPOSED RULE

Rule G-47: Time of Trade Disclosure

(a) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market.

(b) Definitions.

(i) “Established industry sources” shall include the MSRB’s Electronic Municipal Market Access (“EMMA”®) system, rating agency reports, and other sources of information relating to municipal securities transactions generally used by brokers, dealers, and municipal securities dealers that effect transactions in the type of municipal securities at issue.

(ii) “Material information”: Information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision.

(iii) “Reasonably accessible to the market” shall mean that the information is made available publicly through established industry sources.

---Supplementary Material:

.01 Manner and Scope of Disclosure.

a. The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely

would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment.

b. The public availability of material information through EMMA, or other established industry sources, does not relieve brokers, dealers, and municipal securities dealers of their obligation to make the required time of trade disclosures to a customer.

c. A broker, dealer, or municipal securities dealer may not satisfy its disclosure obligation by directing a customer to an established industry source or through disclosure in general advertising materials.

.02 Electronic Trading Systems. Brokers, dealers, and municipal securities dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other brokers, dealers, and municipal securities dealers.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

a. **Variable rate demand obligations.** A description of the basis on which periodic interest rate resets are determined and the role of the remarketing agent.

b. **Auction rate securities.** Features of the auction process that likely would be considered significant by a reasonable investor and the basis on which periodic interest rate resets are determined. Additional facts that may also be considered material are the duration of the interest rate reset period, information on how the “all hold” and maximum rates are determined, any recent auction failures, and other features of the security found in the official documents of the issue.

c. **Credit risks and ratings.** The credit rating or lack thereof, credit rating changes, credit risk of the municipal security, and any underlying credit rating or lack thereof.

d. **Credit or liquidity enhanced securities.** The identity of any credit enhancer or liquidity provider, terms of the credit facility or liquidity facility, and the credit rating of the credit provider or liquidity provider, including potential rating actions (*e.g.,* downgrade).

e. **Insured securities.** The fact that a security has been insured or arrangements for insurance have been initiated, the credit rating of the insurance company, and information about potential rating actions with respect to the bond insurance company.

f. **Original issue discount bonds.** The fact that a security bears an original issue discount since it may affect the tax treatment of a municipal security.

g. **Securities sold below the minimum denomination.** Selling to a customer a quantity of municipal securities below the minimum denomination. Brokers, dealers, and municipal securities dealers are also required to disclose the potential adverse effect on liquidity of a customer position below the minimum denomination. *See also* Rule G-15(f).

h. **Securities with non-standard features.** Any non-standard feature of a

municipal security. Additionally, if price/yield calculations are affected by anomalies due to a non-standard feature, this also may be material information about the transaction that must be disclosed to the customer.

i. **Bonds that prepay principal.** The fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction.

j. **Callable securities.** The fact that a municipal security may be redeemed prior to maturity in-whole, in-part, or in extraordinary circumstances, including sinking fund calls and bonds subject to detachable call features.

k. **Put option and tender option bonds.** Information concerning the put option or tender option features.

l. **Stripped coupon securities.** Facts concerning the underlying securities which materially affect the stripped coupon instruments. The unusual nature of these securities and their tax treatment warrants special efforts to provide written disclosures.

m. **The investment of bond proceeds.** Information on the investment of bond proceeds.

n. **Issuer's Intent to Prerefund.** An issuer's intent to prerefund an issue.

o. **Failure to make continuing disclosure filings.** Discovery that an issuer has failed to make filings required under its continuing disclosure agreements.

.04 Processes and Procedures. Brokers, dealers, and municipal securities dealers must implement processes and procedures reasonably designed to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

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[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[2] This includes interpretive guidance included in rules other than Rule G-17 but cross-referenced to Rule G-17.

[3] The time of trade disclosure guidance that has been consolidated and condensed into the proposed rule was derived from the following Rule G-17 interpretive notices: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (July 14, 2009), *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17* (November 30, 2011), *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 20, 2002), *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (September 20, 2010), *Application of MSRB Rules to Transactions in Auction Rate Securities* (February 19, 2008), *Bond Insurance Ratings – Application of MSRB Rules* (January 22, 2008), *Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (August 7, 2006), *Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts -- Disclosure of Original Issue Discount Bonds* (January 5, 2005), *Notice of Interpretation of Rule G-17 Concerning Minimum Denominations* (January 30, 2002), *Transactions in Municipal*

Securities with Non-Standard Features Affecting Price/Yield Calculations (June 12, 1995), *Educational Notice on Bonds Subject to "Detachable" Call Features* (May 13, 1993), *Notice Concerning Securities that Prepay Principal* (March 19, 1991), *Notice Concerning Disclosure of Call Information to Customers of Municipal Securities* (March 4, 1986), *Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features* (March 6, 1984), and *Notice Concerning the Application of Board Rules to Put Option Bonds* (September 30, 1985); the following Rule G-15 interpretive notice: *Notice Concerning Stripped Coupon Municipal Securities* (March 13, 1989); the following Rule G-17 interpretive letters: *Description provided at or prior to the time of trade* (April 30, 1986), and *Put option bonds: safekeeping, pricing* (February 18, 1983); and the following Rule G-15 interpretive letters: *Disclosure of the investment of bond proceeds* (August 16, 1991), *Securities description: prerefunded securities* (February 17, 1998), *Callable securities: pricing to mandatory sinking fund calls* (April 30, 1986), and *Callable securities: pricing to call and extraordinary mandatory redemption features* (February 10, 1984).

[4] The proposal to codify the time of trade disclosure obligations in proposed Rule G-47 as they exist today is not intended to foreclose substantive changes to this rule in the future. The MSRB believes that the structure and clarity of proposed Rule G-47 will facilitate any potential substantive changes in the future.

[5] *See, e.g.*, FINRA Rule 2111 (Suitability).

[6] *Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 20, 2002), *Notice of Interpretation of Rule G-17 Concerning Minimum Denominations* (January 30, 2002), and *Notice Concerning Disclosure of Call Information to Customers of Municipal Securities* (March 4, 1986).

Alphabetical List of Comment Letters on MSRB Notice 2013-04 (February 11, 2013)

1. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated March 12, 2013

2. Charles Schwab & Co., Inc.: Letter from Michael P. Moran, Vice President, Compliance, dated March 12, 2013

3. Lumesis, Inc.: Letter from Gregg L. Bienstock, Co-Founder and Chief Executive Officer, dated March 11, 2013

4. Lumesis, Inc.: Letter from Gregg L. Bienstock, Co-Founder and Chief Executive Officer, dated July 17, 2013

5. R.W. Smith & Associates, Inc.: E-mail from Paige Pierce dated March 20, 2013

6. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director and Associate General Counsel, dated March 12, 2013

7. TMC Bonds, L.L.C.: Letter from Thomas S. Vales, Chief Executive Officer, dated March 11, 2013

8. Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated March 12, 2013

BDA Bond Dealers of America

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Washington, DC 20036
202.204.7900
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March 12, 2013

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2013-04 (February 11, 2013)

Dear Mr. Smith:

On behalf of the Bond Dealers of America (BDA), I am pleased to submit this letter in response to MSRB Notice 2013-04, a proposed rule (the "Proposed Rule") that would codify the time-of-trade disclosure obligation of brokers, dealers, and municipal securities dealers ("dealers") currently described in interpretive guidance to MSRB Rule G-17. BDA is the only DC based group representing the interests of securities dealers and banks focused on the U.S. fixed income markets. We welcome this opportunity to state our position.

The BDA appreciates the MSRB's effort to codify its multiple interpretive guidance notices of these time-of-trade disclosure obligations under MSRB Rule G-17 and any continued efforts to clarify the practical real-world steps that these disclosure obligations impose on dealers. The incorporation of interpretive notices into rules themselves should help provide much desired clarity to market participants such as dealers, investors and regulatory examiners. We would like to outline some outstanding concerns, described below.

1. Reference the Sophisticated Municipal Market Participant Exception

The BDA believes a reference to the exception provided in the MSRB's sophisticated

municipal market professional ("SMMP"[1]) interpretation pursuant to Rule G-17 is warranted in the new proposed rule. This exception is predicated on the fact that SMMPs are deemed able to make their own independent investment decisions and investigate all material facts concerning a municipal security and as such, should not require the time-of-trade disclosures as retail customers do. Although the MSRB is codifying these obligations in a new rule, the rule originates from fair dealing principles that sought to protect retail customers from purchasing municipal securities, the terms of which they may not understand. As the MSRB recognizes through exceptions in Rule G-17, we would encourage the MSRB to revise proposed Rule G-47 to incorporate similar exceptions which would apply to SMMPs, who by definition are considered to be as sophisticated as dealers and are capable of obtaining all of the information concerning the municipal security just like the dealer. Further, treating SMMPs the same as retail customers results in practical real-world problems that impose costs and burdens that clearly outweigh any benefits. For example, it would be impossible for a dealer to meet proposed rule G-47 requirements for an SMMP who places trades directly an Alternative Trading System ("ATS") because ATS subscribers are typically institutional investors, broker-dealers, and market-makers and are protected under Regulation ATS. At a minimum, the SMMP interpretation should be revised to exempt transactions with SMMPs from proposed Rule G-47.

2. The Proposed Rule Is Still Too Ambiguous.

Dealers have now made many significant efforts in changing their sales and trading operations to comply with the existing interpretative guidance notices. But the Proposed Rule, like the interpretative guidance notices, are unnecessarily ambiguous. Does a dealer comply with the Proposed Rule by sending an e-mail to the customer with material

[1] MSRB Glossary of Municipal Securities Terms defines a Sophisticated Municipal Market Participant as, "An entity with respect to which a broker-dealer has reasonable grounds to conclude (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion. An SMMP may not be a natural person and must have total assets of at least $100 million invested in municipal securities in its portfolio and/or under management. Certain disclosure, suitability and fair pricing obligations of a broker-dealer under MSRB rules may be deemed fulfilled in connection with a transaction between the broker-dealer and an investor that constitutes an SMMP with respect to such transaction."

terms and a link to all material event notices? What industry data sources are the dealers supposed to consult? In the end, there are a small number of ways that representatives can communicate with their customers and a small number of industry data sources that dealers can draw upon to obtain information. Conversely, dealers can be effecting thousands of trades a day with hundreds of representatives. As just a mere practicality, the MSRB will either present a clear, practical and mechanical method by which dealers will comply or the dealers will develop policies that do the same, because dealers are left with no other practical alternative. We strongly believe that there should be at least a safe harbor or some sort of clarity that allows dealers to comply with concrete rules rather than broad-based principles.

3. The Proposed Rule Needs to Provide Clarity and Certainty with respect to Online Trading.

We would encourage the MSRB needs to establish an entire separate section of the Proposed Rule that tells Dealers exactly what needs to be done with online trading. Our dealers believe that with online trading, access is equal to disclosure. Our dealers believe that providing the customers who are directing themselves to purchases and sales of municipal securities with links and access to the industry data currently available suffices. Per the initiative and preference of the customers themselves, there is likely to be no direct interaction between a representative and a customer with online trading. The MSRB should provide specific clarity that allows dealers to put in place the mechanical processes to comply with the Proposed Rule.

4. The Proposed Rule Should Have Limited Application to Sales by a Customer.

The whole idea behind the time-of-trade disclosures is that customers understand the municipal securities they are purchasing. Customers who are selling a municipal security are already familiar with the terms of the municipal security enough to know they want to sell the municipal security. The burden of applying this rule to sales simply outweighs any tangential value to customers. Dealers are already obligated under Rule G-30 to ensure that the meet fair pricing duties that would address that vast majority of concerns that purchases from customers would entail. Thus, we urge the MSRB to take a practical

approach that weighs costs with benefits and only apply the Proposed Rule to sales by customers in a very narrow set of instances, such as when an issuer has made a tender offer for the bonds in question at a price that is higher than a dealer is offering.

5. Revise the Definition of "Material Information"

The BDA would ask the MSRB to consider revising the definition of material information in section (b)(ii) of the proposed rule to clarify that non-public information that may be in a dealer's possession is not included in the scope of that definition. We do not believe it was the MSRB's intent that proposed rule G-47(a) would require a dealer to disclose to an investor material non-public information that a dealer may have about the issuer or the securities, such as information that may be in the possession of the dealer's public finance investment banking department. Sharing of material non-public information that is subject to information walls designed to restrict access to such information by trading / sales groups would be inconsistent with SEC insider trading principles.

5. Harmonizing FINRA Regulatory Notice 10-41

In Regulatory Notice, 10-41, FINRA reminds firms of their sales practice and due diligence obligations when selling municipal securities in the secondary market. As the BDA reads proposed rule G-47, we understand it to supersede certain MSRB interpretive guidance as described by the MSRB in footnote 6. The BDA would like for the MSRB to reconcile how the new proposed rule will be harmonized with FINRA Regulatory Notice 10-41 and exactly how the market should read the two in conjunction with one another. Specifically, as FINRA examiners continue to interpret MSRB rules, we believe it should be clear to all market participants the relevance of proposed rule G-47 requirements as they relate to the current FINRA 10-41 in light of the fact that FINRA 10-41 was developed in conjunction with the MSRB and taking into consideration at the time, rules which may now be superseded by proposed rule G-47. In addition to the points we raise above, we remind the MSRB that FINRA has told us time and time again, that FINRA can only be as effective in its enforcement of MSRB rules, as the MSRB is in drafting the rules themselves. As we have urged in prior comment letters, we once again ask the

MSRB to provide a clear time-of-trade disclosure rule that empowers FINRA to clearly and effectively enforce it, and to allow dealers to clearly and effectively comply with it.

Thank you again for the opportunity to submit these comments.

Sincerely,

Michael Nicholas
Chief Executive Officer

charles SCHWAB

Compliance
211 Main Street, San Francisco, CA 94105-1905
Tel (415) 667-7000

March 12, 2013

VIA EMAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2013-04:
Request for Comment on Codifying Time of Trade Disclosure Obligation
Proposed Rule G-47

Dear Mr. Smith:

Charles Schwab & Co. Inc. ("Schwab") appreciates the opportunity to comment on the Municipal Securities Rule Making Board's (the "MSRB") Request for Comment on Codifying Time of Trade Disclosure Obligation and proposed Rule G-47 (the "Proposal").

Schwab's Position

Generally speaking, Schwab supports the MSRB's effort to consolidate years' of interpretive guidance related to time of trade disclosure obligations "...[i]nto one easy to follow rule". However, when adopting the final rule, it is essential for the MSRB to recognize the ability of dealers who provide online access to their customers to continue to use electronic delivery to meet their time of trade disclosure obligations.

Schwab requests clarification on the proposal to delete MSRB Notice 2002-10

Of particular concern for Schwab, is the proposed deletion of MSRB Notice 2002-10[1], which among other things recognizes that electronic access to material information is consistent with a dealer's obligation to disclose such information and can be an effective means to do so, depending on the facts and circumstances of the particular situation. Specifically, Footnote 7 details the time of trade obligations of dealers operating electronic trading platforms:

[1] MSRB Notice 2002-10 (March 25, 2002), available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-10.aspx?n=1

charles SCHWAB

> Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under rule G-17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

For years dealers such as Schwab who provide online access to their customers have relied upon this language to deliver timely disclosures. Schwab does not believe that the MSRB intends to limit dealers' ability to meet their disclosure obligations via electronic access to material information by deleting MSRB Notice 2002-10, but the absence of specific language to the contrary in the Proposal creates a sense of uncertainty for dealers who operate electronic brokerage systems and provide electronic access to material information to meet their time of trade disclosure obligations. The absence of specific language that recognizes a dealer's ability to meet their time of trade disclosure obligations via electronic access could lead to confusion amongst dealers and disruption of disclosure processes across the industry, which could ultimately harm customers.

As such, as part of any future final rule making on the Proposal, Schwab respectfully asks the MSRB to explicitly include language in any final rule or supplementary material that specifically states that providing customers with electronic access to material information is consistent with a dealer's obligation to disclose such information at the time of trade and can be an effective means to do so, depending on the facts and circumstances of the particular situation.

Thank you for your consideration of the points we have raised in this letter and we hope that our comments are useful. Please feel free to contact me at (415) 667-0902 if you have any questions.

Sincerely,

Michael P. Moran
Vice President, Compliance
Charles Schwab & Co., Inc.

DIVER By Lumesis

March 11, 2013

Lawrence P. Sandor, Deputy General Counsel, Regulatory Support
Darlene Brown, Assistant General Counsel
Municipal Securities Rulemaking Board
1600 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2013-04 (February 11, 2103); Request for Comment on Codifying Time of Trade Disclosure Obligation

Dear Mr. Sandor and Ms. Brown:

Lumesis, Inc. ("Lumesis") welcomes the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB's") proposed rule that would codify the time of trade disclosure obligation of brokers, dealers, and municipal securities dealers ("Market Participants") currently set forth in the interpretive guidance to MSRB Rule G-17.

Lumesis is a software company focused on the development and delivery of software solutions for the fixed income municipal market. Started in 2010, Lumesis has delivered its *Analytics* platform to provide Market Participants demographic and economic data and a series of analytical tools to support credit research where CAFRs are, on average, delivered more than 180 days after the end of the fiscal year. In late 2012, we delivered *Advisor* to specifically address the requirements of G-17 and FINRA Regulatory Notice 10-41 while providing Market Participants additional data and information about their client's municipal securities positions. Our client base is more than 35 institutions.

We applaud the ongoing efforts of the MSRB to enhance transparency and disclosure and support the codification of the interpretive guidance of Rule G-17. The MSRB's steps to consolidate the current obligations into one easy-to-follow rule and utilize a structure used by FINRA will benefit the market. While we recognize the limited intent of proposed Rule G-47, we suggest the MSRB ensure its codification contemplates more than "established industry sources," as currently defined, in requiring market participants to disclose "material information about the security that is reasonably accessible to the market." This would be consistent with the MSRB's goal to continue to support transparency and disclosure of material information by making the definition broad enough to encompass current or future technology and/or dissemination systems and improvements that are or become reasonably accessible to the market. We also suggest the definition of "established industry sources" not include "rating agency reports."

In response to the query set forth in the Request for Comment, we see the primary benefit to Market Participants being clarification of the disclosure obligation. Such clarification is needed as some Market Participants subscribe to the view that "checking the box" that continuing disclosure filings were reviewed and/or basic terms of a bond were disclosed is satisfactory to meet their disclosure obligations. G-17, its associated guidance and FINRA's Regulatory Notice 10-41 suggest otherwise as they clearly refer to "Material information about the security that is reasonably accessible to the market."

DIVER
By Lumesis

Clarification or Removal of "Established Industry Sources"

We express our reservations as to language contained in subpart (b), Definitions, where "Reasonably accessible to the market" is defined. The proposed rule provides:

> ... shall mean that the information is made available publicly through ***established industry sources***. Emphasis supplied.

"Established industry sources" is defined to include EMMA, "rating agency reports and other sources of information ... generally used by [Market Participants] ..."

The emphasis on "established industry sources" may have the effect of retarding the introduction of new tools, resources and technologies. It may also cause some Market Participants to rely on policies and procedures premised on "established industry sources" that are no longer comprehensive when it comes to information that is "reasonably accessible." The MSRB's 2002-16 Notice specifically recognized the importance of technological enhancements to the advancement of disclosure and transparency:

> The MSRB expects that, as technology evolves and municipal securities information becomes more readily available, new "established industry sources" are likely to emerge.

In this context, it is important for Market Participants to understand if an "established industry source" is, in fact, the standard and, if so, what qualifies as such? Alternatively and, perhaps more relevant, is to ensure Market Participants are focused on making available "material information about the security that is reasonably accessible to the market." If, as we suspect, it is the latter, the continued inclusion of "established industry standards" (or, absent a refinement to the definition) may have the unintended consequence of Market Participants not periodically reassessing their policies and procedures to ensure they are complying with the MSRB Rules and FINRA Regulatory Notices.

FINRA's Regulatory Notice 10-41 seemingly underscores this important distinction between "established industry sources" and "material information about the security that is reasonably accessible to the market."

> In meeting these disclosure, suitability and pricing obligations, firms must take into account all material information that is known to the firm or that is available through "established industry sources," including official statements, continuing disclosures, and trade data, much of which is now available through EMMA. Resources outside of EMMA may include press releases, research reports and other data provided by independent sources... Therefore, firms should review their policies and procedures for obtaining material information about the municipal securities they sell to make sure they are reasonably designed to access all material information that is available, whether through EMMA or other established industry sources.

FINRA's citing "established industry sources" points to Official Statements, continuing disclosures and trade data. Regulatory Notice 10-41 also makes clear that one must look beyond the same and ensure "policies and procedures are designed to access all material information that is available."

Based on the foregoing, we respectfully suggest "established industry sources" be removed or clarity be provided to ensure Market Participants focus on disclosing "material information about the security that is reasonably accessible to the market." This would support transparency and disclosure and continue to encourage innovation.

DIVER
By Lumesis

Refining "Established Industry Sources" to Remove Reference to "Rating Agency Reports"

To the extent "established industry sources" is included in Rule G-47, we suggest removing the reference to "rating agency reports" from the definition. Initially, its inclusion may prove to be inconsistent with the Rule's intent around material information that is timely. Continued inclusion of the reference may also be construed as an implicit endorsement of a private, for profit enterprise's offering as fulfilling the requirement. Further, the inclusion of rating agency reports seems inconsistent with critical aspects of Dodd-Frank, legislation that impacts most Market Participants.

With regard to timeliness, ratings repots, while current at time of issuance, are not regularly updated. This is not a criticism of the raters but recognition that, even with the best of intentions, it is impossible for rating agencies to continually update their reports to reflect material information. The explicit reference to "rating agency reports" fails to consider that these reports may have been issued months (or longer) prior to the trade for which the disclosure is required.

Moreover, the reference to "rating agency reports" and reality that there are three primary agencies to which the market turns, implies that the MSRB is endorsing the rating agencies as the "established industry source" (other than EMMA). This implicit endorsement can be to the detriment of and is to the exclusion of other sources that deliver "material information about the security that is reasonably accessible to the market." We suggest this is a disservice to Market Participants and to other providers of information and data seeking to bring new and better technology to the municipal market.

Finally, the applicable provisions of Dodd-Frank and the rating agencies themselves make clear that Market Participants using ratings or rating reports should do more than simply rely on the same. Thus, the inclusion of "rating agency reports" may give Market Participants a false sense of satisfying their obligation when current legislation and associated rules instruct otherwise.

Conclusion

As noted above, we agree with and support the MSRB's codification efforts. We offer these comments in hopes of helping to refine the final rule so that it reflects the importance of cost-effective tools and resources and benefits to the market of the continued evolution of technology, tools and resources. In this regard, we request the MSRB consider removing its reference to "established industry sources" or clarifying the same and also removing its reference to "rating agency reports." This will turn the emphasis and focus on material information about the security as opposed to a specific source. Moreover, it will continue to encourage technological innovation and competition which will support Market Participants.

Thank you for the opportunity to comment on this proposed rule.

Respectfully Submitted,

Gregg L. Bienstock, Esq.
Co-Founder & Chief Executive Officer

DIVER
By Lumesis

July 17, 2013

Chairman Jay Goldstone
Executive Director Lynnette Kelly
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Chairman Goldstone and Executive Director Kelly:

Lumesis, Inc. offers this letter in support of the MSRB's Proposed Rule G-47. We are prompted to submit the same in light of certain comments submitted as well as other "concerns" articulated by market participants. We do recognize that the official comment period has expired.

We support the MSRB's initiative to clarify and codify the disclosure requirements for those interfacing with the fixed income municipal retail investor (Proposed Rule G-47; referenced herein as "G-47" and to include, by reference, existing Rule G-17). This step, along with the harmonization with FINRA's regulatory notices and guidance, will provide greater clarity to market participants and, more importantly, support enhanced transparency and disclosure for the retail investor. We believe this effort supports the MSRB's mission "to protect investors ... and the public interest by promoting a fair and efficient market, regulating firms that engage in municipal securities and advisory activities, and promoting market transparency." In this regard, we applaud the leadership and steps being taken by the MSRB to further promote transparency.

Municipal bonds are one of the most important fixed income products for retail investors and are an essential financial tool for municipal issuers across the country. We firmly believe that the work of the MSRB in refining disclosure obligations and coordinating with the enforcement efforts of FINRA, will materially improve transparency -- an essential feature of well-functioning markets.

Proposed Rule G-47 is a significant step in clarifying, for market participants, the requirements for time of trade disclosure to retail investors. The MSRB has gone to lengths to affirm that the new rule is a codification of the relevant interpretive letters and notices from Rule G-17. We believe this clarification, along with the stated harmonization of efforts with FINRA, will eliminate the lack of clarity that has seemingly existed for some time. Despite these steps and pronouncements, we continue to hear concern that the proposed rule will drive market participants from the buying and selling of individual bonds given the apparent "burden and expense of compliance" with G-47.

We strongly believe that technology has the potential to save time and money and to improve the quality of information aggregation, delivery, analysis and reporting. While the municipal market has been underserved in this regard over the years, we are encouraged by the introduction of new tools and resources designed to promote transparency and information delivery and recognize those in the private sector that have delivered in this regard as well as the MSRB's EMMA platform.

Lumesis' primary purpose is to deliver software and data for the municipal market. We are cognizant of the importance of balancing information and solution delivery with cost-effectiveness. As it relates to G-

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47, we are one of several firms that have created a technology solution that offers market participants the ability to efficiently and cost-effectively meet their obligations. Taking our cues directly from the Rules and Regulatory Notices and market feedback, market participants can use our software to generate investor-specific municipal bond reports in seconds. These reports can include customizable data and, importantly, risk factors. These same reports can be emailed directly to retail investors.

The use of modern web technology, including cloud-based computing, is enabling cost-effective technology solutions like ours for G-47 that can be delivered quickly, easily, and with universal accessibility for all market participants. In our view, any concern that compliance with G-47 represents an unreasonable cost or other burden is simply unfounded. We would also suggest that because information and technology is so abundantly available and affordable, investors already have a fair expectation that the Municipal Market should function similarly to the equity or mutual fund markets in its disclosure practices. When it does not, retail investors become suspect casting an even greater negative pallor on the market.

G-47 Enforcement

A critical aspect of G-47 is what happens after the rule is passed -- enforcement. We recognize enforcement is beyond the scope of the MSRB's mandate. However, despite the fact that G-17 and its interpretive notices have existed for many years, compliance with the same may have been less than intended by the Rule (this is supported by comments pertaining to the burden and expense of compliance with G-47).

Perhaps, as part of the harmonization with FINRA, an approach can be adopted whereby market participants are provided clarity and an opportunity to comply. We believe G-47 addresses the need for clarity. We also believe that providing those that have made good-faith efforts to comply with ample notice and sufficient direction to take corrective actions would support the spirit and intent of the rule. For those that have not made the effort or do not comply with G-47, more meaningful consequences may be warranted to emphasize the importance of providing required information to the retail investor. We believe such an approach is fair to those firms that have taken meaningful steps over the years to comply and provides an opportunity for all to be compliant.

Form of Disclosure

Finally, we recognize the current rulemaking effort focuses on clarifying and codifying G-17 and the interpretive notices by way of the introduction of G-47. As the MSRB contemplates refinements and changes to the rule in the future, it is suggested that the subject of "form of disclosure" be more fully addressed. Many market participants struggle with "what actions satisfy the time of trade disclosure obligation?" Is verbal disclosure sufficient? Are notes required to be taken and stored? Is checking the box saying "I've made the disclosures" sufficient? Is an email of the disclosure required or suggested? A better/clearer roadmap for firms will encourage compliance and reduce confusion in the market.

As the Board contemplates this and other changes to G-47, we think the availably and impact of technology should be fully considered. In this regard, we would welcome the chance to express our perspective regarding how technology can offer an efficient and cost-effective means to support the necessary disclosure to the retail market as well as to protect firms.

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In conclusion, we wish to voice our support for the adoption of G-47 and, more broadly, for the work the MSRB is doing to promote transparency and fairness. We would be happy to discuss our thoughts in greater detail and are available at your convenience.

Sincerely,

Gregg L. Bienstock, Esq.
CEO and Co-Founder, Lumesis, Inc.

cc: John Cross, Director, Office of Municipal Securities, Securities and Exchange Commission

Comment on Notice 2013-04

from Paige Pierce, RW Smith & Associates, Inc.

on Wednesday, March 20, 2013

Comment:

RW Smith contributed to and supports the SIFMA comment letter and its positions in relation to codifying time of trade disclosure obligations for dealers.

sifma
Invested in America

March 12, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2013-04 (February 11, 2013): Request for Comment on Codifying Time of Trade Disclosure Obligation Proposed Rule G-47

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Request for Comment on Codifying Time of Trade Disclosure Obligation and proposed Rule G-47[2] (the Proposal"). Over time, MSRB Rule G-17, through a myriad of interpretive guidance, has been applied to varied unrelated activities. SIFMA, therefore, generally supports the concept behind this initial effort by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles.

However, as detailed below, SIFMA believes the Proposal has significant gaps as well as represents a significant expansion of the existing time of trade obligation and does not fulfill the MSRB's stated objective that "[t]he codification of the interpretive guidance into a rule is not intended to substantively change the time of trade disclosure obligation. Rather, the codification is an effort to consolidate the current obligations into one easy to follow rule . . . and [to] make the rules more flexible and easier for dealers and municipal advisors to understand and follow." Accordingly, SIFMA's members believe a re-proposal

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2013-04 (February 11, 2013) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx?n=1.

is warranted and suggest that existing interpretive notices be reorganized similarly to the way the MSRB reorganized the Rule G-37 interpretive notices into a more user friendly format[3]. Additionally, it is not apparent that the proposed codification of existing guidance and new rule format will provide any material benefit to brokers, dealers, or municipal securities dealers. Complete, comprehensive, and consolidated "time of trade disclosure obligation" requirements and guidance should be considered.

I. Dealers' Longstanding Time-of-Trade Disclosure Requirement

Since its adoption, Rule G-17, the MSRB's fair dealing rule, has encompassed two general principles: a duty on brokers, dealers, or municipal securities dealers not to engage in deceptive, dishonest, or unfair practices; and imposing a duty to deal fairly[4]. The first prong of rule G-17 is essentially an antifraud prohibition. As for the second prong, as part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that a dealer's affirmative disclosure obligations require that a dealer disclose, at or before effecting a municipal securities transaction[5] with a customer, a complete description of the security, and all material facts about a transaction known to the dealer, as well as material facts about a security when such facts are reasonably accessible to the market. These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.[6]

II. Existing Interpretive Notices

As noted in MSRB Notice 2013-04, Rule G-17 is a principles-based rule, which has been expanded upon through numerous interpretive notices and interpretive letters. Time of trade disclosure guidance has been covered by the MSRB in at least twenty three interpretive or regulatory notices[7], three of which were filed with or approved by the

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[3] *See* Rule G-37 Interpretive Questions and Answers (February 25, 2004) available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/~/link.aspx?_id=9880F6021140412A80C5234F33980302&_z=z

[4] *See* Exchange Act Release No. 13987 (September 22, 1977). The duty to "deal fairly" is intended to "refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets."

[5] SIFMA notes (as further discussed in Section VII.a.i.) previously issued MSRB guidance primarily focuses the time of trade disclosure obligations on when a dealer is *selling* a municipal bond to a customer. Several MSRB Notices *only* describe the disclosure requirement as arising when selling a municipal security. Very limited guidance, (and none recently) has been issued covering situations when a customer is selling a bond.

[6] *See* MSRB Notice 2002-10 (March 25, 2002), available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-10.aspx?n=1, approved by the Securities and Exchange Commission (Release 34-45591) (March 20, 2002).

[7] See MSRB Notice 2013-04, at Note 3. Additionally, See MSRB Notice 2012-27, Securities and Exchange Commission approves the restatement of an interpretive notice of the Municipal Securities

Securities and Exchange Commission[8] ("SEC"), most recently in restating the application of Rule G-17 to sophisticated municipal market professionals[9]. These notices came about due to a variety of circumstances – and contain nuances that are easily lost in the short bullet point format of the "specific scenarios" in Proposed Rule G-47.

III. Consolidated Interpretive Notices

The MSRB has noted in the Proposal that "[m]arket participants have expressed concern regarding the difficulty of reviewing years of interpretive guidance to determine current obligations". SIFMA suggests that the MSRB consolidate existing interpretive notices and guidance into a user friendly format similar to the format previously utilized by the MSRB when it reorganized the Rule G-37 interpretive notices into a more user friendly format[10] – preserving the text of the original notices, but consolidating in one place the guidance given by the MSRB concerning disclosure obligations generally and in specific scenarios. We believe a good starting point for consolidated guidance is MSRB Notice 2011-67 (November 30, 2011), where the MSRB answered frequently asked questions regarding dealer disclosure obligations under Rule G-17.

IV. Absence of SMMP

A dealer's time of trade disclosure requirements are significantly affected by the status of a customer as a Sophisticated Municipal Market Professional ("SMMP"). While it is our understanding that the MSRB plans to codify dealings with SMMPs into a rule separate from both G-17 and Proposed Rule G-47, since the only current SMMP interpretive guidance primarily relates to time of trade disclosures, we strongly believe that G-47 should affirm existing guidance regarding providing time of trade disclosures to SMMPs: when a dealer has reasonable grounds for concluding that the customer is an SMMP, the dealer's obligation to ensure disclosure of material information available from established industry sources is fulfilled.

Rulemaking Board ("MSRB") concerning the application of MSRB Rule G-17 (on conduct of municipal securities and municipal advisory activities) to sophisticated municipal market professionals or "SMMPs" (the "Restated Notice"). The full text of the Restated Notice is available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_D37D3EF9-F642-4A63-A40D-3A6B33B5260A . See also, MSRB Notice 2009-28 (June 1, 2009) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-28.aspx?n=1 .

[8] *See* MSRB Notice 2002-10, *supra* note 5, MSRB Notice 2009-42 (July 14, 2009) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-42.aspx?n=1 , and the Restated Notice, *supra* note 6.

[9] *See* the Restated Notice, *supra* note 6.

[10] *See supra* note 3.

V. Proposed Deletion of MSRB Notice 2002-10

Under the Proposal, the MSRB has identified MSRB Notice 2002-10[11] for deletion. MSRB Notice 2002-10 is one of the few MSRB notices discussing a dealer's time of trade disclosure obligations that has been approved by the SEC. While the substance of the main text of this notice has been captured by Proposed Rule G-47, a critical discussion has been omitted – which does not exist in any other SEC filed or approved MSRB notice providing guidance on time of trade obligations. Specifically, Footnote 7 details the time of trade obligations of dealers operating electronic trading platforms:

> Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under rule G-17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

SIFMA's members have relied on this language in developing longstanding policies and procedures to provide time of trade disclosures to customers utilizing electronic trading platforms. The discussion above was most recently affirmed and cited by the MSRB in MSRB Notice 2011-67[12], which was not approved by or filed with the SEC. Deletion of MSRB 2002-10 calls into question the validity of this section in MSRB 2011-67. SIFMA believes it is critical that this concept be affirmed by the MSRB in Rule G-47 which has been inadvertently deleted or superseded through the Proposal.

VI. Proposed Deletion of MSRB Notice 2002-05

Under the Proposal, the MSRB has identified MSRB Notice 2002-05[13] for deletion. We note that this is the only existing guidance concerning the time of trade disclosure obligation on securities sold below minimum denominations. Our members believe the background information contained in this notice is important to understanding the scope of this specific scenario that may be material to the transaction:

> Municipal securities issuers sometimes set a relatively high minimum denomination, typically $100,000, for certain issues. This may be done so that the issue can qualify for one of several exemptions from Securities Exchange Act Rule 15c2-12, meaning that the issue

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[11] MSRB Notice 2002-10 (March 25, 2002), available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-10.aspx?n=1 .

[12] *See* MSRB Notice 2011-67 (November 30, 2011), MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under Rule G-17, available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-67.aspx?n=1 .

[13] MSRB Notice 2002-05 (January 31, 2002) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-05.aspx?n=1 .

> would not be subject to certain primary market or continuing disclosure requirements. In other situations, issuers may set a high minimum denomination even though the issue is subject to Securities Exchange Act Rule 15c2-12. This may be because of the issuer's (or the underwriter's) belief that the securities are not an appropriate investment for those retail investors who would be likely to purchase securities in relatively small amounts.

Thus, SIFMA supports keeping MSRB Notice 2002-05 intact.

VII. The Proposed Rule is an Expansion of Current MSRB Guidance and Lacks Critical Nuances and Perspective

a. The Proposed Rule and Definitions

SIFMA believes that the proposed rule is overly broad, prohibits certain existing sanctioned practices, and includes requirements beyond existing MSRB interpretive guidance. Additionally, the proposed rule lacks certain critical nuances.

i. Customer Sales

In its Proposal, the MSRB has made no distinction between the dealer's time of trade disclosure obligation for sales to customers and purchases from customers. That is inconsistent with current MSRB guidance. Existing MSRB guidance primarily focuses on time of trade disclosure obligations when a dealer is *selling* a municipal bond to a customer.[14] Very limited guidance has been issued covering situations when a customer is selling a bond.[15] SIFMA believes this proposed extension of a time of trade disclosure obligation—undifferentiated by the type of trade—is not warranted, as arguably the selling customer knows the features of the security that it owns and the potential purchaser is about

[14] *See* MSRB Notice 2010-37 (September 20, 2010), MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations when *Selling* Municipal Securities in the Secondary Market (emphasis added), available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-37.aspx?n=1 . *See also* MSRB Notice 2011-67, *supra* note 4 ("On September 20, 2010, the MSRB and FINRA issued reminder notices to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations when ***selling*** municipal securities in the secondary market (the "2010 Notices"). The 2010 Notices reiterate MSRB interpretive guidance issued to dealers in prior years, including MSRB Notices 2002-10 (the "2002 Notice") and 2009-42 (the "2009 Notice"), which were filed with the Securities and Exchange Commission ("SEC")" (citations omitted and emphasis added)

[15] *See* MSRB Interpretation of February 18, 1993 (Put option bonds: safekeeping, pricing), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=3#_ECDFD5BE-5AD9-4065-B572-8A79858618EA . *See also* MSRB Interpretation of April 30, 1986 (Description provided at or prior to the time of trade), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=3#_9D2E1273-8A20-4E4A-9258-533D9281F890 . And see MSRB Interpretation June 12 1995 (Transactions in Municipal Securities with Non-standard Features Affecting Price/Yield Calculations), available at http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_E02C6245-CBC5-4B0C-85E3-EFBCA76963FF .

to assume such risks.[16] This new requirement could be harmful to customers and would also be unnecessarily burdensome for dealers. For example, a particular dealer may not have recommended or even sold the bond to the particular customer – and may not be familiar with the credit. Researching and disclosing all material facts about such a bond to a customer who simply wants to sell it will delay the trade; it's unclear what the benefit to the selling customer would be. Another scenario to consider is when an estate has given its dealer instructions to liquidate an entire portfolio. Again, requiring a dealer to meet an identical time of trade disclosure obligation when the sale is by, not to, a customer could decrease liquidity while the dealer does its own diligence, as well as increase the cost of the trade. SIFMA believes that a dealer's role in a customer sale transaction is to facilitate that sale at a fair and reasonable price; this primarily requires an examination of the market and trading data relative to that security. We urge the MSRB to explicitly recognize that a substantially different time of trade obligation exists in these circumstances – and that the Proposal's "Disclosure Obligations in Specific Scenarios" may not be applicable at all when a customer seeks to sell its holdings. If the MSRB extends an undifferentiated time of trade disclosure obligation to customer sale transactions, we request that the MSRB conduct a thorough cost benefit analysis.

ii. Rating Agency Reports

SIFMA's members request that the MSRB clarify "rating agency reports" within the definition of "established industry sources" contained in Proposed Rule G-47(b)(i) . SIFMA understands the reference to "rating agency reports" to mean reports that are produced by rating agencies and made publicly available by the rating agencies without a subscription. Additionally, the use of the term "reports" has the further implication to distribute credit event-driven reports and that disclosure of the rating action alone is insufficient. The MSRB should further clarify that firms are under no obligation to distribute such reports.

iii. Material Information

The Proposal defines in Section (b) (ii), material information as "Information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision." SIFMA's members believe that this definition should be modified to exclude unpublished price sensitive information ("UPSI"), sometimes also referred to as non-public material information. Often a public finance department may be aware of a yet to be announced ratings change, planned tender offer, or an impending, not yet public, refunding transaction. Broker-dealers routinely impose information barriers between investment bankers and trading personnel to prevent insider trading in advance of a new offering, and we do not believe Proposed Rule G-47 should require those barriers to be dismantled. We

[16] SIFMA and its members acknowledge that knowledge professionally available to dealers, such as a ratings change that has not yet been noticed to EMMA, or a call at par announced minutes ago via Bloomberg, is material and should be disclosed.

believe this clarification would be consistent with existing time of trade disclosure obligations and securities laws generally.

While SIFMA appreciates the reiteration of a definition of "material information" in the proposed Rule, we believe it would be helpful for the MSRB to explicitly address the concept that an event disclosed by an issuer or obligated person pursuant to a SEC Rule 15c2-12 continuing disclosure agreement ("CDA") does not necessarily constitute "material information" that would be required to be disclosed to investors; and that even if such information was material at the time it was disclosed, that it does not remain material forever. Long-past credit ratings changes, or substitutions of trustees, or a continuing disclosure filing that was a few days late five years ago should not *automatically* be deemed material at the time of trade merely because these events triggered a disclosure obligation pursuant to the CDA at the time of occurrence. It is our understanding that the MSRB wants the customer to be informed of important relevant information at the time of trade, which will certainly include information about structure and recent events affecting the credit, price, and yield of the security. However, unless some reasonable limit is placed on the ever-expanding total universe of information available about securities (that often have a lifespan of twenty years or more), the customer is at risk of being drowned in a sea of details by dealers uncertain whether anything may legitimately be excluded from time-of-trade disclosure. This will not help the customers to make an informed decision about a purchase. FINRA's Municipal Securities Disclosure Report, which is published monthly, only identifies those events filed within the past six months. SIFMA suggests that a six month look back would be a reasonable time limit for disclosing past information.

b. Supplementary Material

i. Manner and Scope of Disclosure

The Proposal seems to eviscerate recent MSRB "access=delivery" initiatives, including the MSRB's recent concept proposal to require underwriters to submit preliminary official statements ("POSs") to the MSRB's Electronic Municipal Market Access ("EMMA") system.[17] . In connection with marketing new issues of municipal securities to customers, dealers have relied upon MSRB guidance that providing a POS, when available, to a customer "can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-17, depending upon the accuracy and completeness of the POS as of the time of trade."[18] In MSRB Notice 2012-61, the MSRB identified a variety of "access=delivery" methods that a customer could use to access a POS:

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[17] See MSRB Notice 2012-61 (December 12, 2012) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-61.aspx?n=1 . SIFMA's comments on MSRB Notice 2012-61 are available at http://www.sifma.org/issues/item.aspx?id=8589941965 .

[18] MSRB Notice 2009-28 (June 1, 2009) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2009/2009-28.aspx?n=1 .

> If an issuer has prepared a preliminary official statement for a new issue of municipal securities, it will typically make it available to the market by various methods, including posting it electronically on an issuer's website or a commercial site, or by making it available electronically (or in hard copy) through its financial advisor or directly to investors upon request. Typically, preliminary official statements posted electronically are made available to syndicate and selling group members by access to an internet link and in some cases a password. A dealer may then access the preliminary official statement, download it as a portable document format (PDF) file and transmit it to other non-syndicate member dealers or to a dealer's own clients. Alternatively, a dealer may direct interested persons to the link itself.

Providing access to a POS, whether on EMMA or some other electronic platform, should continue to satisfy a dealer's time of trade obligation for new issues of municipal securities. Proposed Rule G-47.01 (b) and (c) seems to prohibit activity recently championed by the MSRB. Furthermore, the proposed new obligation could create a risk of having dealers misinterpret or inadequately summarize the information available where a POS is made available to investors.

SIFMA also requests further clarification to the types of "disclosure of general advertising materials" referenced in Proposed Rule G-47.01 (c) that the MSRB believes are inadequate. Like the MSRB itself, many dealers have sought to continually educate and inform their customers about the features and risks of municipal bonds. (The MSRB may regard these as "advertising materials".) It is clearly better for customers to be pre-briefed on concepts such as optional calls or the role of a liquidity provider, so that time of trade disclosure can be efficient and allow for prompter execution. The Rule as drafted permits disclosures "at or prior to the time of trade", and customer–facing educational material should not be rendered legally worthless by the need to make other, time-specific disclosures at the time of trade.

c. Disclosure Obligations in Specific Scenarios

With respect to the 15 specific scenarios listed in the Proposal that *may* be material under certain circumstances and require time of trade disclosure to a customer, SIFMA's members are concerned that this list is too prescriptive for a principles-based rule and will become a *de facto* enforcement check list for regulators – whether or not the *information* is actually material in the context of the particular transaction. It may also have the unintended consequence of dealers relying on the four corners of the notice – and not consider other unenumerated factors that may become material in the future. If the MSRB proceeds with proposed rule format, we suggest that the existing related interpretive notices be reorganized by specific scenarios, as many of the listed specific scenarios are the subject of more than one interpretive notice.

Below are comments on some of the specific scenarios listed in the Proposal:

Credit risks and ratings: Unlike many of the other specific scenarios which address static bond features, credit ratings are potentially more fluid. Accordingly, as noted above,

it would be helpful to define a material look-back period for credit ratings changes for purposes of time of trade disclosure.

Securities sold below the minimum denomination: See our discussion above in Section VI[19].

Securities with non-standard features: This is an impossibly amorphous definition. The prior uses of this term have been related to situations where the bonds pay interest annually, rather than semi-annually --a fact that affects yield calculations. This new usage seems to have no bounds, and adds the traditional interpretation as an afterthought. In this context it would be helpful to know what the MSRB considers to be *standard* features, aside from semi-annual interest payments?

Issuer's intent to pre-refund. Unless this has been publicly announced, it will not be known to established industry sources, and would likely be material non-public information.

Failure to make continuing disclosure filings: SIFMA's members are concerned that this requirement is too open ended and that is should be made clear (either in Proposed Rule G-47 or new interpretive guidance) that for secondary market trades the "discovery" by a dealer that an issuer has failed to make filings required under its continuing disclosure agreements is limited to a dealer's review of "failure to file" notices on EMMA pursuant to Rule 15c2-12, if any.[20] For primary offerings, a more robust obligation, i.e. to review the financial statement filings as they are posted on EMMA, is made possible by the access of the underwriter to the issuer in a primary offering context.

d. Processes and Procedures

Our members believe that Proposed Rule G-47.04, Processes and Procedures, is an expansion of current regulatory requirements, is too narrow, and omits critical guidance as set forth in MSRB Notice 2011-67[21].

Proposed Rule G-47.04 states:

> **Processes and Procedures.** Brokers, dealers, and municipal securities dealers must implement processes and procedures reasonably designed to ensure that material information

[19] We also note that some sales below minimum denominations occur in the context of estate settlement. The deceased's will evenly divides securities holdings, and brother then sells to sister to re-create a minimum denomination in one or the other's portfolio. In such cases, the purchasing legatee is *enhancing*, not decreasing, the liquidity of the holding.

[20] Our members strongly believe "failure to file" notices that pre-date EMMA are not considered material to a current trade as the market long ago absorbed such information.

[21] See MSRB Notice 2011-67 (November 30, 2011), MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under Rule G-17, available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-67.aspx?n=1 .

> regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

The related relevant language in MSRB Notice 2011-67 is:

> **What are the supervisory obligations of dealers regarding the fair dealing and disclosure obligations under MSRB Rule G-17?**
> Under MSRB Rule G-27, dealers must supervise their municipal securities business and ensure they have adequate policies and procedures in place to monitor the effectiveness of their supervisory systems. They must supervise the municipal securities activities of their associated persons, have adequate written supervisory procedures, and implement supervisory controls to ensure their supervisory procedures are adequate. Importantly, dealers must implement processes to ensure that material information regarding municipal securities is disseminated to their registered representatives who are engaged in sales to and from customers. *It would be insufficient for a dealer to possess such material information, if there were no means by which a registered representative could* ***access*** *it and provide such information to customers.* (citations omitted and emphasis added)

A dealer that provides its registered representatives *access* to such information satisfies current MSRB guidance under G-17. This should similarly be sufficient under G-47. We also note that incorporating this guidance into Proposed Rule G-47 is an expansion of existing regulatory obligations as currently approved by the SEC – and is not merely a codification of existing regulations. Any enforcement against dealers for failing to disseminate or provide access to their registered representatives of material information regarding municipal securities should be applied solely prospectively.

VIII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA generally supports the concept behind this initial effort by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles. However, as detailed above, SIFMA believes the Proposal has significant gaps as well as represents a significant expansion of the existing time of trade obligation and does not fulfill the MSRB's stated objective not to substantively change the time of trade disclosure obligation through this Proposal. Accordingly, SIFMA's members believe a re-proposal is warranted.

We would be happy to meet with you and the MSRB's staff to discuss our comments further. Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director
Ernesto Lanza, Deputy Executive Director
Gary L. Goldsholle, General Counsel
Lawrence P. Sandor, Deputy General Counsel – Regulatory Support

March 11, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Request for Comment on Codifying Time of Trade Disclosure Obligation

Dear Mr. Smith:

TMC Bonds, L.L.C. ("TMC") welcomes the opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB") Request for Comment on Codifying Time Trade Disclosure Obligation. TMC is an electronic exchange for trading fixed income securities and a registered Alternative Trading System ("ATS") with the Securities and Exchange Commission. Started in May 2000, TMC has grown to become a leader in facilitating electronic trading for both taxable and tax-exempts bonds over its open and anonymous platform. In 2012, TMC's monthly trade volume accounted for approximately 20-25% of the secondary inter-dealer municipal trades.

TMC supports the efforts by the MSRB to more clearly define the Rule G-17. Similar to the industry questions that were raised when FINRA's released its 10-41 Regulatory Notice, reminding firms of their obligations when selling municipal securities in the secondary market, TMC has similar concerns for the current proposal.

First, Supplementary Material .02 Electronic Trading Systems, states "Brokers, dealers, and municipal securities dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other brokers, dealers, and municipal securities dealers." This statement may have unintended consequences, as many institutional customers access electronic trading platforms systematically, as opposed to via web browser. Web users are relatively easy to accommodate as most of the various municipal ATS' have numerous tools on their web interfaces from which users are presented with EMMA data and other credit-specific information. However, institutional customers trading via a direct line connection, choose to bypass the information and tools available on an ATS's screens and use only the market feeds containing bids and offerings delivered by the platform. Such firms, having the expertise to take receipt of the data, prefer to use their own internal systems for both validation and

disclosure of relevant information. In fact, the ATS' have hundreds of users that do not log into their sites; rather, they use the ATS' for market-making, not for information gathering. It would be meaningless for the ATS's to pass information, such as documents from EMMA, to institutional users, as the ATS's would be required to warehouse the data and the sender, in these cases, would know that if the recipient was using the data. Furthermore, multiple ATS's supplying the same content would result in an enormous amount of redundant data for the receiving firm. Thus, TMC suggests that the Board exempt institutional market professionals from the disclosure requirement.

Second, as with FINRA's 10-41, market participants were confused as to what would constitute "reasonably accessible to the market" information. G-47 (b)(iii) adds similar vagueness by not defining what these sources are. While we understand the concerns of the MSRB not wanting market participants to miss a relevant source, clearer definition of use such as a Google search, Yahoo Finance, or an approved third-party service would help eliminate the fog of regulation. Furthermore, for non-solicited transactions, in a market as granular as the municipal market, the client must have access to public sources to even know what CUSIP or name to place an order on. The requirement of the dealer to further disclose "reasonably accessible" information to a client placing unsolicited an order is unnecessary regulation given the ease of access to the internet.

Finally, as the proposed G-47 provides clarification of G-17, it might be beneficial to have the rule as a subsection as opposed to a completely new rule. As a subsection, participants would only have to view a single rule for clarity of fair dealing as opposed to having to cross-reference similar rules and their corresponding comments.

Thank you for giving us the opportunity to respond.

Sincerely,

Thomas S. Vales
Chief Executive Officer

Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson
St. Louis, MO 63103
HO004-095
314-955-2156 (t)
314-055-2928 (f)

March 12, 2013

Via E-mail to http://www.msrb.org/CommentForm.aspx

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB 2013-04 Request for Comment on Codifying Time of Trade Disclosure Obligation

Dear Mr. Smith:

Wells Fargo Advisors, LLC ("WFA") thanks the Municipal Securities Rulemaking Board ("MSRB" or "the Board") for the opportunity to comment on MSRB's proposed rule codifying dealer time of trade disclosure obligations. WFA commends the Board's efforts to simplify member compliance with time of trade disclosure guidance and to harmonize the MSRB's rule structure with that of the Financial Industry Regulatory Authority ("FINRA"). Although the MSRB has noted that its proposed time of trade disclosure rule does not "substantively change the time of trade disclosure obligations," the Board acknowledges that the rule "supersede[s] in their entirety" three prior interpretive notices. [1] In light of the need for careful consideration of the implications of the codification and revised rule structure, WFA encourages the MSRB to continue to accept comments received after the proposed rule's formal comment period concludes.

[1] MSRB Notice 2013-04 Request for Comment on Codifying Time of Trade Disclosure Obligation, 1-2, http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-04.aspx.

WFA consists of brokerage operations that administer approximately $1.2 trillion in client assets. It employs approximately 15,414 full-service financial advisors in 1,100 branch offices in all 50 states and 3,248 licensed financial specialists in 6,610 retail bank branches in 39 states.[2] WFA offers a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

WFA offers the comments below in support of MSRB's effort to assure that the codification eases the "burden on dealers… .to understand" and comply with time of trade disclosure obligations. In particular, WFA believes a final rule should reflect the important role vendors play in helping "ensure that material information regarding municipal securities is disseminated."[3] WFA also believes that a final rule should clarify the significance of material event disclosure deficiencies particularly if a deficiency appears to be cured by more recent filings.[4]

I. MSRB's Time of Trade Disclosure Rule Should Acknowledge the Role of Vendors in Monitoring Established Industry Sources of Material Information.

WFA requests that the MSRB's final time of trade disclosure rule incorporate the Board's prior acknowledgment of the role of vendors in helping a dealer monitor established industry sources of material information.[5]

In its 2010 notice covering sales practice and due diligence obligations of municipal securities dealers, MSRB reminded firms of a dealer's duty to disclose "all material information" relating to a municipal securities transaction, including material information available from "established industry sources." Although the notice provided several examples of potential established industry sources, including press releases and research reports, it did not clearly delineate how a source becomes "established" and thus "reasonably accessible" to facilitate a dealer's time of trade disclosures.[6]

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[2] 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 86 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

[3] Request for Comment on Codifying Time of Trade Disclosure Obligation at 4.

[4] MSRB Notice 2010-37 MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market , September 20, 2010, 4. http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-37.aspx.

[5] MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under Rule G-17, November 30, 2011, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_316FB763-1DC3-436E-9533-A8E1007050BD.

[6] MSRB Notice 2010-37.

The MSRB attempted to clarify a dealer's duty to identify established industry sources to support time of trade disclosure duties as part of a 2011 rule interpretation.[7] MSRB noted that the increasing availability of municipal securities information could result in the emergence of "new 'established industry sources'" which a dealer might need to monitor. The interpretive notice also acknowledged that "information vendors" may help dealers meet their duty to monitor the potentially expanding pool of "established industry sources."[8] The proposed time of trade disclosure rule, however, omits the 2011 interpretation's reference to the role of "information vendors" in helping a dealer monitor "established industry sources."[9]

Accordingly, WFA requests that MSRB's final rule acknowledge the role of information vendors in helping a dealer monitor established industry sources in support of time of trade disclosure obligations. More specifically, WFA requests that MSRB's final rule clarify that dealers may rely on vendors to help aggregate material event information from the range of established industry sources and monitor for "emerging" sources of material event notices. Furthermore, WFA believes the rule and guidance should recognize that established industry sources remain reliant on the quality of continuing and material event notifications provided by issuers.[10]

Ultimately, WFA believes the restructured rule and guidance should make clear that a dealer with a reasonably designed system for the detection and disclosure of material information will be presumed to have complied with its time of trade disclosure obligations.

II. MSRB's Time of Trade Disclosure Rule Should Clarify the Significance of an Issuer's Failure to Make Continuing Disclosure Filings.

WFA believes a final rule should provide dealers more clarity about the "specific scenarios" that trigger time of trade disclosure obligations for the types of information identified in the supplementary material.[11] As part of such a clarification, WFA believes that MSRB's proposed rule should provide guidance about how to interpret the potential materiality of issuer event reporting deficiencies.

In its 2010 guidance concerning dealer sales practice and due diligence obligations, MSRB stated that a dealer's finding that an issuer failed to make continuing disclosure or material event filings "should be viewed as a red flag" which might, among other things, necessitate time of trade disclosure.[12] The guidance, however, did not provide further clarity about factors that a dealer might consider as mitigating such a "red flag."

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[7] MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under Rule G-17.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] MSRB Notice 2013-04 at 3.
[12] MSRB Notice 2010-37 at 4.

The Board's proposal to codify time of trade disclosure rules does not incorporate the characterization of issuer disclosure deficiencies as "red flag" events.[13] Nevertheless, the proposed rule's supplementary material includes an issuer's "failure to make continuing disclosure filings" among "examples" of "information that may be material in specific scenarios."[14] The proposed rule does not provide dealers with direction about how to evaluate the significance of specific issuer continuing disclosure deficiencies. Likewise, as with the 2010 guidance, the proposed rule does not describe any mitigating factors relating to a deficiency.

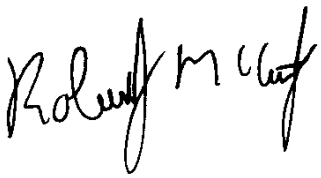
At a minimum, WFA believes that the final time of trade disclosure should make clear that that an issuer's "failure to make continuing disclosure filings" is a factor in, but is not determinative of the materiality of the issuer's disclosure deficiency.[15] Furthermore, WFA believes that the MSRB should make clear that a dealer may consider subsequent disclosures and the curing of late filings as relevant in determining the significance of a prior or less severe disclosure deficiency. Finally, to assist dealers in assessing the materiality of a subsequently cured late filing, WFA believes the supplemental information should specify a window of time in which an issuer's late continuing disclosure filing would be regarded as a clerical or ministerial issue and thus not a material deficiency.

Conclusion

WFA appreciates that opportunity to offer comment for the MSRB to consider as it considers the codification of dealer time of trade disclosure obligations. WFA believes the foregoing suggestions will help the Board achieve its purpose of promoting efficient compliance in the public interest.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

[13] *Id*.
[14] MSRB Notice 2013-04 at 3-4.
[15] *Id*. at 4.

MSRB NOTICE 2013-07 (MARCH 11, 2013)

REQUEST FOR COMMENT ON REVISIONS TO SUITABILITY RULE

The Municipal Securities Rulemaking Board ("MSRB") is seeking comment on proposed revisions to MSRB Rule G-19, on suitability. The proposal is part of the MSRB's comprehensive review of its rules and related interpretive guidance and reflects an ongoing commitment to consider whether MSRB rules can be more closely aligned with rules of other regulators to promote more effective and efficient compliance. The proposed revisions would harmonize Rule G-19 with Financial Industry Regulatory Authority's ("FINRA's") suitability rule.[1] Lastly, the proposal aligns with a recommendation from the Securities and Exchange Commission in its 2012 Report on the Municipal Securities Market.[2]

Comments should be submitted no later than May 6, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[3]

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, or Darlene Brown, Assistant General Counsel, at 703-797-6600.

BACKGROUND

The MSRB has conducted a review of Rule G-19, as well as the MSRB's interpretive guidance addressing suitability, and is proposing the amendments described below to more closely harmonize its rule with the corresponding FINRA suitability rule. The MSRB also is proposing to incorporate elements of its current interpretive guidance on suitability into Rule G-19.

PROPOSED REVISIONS

Account Information

MSRB Rule G-19(a), in referencing Rule G-8(a)(xi), currently requires brokers, dealers, and municipal securities dealers ("dealers") to obtain certain customer information prior to completing a transaction in municipal securities in a customer's account. In an effort to streamline the rule and to more closely align with the FINRA rule, the recordkeeping provisions in G-19(a) have been eliminated, and technical and conforming amendments to Rule G-8(a)(xi)(F) have been proposed.

Suitability

The proposed amendments to Rule G-19 incorporate the application of suitability to "investment strategies." Specifically, supplementary material .03 defines the phrase "investment strategy involving a municipal security or municipal securities" in a manner consistent with FINRA's suitability rule. As such, the phrase "investment strategy" in the proposed MSRB suitability rule would include an explicit recommendation to hold a municipal security or securities. The proposed rule, like the FINRA rule, carves out communications of certain types of educational material so long as such communications do not recommend a particular municipal security or securities.[4]

Information Required for Suitability Determinations

The current MSRB suitability rule contains a non-exclusive list of customer information that dealers must obtain prior to recommending a transaction to a non-institutional account. The proposed rule expands this list to include additional items such as age, investment time horizon, liquidity needs, investment experience and risk tolerance.[5] The MSRB believes that these additional items are directly relevant for recommendations involving municipal securities and having such items explicitly identified will promote more consistent application of the suitability rule.[6]

The current MSRB suitability rule also requires dealers to consider information available from the issuer of the municipal security or otherwise in making suitability determinations. Similarly, the supplementary material to FINRA's suitability rule establishes the reasonable-basis suitability obligation, which requires a broker-dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In order to perform a reasonable-basis suitability analysis, dealers must necessarily consider information from the issuer in performing reasonable due diligence on the security.[7] The proposed revisions to Rule G-19 incorporate the terminology of reasonable-basis and customer-specific suitability.

Institutional Accounts

Provisions in guidance to Rule G-17 exempt dealers from the duty to perform a customer-specific suitability determination for recommendations to sophisticated municipal market professionals ("SMMPs"). FINRA's suitability rule has similar provisions with respect to institutional accounts. The MSRB does not propose incorporating the SMMP exemption into Rule G-19.

Discretionary Accounts

The current MSRB suitability rule includes a provision on discretionary accounts, which the MSRB believes is more appropriately set forth in a separate rule. Similarly, FINRA's suitability rule does not include a provision on discretionary accounts. The MSRB proposes to take a similar approach and address discretionary accounts in a separate rule.

Churning

The proposed rule retains the substance of the existing MSRB prohibition on churning, but recasts it using the new terminology of "quantitative suitability."

CURRENT INTERPRETIVE GUIDANCE

Over the years, the MSRB has issued guidance on suitability in connection with other issues under Rule G-17. This guidance provides that a dealer must take into account all material information that is known to the dealer or that is available through established industry sources in meeting its suitability obligations.[8] This is the same type of information that dealers are required to disclose to customers at the time of trade.[9] The Rule G-17 guidance also describes material information that dealers should consider in making suitability determinations in specific scenarios such as credit or liquidity enhanced securities,[10] auction rate securities,[11] and insured bonds.[12] Rather than listing information in the supplementary material to Rule G-19 that may be material to an investor, the proposed revisions include a general requirement for dealers to understand information about the municipal security or strategy and the supplemental material contains an explicit cross-reference to a dealer's obligations under proposed MSRB Rule G-47 (Time of Trade Disclosure).[13]

The remaining suitability obligations described in the Rule G-17 guidance[14] are incorporated into revised Rule G-19.[15]

The MSRB also has issued interpretive guidance under Rule G-19 that addresses electronic communications, investment seminars, customers contacting a dealer in response to an advertisement, and other general suitability concepts.[16] This guidance would be superseded by revised Rule G-19 and the MSRB proposes to rescind the guidance. The MSRB also has issued interpretations under Rules G-15,[17] G-21,[18] and G-32[19] that nominally reference suitability obligations. Since these interpretations address areas other than suitability, the MSRB proposes that these interpretations remain intact.

REQUEST FOR COMMENT

The MSRB is requesting comment from the industry and other interested parties on the proposed revisions to Rules G-19 and G-8 set forth below. In addition to the substance of the proposed revisions, the MSRB requests that commenters address the following questions:

1. Is the proposal to harmonize the MSRB's suitability rule with FINRA's suitability rule an appropriate policy decision?
2. Are their unique attributes of the municipal securities market that would justify differences in the MSRB's suitability rule? If so, please identity the particular attributes and regulatory alternatives for addressing such issues. Where possible, provide supporting data or examples.
3. Does harmonizing the MSRB's suitability rule with FINRA's suitability rule provide any benefits to investors or dealers? If so, please provide detail regarding the benefits and to the extent possible, provide supporting data.
4. Does harmonizing the rules impose any particular costs or burdens on investors or dealers? If so, please provide detail regarding the costs or burdens and to the extent possible, provide supporting data.
5. Does any of the existing interpretive guidance proposed to be retained conflict with the revisions to Rule G-19? Conversely, is any of the guidance proposed to be rescinded necessary in that it is not fairly implied from the revised Rule G-19? Please be specific in identifying any conflicts or omissions.

March 11, 2013

* * * * *

TEXT OF PROPOSED AMENDMENTS[20]

Rule G-19: Suitability of Recommendations and Transactions~~; Discretionary Accounts~~

~~(a) *Account Information*. Each broker, dealer and municipal securities dealer shall obtain at or before the completion of a transaction in municipal securities with or for the account of a customer a record of the information required by rule G-8(a)(xi).~~

~~(b) *Non-institutional Accounts*—Prior to recommending to a non-institutional account a municipal security transaction, a broker, dealer or municipal securities dealer shall make reasonable efforts to obtain information concerning:~~

~~(i) the customer's financial status;~~

~~(ii) the customer's tax status;~~

(iii) the customer's investment objectives; and

~~(iv) such other information used or considered to be reasonable and necessary by such broker, dealer or municipal securities dealer in making recommendations to the customer.~~

~~The term "institutional account" for the purposes of this section shall have the same meaning as in rule G-8(a)(xi).~~

~~(c) *Suitability of Recommendations*. In recommending to a customer any municipal security transaction, a broker, dealer, or municipal securities dealer shall have reasonable grounds:~~

~~(i) based upon information available from the issuer of the security or otherwise, and~~

~~(ii) based upon the facts disclosed by such customer or otherwise known about such customer for believing that the recommendation is suitable.~~

~~(d) *Discretionary Accounts*. No broker, dealer or municipal securities dealer shall effect a transaction in municipal securities with or for a discretionary account.~~

~~(i) except to the extent clearly permitted by the prior written authorization of the customer and accepted in writing by a municipal securities principal or municipal securities sales principal on behalf of the broker, dealer or municipal securities dealer; and~~

~~(ii) unless the broker, dealer or municipal securities dealer first determines that the transaction is suitable for the customer as set forth in section (c) of this rule or unless the transaction is specifically directed by the customer and has not been recommended by the dealer to the customer.~~

~~(e) *Churning.* No broker, dealer or municipal securities dealer shall recommend transactions in municipal securities to a customer, or effect such transactions or cause such transactions to be effected for a discretionary account, that are excessive in size or frequency in view of information known to such broker, dealer or municipal securities dealer concerning the customer's financial background, tax status, and investment objectives.~~

A broker, dealer or municipal securities dealer must have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the broker, dealer or municipal securities dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation.

---Supplementary Material:

.01 General Principles. Implicit in all broker, dealer and municipal securities dealer relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be

judged as being within the ethical standards of the MSRB's rules, with particular emphasis on the requirement to deal fairly with all persons. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Disclaimers. A broker, dealer or municipal securities dealer cannot disclaim any responsibilities under the suitability rule.

.03 Recommended Strategies. The phrase "investment strategy involving a municipal security or municipal securities" used in this rule is to be interpreted broadly and would include, among other things, an explicit recommendation to hold a municipal security or municipal securities. However, the following communications are excluded from the coverage of Rule G-19 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular municipal security or municipal securities: general financial and investment information, including (i) basic investment concepts, such as risk and return and diversification, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimates of future retirement income needs, (v) assessment of a customer's investment profile, and (vi) general comparisons between tax-exempt and taxable bonds and the concept of tax-equivalent yield.

.04 Customer's Investment Profile. A broker, dealer or municipal securities dealer shall make a recommendation covered by this rule only if, among other things, the broker, dealer or municipal securities dealer has sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer. The factors delineated in Rule G-19 regarding a customer's investment profile generally are relevant to a determination regarding whether a recommendation is suitable for a particular customer, although the level of importance of each factor may vary depending on the facts and circumstances of the particular case. A broker, dealer or municipal securities dealer shall use reasonable diligence to obtain and analyze all of the factors delineated in Rule G-19 unless the broker, dealer or municipal securities dealer has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer's investment profile in light of the facts and circumstances of the particular case.

.05 Components of Suitability Obligations. Rule G-19 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

(a) The reasonable-basis obligation requires a broker, dealer or municipal securities dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the municipal security or investment strategy and the broker, dealer or municipal securities dealer's familiarity with the municipal security or investment strategy. A broker, dealer or municipal securities dealer's reasonable diligence must provide the broker, dealer or municipal securities dealer with an understanding of the potential risks and rewards associated with the recommended municipal security or strategy and an understanding of information about the municipal security or strategy, including the information described in [proposed] MSRB Rule G-47 (Time of Trade Disclosure), to the extent such information is material. The lack of such an understanding when

recommending a municipal security or strategy violates the suitability rule.

(b) The customer-specific obligation requires that a broker, dealer or municipal securities dealer have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule G-19.

(c) Quantitative suitability requires a broker, dealer or municipal securities dealer who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule G-19. No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a broker, dealer or municipal securities dealer has violated the quantitative suitability obligation.

.06 Customer's Financial Ability. Rule G-19 prohibits a broker, dealer or municipal securities dealer from recommending a transaction or investment strategy involving a municipal security or municipal securities or the continuing purchase of a municipal security or municipal securities or use of an investment strategy involving a municipal security or municipal securities unless the broker, dealer or municipal securities dealer has a reasonable basis to believe that the customer has the financial ability to meet such a commitment.

* * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) *Description of Books and Records Required to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (x) No change.

(xi) *Customer Account Information.* A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A) - (E) No change.

(F) information about the customer ~~used~~ obtained pursuant to rule G-19~~(c)(ii) inmaking recommendations to the customer. For non-institutional accounts, all data obtained pursuant to rule G-19(b) shall be recorded~~.

(G) - (M) No change.

(xii) - (xxvi) No change.

(b) - (g) No change.

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[1] *See* FINRA Rule 2111 (Suitability). The MSRB also is seeking comment on proposed technical revisions to Rule G-8, on books and records, to conform this rule

with the proposed revisions to Rule G-19.

[2] *See* http://www.sec.gov/news/studies/2012/munireport073112.pdf

[3] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[4] Some of the educational items discussed in the supplementary material to FINRA's rule are not applicable to the municipal securities market; therefore, the proposed revisions to Rule G-19 do not include these items. Conversely, the proposed revisions to Rule G-19 add an educational item related to tax exemption information since this is uniquely applicable to municipal securities.

[5] The expanded list of customer information in the proposed revisions is the same as the customer information in FINRA's suitability rule.

[6] *See also* SIFMA Letter in response to MSRB Notice 2012-63 (SIFMA urged the MSRB to make the investor profile information required to be obtained under Rule G-19 consistent with that required under FINRA Rule 2111 given the effort and expense associated with updating systems and processes to comply with Rule 2111); FSI Letter in response to MSRB Notice 2012-63 (harmonization would streamline the exam process and lend greater clarity in rule interpretation and application).

[7] FINRA's guidance indicates that the reasonable-basis suitability obligation requires broker-dealers to perform reasonable diligence to understand the potential risks and rewards associated with a recommended security or strategy.

[8] *See, e.g.,* Interpretive Notice dated September 20, 2010, *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations when Selling Municipal Securities in the Secondary Market*.

[9] *See, e.g.,* Interpretive Notice dated July 14, 2009, *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities*.

[10] *Id.*

[11] Interpretive Notice dated February 19, 2008, *Application of MSRB Rules to Transactions in Auction Rate Securities*.

[12] Interpretive Notice dated January 22, 2008, *Bond Insurance Ratings – Application of MSRB Rules*.

[13] *See also* FSI Letter in response to 2012-63 (asking for guidance on the scope of material information that must be taken into account to adequately complete a suitability review under G-19.)

[14] Interpretive Notice dated March 30, 2007, *Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities; Interpretive Notice dated March 20, 2002, Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts;* and *Interpretive Notice dated March 4, 1986, Notice Concerning Disclosure of Call Information to Customers of Municipal Securities*.

[15] This does not include suitability obligations with respect to 529 plans. The MSRB proposes including these obligations in a separate rule for 529 plans.

[16] Interpretive Notice dated September 25, 2002, *Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications*; Interpretive Notice dated May 7, 1985, *Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements*; Interpretive Letter dated February 17, 1998*, Recommendations;* and Interpretive Letter dated February 24, 1994*, Recommendations: advertisements*.

[17] Interpretive Notice dated March 13, 1989, *Notice Concerning Stripped Coupon Municipal Securities*; and Interpretive Letter dated February 17, 1998, *Securities description: prerefunded securities.*

[18] Interpretive Notice dated June 5, 2007, *Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities under Rule G-21;* and Interpretive Letter dated May 21, 1998, *Disclosure obligations*.

[19] Interpretive Notice dated November 20, 1998, *Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers*; and Interpretive Notice dated March 26, 2001, *Interpretation on the Application of Rules G-32 and G-36 to New Issue Offerings Through Auction Procedures*.

[20] Underlining indicates new language; strikethrough denotes deletions.

Alphabetical List of Comment Letters on MSRB Notice 2013-07 (March 11, 2013)

1. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated May 6, 2013

2. College Savings Foundation: Letter from Roger Michaud, Chairman, dated May 6, 2013

3. College Savings Plans Network: Letter from Michael L. Fitzgerald, Treasurer of Iowa and Chairman, dated May 6, 2013

4. Financial Services Institute: Letter from David T. Bellaire, Executive Vice President and General Counsel, dated May 6, 2013

5. Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated May 5, 2013

6. Retail Investor: E-mail from Retail Investor dated August 25, 2013

7. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated May 6, 2013

8. Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated May 6, 2013

BDA Bond Dealers of America

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Washington, DC 20036
202.204.7900
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May 6, 2013

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2013-07 (March 11, 2013) – Request for Comment on Revisions to Suitability Rule

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2013-07 seeking comment on the proposed revisions to MSRB Rule G-19, on suitability ("Proposed Rule G-19"), that would harmonize MSRB Rule G-19 with the Financial Industry Regulatory Authority's ("FINRA") Rule 2111 on Suitability ("FINRA's Suitability Rule".)[1] BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. The BDA is pleased to have this opportunity to comment on Proposed Rule G-19.

The BDA believes that any revisions to the MSRB rules to harmonize such rules with those of other regulators should be written with an eye towards achieving a consistent interpretation and application of each rule. While we are encouraged by many of the changes in Proposed Rule G-19 that would harmonize MSRB Rule G-19 with FINRA's Suitability Rule 2111, we are concerned that the differences in the Proposed Rule G-19 from FINRA's Suitability Rule are not necessarily justified, particularly with respect to the treatment of institutional investor accounts.

MSRB Should More Clearly Identify What Constitutes a Hold Recommendation

In connection with any proposed rule that attempts to harmonize the rules across the fixed income markets, there needs to be some recognition that many of the unique qualities of the municipal bond market, such as the large number of outstanding bonds, prevalence of buy and hold investors and infrequent secondary market trading for many issues, among others, may require additional guidance to help municipal market participants transition to the new rules. For example, the BDA is concerned that there is the potential for confusion to exist with respect to explicit versus passive hold recommendations. Specifically, under Proposed Rule G-19's supplementary material .03, Recommended

[1] *See FINRA Rule 2111 (Suitability)*

Strategies, Proposed Rule G-19 would apply the suitability obligation to investment strategies that include "an explicit recommendation to hold a municipal security or municipal securities."

The BDA is concerned that this might lead to unnecessary and burdensome compliance documentation in certain instances. For example, consider a situation where a customer approaches his or her financial advisor ("FA") with a desire to liquidate a portion of their portfolio for cash. The FA discovers the client requires what amounts to the liquidation of $25,000 from their entire portfolio, which consists of many items amounting to a much larger total amount. The FA and customer then decide to put out for bid, three similar items from the larger portfolio in order to make a better informed decision about which of the three to act upon after quotes from the market come in. The FA and the customer receive bids on all three and then need to decide to sell which of the three securities, taking into account all potential relevant factors, and making the best decision on the customer's behalf. We assume the recommendation to go through with the sale of that one item would require documentation that the suitability requirements of Proposed Rule G-19 have been met. Furthermore, we believe that the other two items not acted upon would not constitute an affirmative "hold recommendation" as Proposed Rule G-19 is written and therefore would not require documentation as such. Therefore, we would encourage the MSRB to provide further guidance as to what constitutes a "hold recommendation" for purposes of Proposed Rule G-19. Specifically, we believe MSRB guidance should make clear that the suitability obligation applies only to the recommendation to sell the designated bond or bonds and that the remaining bonds would not be the subject of an "explicit" recommendation to hold. We believe the MSRB should incorporate guidance language, as FINRA does in Regulatory Notice 12-55, that "implicit" hold recommendations are not within the scope of its suitability rule.

Proposed Rule G-19 Should Include an Exception for Sophisticated Municipal Market Professionals ("SMMP") Similar to FINRA's Exception for Institutional Investor Accounts

As it relates to Proposed Rule G-19 and the MSRB's effort to harmonize its suitability rule with FINRA's Suitability Rule, the BDA would suggest the MSRB maintain an SMMP exemption. While the BDA intends to submit more substantial comments on MSRB Notice 2013-10[2], Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, we do believe it is worth mentioning in this letter why an SMMP exemption should be included in Proposed Rule G-19. The BDA believes that omitting any reference to the SMMP exemption in Rule G-19 in favor of moving that exemption from being an interpretation under MSRB Rule G-17 to its own stand-alone Rule G-48 and companion definitional rule D-15 under MSRB Notice 2013-10, undermines the goal of harmonizing the Proposed Rule G-19 with FINRA's Suitability Rule and runs counter to the MSRB's stated objective. In fact, in MSRB Notice 2012-16[3], the MSRB revised the definition of SMMP indicating that they revised this "definition so that it is consistent with the new FINRA suitability rule for institutional

[2] *See MSRB Notice 2013-10 (May 1, 2013)*
[3] *See MSRB Notice 2012-16 (March 26, 2012)*

customers." Our concern with the omission of an SMMP exemption in Proposed Rule G-19 is that FINRA examiners will not be able to consistently apply the FINRA Suitability Rule as contrasted with the MSRB's suitability rule, potentially causing confusion for application of the rules by FINRA examiners. If the definition of SMMP is not clearly defined and exempted in MSRB's suitability rule, like it is in FINRA Rule 2111(b), it will be difficult for FINRA examiners to know how to apply the language of MSRB's rule as separate and apart from FINRA's rule. As we have stated in the past with other rules, the BDA believes rules should be written consistently among the different regulators with an eye toward facilitating the interpretation and application of each rule with objective standards that broker dealers and FINRA examiners alike can interpret and apply the rules in a consistent manner. Since we do believe harmonization will be beneficial for enforcement of both MSRB and FINRA rules, we would encourage the MSRB to consider inserting a definition of SMMP in Proposed Rule G-19 before it submits this proposal to the SEC.

Supplementary Material for Proposed Rule G-19 Should be Updated

Should the MSRB include an exemption for SMMPs in Proposed Rule G-19, the MSRB should also consider updating supplementary material .02, Disclaimers, to include language such as "when providing services to retail clients" or "when providing services for non-SMMP clients" so that all supplementary material acknowledges the exception for SMMPs in the Proposed Rule G-19.

Additionally, another consideration for changes to supplementary material would be to strike the word "retirement" from supplementary material .03, Recommended Strategies, item (iv). We would suggest that the Section be rewritten to read "estimates of future income needs." The BDA believes this would better align to FINRA's "liquidity needs" criteria to recognize that when purchasing a position, one might be looking for a period to help bridge income needs until they reach retirement and not solely for "retirement income needs."

Thank you for the opportunity to submit these comments.

Sincerely,

Michael Nicholas

Chief Executive Officer

May 6, 2013

By Electronic Delivery

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: College Savings Foundation's Comments on MSRB Notice 2013-07:
Request for Comment on Revisions to Suitability Rule

Dear Mr. Smith:

The College Savings Foundation ("CSF") is a not-for-profit organization with the mission of helping American families achieve their education savings goals by working with public policy makers, media representatives, and financial services industry executives in support of 529 college savings plans ("529 Plans" or "Plans"). CSF serves as a central repository of information about college savings programs and trends and as an expert resource for its members as well as representatives of state and federal government, institutions of higher education and other related organizations and associations. CSF's members include state 529 Plans, investment managers, broker-dealers, other governmental organizations, law firms, accounting and consulting firms, and non-profit agencies that participate in the sponsorship or administration of 529 Plans.

CSF supports the proposal to conform Rule G-19 to FINRA's suitability rule and endorses the comments regarding this proposal made by the Investment Company Institute in its May 6, 2013 response letter to Notice 2013-07. We appreciate the opportunity both to comment on Notice 2013-07 and to continue the dialogue with the MSRB on 529 college savings plans. Please do not hesitate to contact us with any questions or for more information. You may reach CSF by calling Kathy Hamor at (703) 351-5091.

Sincerely,

Roger Michaud
Chairman,
College Savings Foundation

By Electronic Delivery

May 6, 2013

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments Concerning MSRB Notice 2013-07
Request for Comment on Revisions to Suitability Rule

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2013-07, *Request for Comment on Revisions to Suitability Rule* issued March 11, 2013 (the "Notice"). We appreciate the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 College Savings Plans ("529 Plans") and its interest in ensuring dealers obtain comprehensive information regarding customers, their savings goals and risk tolerance, among other things, prior to recommending a particular investment opportunity. We are dedicated to working with the MSRB in its efforts to harmonize its suitability rules with those issued by the Financial Industry Regulatory Authority.

Endorsement of Investment Company Institute Comment Letter

CSPN is supportive of the comments relating to 529 Plan suitability requirements under the heading "*Recommendations Relating to 529 Plan Suitability Requirements*" to be submitted by the Investment Company Institute and endorses that portion of its comment letter on the Notice dated May 6, 2013.

* * * * * * * * * *

Thank you again for providing an opportunity to comment on the Notice. Please do not hesitate to contact us with any questions or for more information. You may reach CSPN by calling Chris Hunter at (859) 244-8177.

Sincerely,

Michael L. Fitzgerald

Hon. Michael L. Fitzgerald
Treasurer of Iowa and
Chairman, College Savings Plans Network

FINANCIAL SERVICES INSTITUTE
VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

May 6, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: Request for Public Comment on Revisions to the Suitability Rule

Dear Mr. Smith:

On March 11, 2013, the Municipal Securities Rulemaking Board (MSRB) issued a request for public comment on revisions to Rule G-19 and technical changes to Rule G-8(a)(xi) that reference Rule G-19 (Proposed Rule).[1] The Proposed Rule seeks to harmonize the MSRB's approach to suitability in municipal securities transactions with the Financial Industry Regulatory Authority's (FINRA) Suitability Rule 2111.[2] While the Financial Services Institute[3] (FSI) has concerns with the FINRA suitability rule[4], FSI supports the harmonization of MSRB Rule G-19 with

[1] MSRB Notice 2013-07, Request for Comment On Revisions To Suitability Rule *available at* http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-07.aspx?n=1

[2] *See* FINRA Rule 2111, *available at:* *http://finra.complinet.com/en/display/display_viewall.html?rbid=2403&element_id=9859&print=1*

[3] The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has over 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

[4] *See* Letter from Dale Brown, President and CEO, FSI to Elizabeth M. Murphy, Secretary, SEC dated September 27, 2010, *available at:* http://www.financialservices.org/uploadedFiles/FSI_Content/Advocacy_Action_Center/Past_Issues/FINRA/FINRA_ListSummary/FSI%20Comment%20Letter%20on%20Amended%20FINRA%20Suitability%20Rule%20Proposal%2009-27-10%20(FINAL).pdf; *see also* Letter from Dale Brown, President and CEO, FSI to Marcia E. Asquith, Office of Corporate Secretary, FINRA dated June 29, 2009, *available at:* http://www.financialservices.org/uploadedFiles/FSI/Advocacy_Action_Center/FINRA_Issues/FSI%20Comment%20Letter%20on%20FINRA%20Suitability%20Rule%20Proposal%2006-29-09.pdf.; *see also* FSI Member Briefing and Call to Action, FINRA's Proposed Rule Governing Suitability and Know-Your-Customer Obligations, June 16, 2009, *available at:*

FINRA Rule 2111 and encourages the MSRB to make further changes to its rulebook to align its rules more closely with the FINRA Rules. FSI and its members believe that further harmonization between the rulebooks of the two self-regulatory organizations (SROs) will promote more effective compliance by regulated entities.

Background on FSI Members

The independent broker-dealer ("IBD") community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; engage primarily in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers, or approximately 64 percent of all practicing registered representatives, operate in the IBD channel.[5] These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically "main street America" it is, essentially part of the "charter" of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.[6] Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses,

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http://www.financialservices.org/uploadedFiles/FSI/Advocacy_Action_Center/FINRA_Issues/Member_Briefing_on_FINRA_Proposed_Suitability_Rule_06-16-09.pdf

[5] Cerulli Associates at http://www.cerulli.com/.

[6] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisers.

these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to insure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

FSI's membership is actively involved in the municipal securities marketplace. Within this space, FSI's members are primarily involved in the secondary market for municipal securities. A small number of FSI members also underwrite municipal securities and/or are municipal advisors.

Comments

As a general principle, FSI supports the harmonization of FINRA and MSRB rules and processes. As a result, FSI supports the current effort by the MSRB to harmonize Rule G-19 with FINRA Rule 2111. While FSI has concerns with the FINRA suitability rule, the harmonization of the two rules is a positive development for FSI's membership. Financial advisers are involved in the trading of equities, corporate bonds, and other instruments covered by FINRA Rule 2111, in addition to engaging in the secondary market trading of municipal securities governed by Rule G-19. The harmonization of these two standards will provide significant benefits for broker-dealers and financial advisors. These benefits are reflected in the ease associated with complying with one suitability standard across a wide range of financial instruments, including municipal securities. Investors will also benefit from this change by having a greater understanding of the standard of care owed to them by their financial adviser, regardless of the specific security they are buying or selling. Therefore, FSI believes the harmonization of Rule G-19 under the Proposed Rule is a positive development. FSI and its members look forward to further harmonization efforts by the MSRB in the future.

Conclusion

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with the MSRB to achieve a sensible balance between investor protection and regulation in the municipal securities market.

Thank you for your consideration of our comments. Should you have any questions, please contact me directly at (202) 803-6061.

Respectfully submitted,

David T. Bellaire, Esq.
Executive Vice President & General Counsel

INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

May 5, 2013

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2013-07
Relating to Revising the Suitability Rule

Dear Mr. Smith:

The Investment Company Institute[1] is pleased to support the Municipal Securities Rulemaking Board's proposal to harmonize its suitability rule, Rule G-19, with FINRA's suitability rule, Rule 2111.[2] We support the proposal because it is in the best interest of investors and registrants, as briefly discussed below. We recommend, however, that the MSRB revise its proposal to include within Rule G-19 *all* suitability obligations of MSRB registrants. The basis for this recommendation is also set forth below.

SUPPORT FOR HARMONIZATION

As we have previously expressed to the MSRB, as a general matter, we support consistency between the rules of the MSRB and FINRA for two reasons.[3] First, with respect to investors, harmonization ensures that, regardless of whether the product recommended is a municipal security or another type of security, the customer receives the same basic protections under the two regulatory regimes. Second, harmonization benefits registrants because it facilitates compliance by those dealers

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $14.96 trillion and serve more than 90 million shareholders.

[2] *See Request for Comment on Revisions to Suitability Rule,* MSRB Notice 2013-07 (Mar. 11, 2013) ("Notice").

[3] *See, e.g.,* Letter from Tamara K. Salmon, Senior Associate Counsel, to Mr. Ghassan Hitti, Assistant General Counsel, MSRB, dated June 2, 2006 (supporting the MSRB's proposal to conform registrants' supervisory responsibilities to those of FINRA registrants).

that are dually registered with the MSRB and FINRA by enabling them to develop consistent suitability standards from product to product without regard to which regulator's rule applies to comparable conduct.[4]

RECOMMENDATION RELATING TO 529 PLAN SUITABILITY REQUIREMENTS

Notwithstanding our support for the proposed rule, we recommend that, as part of this rulemaking, the MSRB consolidate into Rule G-19 all duties of MSRB registrants relating to suitability – including those that are found in guidance issued by the MSRB. While the Notice expresses the MSRB's interest in taking this approach as part of its current proposal, it does so only with respect to products other than 529 plans:

> Over the years, the MSRB has issued guidance on suitability in connection with other issues under Rule G-17 [relating to customer protection] . . . Rather than listing information in the supplementary material to Rule G-19 that may be material to an investor, the proposed revisions include a general requirement for dealers to understand information about the municipal security or strategy and the supplemental material contains an explicit cross-reference to a dealer's obligations under proposed MSRB Rule G-47 (Time of Trade Disclosure). The remaining suitability obligations described in the Rule G-17 guidance are incorporated into revised Rule G-19.

A footnote to the last sentence of this excerpt provides: "This does not include suitability obligations with respect to 529 plans. The MSRB proposes including these obligations in a separate rule for 529 plans." Given this language, it is not clear whether the current proposal was intended to apply to MSRB registrants selling 529 plan securities. We understand from talking to the MSRB staff that the revised rule *is* intended to apply to such registrants' recommendations, and the footnote is intended to alert commenters to the MSRB's plans to publish additional guidance relating to the suitability of recommendations involving 529 plan securities. The Notice seeks comment on the proposed approach.

The Institute has long urged the MSRB to clarify in its rules which of its requirements apply to municipal fund securities (*e.g.,* 529 plan securities) versus those applicable only to other municipal securities.[5] Earlier this year, we filed a comment letter with the MSRB strongly recommending that:

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[4] We note that FINRA has provided its members guidance regarding its interpretation of FINRA Rule 2211. *See, e.g.,* http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=14960&element_id=9859&highlight=2111#r14960. In its notice adopting the proposed revisions to Rule G-19, we recommend that the MSRB confirm its intent to interpret its rule in a manner that is consistent with FINRA's interpretation.

[5] *See, e.g.,* Letter from the undersigned to Ronald W. Smith, Secretary, MSRB, dated Feb. 19, 2013, commenting on MSRB Notice 2012-63.

> . . . when proposing any new rules or rule revisions, or publishing any guidance for registrants, the MSRB *expressly* state whether such rule or guidance is intended to apply to both types of products and, to the extent the proposal is intended to apply to both products but would impact them differently, the MSRB notice expressly discuss and explain these differences. We believe this recommendation will go a long way toward addressing the current confusion that arises when trying to determine the intended scope and impact on 529 plan offerings of the MSRB's rules governing municipal securities. [Emphasis in original.][6]

In the Notice, the MSRB partially responded to our previous recommendation by making specific reference in the Notice to suitability obligations with respect to 529 plans. We appreciate the MSRB's specific attention to 529 plans. We recommend, however, that, in lieu of adopting another suitability rule that would, presumably supplement Rule G-19 with respect to 529 plan recommendations, the MSRB incorporate provisions specific to 529 plans in Rule G-19.[7] This approach would avoid the inefficiencies and confusion that may result from the MSRB having two distinct rules relating to the same topic – suitability – both of which would apply to 529 plan recommendations. Also, consolidating all suitability requirements in one rule is appropriate because, in large part, the requirements in proposed Rule G-19 will apply to MSRB registrants without regard to the products they are recommending.[8] Moreover, the new structure proposed for Rule G-19, which adds "Supplementary Material" to the rule, would appear to lend itself to incorporating in the Supplementary Material requirements that may be solely applicable to recommendations involving 529 plans.

Accordingly, we strongly recommend that the MSRB revise its current proposal to add to Rule G-19 Supplementary Material that sets forth *all* additional suitability obligations imposed on registrants' recommendations of 529 plan securities. We also recommend, in the interest of internal consistency of the MSRB's rules, that the MSRB rescind all suitability requirements and guidance that have been issued under other MSRB rules relating to recommendations involving 529 plan securities.[9] If the MSRB follows our recommended approach, we request that it publish for comment a revised

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[6] Id at pp. 3-4.

[7] Alternatively, the MSRB could clarify that Rule G-19 is not intended to apply to 529 plan recommendations and propose a separate rule that applies only to recommendations regarding 529 plans and includes, in one rule, all suitability obligations imposed on such recommendations. This approach may be confusing and inefficient, however, because of the likely overlap between such separate rule and Rule G-19.

[8] Moreover, this would avoid dealers recommending 529 plan securities from being sanctioned under two separate MSRB suitability rules for singular conduct, which seems most unfair.

[9] Our recommended approach is consistent with the MSRB's proposal to rescind the guidance that it has previously issued under Rules G-15, G-21, and G-32 "that nominally reference suitability obligations." Notice at p. 2.

version of Rule G-19 and its Supplementary Material that includes any provisions designed to address unique issues that registrants must take into account when recommending 529 plan securities.

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The Institute commends the MSRB for its ongoing efforts to review its rules to ensure they remain current and to evaluate their consistency with those of the FINRA. We also appreciate the MSRB's movement toward implementing our recommendation to make clear in its rules, where appropriate, which obligations apply to municipal fund securities. If you have any questions concerning these comments, please do not hesitate to contact me at (202)326-5825.

Sincerely,

/s/
Tamara K. Salmon
Senior Associate Counsel

Cc: Lawrence P. Sandor, Deputy General Counsel

Comment on Notice 2013-07

from Retail Investor,

on Sunday, August 25, 2013

Comment:

Not sure how this exactly applies to the soliciation for comments, but here goes:

I've had several experiences in past where I've put up a "bid wanted" for some of my bonds through my broker and have had dealers (I assume they are dealers) come back with prices - believe it or not - 8-10 points lower from where the bonds last traded! Of course, the bids come in anonymously, so I can't tell who's on the other end, but to me a basic market "price check" by looking at the MSRB historical trade data should be done in order to protect the retail seller from getting ripped off by the bond dealer.

There should be some kind of MSRB rule that if a bond has recently traded at, say, 115, that a dealer cannot offer to buy at a price more than n-points from where the last trade was done?
For example, maybe that's 3 points away from the last trade, thus dealer cannot buy for lower than 112 in my example.

Given the retail nature of muni bond market, I feel that dealers prey upon investors who don't know about using the MSRB trade price history as a guide to what a fair price might be.

What can MSRB do to force dealers to conduct an evidenced market "price check" prior to responding to a customer's bid wanted?
MSRB needs to do more here. Thanks.

sifma
Invested in America

May 6, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2013-07 (March 11, 2013): Request for Comment on Revisions to Suitability Rule: MSRB Rule G-19

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Request for Comment on Revisions to Suitability Rule (MSRB Rule G-19[2]) (the Proposal"). As it has in the past[3], SIFMA continues to support the harmonization of Rule G-19 with Financial Industry Regulatory Authority ("FINRA") Rule 2111.

I. Harmonization with FINRA 2111

SIFMA supports the MSRB efforts to harmonize MSRB Rule G-19 with FINRA Rule 2111 – as current Rule G-19 had been harmonized with the predecessor rule to FINRA 2111, NASD 2310. Such harmonization will promote more effective business practices and efficient compliance. Additionally, SIFMA concurs with the MSRB that for purposes of conducting a customer suitability analysis, the factors to consider when developing their investment profile should contain the same components across financial products: there are no unique attributes of customers purchasing municipal securities

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2013-07 (March 11, 2013) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-07.aspx .

[3] See comment letter from David L. Cohen, SIFMA, to Ronald W. Smith, MSRB, dated February 19, 2013, available at http://www.sifma.org/issues/item.aspx?id=8589942049 .

warranting distinct investment profile elements. SIFMA's members, and others, have worked with FINRA over many years to fine-tune, and enhance customer facing and back office recordkeeping systems, and train and educate their registered representatives about FINRA 2111's new requirements. FINRA continues to provide guidance, most recently issuing Frequently Asked Questions about this new rule[4].

II. Differences between the Proposal and FINRA 2111

SIFMA notes that there are certain differences between FINRA 2111 and the Proposal. Yet our analysis has not identified unique attributes of the municipal securities market that would justify differences between G-19 and FINRA Rule 2111 – except for the application to 529 securities, as further detailed below. We believe the MSRB should eliminate or justify any other differences – as separate rules covering the same conduct will unnecessarily lead to regulatory confusion and increased compliance costs.

i. Application to SMMPs

As noted in the Proposal "[p]rovisions in guidance to Rule G-17 exempt dealers from the duty to perform a customer-specific suitability determination for recommendations to sophisticated municipal market professionals ("SMMPs"). FINRA's suitability rule has similar provisions with respect to institutional accounts. The MSRB does not propose incorporating the SMMP exemption into Rule G-19." SIFMA's members would prefer the MSRB to explicitly include the SMMP exemption in G-19 as with the institutional account exemption in FINRA 2111(b), even though the MSRB has proposed separate rules codifying current SMMP guidance[5]. We believe the current Proposal should at a minimum cross reference the forthcoming SMMP rules – in a similar fashion to which proposed Rule G-47 is referenced in the Proposal. The MSRB's omission of its SMMP exemption from this "harmonized" suitability rule risks this unnecessary regulatory confusion. Separately, it is our understanding, as reaffirmed in MSRB Notice 2013-10, that nothing in the Proposal impacts current G-17 Securities and Exchange Commission ("SEC") approved guidance[6] that exempts dealers from the duty to perform a customer-specific suitability determination for recommendations to SMMPs.

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[4] *See* FINRA Rule 2111 (Suitability) FAQ, December 11, 2012, available at http://www.finra.org/Industry/Issues/Suitability/ .

[5] *See* MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx .

[6] *See* MSRB Notice 2012-27 (May 29, 2012) (SEC Approves Revised MSRB Definition of Sophisticated Municipal Market Professional) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-27.aspx .

ii. Supplementary Material – Exclusions from Recommended Strategies

The SEC, in its 2012 report on the Municipal Securities Market, expressly calls for amending Rule G-19 to be consistent with FINRA's Rule 2111 "including with respect to the scope of the term strategy."[7] However, in proposed Supplementary Material, the MSRB omits important exclusions from Recommended Strategies to be covered under Rule G-19 that are present in FINRA's suitability rule in the absence of the recommendation of a particular security including with respect to: descriptive information about an employee benefit plan; asset allocation models such as investment analysis tools; and other interactive investment materials. The omission of these exclusions solely with respect to municipal securities will result in continued confusion for firms in implementing and maintaining suitability procedures and recordkeeping and is contrary to the MSRB's stated goal of promoting more effective and efficient compliance. Materials and output of this nature provide investors with valuable information when considering investment decisions and should be recognized by MSRB as exclusions from the requirements of Rule G-19.

SIFMA supports the inclusion of "general comparisons between tax-exempt and taxable bonds and the concept of tax-equivalent yield" as the type of general and investment information that would be excluded from coverage by Rule G-19 as long as such information does not include (standing alone or in combination with other communications) a recommendation of a particular municipal security or municipal securities. SIFMA suggests additionally listing 529 plan education savings calculator and tools as a type of excluded "general and investment information".

III. Proposed Deletion of MSRB Interpretive Notice 2002-30

Under the Proposal, the MSRB has identified MSRB Notice 2002-30[8] for rescission and to be superseded by revised Rule G-19. SIFMA supports the rescission of this notice as such rescission reflects the evolution and expansion of municipal securities offerings through alternative trading systems, other online trading platforms, and technological advances over the past decade and further harmonizes with FINRA guidance on what constitutes a "recommendation" in the online context.

IV. Clarification Related to 529 Plans

SIFMA requests clarification of endnote 15 that reads: "This does not include suitability obligations with respect to 529 plans. The MSRB proposes including these

[7] SEC's Report on the Municipal Securities Market, page 141 (July 31, 2012) available at http://www.sec.gov/news/studies/2012/munireport073112.pdf .

[8] MSRB Notice 2002-30 (September 25, 2002): Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2002/2002-30.aspx?n=1 .

obligations in a separate rule for 529 plans." We believe that this endnote and the text in the proposal that it accompanies creates confusion about the applicability of the proposed rule to firms selling 529 plan securities. In lieu of a separate suitability rule for 529 plans, we suggest that the MSRB consider incorporating existing interpretive guidance related to suitability assessments for 529 plans[9] into the proposed rule, either by adding a sentence to the proposed Rule G-19 specific to assessing the suitability of a 529 plan security, or in the alternative, by incorporating this existing interpretive guidance into the Supplementary Material.

V. Reconciliation of Comments and Synchronization of Effective Dates for the Proposal, Proposed Rule G-47, and Proposed Rule G-48

Given the proposed cross reference in Rule G-19 to proposed Rule G-47 with respect to satisfying reasonable basis suitability, SIMFA appreciates the MSRB's careful consideration of comments submitted in response to MSRB 2013-04 including the scope of a municipal securities dealer's time of trade disclosure obligation. In addition, as noted above, and in SIFMA's comments to the MSRB regarding proposed Rule G-47[10], the determination of a customer's status as an SMMP means that certain of a dealer's fair practice obligations will be deemed as fulfilled. Currently these circumstances are detailed in MSRB Notice 2012-27. We commend the MSRB's recognition of the interdependencies of the proposed revisions to Rule G-19, proposed Rule G-47, and proposed Rule G-48 (Transactions with Sophisticated Municipal Market Professionals) by intending to file each of these rule proposals with the SEC at the same time.[11] SIFMA respectfully requests that these three rule making proposals be implemented simultaneously with the same effective date.

VI. Implementation Period

As noted above, FINRA 2111 was the result of a multi-year process – including an implementation period of approximately 19 months[12]. Any regulatory scheme takes time to implement properly. Municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training. Municipal securities dealers that are FINRA members will also need time, albeit less than

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[9] *See* MSRB Notice 2006-07, MSRB Files Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans with the SEC, (March 31, 2006), available at http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2006/2006-07.aspx?n=1

[10] *See* comment letter from David L. Cohen, SIFMA, to Ronald W. Smith, MSRB, dated March 12, 2013, available at http://www.sifma.org/issues/item.aspx?id=8589942417.

[11] *See* MSRB Notice 2013-10.

[12] In November 2010, the SEC approved FINRA Rule 2111 (Suitability), which became effective on July 9, 2012.

non-FINRA members, to implement the proposed changes to Rule G-19. Therefore, SIFMA requests an implementation period, which would be no less than one year from approval by the SEC, before the Proposal becomes effective.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the harmonization of Rule G-19 with FINRA Rule 2111 as detailed above.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director
Ernesto Lanza, Deputy Executive Director
Gary L. Goldsholle, General Counsel
Lawrence P. Sandor, Deputy General Counsel – Regulatory Support

Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson
St. Louis, MO 63103
HO004-095
314-955-2156 (t)
314-055-2928 (f)

May 6, 2013

Via E-mail to http://www.msrb.org/CommentForm.aspx

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB 2013-07 Request for Comment on Revisions to Suitability Rule

Dear Mr. Smith:

Wells Fargo Advisors, LLC ("WFA") thanks the Municipal Securities Rulemaking Board ("MSRB" or "the Board") for the opportunity to comment on MSRB's proposed revisions to the suitability rule. WFA applauds the Board's continuing effort to promote regulatory efficiency.[1] Accordingly, WFA encourages MSRB to carefully consider comments it receives in relation to its proposed suitability revisions to assure that the Board meets its objective of harmonizing its suitability rule with FINRA's and that any differences reflect "unique attributes of the municipal securities market."[2]

WFA consists of brokerage operations that administer approximately $1.3 trillion in client assets. It employs approximately 15,354 full-service financial advisors in 1,100 branch offices in

[1] MSRB Notice 2013-06 MSRB Seeks Input on Annual Planning, 2, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-06.aspx?n=1.
[2] MSRB Notice 2013-07 Request for Comment on Revisions to Suitability Rule, 3, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-07.aspx?n=1

all 50 states and 3,204 licensed financial specialists in 6,610 retail bank branches in 39 states.[3] WFA offers a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

WFA offers the comments below in support of MSRB's proposed alignment of its suitability rule with FINRA's and to advance the Securities and Exchange Commission ("SEC") recommendation that MSRB continue efforts at "otherwise harmonizing MSRB rules with similar FINRA rules."[4] To achieve harmonization, WFA believes that MSRB's rule should include language similar to that in FINRA's suitability rule outlining limits on customer-specific suitability obligations for qualifying institutional accounts. Furthermore, WFA believes that MSRB should offer dealers guidance similar to that provided by FINRA clarifying that a dealer's suitability obligations relating to hold recommendations apply only to explicit recommendations.[5]

I. MSRB's Suitability Rule Should Include Language Describing Dealer's Limited Suitability Obligations for Sophisticated Municipal Market Professionals.

WFA requests that MSRB adopt a structure parallel to that of the FINRA suitability rule to make clear that under certain circumstances, a dealer has limited suitability obligations to institutional customers.[6]

The MSRB revised its definition of sophisticated municipal market professionals ("SMMPs") in 2012 "to maintain consistency with the revised FINRA suitability rule for institutional customers."[7] In its proposed suitability rule revisions, the MSRB again acknowledged that FINRA's suitability rule has provisions similar to those that "exempt dealers from the duty to perform a customer-specific suitability determination" for recommendations to SMMPs. Furthermore, MSRB has identified the promotion of regulatory efficiency as among its top priorities for 2013. Moreover, MSRB has identified the alignment of its rule format with that of

[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 89 correspondent clients, WFA and WFAFN. For ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

[4] SEC Report on the Municipal Securities Market, 141, http://www.sec.gov/news/studies/2012/munireport073112.pdf

[5] FINRA Regulatory Notice 12-25 Additional Guidance on FINRA's New Suitability Rule, 5, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p126431.pdf.

[6] FINRA 2111 Suitability part (b) explains that a FINRA member "fulfills customer-specific suitability obligations" to institutional customers when the firm reasonably believes the customer can independently evaluate investment risks and the customer affirmatively indicates that it is exercising such independent judgment, http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9859.

[7] MSRB Notice 2012-16 MSRB Files Restated Interpretive Notice on Sophisticated Municipal Market Professionals, 2, http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-16.aspx.

other regulators as one of its designated approaches to achieve the objective of regulatory efficiency.[8] Nevertheless, rather than adopt a suitability rule structure that parallels FINRA's with respect to potential limits on duties to institutional customers, MSRB is proposing a separate rule on SMMPs.[9] WFA notes that MSRB's proposed SMMP codification acknowledges that the rule has "interpendencies" with other MSRB rules, including MSRB's proposed revised suitability rule.[10]

WFA respectfully requests that MSRB reconsider its plan to handle the SMMP exemption separately from the revised suitability rule. Treating a municipal dealer's suitability obligations to SMMPs differently than a FINRA member's institutional suitability duties as reflected in FINRA 2111(b) undermines MSRB's broader objective to "promote regulatory efficiency."[11] In order to understand and comply with its municipal suitability obligations to an institutional client, dealers currently need to reference three separate MSRB rules and accompanying guidance.[12]

In addition, WFA is concerned that the SMMP exemption continues to impose additional suitability requirements for dealers conducting transactions in municipal securities with institutional clients beyond those required under FINRA 2111(b). Dealers considering whether an institutional account is a SMMP must assess the factors required under 2111(b) as well as additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer.[13] Consequently, even though MSRB seeks to harmonize its suitability rule with FINRA's, dealers will likely be required to maintain separate policies and procedures to satisfy suitability obligations to institutional customers transacting in municipal securities. Since some institutional clients may satisfy FINRA's exemptive criteria but not MSRB's, dealers will likely need to invest in costly technology enhancements to distinguish SMMPs under the MSRB rule from those institutional accounts eligible for the exemption described in FINRA 2111(b) for other types of securities.

WFA is also concerned the difference in rule structure will lead to regulatory confusion for clients and regulators. For example, the same institutional client might be required to provide more detailed information to facilitate a dealer's suitability obligations for an investment grade municipal bond transaction than for transactions in other types of securities that may entail greater investment risks. FINRA examiners will also have to be familiar with the difference in

[8] MSRB Current Priorities, http://www.msrb.org/About-MSRB/About-the-MSRB/MSRB-Current-Priorities.aspx
[9] MSRB Notice 2013-10 Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1.
[10] *Id*.
[11] MSRB Current Priorities.
[12] MSRB G-8,(a)(xi) defining institutional accounts, MSRB G-19 Suitability, MSRB G-17 Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals, July 9, 2012, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx.
[13] Text of Sophisticated Municipal Market Professional definition, http://www.msrb.org/msrb1/pdfs/MSRB-2012-05-Exhibit-5.pdf.

structure of the FINRA suitability rule and the MSRB's to understand the potential difference between a dealer's suitability obligations to institutional customers effecting municipal transactions and those transacting in other types of securities. This would be true despite MSRB's recent efforts to "maintain consistency with FINRA" in modifying the definition of a SMMP.[14]

The simplest means of addressing this potential for duplication and confusion would be for MSRB to synchronize its SMMP definition with the institutional provisions in 2111(b) and include it as part of the revised MSRB suitability rule.

II. MSRB Should Provide Guidance Clarifying that Suitability Obligations for Recommendations to Hold Apply Only to Explicit Hold Recommendations.

WFA believes that MSRB should provide guidance similar to that FINRA has provided making clear that suitability obligations concerning hold recommendations cover only explicit hold recommendations.[15]

MSRB's request for comment on proposed revisions to the suitability rule explains how the Board has incorporated provisions of FINRA's suitability rule covering recommended "investment strategies" including "an explicit recommendation to hold a municipal security or securities."[16] The proposed rule text specifies certain types of communications about "investment strategies" that are excluded from coverage under the suitability rule unless they accompany a specific recommendation. It does not, however, offer detail to clarify what constitutes an explicit recommendation to hold a municipal security or group of municipal securities.[17]

In guidance issued in December 2012, FINRA provided an example of a covered recommendation to hold in which a registered representative "explicitly advises the customer not sell any securities" as part of a "quarterly or annual investment review." The December guidance also reinforces earlier FINRA guidance exempting "implicit recommendation[s] to hold" from coverage under the suitability rule. Moreover, FINRA's guidance makes clear that even when an explicit hold recommendation is made, it does not ordinarily create a duty to monitor the position or to later make recommendations concerning the security or securities.[18]

WFA respectfully requests that MSRB issue guidance similar to FINRA's clarifying the nature of an explicit recommendation to hold. Likewise, WFA encourages MSRB to ensure its guidance addresses the fact that an explicit recommendation to hold is made does not, by itself,

[14] MSRB Notice 2012-16 at 2.
[15] FINRA Regulatory Notice 12-25 at 5.
[16] MSRB Notice 2013-07 at 1.
[17] *Id.* at 4-5.
[18] FINRA Regulatory Notice 12-55 Guidance on FINRA's Suitability Rule, 3, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p197435.pdf,

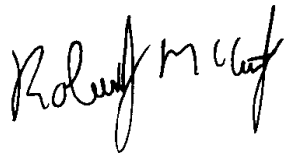
create an obligation to monitor a municipal security or group of securities, or to make subsequent recommendations.

Conclusion

WFA appreciates the opportunity to offer comment for the MSRB to consider as the Board revises the municipal suitability rule. WFA believes the suggestions above will help MSRB achieve its objective of harmonizing its suitability rule with FINRA's and further the Board's objective to facilitate regulatory efficiency.

If you have any questions regarding this comment letter, please feel free to contact me.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

MSRB NOTICE 2013-10 (MAY 1, 2013)

REQUEST FOR COMMENT ON PROPOSED SOPHISTICATED MUNICIPAL MARKET PROFESSIONAL RULES

The Municipal Securities Rulemaking Board ("MSRB") is seeking comment on proposed rules that would streamline and codify existing guidance regarding the application of MSRB rules to transactions with Sophisticated Municipal Market Professionals ("SMMPs") currently set forth in interpretive guidance to MSRB Rule G-17. The proposed changes would create a new definitional rule, D-15, defining an SMMP and a new general rule, G-48, on the regulatory obligations of brokers, dealers and municipal securities dealers ("dealers") to SMMPs.

Comments should be submitted no later than June 12, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, or Darlene Brown, Assistant General Counsel, at 703-797-6600.

BACKGROUND

On July 9, 2012, the MSRB issued an interpretive notice to Rule G-17 revising prior guidance on the application of MSRB rules to transactions with SMMPs.[2] The rules proposed below preserve the substance of that guidance but codify it into two proposed rules that define an SMMP and describe the application of the following obligations to SMMPs: (1) time of trade disclosure; (2) transaction pricing; (3) suitability; and (4) bona fide quotations.

PROPOSED SMMP RULES

The proposed SMMP rules do not change the substance of the restated SMMP notice.[3] The MSRB believes that a new definitional rule, together with a general rule that describes the regulatory obligations of dealers working with SMMPs, will underscore the differences between dealers' obligations to non-SMMPs and SMMPs, while highlighting the eligibility standards for being an SMMP.

CURRENT INTERPRETIVE GUIDANCE

Contemporaneous with the adoption of the proposed SMMP rules, and those related to time of trade disclosures[4] and suitability,[5] the MSRB proposes deleting four Rule G-17 interpretive notices that will be superseded in their entirety by these rules.[6]

RELATIONSHIP WITH PROPOSED TIME OF TRADE DISCLOSURE AND SUITABILITY RULES

The proposed SMMP rules are part of the MSRB's review of Rule G-17 and related interpretive guidance. Because of the interdependencies of the proposed time of trade disclosure rule,[7] the proposed revisions to the suitability rule[8] and the proposed SMMP rules, the MSRB intends to file each of these rule proposals with the Securities

and Exchange Commission at the same time, once they have been approved by the MSRB.

REQUEST FOR COMMENT

The MSRB is requesting comment from market participants and other interested parties on the proposed SMMP rules set forth below. Specifically, the MSRB requests that commenters address the following questions:

1. Will the proposed codification of existing SMMP guidance impose any particular burden on dealers or provide any material benefit to dealers?
2. Is there any aspect of the restated SMMP notice that has been eliminated that should be included in the definitional or general rule? If so, please identify the guidance and state why it should be included in the new rules.
3. Will the proposed SMMP definitional rule make it easier for dealers and institutional customers to understand who qualifies as an SMMP?
4. Will the proposed SMMP general rule make it easier for dealers and institutional customers to understand the alternative regulatory obligations applicable to a dealer's business with an SMMP?

May 1, 2013

* * * * *

TEXT OF PROPOSED SMMP RULES

Rule D-15: Sophisticated Municipal Market Professional

The term "sophisticated municipal market professional" or "SMMP" shall mean a customer of a broker, dealer or municipal securities dealer that is:

> (A) a bank, savings and loan association, insurance company, or registered investment company; or
>
> (B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or
>
> (C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million; and,

for which the broker, dealer or municipal securities dealer has a reasonable basis to believe is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities, and affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the broker, dealer or municipal securities dealer.

***** Supplementary Material: ----------**

.01 Reasonable Basis Analysis. As part of the reasonable basis analysis, the broker, dealer or municipal securities dealer should consider the amount and type of municipal securities owned or under management by the customer.

.02 Customer Affirmation. A customer may affirm that it is exercising independent judgment either orally or in writing, and such affirmation may be given on a trade-by-trade basis, on a type-of-municipal-security basis (*e.g.*, general obligation, revenue,

variable rate, etc.), or on an account-wide basis.

* * * * *

Rule G-48: Transactions with Sophisticated Municipal Market Professionals

A broker, dealer, or municipal securities dealer's obligations to a customer that it reasonably concludes is a Sophisticated Municipal Market Professional, or SMMP, shall be modified as follows:

(a) *Time of Trade Disclosure*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-47 to ensure disclosure of material information that is reasonably accessible to the market.

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

(1) the transactions are non-recommended secondary market agency transactions;

(2) the broker, dealer, or municipal securities dealer's services with respect to the transactions have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions; and

(3) the broker, dealer, or municipal securities dealer does not exercise discretion as to how or when the transactions are executed.

(c) *Suitability*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-19 to perform a customer-specific suitability analysis.

(d) *Bona Fide Quotations*. The broker, dealer, or municipal securities dealer disseminating an SMMP's "quotation" as defined in Rule G-13, which is labeled as such, shall apply the same standards regarding quotations described in Rule G-13(b) as if such quotations were made by another broker, dealer, or municipal securities dealer.

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[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[2] Interpretive Notice dated July 9, 2012, *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (the "restated SMMP notice").

[3] The proposed definition of SMMP includes a reference to the term "investment strategies," consistent with inclusion of that term in the proposed suitability rule published for comment on March 11, 2013. *See* MSRB Notice 2013-07 (March 11, 2013).

[4] *See* MSRB Notice 2013-04 (February 11, 2013).

[5] *See* MSRB Notice 2013-07 (March 11, 2013).

[6] Interpretive Notice dated November 30, 2011, *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations under MSRB Rule G-17;* Interpretive Notice dated February 19, 2008, *Application of MSRB Rules to Transactions in Auction Rate Securities;* Interpretive Notice dated July 9, 2012, *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals*; and Interpretive Notice dated April 30, 2002, *Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals*.

[7] *See* MSRB Notice 2013-04 (February 11, 2013).

[8] *See* MSRB Notice 2013-07 (March 11, 2013).

Alphabetical List of Comment Letters on MSRB Notice 2013-10 (May 1, 2013)

1. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated June 12, 2013

2. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated June 12, 2013

3. Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated June 12, 2013

BDA Bond Dealers of America

21 Dupont Circle, NW • Suite 750
Washington, DC 20036
202.204.7900
www.bdamerica.org

June 12, 2013

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2013-10 (May 1, 2013) – Request for Comment on Proposed Sophisticated Municipal Market Professional Rules

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Notice 2013-10 seeking comments on proposed Sophisticated Municipal Market Professional Rules (the "Proposed Rule") that would create a new definitional rule, Rule D-15 ("Proposed Rule D-15"), defining a sophisticated municipal market professional ("SMMP") and a new general rule, Rule G-48 ("Proposed Rule G-48"), regarding the regulatory obligations of brokers, dealers and municipal securities dealers ("dealers") to SMMPs. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets.

The BDA believes that any revisions to the MSRB rules, whether to harmonize such rules with those of other regulatory authorities or to streamline and codify existing guidance, should be written with an eye towards achieving a consistent interpretation and application of each rule. While we are supportive of the Proposed Rule, we seek clarity on some items.

Customer Affirmations Should Allow for Flexibility

With regard to Proposed Rule D-15 Supplementary Material, .02 Customer Affirmation, we appreciate the flexibility the MSRB has provided with regard to obtaining customer affirmations. However, we respectfully request that the MSRB consider permitting alternate methods of affirming SMMP status in lieu of specifically obtaining customer affirmations under the Proposed Rule. As an example, a dealer who has a process for and conducts a regular credit review of its SMMP customers should be able to use such credit review instead of obtaining an affirmation by the SMMP as long as the dealer determines there has been no change in the status of the SMMP based upon the internal review of the customer's portfolio or other similar evaluation. Current practice by firms already

indicates this is a process which is accepted and which does not take away from the evaluation process that the MSRB is seeking to ensure protection for customers. Therefore, we would ask that the MSRB consider including language in the Proposed Rule which permits such alternate methods of assessing an SMMP.

The Asset Threshold Language Should be Consistent with FINRA's Rule

Although we are comfortable with the $50 million asset threshold set forth in the Proposed Rule, especially as it is consistent with FINRA Rule 4512(c), Customer Account Information, we are concerned by the more stringent requirement in the Supplementary Material .01 of the Proposed Rule, which goes beyond FINRA Rules 4512 and 2111and states that a "…dealer should consider the amount *and type of municipal securities* owned or under management by the customer" *(emphasis added).*[1] FINRA Rule 2111 does not require a consideration of the type of securities held by the customer for qualification under FINRA's institutional investor exemption. We are unaware of any feature unique to the municipal securities market that would justify the more burdensome requirement in the Proposed Rule of consideration by a dealer of both the amount AND type of municipal securities owned or under management by the customer.

Furthermore, we believe this requirement might confuse examiners and allow for an uneven application of the Proposed Rule by examiners depending on how familiar or unfamiliar they are with the municipal markets and the differences between the FINRA and MSRB rules. We believe that it might be difficult for examiners and compliance officers at firms to set appropriate and objective parameters to meet the rule's requirements for consideration of the *type* of municipal securities. As an example, if a dealer's written supervisory procedures states a customer's holdings of all types of municipal bonds should be considered, but an examiner determines that since the customer has only a few revenue bonds and mostly general obligation bonds in their portfolio and therefore the revenue bonds should not be considered, then there is a difference in opinion which could cause the firm to have to reassess its entire methodology or risk being in violation of the rule as a result of differences in interpretation. We believe a determination by the dealer that the customer has total assets of at least $50 million and that the dealer has a reasonable basis to believe the customer is capable of evaluating investment risk and market value independently are important for whether or not the customer's account meets the requirements to be designated as an SMMP and that deference should be given to the evaluation process conducted by the dealer.

Technical Corrections

Proposed Rule G-48(b) provides that a broker, dealer, or municipal securities dealer does not have an obligation under MSRB Rule G-18 to take action to ensure that transactions meeting certain conditions are effected at fair and reasonable prices.[2] Under Proposed

[1] MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.

[2] See MSRB Notice 2013-10 (May 1, 2013).

Rule G-48(b)(1), one of the conditions is if the transaction is a "non-recommended secondary market agency transaction."[3] We would like further clarification as to how the MSRB defines "agency transactions" for purposes of this provision. The MSRB's Restated Interpretative Notice regarding the Application of the MSRB Rules to Transactions with Sophisticated Municipal Market Professionals dated July 9, 2012 (the "July 2012 Notice") included guidance that was particularly relevant to dealers operating alternative trading systems. Since the July 2012 Notice will be superseded by the Proposed Rules, we respectfully request the MSRB to consider the application of this provision in the context of alternative trading systems ("ATS") and whether it would be appropriate to expand this exemption for transaction pricing under Proposed Rule G-48 (b)(1) to include an ATS which functions on a riskless principal basis disclosing all commissions in the same manner as it would if it were acting as agent.

Finally, Proposed Rule G-48(d), Bona Fide Quotations, provides that a "[…] broker, dealer, or municipal securities dealer disseminating an SMMP's 'quotation' as defined in Rule G-13, *which is labeled as such*, shall apply the same standards…." (emphasis added).[4] We are unclear as to whether the MSRB intends that a quotation from an SMMP needs to be labeled as an "SMMP quotation" or if the MSRB is simply referring to a quotation that meets the requirements set forth under MSRB Rule G-13. Under the July 2012 Notice, it was very clear that if an SMMP makes a "quotation" *and* it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer and the disseminating dealer's responsibility with respect to such quotation is reduced and the disseminating dealer is held to the same standard as if it were disseminating a quotation made by another dealer. If Proposed Rule G-48(d) is intended to codify the language from the July 2012 Notice, then we respectfully request that the MSRB consider modifying the language in Proposed Rule G-48(d) to clarify that the clause "which is labeled as such" does not require the quotation to be specifically labeled as an SMMP quotation.

Thank you for the opportunity to submit these comments on the Proposed Rule.

Sincerely,

Michael Nicholas

Chief Executive Officer

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[3] See MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.

[4] MSRB Notice 2013-10 (May 1, 2013) Request for Comment on Proposed Sophisticated Municipal Market Professional Rules.

sifma

Invested in America

June 12, 2013

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2013-10 (March 11, 2013):
Request for Comment on Proposed Sophisticated Municipal Market Professional Rules

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB") Request for Comment on Proposed Sophisticated Municipal Market Professional ("SMMP") Rules[2] (proposed Rule D-15 and proposed Rule G-48).

I. Executive Summary

SIFMA continues to support the efforts by the MSRB to provide clarity to regulated entities by reorganizing or eliminating certain interpretive guidance associated with MSRB Rule G-17 into new or revised rules that highlight core principles. SIFMA concurs with the MSRB "that a new definitional rule, together with a general rule that describes the regulatory obligations of dealers working with SMMPs, will underscore the differences between dealers' obligations to non-SMMPs and SMMPs, while highlighting the eligibility standards for being an SMMP." Hopefully this will improve brokers, dealers, and municipal securities dealers' ability to more easily identify SMMPs and their reduced obligations to this class of customers. As further discussed below, SIFMA believes that the MSRB rules listed within proposed Rule G-48 should reference a firm's reduced obligations to SMMPs

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] MSRB Notice 2013-10 (May 1, 2013) available at http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1 .

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by cross referencing proposed rule G-48. Additionally, SIFMA believes that the following rule proposals should be implemented simultaneously with the same effective date due to their interdependencies: proposed Rules D-15, G-47, G-48, and the proposed revisions to Rule G-19.

II. Proposed Rule D-15: Sophisticated Municipal Market Professional

Last year, SIFMA supported the MSRB's efforts to revise the 10 year old definition of SMMP so that it became harmonized, definitionally and operationally, with the treatment of institutional customers under FINRA's revised suitability rule, FINRA Rule 2111[3]. SIFMA continues to believe that a single definition of "institutional account" reduces compliance burdens. Additionally, the operational benefit of utilizing a single affirmation[4] to satisfy both FINRA 2111 and the SMMP requirements, soon to be a part of Rule D-15, eases customer confusion and reduces compliance burdens. If FINRA were to amend FINRA 2111(b) or FINRA 4512(c), we would expect the MSRB to once again harmonize its rulemaking on this topic.

SIFMA's members have brought to our attention one group of customers that may be experienced municipal market participants – yet do not fall within the current SMMP definition: hedge funds with assets under management of less than $50 million. The MSRB and FINRA should consider expanding the definition of institutional account holders and SMMPs in future rule making to include this type of customer.

III. Proposed Rule G-48: Transactions with Sophisticated Municipal Market Professionals

SIFMA continues to support the modifications of certain obligations that a broker, dealer, or municipal securities dealer has to its SMMP customers: time of trade disclosures, transaction pricing obligations for certain non-recommended secondary market agency transactions, customer-specific suitability analysis, and disseminating an SMMP's quotation. Listing these modifications within a self-contained rule clearly underscores the differences between dealers' obligations to non-SMMPs and SMMPs and should ease compliance with these requirements.

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[3] See letter to Mary M. Murphy, U.S. Securities and Exchange Commission, from David L. Cohen (May 4, 2012) available at http://www.sifma.org/issues/item.aspx?id=8589938628 .

[4] *See* SIFMA Develops New Institutional Suitability Certificate to Facilitate Compliance with New FINRA Suitability Requirements (February 23, 2012) available at http://www.sifma.org/news/news.aspx?id=8589937525 .

IV. Cross Referencing Related Rules

As noted above, proposed Rule G-48 references the other MSRB rules to which a dealer's obligations to SMMPs are modified. Similarly, we believe it is important for these rules (proposed Rule G-47, Rule G-19 (currently proposed for modifications), and Rule G-13) to specifically include a reference to the definition of and the modified obligations to SMMPs that exist under current MSRB interpretive guidance soon to be replaced by proposed Rules D-15 and G-48. Doing so will further the MSRB's objective in underscoring the differences between dealers' obligations to non-SMMPs and SMMPs.

V. Synchronization of Effective Dates for the Proposal, Proposed Rule G-47, and Proposed Revisions to Rule G-19

We commend the MSRB's recognition of the interdependencies of the proposed revisions to Rule G-19, proposed Rule G-47, proposed Rule G-48, and proposed Rule D-15 by intending to file each of these rule proposals with the SEC at the same time.[5] SIFMA respectfully requests that these three rule making proposals be implemented simultaneously with the same effective date.

VI. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the proposed rule changes as detailed above and requests that proposed Rule G-47, Rule G-19 (currently proposed for modifications), and Rule G-13 cross reference proposed Rule D-15 and proposed Rule G-48. Additionally all of these proposals should have the same effective date.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

David L. Cohen
Managing Director
Associate General Counsel

cc: *Municipal Securities Rulemaking Board*
Lynnette Kelly, Executive Director
Ernesto Lanza, Deputy Executive Director
Gary L. Goldsholle, General Counsel
Lawrence P. Sandor, Deputy General Counsel – Regulatory Support

[5] *See* MSRB Notice 2013-10.

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June 12, 2013

Via E-mail to http://www.msrb.org/CommentForm.aspx

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB 2013-10 Request for Comment on Proposed Sophisticated Municipal Market Professional Rules

Dear Mr. Smith:

Wells Fargo Advisors, LLC ("WFA") thanks the Municipal Securities Rulemaking Board ("MSRB" or "the Board") for the opportunity to comment on MSRB's proposed codification of existing guidance about how its rules are modified when dealers interact with Sophisticated Municipal Market Professionals ("SMMPs").[1] WFA supports MSRB's continued commitment to "streamline" its rules and guidance and its ongoing effort to align its rule format with that of other regulators, particularly the Financial Industry Regulatory Authority (FINRA).[2]

WFA consists of brokerage operations that administer approximately $1.3 trillion in client assets. It employs approximately 15,354 full-service financial advisors in branch offices located in all 50 states and the District of Columbia, and 3,204 licensed financial specialists located in retail bank branches in 39 states.[3] WFA offers a range of fixed income solutions to its clients, many of whom regularly transact municipal securities in the secondary markets.

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[1] MSRB Notice 2013-10 Request for Comment on Proposed Sophisticated Municipal Market Professional Rules, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1.

[2] MSRB Current Priorities, http://www.msrb.org/About-MSRB/About-the-MSRB/MSRB-Current-Priorities.aspx.

[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 89 correspondent

WFA offers these brief comments to help MSRB assure that a codified SMMP rule facilitates efficient compliance and advances the Board's objective to harmonize its rulebook with FINRA rules.[4]

I. MSRB Should Incorporate References to the Proposed SMMP Rules Within Other Related MSRB Rules.

In its proposed SMMP codification, the Board acknowledged the interrelated nature of the SMMP and suitability rule proposals and announced the Board's intent to submit these rules for Securities and Exchange Commission ("SEC" or "the Commission") approval at the same time.[5]

In light of its interrelated nature, proposed Rule G-48 identifies the other MSRB rules under which a dealer's duties to a SMMP are modified. The SMMP proposal, however, does not incorporate a reference to the SMMP rules within any of these related MSRB rules.[6] WFA is concerned that the failure to incorporate explicit references to rules under which a dealer's duties to SMMPs are modified will create regulatory confusion and respectfully requests that MSRB make this linkage clear within each of the affected rules.

II. Criteria for a Dealer's Determination of a SMMP's Capacity to Independently Evaluate Municipal Risks Should Align with Criteria Applying to Institutional Customers Under FINRA's Suitability Rule.

When MSRB revised its SMMP definition in 2012, it sought "to maintain consistency with the revised FINRA suitability rule for institutional customers."[7] In its recent proposal to align the MSRB suitability rule with FINRA's, the MSRB again acknowledged the similarity of the SMMP exemption and provisions of the FINRA suitability rule limiting duties to institutional customers capable of independently evaluating investment risks.[8]

WFA, however, remains concerned that MSRB's SMMP definition imposes additional suitability obligations for dealers conducting transactions in municipal securities with institutional clients beyond those required under FINRA 2111(b). [9] Dealers considering whether an institutional account is a SMMP must assess the factors required under 2111(b) as well as additional criteria such as the institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned

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clients, WFA and WFAFN. For ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

[4] MSRB Notice 2013-10, MSRB Current Priorities.

[5] MSRB Notice 2013-10 (noting interdependencies of SMMP, Time of Trade and Suitability rule proposals).

[6] *Id.*

[7] MSRB Notice 2012-16 MSRB Files Restated Interpretive Notice on Sophisticated Municipal Market Professionals, 2, http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-16.aspx.

[8] MSRB Notice 2013-07 Request for Comment on Revisions to Suitability Rule, 3, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-07.aspx?n=1.

[9] Wells Fargo Advisors Comment Letter Re: MSRB 2013-07 at 3, http://www.msrb.org/RFC/2013-07/wellsfargo.pdf.

[by] or under management" of the institutional customer.[10] As WFA noted in its comment letter on MSRB's proposal to harmonize its suitability rule with FINRA's, dealers will likely be forced to maintain separate procedures and systems to address the differences between MSRB's SMMP rules and FINRA 2111(b).[11]

Furthermore, the differences in duties owed under the SMMP rules and FINRA 2111(b) may confuse clients and regulators. For example, the same institutional client might be required to provide more detailed information to facilitate a dealer's suitability obligations for an investment grade municipal bond transaction than for transactions in other types of securities that may entail greater investment risks. FINRA examiners will also have to be familiar with the difference in structure of the FINRA suitability rule and the MSRB's SMMP rules to understand the potential difference between a dealer's suitability obligations to institutional customers effecting municipal transactions and those transacting in other types of securities.[12]

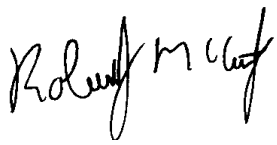
Accordingly, WFA believes MSRB should remove criteria from its proposed Rule D-15 and its supplementary material which require municipal securities dealers to consider an institutional customer's ability to independently evaluate the "market value" of municipal securities and the "amount and type of municipal securities owned [by] or under management" of the institutional customer in making the determination of the customer's status as a SMMP.[13]

Conclusion

WFA appreciates the opportunity to offer comment for the MSRB to consider as the Board codifies its SMMP guidance. WFA believes the suggestions above will further the Board's objectives of facilitating regulatory efficiency and harmonizing its rules with FINRA's.

If you have any questions regarding this comment letter, please feel free to contact me.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

[10] Text of Proposed Rule D-15; Sophisticated Market Professional, http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx?n=1.
[11] Wells Fargo Advisors Comment Letter Re: MSRB 2013-07 at 3.
[12] *Id.* at 3-4.
[13] Text of Proposed Rule D-15.